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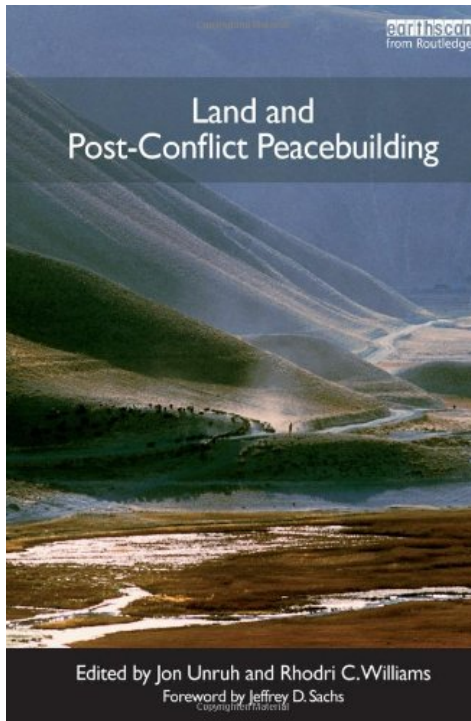
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This chapter first appeared in *Land and Post-Conflict Peacebuilding*, edited by J. Unruh and R. C. Williams. It is one of 6 edited books on Post-Conflict Peacebuilding and Natural Resource Management (for more information, see www.environmentalpeacebuilding.org). The full book can be ordered from Routledge <http://www.routledge.com/books/details/9781849712316/>.

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Customary law and community-based natural resource management in post-conflict Timor-Leste

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Online publication date: November 2013

Suggested citation: Miyazawa, N. 2013. Customary law and community-based natural resource management in post-conflict Timor-Leste. In *Land and post-conflict peacebuilding*, ed. J. Unruh and R. C. Williams. London: Earthscan.

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Customary law and community-based natural resource management in post-conflict Timor-Leste

Naori Miyazawa

The concept of the commons has evolved since the publication of Garrett Hardin's article "The Tragedy of the Commons" in *Science* (Hardin 1968). Hardin argued that degradation of the environment is likely when sizable numbers of individuals use resources in common. He used the example of pastures in Britain. A pasture is open to all, and many herders directly benefit from grazing their animals there. A rational herder may be motivated to add more animals, continually seeking more benefit. But as more and more animals are released to pasture, the pasture becomes barren. Pursuing this logic, Hardin argued that exhaustion of common resources is inevitable unless the property is owned by a public or private entity that can regulate access to pasture.

Hardin's theory accelerated the development of a dichotomy between the public and private sectors in environmental management, especially in developing countries. This contributed to a denial of the value of the customary and indigenous management of natural resources that operated until governmental authorities put Hardin's theories into practice (Murota and Mitsumata 2004).

However, subsequent research has pointed out that Hardin's paper was based on a misconception of the common system. Social scientists and anthropologists who grasped the characteristics of community-based management of natural resources revealed that many common systems still exist globally, and that the systems successfully manage and conserve natural resources on a community basis (McCay and Acheson 1987; Murota and Mitsumata 2004). Elinor Ostrom, who shared the 2009 Nobel Prize in Economics, examined various practices of managing common-property resources around the world from political and socioeconomic viewpoints. In a historical analysis, she presented eight conditions under which the commons can work in the long term and joint management of natural resources can succeed (Ostrom 1990).

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A society's customary law and community-based land management processes are influenced by political and social changes in the post-conflict situation, yet little research on customary law focuses on post-conflict settings. This case study analyzes the role of customary law and community-based management for land and natural resources in post-conflict Timor-Leste. It discusses how the customary law system of *tara bandu* has been affected by the conflict and the roles it has played in post-conflict recovery.

BACKGROUND OF RESEARCH

The author worked in post-conflict Timor-Leste with three organizations—an international nongovernmental organization (NGO), a university, and a consultancy organization—from 2001 to 2005. During this period, environmental management measures were implemented by the United Nations and the Timorese government, but the immediate effects of such measures were limited. For example, the UN and the government set up signboards banning tree cutting as part of a nationwide forest-conservation campaign. The signs said, “Do not cut trees. Let us conserve the forests for the future.” However, the signs failed to stop people from cutting trees. Indeed, trees were cut down even in locations adjacent to such signboards.

In contrast, community-based actions for natural resource management were more effective. It has been frequently observed that communities effectively manage natural resources by utilizing customary law. The community did not put up signs like the governmental authorities did, but erected altars made of tree branches and other natural objects. These customary practices nearly stopped the harvesting of natural resources by residents in the protected areas. Customary law was regulating the use of natural resources by Timorese people, especially in the rural areas. It was once again guiding local decisions, collective action, and enforcement systems.

Research focus

In order to analyze how natural resources should be managed after a conflict, the author considers the relationship between two major stakeholders: civil society (customary law, community, and international organizations) and government. Companies are a third major stakeholder. The balance of the three stakeholders in a state unaffected by conflict differs from the balance in a post-conflict situation. Figure 1 shows that the relationship of the stakeholders is balanced during a stable period in a democratic country. Figure 2 depicts the lack of balance among the stakeholders in a post-conflict society. In post-conflict Timor-Leste, the role of civil society—community, customary law, NGOs and international organizations—became larger than it was under stable circumstances, and the roles of the government and companies became smaller. This study focuses on the relative functions of these elements of civil society and government in natural resource management in post-conflict Timor-Leste.



Definitions

This study uses C. K. Allen’s definition of customary law: “Native customary law means a rule or a body of rules regulating rights and imposing correlative duties, being a rule or a body of rules which obtains and is fortified by established native usage and which is appropriate and applicable to any particular cause, action, suit, matter, disputes, and includes also any native customary law” (Allen 1939).

Though there is a wide range of definitions of community, this research defines community as a geographical distribution of individuals because people in Timor-Leste have close ties to the geographical area in terms of natural resource management. This is a slight adaptation of Ernest W. Burgess’s definition of community: “social groups where they are considered from the point of view of the geographical distribution of the individuals and institutions of which they are composed” (Burgess 1967, 144). Community is thus the geographical distribution of people at the village (*suco* in Tetum, the local language of Timor-Leste) and hamlet (*aldeia* in Tetum) levels.

This study adopts the following definition of *the commons*: 1) institutionalized systems for the collective management of natural resources, and 2) the natural resources commonly owned and used (Mitsumata, Morimoto, and Murota 2008). According to this definition, customary law is included in the commons in Timor-Leste because communities have applied customary law to manage common pool natural resources. Customary law is particularly applied to common land and forests that community members share.

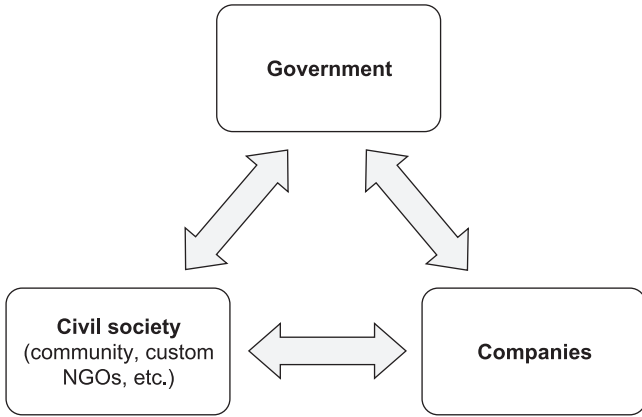


Figure 1. Roles of three societal stakeholders in a balanced state

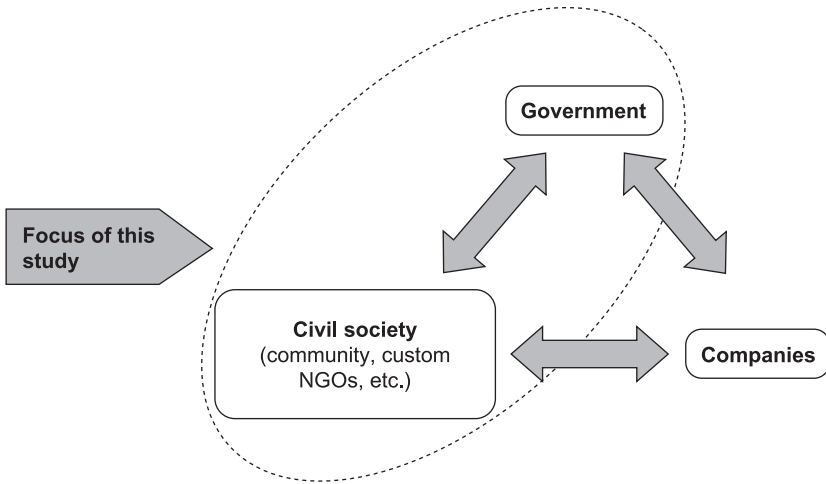


Figure 2. Shift in balance of stakeholder roles in a post-conflict society (Timor-Leste)

Nature and history of the conflict

Timor-Leste was colonized by Portugal in the seventeenth century. The pro-independence party, the Revolutionary Front for an Independent Timor-Leste (Frente Revolucionária de Timor-Leste Independente, or FRETILIN), declared the independence of Timor-Leste in 1975 after the territory was decolonized in 1974. Subsequently Indonesia invaded the territory and occupied it until 1999. The Indonesian government was interested in Timor-Leste's natural resources, especially the oil and gas reserves in the Timor Sea. During the Indonesian occupation, resistance continued in the form of guerrilla combat, which was waged mostly in the countryside (Candio and Bleiker 2001). Indonesian forces committed

large-scale human rights violations such as murders, rapes, torture, and forced relocation on a massive scale. Indonesian repression is asserted to have resulted in the deaths of about 200,000 East Timorese, or approximately one-quarter of the population (Shalom, Chomsky, and Albert 1999).

In the August 1999 popular election, 78.5 percent of East Timorese voters opted for independence from Indonesia. Immediately after announcement of the ballot result, the Indonesian military and pro-Indonesian militia groups went on a rampage in Timor-Leste and destroyed an estimated 70 percent of the territory's infrastructure (Tee 2000). The death toll was estimated to be about six hundred people, though the UN conceded that the number could have been much higher (Candio and Bleiker 2001). Timor-Leste became independent in May 2002.

THE EFFECTS OF ARMED CONFLICT ON NATURAL RESOURCES

Serious problems for the environment emerged in post-conflict Timor-Leste: destruction of infrastructure, decrease in forest area, lack of effective law and policy, and loss of human and technical resources that weakened state capacity.

During the twenty-four years of Indonesian administration, natural resources were exploited for short-term profit. The Portuguese and Indonesian regimes "denied, or at least failed to encourage, a constructive role for local communities in the management and conservation" of resources (McWilliam 2003, 308). This followed decades during which the Indonesian occupation not only depleted the resources of the physical environment but also weakened the social structure by which communities had managed and protected natural resources. The effects of bombings and forced resettlement practices by Indonesian governmental authorities also contributed to the changes in the environment and social structure (Aditjondro 1994a, 1994b). The forced resettlement of the population to roadside areas and other more controllable places detached people from their sacred lands and community forests (Anderson and Deutsch 2001).

The independence of Timor-Leste brought to light the country's environmental problems. As indicated in table 1, 192,250 hectares of forest cover were lost between 1972, before the Indonesian invasion, and 1999, the year Timor-Leste voted for independence (Sandlund et al. 2001). This represents a 30 percent reduction in forest cover over the period—a deforestation rate of roughly 1.1 percent per year, nearly four times higher than the global average of 0.3 percent (FAO 2005).

Two major factors contributed to deforestation from 1975 to 1999. First, the Indonesian military's counterinsurgency activities included regular burning of forests

Table 1. Pre- and post-conflict forest cover in Timor-Leste

	<i>Dense forest (ha)</i>	<i>Sparse forest (ha)</i>	<i>No forest (ha)</i>	<i>Total (ha)</i>
1972 (before conflict)	321,542	324,558	624,546	1,270,646
1999 (after conflict)	207,654	246,196	816,796	1,270,646

Source: Sandlund et al. (2001).



Figure 3. Depleted forest on hillsides around Dili, Timor-Leste's capital city

Source: Photo by author (2003).

to flush out opposition forces and “to reduce protective cover and concomitant opportunities for ambush” (McWilliam 2003, 316). Second, the Indonesian administration and Indonesian companies pursued logging for export, especially of high-value timber such as sandalwood and teak. Timor-Leste’s timber resources were virtually monopolized by Indonesian business interests (Aditjondro 1994b). The hillsides around Dili, Timor-Leste’s capital city, depicted in figure 3, were once covered in forest and home to marsupial mammals; now only a few trees remain.

Armed conflict negatively influences not only natural resources themselves but also environmental management systems. It disrupts state institutions and mechanisms of policy coordination, which in turn increases the likelihood of poor management and illegality (UNEP 2009). As a consequence of the conflict in Timor-Leste, the government there has faced a policy and regulation gap, a human resources shortage, financial resource limitations, and a lack of baseline information.

Policy and regulation gap

After the withdrawal of the Indonesian government in 1999, the United Nations Transitional Administration in East Timor (UNTAET) undertook state building and administrative activities until 2002, including establishment of environmental

regulations.¹ In principle, UNTAET adopted the policies formally applied during the Indonesian administration, including laws and regulations on forest conservation. However, those policies were sometimes ineffective due to the changes in the post-conflict situation (MAFF 2004).

Later, the national legislature started to transform the transitional regulations established by UNTAET into national regulations. Currently the government of Timor-Leste is in the process of formulating a range of policies, laws, decrees, and regulations related to the environment and natural resource management. Throughout this process, there have been periods when policies and regulations proved inefficient or the law did not function effectively. Environmental law that covers pollution control and the Environmental Impact Assessment Law were finally promulgated in February 2011, nearly ten years after independence. As of February 2011, the land law was still being debated in parliament.

Human resources shortage

Timor-Leste has also faced a structural human resources shortage. During the Indonesian administration, most civil servants in management positions were Indonesian personnel, partly because the Indonesian authorities intentionally kept Timorese out of senior management positions in the government. There was little opportunity for Timorese public servants to develop their capacity as senior-level managers.

After the popular election in 1999, over 7,000 Indonesian public servants fled Timor-Leste in the chaos of the ensuing violence (UNDP 2003). This situation created a vacuum in the public service, with a limited number of qualified personnel available in the administration. For example, the National Directorate of Forestry and Water Resources (NDFWR) of the Ministry of Agriculture, Forestry and Fisheries (MAFF) had only fifty-seven staff covering the entire country, or roughly 19 percent of the number of staff during the Indonesian administration. Only seven of the fifty-seven—or some 12 percent of NDFWR staff members—had a bachelor's degree in forestry; the education level of most staff was senior high school level (MAFF 2007).

Financial resource limitations

The government of Timor-Leste has faced severe budget constraints after independence was decided in 1999, and these constraints have impacted the budgets

¹ There have been three subsequent UN peacekeeping missions to Timor-Leste: the UN Mission of Support in East Timor (May 2002–May 2005), a peacekeeping mission to assist the newly independent state; the UN Office in Timor-Leste (May 2005–August 2006), which supported capacity building, democratic governance, and the observance of human rights; and the UN Integrated Mission in Timor-Leste (established in August 2006), whose mandate includes supporting the government in strengthening stability, promoting democratic governance, and facilitating political dialogue among stakeholders.

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of MAFF, NDFWR, and the Department of Forestry. For the years 2002 to 2011, the cumulative sum of the annual budgets for the state of Timor-Leste totaled nearly US\$4.4 billion (MOF n.d.). During this same period, the cumulative sum of MAFF's annual budgets totaled US\$128 million, less than 3 percent of the state budget. The NDFWR and the Department of Forestry had similarly restricted budgets. The NDFWR's annual budget was US\$199,000 between 2001 to 2004, and the Department of Forestry's 2011 budget was US\$555,159, only 4 percent of the MAFF's annual budget (MAFF 2004; MOF n.d.). In light of these financial constraints, it was important for the ministry to have a strategic partnership with other institutions, including international organizations and NGOs that provided assistance with environmental management.

Lack of baseline data

Data related to the environment were not properly maintained during the conflict. Therefore, there is limited accurate baseline information to consult for the purpose of policy and project formation. This poses a major challenge for the government of Timor-Leste in planning, analyzing, and formulating environmental policy.

Accurate forest inventories, data on biodiversity, and land classifications delineating clear boundaries between forest and nonforest areas were nonexistent (MAFF 2004). The resulting uncertainty has made it more difficult to attract attention from donors and has caused delays in project implementation. For example, when a reforestation program was implemented with MAFF, the discussions on where public and private forest boundaries should be located caused substantial delays in program implementation.

In light of these needs, in 2001 the United Nations Development Programme (UNDP) and the Norwegian Institute for Nature Research published *Assessing Environmental Needs and Priorities in East Timor* to provide basic data on environmental resources (Sandlund et al. 2001).

FRAMEWORKS FOR ENVIRONMENTAL REGULATION

Natural resources are key to the long-term sustainability and prosperity of Timor-Leste and its local communities. In 2001, the agricultural sector employed 80 percent of the population, contributing 40 percent of the gross domestic product and 90 percent of foreign exchange (da Costa 2001),² and agriculture was the main source of income in 94 percent of villages (East Timor Transitional Authority 2001). With 86 percent of the people living in rural areas and 80 percent dependent

² Petroleum exploitation in the waters southeast of Timor-Leste in the mid-2000s reshaped Timor-Leste's economy. As of 2011, the oil sector contributes 95 percent to the country's gross domestic product and accounts for most of its foreign exchange (World Bank n.d.a).

on agriculture, forestry, and fisheries (World Bank n.d.b), rural communities continue to rely directly on natural resources for their daily life. For example, people depend on forests for a variety of medicinal and food items, as well as building and household materials (Sandlund et al. 2001).

United Nations environmental regulation framework

While the transitional administrator of Timor-Leste, UNTAET, was working on state building and administrative activities from 2000 to 2002, it also established two main interim regulations for natural resource management. The first regulation (Regulation 17/2000) was to ban illegal logging of wood and the burning of forests. The second regulation (Regulation 19/2000) provided for the protection of fifteen areas designated as “protected wild areas” of natural importance.

For illegal logging, a differential scale of penalties was established. Individual loggers were to be charged up to US\$5,000, and business entities who violated the regulations were to be fined up to US\$500,000. However, people continued to log wood and burn forests despite the UNTAET prohibitions. The penalty system, with its large fines, was impractical, and the regulation became unenforceable (McWilliam 2003).

Customary law for land and natural resource management: Tara bandu

A system of customary law called tara bandu, on the other hand, is well-practiced in Timor-Leste and provides protection for natural resources. In Tetum, the term *tara bandu* means “prohibition (*bandu*) by hanging (*tara*).” Tara bandu is a community-based natural resource management system based on traditional sociopolitical structures at the village and hamlet levels.

The three steps of tara bandu

Through observation and interviews with communities in Dili, Ainaro, and Liquiçá from 2001 to 2005, the author identified three major steps as the core mechanism for the practice of tara bandu: initiation, announcement, and enforcement.

First, specifically prohibited activities are determined at a public meeting of community members. Tara bandu typically prohibits the burning of forests, the cutting of trees, collection of forest products, agricultural harvests, and hunting and fishing in a forbidden zone for a defined period of time, as well as a broad variety of other activities.

Second, the community conducts a public ceremony to announce its enactment of the determined prohibition. A ritual authority figure takes the leading role in conducting the ceremony. The ceremony consists of a set of ritual forms: an altar is established, an animal is sacrificed, and the animal blood is poured over the land. Items are hung on the altar to inform the community about the prohibition. For



Figure 4. *Tara bandu* inception ceremony in Dili

Source: Photo by author (2004).

example, a lighter hung from a cross made out of tree branches may signify a ban on burning forests in a designated area. Such altars can be found in most areas.

Figure 4 depicts a ritual ceremony for announcing regulations by *tara bandu*. The man in the center holding a megaphone is a traditional leader. The community had decided to prohibit the cutting and burning of trees on the hill behind the altar, which was made of leaves and tree branches. A lighter was hung on the altar at this time, to indicate that tree burning was prohibited. A goat was sacrificed for the gods during the ceremony, and blood from the sacrificed goat was sprinkled over the land.

Third, as an enforcement mechanism, fines are determined by the community leaders and are imposed on any individual who is caught violating the regulation. Violators usually pay their fines in kind—by giving the community leaders an animal, for example—but sometimes they pay in cash. For example, if someone cut trees from the prohibited areas, the violator must pay the determined fines or provide his or her animal to the community leaders. The collected animals and cash fines are pooled and maintained by the community leaders for future ritual ceremonies.

There is strong compliance with regulations established in this manner. For example, when a public works project cut palm trees protected by *tara bandu* without permission from customary village authorities in the Oecusse District, the district government paid the mandated fine to the affected communities (Meitzner Yoder 2003).

Historical background of tara bandu

Following independence from Indonesia, a strong movement to reestablish customary practices for land and natural resource management emerged. Tara bandu is said to have been practiced before the Portuguese colonial era, and its key elements persisted through the Portuguese colonial era (Taylor 1999). Natural resource management by customary practices faded during the Indonesian occupation (Meitzner Yoder 2003), when the Indonesian administration replaced ritual authorities with Indonesian forestry officers to approve tree felling. Ritual authorities maintained their role only in conducting the annual agricultural rituals (Meitzner Yoder 2007). The customary system was also weakened by population relocation and social disruption (MAFF and Oxfam 2004).

The resurgence of customary law resulted from a perceived crisis of forest-resource depletion following the 1999 popular election and ensuing violence. Communities faced a severe shortage of wood materials when they needed to rebuild their homes, many of which were mostly destroyed by fire during the crisis in 1999. In 2001 and 2002, communities started to take the initiative by enacting harvesting restrictions in locally protected or sacred forests. For example, from 2001 to 2004, fifteen out of eighteen villages (over 80 percent) in Oecussi District held tara bandu ceremonies (Meitzner Yoder 2007).

Local perception of the environment

The practice of tara bandu is closely related to cultural perception of the environment. Local people perceive the environment as a cultural resource inherited from the ancestors, and they are tied to their land for reasons beyond its productive purpose: "It is a place where the life of the clan is invested, the place where the history of the existing lineage can be found, the site of ancestors' graveyards, the place of a clan's sacred altar and other cosmologically related affairs" (Anderson and Deutsch 2001, 21).

This perception of the environment is closely linked with the enforcement mechanism of tara bandu. The people believe that someone who violates the prohibition set by tara bandu will be cursed. During interviews the author conducted in Ainaro in 2004, community members mentioned such curses: "He died by snakebite because he cut trees from a prohibited area"; "He died after suffering from an unknown fever because he harvested products from a forbidden area." This local belief facilitates the people's strong compliance with the regulations implemented by customary leaders.

Leadership for the practice of customary law

Core leadership for the practice of tara bandu is taken by the *lia nain*, a descendant of a chief. A respected individual within the community, the *lia nain* enforces proper treatment of nature by drawing on accumulated local knowledge. He takes a key role in supernatural aspects of the tara bandu mechanism and in maintaining order for ritual.

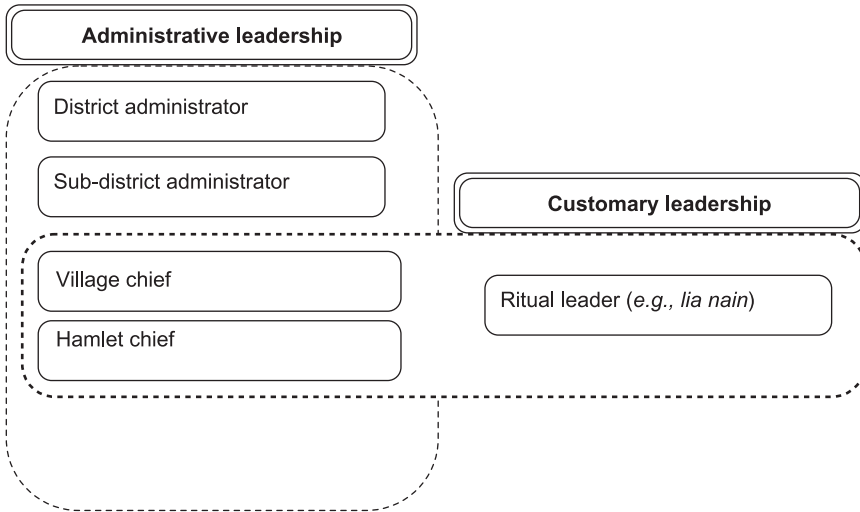


Figure 5. Conceptual relationships between administrative and customary leadership

The village chief and hamlet chief also play leadership roles in managing land and natural resources through customary law. Historically the role of chief was a hereditary position, but since independence the chiefs have been chosen by election. In the absence of effective law for landownership and land registry, the chief of the village, or *chefe de suco* (in Tetum), serves as a key figure in unofficial land markets. A *chefe de suco* may witness documents, maintain copies of documents, and even issue documentary acknowledgments of land rights. Most parties to land transactions are aware of the land administrative role of the *chefe de suco*, but are less sure of the role of the Land and Property Directorate, the government entity that is officially responsible for land transactions. Usually the *chefe de suco* consults with local authorities when a purported transaction takes place on land claimed as customary land; this seems particularly to be the case in transactions involving outsiders or foreigners (Fitzpatrick, McWilliam, and Barnes 2008).

Administrative leaders are officials appointed by the government. In some areas, administrative leaders play a leadership role in customary practice as well. The customary regulations can be enforced as long as the government empowers customary authorities and supports their enforcement mechanisms. If customary authorities have no leadership in enforcing customary law, such law will not be effective. (The leadership structure for the practice of the customary law is shown in figure 5.)

Strengths and limitations of tara bandu mechanism

Because it originates locally, tara bandu makes it easy for community members to enforce rules and adjust them according to environmental and social conditions. The practice is also straightforward for communities because the environment is closely related with local beliefs and other aspects of local culture. Thus tara bandu is familiar to local people and widely acceptable to them.



Figure 6. Tara bandu ceremony in Dili with the then-president and then-prime minister of Timor-Leste in attendance

Source: Photo by author (2004).

Tara bandu has certain limitations, however. Sometimes customary authorities have difficulty resolving intervillage disputes. Because tara bandu does not bind people from adjacent areas or villages who did not participate in its establishment, violations committed by nonparticipating villages are not covered by its restrictions (Cardinoza 2005). Thus it is necessary for leaders to collaborate with other villages, particularly those with common boundaries, when establishing tara bandu regulations. All neighboring villages should be invited to attend the meetings and ceremonies. In the event that collaboration fails, government officials provide support for mediation.

Another limitation is that sometimes a community cannot afford the materials for the ceremony, and there is a tendency to delay declaring a rule by tara bandu until the community can arrange for the required ritual materials (Cardinoza 2005). To address this problem, the government and NGOs occasionally provide material support to communities—sometimes even supplying the goat to be used for the sacrifice. Government officials' attendance at tara bandu ceremonies, as depicted in figure 6, increases the legitimacy of customary leaders and customary law. Figure 6 shows a symbolic ceremony in which government authorities and a customary leader intermingle. When a community organizes a tara bandu ceremony, they usually invite governmental officers to attend the ceremony.

LANDOWNERSHIP AND LAND DISPUTES

The land tenure system in Timor-Leste is closely related to the way natural resources are managed in rural areas. Most of the land is governed by customary law and not registered formally. In 2008 Timor-Leste had a population of 1.1 million. However, there were fewer than 47,000 formal land titles, of which 2,709 were from the Portuguese colonial era and 44,091 were issued during the Indonesian era (Hohe and Nixon 2003). Customary authorities generally recognize land boundaries and transactions, and land tenure systems are related to ancestral origin (D'Andrea 2003), although as of October 2011 there is no statutory framework that recognizes customary land in Timor-Leste. Origin groups have de facto authority over land allocation, including permission for the clearing and cultivation of new land (Fitzpatrick, McWilliam, and Barnes 2008). Further, a multilevel ownership system has been practiced in Timor-Leste—that is, the land itself and other things existing above the land are sometimes owned by different people. For example, trees planted on a certain tract of land may be owned by one person, while the land itself can have a different owner.

The bulk of the forests are managed by communities in Timor-Leste. According to a 2005 assessment of global forest resources (FAO 2005), 33 percent of forests in Timor-Leste are designated as public and 67 percent as private. Privately owned forests are forests managed by communities. This private-ownership figure is much higher than that in neighboring countries: the 2005 assessment deemed 96 percent of forests in South and Southeast Asian nations as publicly owned, and only 3 percent as privately owned.

These disparate ownership figures reflect confusion about immovable property in Timor-Leste. A draft land law approved by the Council of Ministers in March 2010, entitled the Special Regime for the Determination of Ownership of Immovable Property, would offer this clarification: “Any immovable property acknowledged by the community as being of their common and shared use, by a group of individuals or families, organized in accordance with local practices and customs shall be considered as community property” (article 25.1).

In areas designated for annual cultivation of food crops, an individual group member can farm a specific plot. At the end of the cultivation period the individual claim is relinquished, and the land reverts back to communal property. In some places with privileged access for group members only, individuals or households may control portions of land. Some areas are set aside as sacred land, and use or access are forbidden; these areas are closely associated with ritual or spiritual prohibitions. Sometimes, however, the boundaries of forests, pasturelands, and agricultural land are unclear and land conflicts ensue (Fitzpatrick, McWilliam, and Barnes 2008).

According to research conducted in 2004 for the Timor-Leste Land Law Program, which included interviews with 162 government officials and community members, the people of Timor-Leste prefer to resolve land conflicts at the local level if at all possible. The tendency is to take land disputes first to elders (*katuas*) at the family or hamlet level, then, if necessary, to a village- or subdistrict-level mediation forum (see figure 7). Most people prefer to avoid the

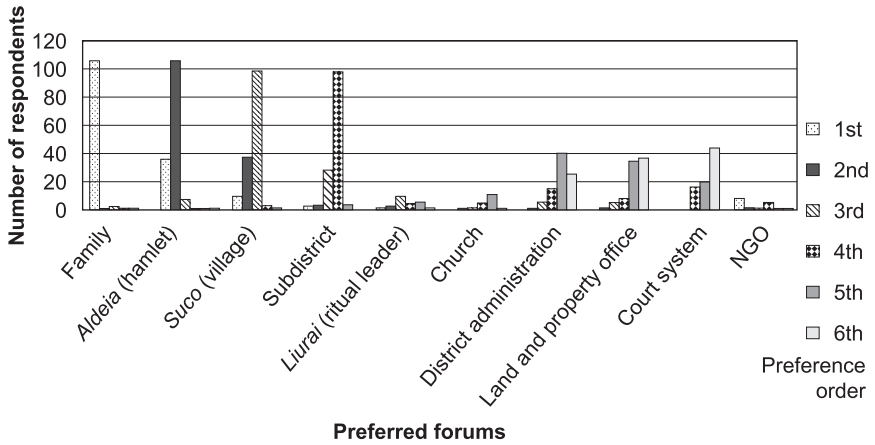


Figure 7. Order in which land disputes are taken to forums in Timor-Leste
 Source: Urresta and Nixon (2004).

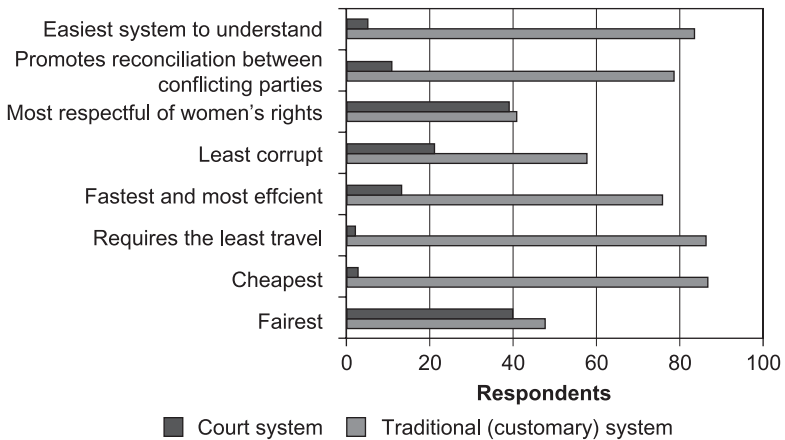


Figure 8. Community perceptions of courts and traditional (customary) conflict resolution systems in Timor-Leste
 Source: Urresta and Nixon (2004).

formal court system and the mediation framework of the government’s Land and Property Office (Urresta and Nixon 2004). This shows the population’s overall preference for land conflict resolution that occurs through customary means.

The same research also demonstrates a strong overall perception among the population that customary conflict resolution systems are better than the courts. The data show that the customary systems are more easily understood by local community members; are believed to more effectively promote reconciliation between conflicting parties; are considered less corrupt, cheaper, faster, and more efficient than the courts; and require less travel than court proceedings (see figure 8).

REGULARIZATION OF CUSTOMARY LAW

The new government of Timor-Leste has recognized the importance of customary law and has emphasized its significance in various rules and regulations. It began by highlighting the value of customs in the Timor-Leste constitution. Article 4 of the constitution reads: “The State shall recognize and value the norms and customs of Timor-Leste that are not contrary to the Constitution and to any legislation dealing specifically with customary law.” Regarding the environment, article 61 of the constitution reads: “1. Everyone has the right to a humane, healthy, and ecologically balanced environment and the duty to protect it and improve it for the benefit of the future generations. 2. The State shall recognize the need to preserve and rationalize natural resources.”

Tara bandu was also integrated into forestry and watershed policy and strategy by Ministry of Agriculture, Forestry and Fisheries (MAFF). A key strategy document recognizes tara bandu as “an inherent part in the development of local ordinances to protect the forest-watershed areas” (MAFF 2004, 38). The Special Regime for the Determination of Ownership of Immovable Property (i.e., the land law) was approved by the Council of Ministers, although it is still before the parliament for approval, as of October 2011. If the land law is adopted without substantial change, customary practice will be recognized in the land law of Timor-Leste as a basis of community property and community representation.

Advantages to governmental authority

The MAFF has been encouraging the revival of tara bandu for both technical and political reasons, benefiting both governmental authority and customary leaders. The government of Timor-Leste faces a critical shortage of human resources, and the demand for technical services in forestry and watershed management far exceeds the supply. Although MAFF has limited knowledge and capacity for overseeing forests, local communities possess many years of accumulated knowledge and practice. In order to overcome those resource constraints, government officials have recognized tara bandu as a cost-effective mechanism for managing natural resources (D’Andrea 2003). Also, the new government has a strong incentive to differentiate itself from previous Indonesian rule. The Indonesian government did not recognize the role of communities in natural resource management. The newly established government is displaying an explicitly different approach by recognizing the role of customary law.

Advantages to customary leaders

Communities have experienced a severe scarcity of natural resources and have sought ways to restore those resources. They have recognized that if the power of customary leaders is regained, it will be possible to control diminishing resources.

Such revitalization of the customary law system requires legitimizing of the authority of customary leaders.

Regularization of customary leaders' authority has also provided a new channel for these leaders to voice their concerns to the state. When communities implement customary practice, government officials attend the ceremony as well as the meetings preceding it. On such occasions, community leaders discuss their concerns—about boundary issues, government support, and other matters—with the government officials.

Communities in Motalun, a village in the Liquiçá district, started to implement tara bandu in May 2003. In an interview with Claudia D'Andrea, village leaders said that they decided to implement tara bandu in reaction to the power vacuum of 1999–2001 (D'Andrea 2003). They took inspiration from the new constitution and felt that it was important to start with fresh legislation in the new era of independence.

FACTORS CONTRIBUTING TO REVIVAL OF CUSTOMARY LAW

When armed conflict limited state capacity in Timor-Leste, many of the measures taken by the UN or the government were insufficient to achieve their intended aims. Furthermore, mechanisms imported by the UN lacked the benefit of local knowledge and legitimacy, and thus were not always reasonable given local conditions. Lack of resources on the part of the government also posed challenges for the enforcement of regulations.

In contrast, natural resource management methods based on customary law are often sufficiently equipped to function in such situations. The government of Timor-Leste would have been unable to effectively manage natural resources during the immediate post-conflict period if customary law had not been used proactively by local communities. It was therefore in the government's interest to elevate the role of customary law. Thus customary law retained substantial legitimacy in Timor-Leste as governmental authority grew, in contrast to many other developing countries that were not affected by conflict, where customary law tends to lose legitimacy as the government becomes stronger. (See figure 9 for conceptual graphs comparing the function of governmental administration to the function of customary law governing natural resources in developing countries not affected by conflict and in post-conflict Timor-Leste.)

Internal factors

A number of internal factors contributed to the revival of customary law. *Internal factors* mean internal issues for community members. First, dependence on natural resources for daily life is high in Timor-Leste, where 80 percent of the population lives in rural areas. When community members are directly affected by environmental deterioration and receive direct benefit through better environmental management, they have more incentive to manage natural resources effectively

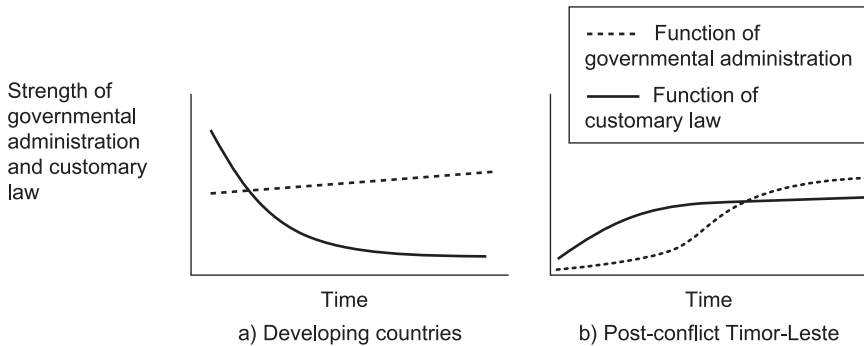


Figure 9. Conceptual graph illustrating the relative roles of governmental administration and customary law governing natural resources in developing countries not affected by conflict and in post-conflict Timor-Leste

to maintain their daily life than those who do not benefit directly from the availability of natural resources.

Communities possess accumulated knowledge and customs for managing natural resources. For example, when the author interviewed customary leaders in Ainaro in December 2003, they mentioned that a landslide had happened because trees from a particular zone had been cut down. The customary leaders and other community members possessed such historical knowledge because it had been passed down by word of mouth from generation to generation.

Customary leaders have an important role in establishing, implementing, and enforcing customary law. For instance, when a community is deciding whether to open a prohibited forest for harvesting, a customary leader assesses the maturity of the trees by using a traditional chisel to check the thickness of the tree bark. On the basis of this assessment, the community then decides on the timing for opening the forests for logging.

Regulations under customary law are closely related to local beliefs and are shared as norms among community members. In rural areas, a high level of compliance with regulations based on customary law is ensured by community members. Community members who violate the rules not only are punished by a fine, but they are subject to a curse, according to local beliefs. In contrast, in the capital city, Dili, where large numbers of foreigners and migrants from other districts share fewer norms and practices of customary law, compliance with rules of customary law is lower.

Monitoring of regulations is ensured by community members. For example, in Sacoco, a hamlet of the village Ponilale, located in the Ermera District, the community elects four or five monitors in a community-wide vote (D’Andrea 2003). The people who are elected take responsibility for monitoring resources for a given period of time and report offenses to the customary leaders (D’Andrea 2003).

Customary leaders also act as negotiators with external parties such as foreigners, government officials, and representatives of NGOs and international organizations. For example, a Portuguese owner of a coffee plantation

in the Liquiçá district told the author in a September 2002 interview that he had negotiated with customary leaders over maintenance of his coffee plantation.

Finally, because customary law is applied in a specific area, normally at a village level, communities can easily adjust the rules according to changes in environmental conditions observed by the community.

External factors

Several external factors have also contributed to the revival of customary law in Timor-Leste. *External factors* mean the issues derived from external power or relationships beyond the community. First, the new government has a strong incentive to distinguish the independent administration from previous Indonesian rule. For example, the new government decided to use Portuguese and Tetum instead of Indonesian as official national languages, even though less than 25 percent of the population speaks Portuguese and the Indonesian language is understood among the educated population. While the Indonesian government replaced community leaders who had managed natural resources with Indonesian forestry officers, the newly established government recognizes the role of the community and its customs in natural resource management in the statutory law. The statutory recognition was important to legitimize the role of the customary leader, as well as the rules and regulations established by customary law.

Furthermore, with independence came an administrative vacuum. After 7,000 Indonesian public officers fled Timor-Leste in 1999, the administration did not have enough officials with the necessary skills. At the same time, communities faced a severe scarcity of natural resources needed for their daily life. This set the stage for governmental recognition of tara bandu.

Finally, not only the new government but also international organizations and NGOs have promoted tara bandu as an effective means of natural resource management. A UNDP report recommends that traditional laws and customs should be incorporated into environmental legislation (Sandlund et al. 2001). Haburas, a local environmental NGO, calls tara bandu “traditional ecological wisdom” and has supported communities’ revival of tara bandu (GEP n.d.). Haburas supports the practice by facilitating government and international organizations’ participation in tara bandu ceremonies organized by communities. Previously, customary leaders did not have extensive contact with external parties such as international organizations. NGOs have linked customary leaders and external parties to achieve better implementation of customary law.

IMPLICATIONS FOR POST-CONFLICT NATURAL RESOURCE MANAGEMENT

This chapter reveals that the customary law for natural resource management in Timor-Leste, tara bandu, has had prominent roles in the country under the sociopolitical transition following the end of conflict in Timor-Leste. The research

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also found that tara bandu was functioning for natural resource management during this period and has started to be integrated into state legislation. When government capacity is limited in a post-conflict situation, environmental policies implemented by the government and international community can fail to achieve the desired effect. In Timor-Leste, gaps were identified between policies on the one hand and, on the other, actual conditions in the community, capacity limitations related to law enforcement, and structural problems such as a lack of human resources.

Although the government has needed time to establish effective environmental laws and policies and to take efficient measures, communities started to revitalize tara bandu and to manage natural resources by local methods fairly soon after the conflict. The newly established government had limited capacity and faced difficulty in managing natural resources effectively when it was not relying on customary law. For natural resource management to be improved quickly, it was imperative for the state to engage local knowledge and practice, and to promote local participation and ownership. The use of customary law was a way to address the urgent agenda of the transitional government. In fact, the government has begun incorporating customary law into other national policies. Customary law is based on local ecology and social structure, and it thus provides a way to manage natural resources in a locally adaptable manner. It widely reflects the local community's structure, its social norms and values, and its concept of land and natural resource management.

In Timor-Leste, increasing the role of customary law was effective in part because the government had insufficient administrative capacity to enforce modern methods for natural resource management after the conflict. However, statutory law also needs to be developed, and the timing of the integration of modern law and customary law early on is important. Multilayered management systems can be quite effective in the management of natural resources. Thus government must recover the capacity to manage statutory law after conflict while strengthening the weak aspects of customary law and supplementing them with other methods of management. During the post-conflict period, assistance should be given not only to government administration but also to communities that enforce customary law to manage natural resources.

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