



The Customary Use and Management of Natural Resources in Timor Leste

A discussion paper prepared for a regional workshop on “Land Policy Administration for pro-Poor Rural Growth,” Dili, December 2003

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Executive Summary

Timor Leste Land Study

This study has been prepared as a discussion paper for a regional course titled “Land Policy Administration for Pro-Poor Rural Growth” organized by the World Bank (WBI, DEC) and the German Agency for Technical Cooperation (GTZ) in collaboration with the Global Development Learning Network (GDLN). This study provides an overview of land policy issues in Timor Leste and makes recommendations for effective policy development.

Part I. Overview

This section provides a brief overview of Timor Leste’s resources, reviews different forms of land ownership in Timor Leste, including community-held traditional land as well as individually-held land. It explains existing rights and responsibilities given to traditional authorities and to local officials in terms of natural resource management and analyzes existing problems of tenure security affecting the sustainable use of natural resources.

Part II. Case Studies

Eight case studies conducted in five districts illustrate how land, water, and forest resources are managed in practice. There are three sets of case studies. The first set of two cases examines communal forest management systems in *Oe-cusse* and explores tenure arrangements over communally managed forest, handed over to the state for plantation development (HTI/HKM) under Indonesia, in the district of *Covalima*. A set of three case studies examine water, forest, and agricultural resources under traditional tenure systems in *Viqueque* district. Another set of three case studies examines these resources in coffee growing areas of *Ermera* and coastal dryland agriculture areas in *Liquica* district.

Part III. Analysis and Recommendations

The case studies raise a number of issues for consideration in the development of effective land policy. This section highlights the major policy considerations. Looking at traditional tenure systems, the cases show the capacity of these systems for the sustainable use of natural resources while raising questions about social hierarchies and gender inequities in these systems. The cases explore the effects of historical and current population movements and changing administrative boundaries that have created various forms of tenure insecurity. The ecological constraints of natural resource management in Timor Leste are also raised in these cases. The cases describe the constraints on existing tenure systems, assess causes of specific problems arising from tenure insecurity and identify priorities, strategies and processes for government to best integrate customary practices into a formalized tenure system.

Key Findings

1. Despite the upheaval of resettlement and years of hardship under Indonesian rule, customary systems of resource management are robust. Ownership of the vast majority of rural land is determined by clan-inherited usufruct rights under traditional customary law. The concept of *lisuk*, or communal rights, remains strong. Sacred or *lulic* places remain very important to the everyday lives of most rural Timorese. They are a basis of customary resource management.
2. Tenure arrangements can be complex. There are multiple levels of ownership that relate to different levels of access to and control over resources within family and clan land. Individuals may own, or co-own, many non-contiguous plots of land in different degrees.

3. Communities across the country are attempting to reintroduce customary prohibitions or *tara bandu* as a way to protect resources. Government officials from sub-district to national levels are eager to support these efforts as a low-cost way of strengthening protection of resources.
4. However, there are certain constraints on the ability of communities to protect and manage resources the way they once could. Many communities have been resettled onto land over which they have no ancestral claims. The systems of control of the harvest of trees and forest products and of maintaining watersheds in these areas are no longer effective. This is of particular concern to communities who have a new settlement of 'outsiders' on their ancestral land. There is a general sense of anxiety among customary communities over 'outsiders' getting titles to land.
5. Where customary management of resources has not been significantly disrupted, systems of control remain intact. These communities would like greater authority from the government to handle the management of natural resources, or some form of territorial recognition from the government of their capacity to manage natural resources within their ancestral boundaries.

Summary of Recommendations

The development of effective land policy needs to address these constraints and provide secure tenure without disadvantaging the poorest of the poor who are most dependent on forest and land resources.

- The state should recognize existing customary tenure, management and use of land and natural resources as the foundation for the emerging policy framework for rural land and natural resource management.
- More assessment of existing customary practice regarding management of land and natural resources is required to balance the cultural dimensions of customary practices with modern values of equality, democracy and sound land and natural resource management.
- Policies for management and tenure of land and forests must be developed in relation to each other in order to ensure that the existing concept of 'horizontal separation' of ownership of land and trees on the land are recognized and to ensure that rights of access to ancestral land is balanced with forest protection.
- New tenure arrangements focusing on co-management and community based natural resource management should be developed for public or state forest land (including protected areas) and water resources, particularly where communities have customary claims on those resources.
- The government should hold extensive public consultation with rural communities to explain the purposes of land and natural resource policies and legislation and to define ways for communities to engage in the development of land policy that meets their needs.
- An inter-agency working group including the participation of various non-government stakeholders and community representatives should be established to oversee discussion on relevant land and natural resource policy questions
- Participatory methodologies combined with modern technology such as GPS linked to GIS maps could provide a sound basis on which policy decisions can be developed. Innovative approaches should be used for mapping of individually and communally-held lands to resolve ambiguity regarding tenure.
- Priority areas for State intervention are policies for land and natural resources in situations where customary management systems have been weakened by previous Indonesian era government policies

Part I. Timor Leste Country Profile¹

Physical Overview

Timor Leste has an area of approximately 14,600 square kilometers marked by rugged mountains, dividing the north and south, and surrounded by dramatic coastlines with rich coastal fisheries.² Because more than 44 percent of the land mass is at an incline of greater than 40 percent, significant areas of Timor Leste are not cultivated.³ The soil is generally shallow and susceptible to landslides and flooding. This vulnerability to erosion is enhanced by Timor Leste's dry climactic zone, which has annual wet and dry seasons.⁴ Divided by the spiny ridge running between North and South are two distinct coastal zones. The North coast zone is hot and dry, with a six-month dry season and a brief monsoon season, and the terrain is characterized by grassland, secondary forest, and savannah. The South coast is hot and humid with two rainy seasons and is a richer agricultural zone.

Water Resources

Water and access to water resources are significant issues in Timor Leste. While it has over 100 rivers, the steepness of the terrain combined with long dry seasons leaves many rivers dry, and there are few springs or groundwater supplies. Water resources are generally richer in the south with higher rainfall, two wet seasons annually, and larger river systems that flow onto a coastal plain. The north has less permanent river courses, lower rainfall. The largest lake, at approximately 2,200 hectares is Ira Lalaro in Lautem, Los Palos. Smaller freshwater lakes are found throughout the southern coast although with poor fish stock.

Forest Resources

As much as 75 percent of the country consists of scrublands, forest, savannah and grasslands.⁵ In 1991, approximately 26 percent of the forested area was primary forest consisting of tropical plants such as eucalyptus and rattan, and 74 percent was secondary forest consisting of sandalwood, teak, candlenut, cinnamon, redwood.⁶ There are few old-growth forests due to wide-scale harvesting particularly of sandalwood since Portuguese times. Land clearing associated with upland farming has also contributed to forest loss. However, some of the most significant losses of forest appear to have occurred since Indonesian occupation. Indonesian forest department data specifically tracking the contribution of value added sandalwood products to export earnings shows a decline from 31.1 percent in 1992 to 0 percent in 1997.⁷ In addition, large amounts of forested land were cleared for settlements or converted to plantation estates (particularly coffee and coconut) under Indonesian rule.

Table 1. Decline in sandalwood export earnings from Timor Leste 1991-1997

1992	1993	1994	1995	1996	1997
31.1%	15%	11%	3.17%	0.8%	0%

[Dinas Kehutanan NTT 1998]⁸

Agricultural Resources

Some 600,000 hectares or 42 percent of the country's land mass is viable agricultural land, of which approximately half is currently cultivated.⁹ Agricultural production tends to be heavily subsistence-oriented (corn, rice, root crops, vegetables, and fruit) although a range of marketable cash crops are also found (coffee, cocoa, tobacco, cloves, vanilla, *areca* nuts).¹⁰ Traditionally farmers practiced rotational or shifting agriculture, where forest is cleared for cultivation followed by periods of natural regeneration (fallow periods). Corn is a staple subsistence crop and is generally grown using shifting cultivation techniques. Rice is cultivated in irrigated fields. More than 75 percent of wet rice production is found in Baucau, Manatuto, Bobonaro, and

Viqueque districts.¹¹ Upland or dryland rice is grown throughout parts of Viqueque and in pockets along the coastal mountain ranges as well as in some parts of the interior.

Land Tenure Systems

Most land in Timor Leste is unregistered and governed by customary law. Timor Leste has a population of 800,000. However, there are less than 47,000 formal titles, 2,709 from the Portuguese colonial era, and 44,091 issued during the Indonesian era.¹² Customary authorities and communities generally hold the memory of land boundaries and transactions. Land tenure systems in Timor Leste are tied closely to ancestral origin. Despite the massive resettlement programs experienced during the Indonesian period, traditional social structures and customary tenure in Timor Leste remain quite strong. Traditionally people lived in small family groupings. These were called *povoação* when the Portuguese arrived. Later during the clandestine movement, the slightly larger hamlets were called *aldeias*, which is the current term for sub-village groupings. Villages are called *sucos*. Village headmen are called *chefe do suco*.

Community-held Traditional Lands

Community-held property continues to be a robust form of land management in Timor Leste. In general, ‘outsiders’ to a community can only acquire land use rights with the consent of the community group, or its representatives, and may never acquire unlimited and transferable right of land “ownership.”¹³ Across Timor Leste, land is allocated through lineage groups. Traditional rulers (*liurai* and *dato*) allocate land to the members of a customary group (usually a particular clan), and in some cases, this land will revert to the community (or clan) in the event of non-use or abandonment. Each customary group retains overarching rights to require adherence to customary norms and maintenance of the cosmological equilibrium¹⁴. Some land in Timor Leste’s customary areas may never be the subject of individual rights. This includes sacred land (*rai lulic*), grave sites (*rai rate*) and sacred houses (*rai uma lulic*).¹⁵

Although communities have the right of control and disposal of land, the relationships within communities are often highly hierarchical. Those of inferior status in the customary hierarchy may never obtain inheritable rights of “ownership” and may also have to pay rates or taxes for their non-inheritable rights of use. This includes those who are not members of the lineage of the *liurai*, *dato* or other authority figures. Another hierarchical land issue arises from the requirement in many parts of Timor Leste of payment of a bride-price (*belis*). This is discussed further below.

Under the community systems, certain individual inheritable rights of “ownership” also exist. Generally, these rights originate from community consent for the clearing of land, which includes holding a ceremony and installing boundary markers as well as cultivating the land. Inheritable individual rights are associated with permanent perennial gardens, rice fields, as well as for plots used in shifting agriculture so long as property markers are maintained.¹⁶ Some valuable trees may have individual tenure (sandalwood, or trees with beehives).¹⁷

Individually-held Land

Traditionally, each hereditary group has a particular territory within which each family holds individual inheritable rights. These property rights are marked with trees, rocks, natural contours, ancestral graves, or distinctive plants, and are acknowledged by customary authorities. However, the land of a given family is not divided equally into permanent plots in most cases but rather worked cooperatively among the family. These rights are usually passed through the male line with the exception of the matrilineal Bunaq-speaking Bobonaro, Manufahi, and Covalima districts of Timor Leste. Generally, in the patrilineal system, women can only acquire land through marriage. In many instances, this means that women can never hold any property rights

other than usufructuary (use-only) relationships acquired through a husband's right to land. This is problematic in circumstances of divorce.

However, the acquisition of family land is negotiable. A woman can retain family rights over her father's land in a patrilineal system. A father with daughters and no sons may negotiate with a prospective suitor to move to the female's father's land in lieu of a bride-price (*belis*), or may give land to a couple to supplement the suitor's inherited land. In some cases, when a husband is unable to pay the bride-price at all, or the payment of bride-price is not complete, the husband must live with the wife-giver group and he may obtain non-inheritable rights of use only. Their children will thus not inherit any rights to land other than through male relatives of the mother.¹⁸ In some cases, an unmarried daughter who has reached an age of twenty years may be given her father's land for life, irrespective of her future marital status. Widows retain full rights over their husband's land, unless they remarry, although they may share this land with their children.

In general, there is a mix of individual and communal rights associated with land and property in Timor Leste. Sacred land and sacred houses are communally-held, but houses and gardens of a particular lineage associated with these communal sacred sites tend to "belong" to the families that own them, subject to continuing use and participation in village ceremonies. Inheritable individual rights may be held over yards; rice fields; gardens; and fallow gardens. Land that is used for grazing livestock or forest gathering is communally owned without demarcated individual rights of use.¹⁹

Territorial Governance Structure

Although there are some matrilineal customary groups, membership and status in most of Timor Leste's customary groups are generally defined by genealogy through the male line and in relation to the *liurai*, a hereditary institution loosely translated as "king."²⁰ Specific ancestral territory is associated with the "rule" of each *liurai* over a particular customary group. Current *liurai* are selected from the *liurai* lineage in consultation with customary authorities. There is also tradition of bringing *liurai* from outside the ancestral lineage when no male heir is suitable. *Liurai* lineages hold important political, ritual and administrative power within their customary group, leading rituals and supervising customary government. Most importantly, they have been traditionally involved in allocating land, determining boundaries, collecting rents and adjudicating changes of use. The power of *liurai* was diminished under Portuguese colonial policies. However, rather than removing or replacing the *liurai*, these policies transformed customary authority so that the *dato* ("prince" or "lord") assumed greater political power at the *suco* ("princedom," but also translated as "village") level. The male *dato* lineages continue to play an important role in protecting boundaries.

Lulic or Sacred Forest

A critical aspect of everyday life for the majority of Timor Lesteese, particularly those living in more remote places, concerns their connection with ancestors expressed through the ongoing ritual worship of *lulic* sites. Concepts of *lulic* permeate traditional social life, from the ritual management of agriculture and rainfall to life cycle ceremonies.²¹ The key focus for the conduct of rituals is the sacred clan house (*uma lulic*), but other *lulic* sites include particular hilltops with ancestral birthplaces or graves, particular rocks (symbolizing mother earth) and trees (symbolizing father sky), or rock and tree combinations, or springs, lakes, bogs and rivers. Such areas may be associated with supernatural forces, hence special ritual precautions are taken upon entering these places, and they are often all together avoided.²² Consequently, these sacred places are typically forested.

Sacred forests are tied to mythic origin places of local clan groups, known as *ratu*. Some sites lie within forested land. Others appear as forest groves or forested islands in savanna grasslands and heavily cultivated garden lands. Recognition of the historical claims of local communities to the forest reserves was not extended under Indonesia. However, significant parts of most sacred groves survived the wide-scale cutting of forest due to the strength of superstition. Nonetheless, these sacred forests are rarely entered and hardly ever used for routine forest product collection. Consequently, they may not even be defined as forest by locals.

***Tara bandu* Ritual Prohibition**

The concept of ritual prohibitions or *tara bandu* is widespread throughout Timor. The prohibitions usually apply to the harvest of agricultural produce, the cutting of trees or collecting of forest products and hunting or fishing. A *tara bandu* (literally “hanging law”) requires a large public ceremony, usually following a public meeting that determines particular sanctions or fines for particular activities. These prohibited activities may include theft of produce or livestock as well as sexual misconduct. There is a wide range of application of *tara bandu*. The usage of the term varies across Timor Leste, but the concept holds. The idea of *tara bandu* is that the announcement of sanctions for cutting trees, or harvesting fruits or fish from a forbidden zone or someone else’s land is made in a public ceremony. Subsequently, the sanction is advertised by hanging the forbidden item. If an individual enters the forbidden zone and violates a prohibition, then he or she should be prepared to pay the consequences according to the fines determined by the community and public announcements. *Tara bandu* fines or sanctions can also be hung as an advertisement. This concept will be addressed in the cases. Although the principle is widespread, the application is not uniform.

Tenure Security and Natural Resources

Tenure systems in Timor Leste have been significantly affected by the Indonesian occupation. Many communities were uprooted from their ancestral territories and placed on others’ ancestral land. Boundaries of ancestral territories were redrawn, significantly reshaping the landscape. The strong customary systems of prohibiting access to particular forests, lakes, or rivers broke down during the Indonesian period in most places. Large areas of communal forest were reportedly taken down, often initially by the military. Once the customary systems of control were removed, the local communities who often had been moved to the area from elsewhere were paid to cut forest and continued to harvest freely with no sanctions imposed.

Old Portuguese titles gained through whatever means are currently grounds for a number of legal battles over valuable agricultural land and in some cases have repercussions on surrounding forest. One legal case in Ermera pits a coffee plantation company against customary smallholder claimants.²³ Another coffee company in Ermera abandoned operations, and the community of smallholders has no customary rights over the land they have worked for over thirty years.²⁴ Yet a third place in Ermera has nine Portuguese landholders claiming 234 hectares of coffee land that has been worked by the customary owners of the land since 1975.²⁵ Political rivalries from both Portuguese and Indonesian eras have played out through the acquisition of land titles by some and the displacement of others. This tenure insecurity, combined with the conflicts that have arisen in some places over forest and water resources have been contentious.²⁶ Despite significant levels of tenure insecurity and conflict in some places, the majority of Timor Leste’s land tenure appears to be remarkably well managed under customary tenure, through customary systems of management. These issues will be examined in the following case studies.

Part II. Case Studies

Forest Case Studies

The following cases help to illustrate the customary ownership of and use of land and natural resources in Timor Leste. There are three sets of case studies. The first set of case studies look at forest resources.²⁷ The first case examines a *pinang* (areca palm) forest in the *Oe-cusse* district over which communal harvesting rights have been practiced since Portuguese times. This case shows how rights and responsibilities are allocated over specific forest species within a given forest. The *Oe-cusse* case is particularly interesting because the customary harvest of *pinang* forests used to be widespread across Timor Leste, but has largely stopped functioning in most places except the *Oe-cusse* enclave. In *Oe-cusse*, the harvest includes the entire kingdom. The second case looks at the establishment of plantations in the district of *Covalima* under the Indonesian forestry administration. These forests were planted on community land after agreement from community leaders, and occupied approximately eleven percent of the district. The case explains some of the property relations of trees in Timor Leste and shows how forest resources are managed. The case also brings attention to the local community perception of these forests as communal land, despite the state's role in establishing them. The forests are managed and used by the local community on a sustainable basis without state involvement.

Coastal Agriculture Case Studies

The second set of case studies examines resource management in *Viqueque* district. The first case in this set demonstrates the resurgence of the customary management of forest and water resources through the *tara bandu* ritual ban on cutting of trees in *Uato Carbau*, *Viqueque* District. The second case examines a situation where an original mountain village, called *Uma Tolu*, was resettled to the customary land of another *suco* (tribe/village) during the Indonesian occupation. This case of *Uma Tolu* shows how despite the uprooting of the people from their ancestral land, they continue to hold a strong connection to that land and even after twenty years are returning to the mountains. The third case looks at the adjacent *suco Luca* whose ancestral land *Uma Tolu* is using. The case shows how the Indonesian era led to considerable upheaval in the system of customary resource management, but despite this upheaval, the *Luca* people want a reinvigorated customary system of management for natural resources. These three cases in *Viqueque* district illustrate the resilience of customary use of resources while also highlighting issues of ancestral land rights.

Upland Coffee and Dryland Agriculture Case Studies

The third set of case studies looks at upland and coastal dryland resources on the northern coast of Timor Leste. The first case looks at a coffee growing region in *Ermera* showing how the clan ownership of territory is similar in many ways to that of *Viqueque*. In this village called *Ponilale*, there are strong customary rituals tied to the water source. In this case, the water serves as a bond between communities from many districts. The second case, looking at the village of *Maubaralisa*, examines the customary law and management of a hilltop village in *Maubara* sub-district that is also a coffee growing area. Its administrative boundaries were significantly redrawn under Indonesia, which is making it difficult to put a *tara bandu* into effect. A third case looks at a very dry area in *Liquica* District, *suco Motalun* that stretches from the hills to the sea and has recently passed a *tara bandu* to control certain activities in the village. These cases show how the function of a customary watchguard is now being fulfilled through elected guards. It shows the flexibility of customary governance over natural resources.

Case 1. Communal Betel-nut Forest in Oe-cusse

Tepas Ana/Naek Forest, Citrana and Manan, Suco Ben-Uf, Oe-cusse District

Context

In Timor Leste's westernmost *Suco*, *Ben-Uf*, in the enclave district of *Oe-cusse*, two adjacent communal forests are prized for the fruit of the areca palm, known as *pinang* (Indonesian).²⁸ These closed-canopy forest areas, called *tepas ana* and *tepas naek* (Meto language: *tepas*=muddy spring; *ana*=small; *naek*=large), are separated by the river *Noel Besi*, and together cover approximately four square kilometers (400 hectares) near the coast. Throughout *Oe-cusse*, people speak of these forests as communally owned by all the *sucos* of the district, giving them a unique status resulting from a long history of communal planting, harvesting, and oversight. Though management of these forests has evolved through successive political periods, people in *Oe-cusse* still value these areas as creators and symbols of unity among the district's *sucos* (villages). This case study exemplifies the multiple and changing layers of tree and forest tenure that exist in Timor Leste today.²⁹

History

Histories of these forests recount how the *pinang* plant was introduced to *Oe-cusse* by a trader of Portuguese descent. Leaders from all eighteen the *Oe-cusse sucos* met to determine a suitable location, settling on *Ben-Uf's* two *tepas* forests because they had ample water and no competing uses which limited the land area. Eventually, all but the two farthest *sucos* had planted sections of *pinang* throughout the *tepas*, and the forests came to be recognized as belonging collectively to all the *sucos* of *Oe-cusse*.

Harvesting Activities and Restrictions

Since Portuguese times, the focal point for the *tepas* forest was one annual highly regulated two-day harvest in which all *sucos* picked their *pinang* simultaneously. This festive event occurred when the *kabo-oel* of *Ben-Uf*, a position appointed to oversee and guard the *pinang* trees, informed traditional leaders of *Ben-Uf* that the *pinang* was ready for harvest. The night before the harvest, all *sucos* publicly presented required gifts of palm wine and money to the *kabo-oel*, other traditional leaders of *Ben-Uf*, and gathered guests including the king and district government officials. At this event, the timing and rules for the harvest were repeated: just after sunrise, all people would assemble and on a signal be permitted to enter the *tepa ana* to harvest until late afternoon the first day; the same process was repeated the second day for the *tepa naek*. All members of the communities could assist with the harvest, with children frequently harvesting the fruits and both women and men as active participants. Harvesting outside the approved time or location was strictly forbidden and rarely transgressed during Portuguese times. After the second day of harvest, people gathered to witness a ceremony presided over by the king closing access to the *pinang* until harvest the following year, called *kelo* (Meto) or *tara bandu* (Tetum).

Traditional and Government Authorities

Local authorities of *suco Ben-Uf* hold most of the responsibility for the *pinang* plantings. When the *tepas* were designated by all *sucos* to receive the seed, two critical traditional *suco*-level leaders who hold their positions by inheritance had to grant permission: the *naizuf*, a political leader, and the *tobe*, a ritual authority with jurisdiction over land and forest resources. To this day, both the *naizuf* and the *tobe* are involved in oversight of the *tepas* forests. All non-*pinang* forest resources throughout *Ben-Uf*, including the *tepas* areas, are under the responsibility of the *tobe*, who can grant or deny permission to harvest palm leaves, rattan, wood, and other products. The current *kabo-oel* are now twelve men chosen from among neighboring hamlets and assigned on a rotational basis to guard the *pinang* trees in the *tepas*. Accounts of events surrounding

harvesting evidence a close working relationship of traditional and government authorities through successive political changes.

Changes After the Portuguese Era

With the transition from Portuguese colonial to Indonesian rule in 1975, population migrations and changes in political authority abruptly changed the management of the *tepas* forests. In the 1980s the Indonesian authorities encouraged people to move from the mountainous interior to the coastal region. The combination of many people entering the *tepas* to find housing materials, the clearing of annual gardens nearby, creating adjacent rice fields irrigated by *tepas* water, and making trails through the forest led to increased theft of *pinang*. During Portuguese times, the harvest was held in July or August but during Indonesian times, these dates were moved forward to May or June in order to minimize the risk of losing fruits to theft.

In the emergency phase of 1999-2000, all harvesting restrictions were suspended, in the absence of local governance and the unstable population movement through this area (due to the close proximity to what is now the Indonesian border). Since 2001, the *kelo* has been practiced annually, but most people still report out-of-season harvesting of fruits as common, mostly attributed to frequency of many people walking through the forests and farmers in adjacent fields taking *pinang* in small quantities. After Independence, in late May 2003, the District Administrator of *Oe-cusse* opened the *pinang* harvest with several *sucos* attending. However, others expressed concern that the new procedures, structures, and fines had not yet been decided jointly by all of the *sucos*.

Transactions, Ownership, and Fines

Pinang trees are primarily owned by individuals, but the *tepas* land and forest as a whole remain the property of *suco Ben-Uf*, under the control of the *tobe* and *naizuf* of the *suco*. People from other *sucos* are permitted to transact standing *pinang* trees and areas for planting new groves, but not to purchase the land itself or to use the land for anything other than growing *pinang*. Originally, individuals from different *sucos* planted in designated *suco* areas, but these divisions have diminished through decades of transactions and replanting empty spaces so that now individual holdings from different *sucos* are mixed throughout the forests. Some sections of the grove are marked with a *suco* symbol carved into the trunk of a tree. People without trees can either buy existing trees or groups of trees, or get permission to plant new trees within someone else's area. Individuals make transactions at harvest time with members of any *suco*, without any involvement of the local leaders. Inheritance of *pinang* trees is individual, with trees passing to a spouse or children.

Most *tepas* trees other than *pinang* are not individually owned, except large trees containing beehives. Rights to harvest honey and wax from a given tree are inherited from parents. Harvest of other fruit (non-*pinang*) is not an individualized privilege. Rights to harvest fruit, palm leaves, nuts, timber, and wax/honey from trees other than *pinang* remain exclusively with people from *suco Ben-Uf*. Requests from members of other *sucos* to take forest products may be denied at the discretion of the *tobe*. Picking up fallen *pinang* fruits for personal use (but not for sale) is now however tolerated.

Differential payment of fines for stealing from the *tepas* illustrates the multiple tenure regimes and authority structures that coexist in the forests. Anyone caught stealing *pinang* fruit is reported by the *kabo-oel* to the *tobe*, *naizuf*, and elders of *suco Ben-Uf*, who set a fine of livestock and rice which must be publicly paid to all *sucos*—not to the individual owner of the affected trees. These are eaten together at the commencement of the next communal harvest. Theft of honey and wax from an individually claimed tree results in a fine paid to the individual owner of

that tree. People from *Ben-Uf* or other *sucos* who take other forest products without permission from the *tobe* may pay a fine to the local *suco* through the *tobe*. At any point in the year outside the official harvesting dates but before the *kelo* restriction is in effect, tree owners from any *suco* should inform the *Ben-Uf tobe* of their intention to harvest from their own trees before entering the *tepas*, or risk being fined if caught by the *kabo-oel*. The district-level communal oversight, private tree ownership, and the role of local traditional and appointed authorities present in the *Ben-Uf tepas* demonstrates the multiple layers of natural resource management in customary forests.

Case 2. State Forest Plantations (HTI/HKM) in Covalima District

Formation and Function of HTI/HKM in Covalima

From 1989 to 1998, approximately 13,100 ha (131 km²) of land in thirteen locations within *Covalima* district³⁰ were designated for Industrial Plantation Forests or Community Forestry (Indonesian: *Hutan Tanaman Industri* (HTI), *Hutan Kemasyarakatan* (HKM)³¹), a government program implemented by the Indonesian Forestry Department and the state forestry corporation (*Perum Perhutani*). To participate in these activities, local leaders and communities at the *suco* level consented to allocate and release a given portion of land from the *suco*'s holdings to the state for the explicit purpose of planting timber species. This case study exemplifies the complex tenurial issues that arise from interactions between Indonesian corporate enterprise, the government agriculture program and customary communities.

Most HTI locations were undertaken at the initiative of the village head and higher district government officials, in response to an invitation from the Forestry Department. From the perspective of rural villagers and local leaders involved in these schemes, the chief benefit of the HTI is employment for members³² of the host *suco* although other perceived benefits included stabilizing landslide-prone land, reforesting bare land, and gaining benefit from unused land. All locations reported some initial resistance to accepting the HTI program. Many *sucos* rejected the HTI program, and in some *sucos* that accepted the program, some *aldeias* (hamlets) refused to allow the HTI to use their land. In four locations, local residents characterized the creation of the HTI as "forced," with one village leader in *Zumalai* Sub-district threatening people with military involvement unless they accepted the program.

Several *sucos* that rejected the HTI program reported their reluctance to lose *suco* landholdings and ancestral land to the state and worried about shortages of farming and grazing land. In most cases, these objections were overcome within one month of repeated community meetings to socialize the program and to enlist the support of dissenting individuals, sometimes by offering them staff positions in the HTI or by fulfilling an *adat* (customary) ceremonial requirement before using the land. Land chosen for HTI sites varied considerably in many areas using existing forest or grassland far from village settlements, and in others using land previously used for houses or gardens. On acceptance of the HTI program, a letter formalizing the agreement was usually signed by local government officials³³, traditional leaders, and representatives of youth in the community.

The HTI program was a high-budget venture which provided income to thousands of Covalima villagers. The several hundred full-time overseers, who were natives of the host *suco*, chose laborers on a rotating basis from the local and neighboring *sucos*. The amount of work and numbers of staff fluctuated, with much work during the initial busy season of clearing and planting, then declining once trees became established. Several of the sites employed women to fill seedling bags with soil. Traditional leaders and village officials of the host *sucos* also received monthly honorariums from the HTI projects which continued until Indonesia's departure in

August 1999. Each location was planted with a different selection from one to six species. These were :- teak (Tectona grandis), Gmelina arborea, johar (Cassia ciamea), sengon (Albizzia chinensis), kayu merah (Pterocarpus sp.), mahogany (Swietenia sp.), sandalwood (Santalum album), kemiri (Aleurites moluccana), and cashew (Anacardium occidentale).

Community Expectations of Ownership at Formation and at Present

Local residents³⁴ expressed a range of perceptions of land and tree ownership in the original HTI agreement. Most believed that the land belonged to members of the *suco* (either in common or to individuals) prior to the HTI designation, as evidenced by the need for a government agreement with the *suco* for use of the land. The state did not purchase the land or give compensation to the communities for the land in any locations. Individuals in all sites remembered that the agreements stated that the land would be used exclusively to plant trees for the benefit of the host *suco*. Additionally, many recounted promises that the wood produced would not be exported but would be used³⁵ by the local *suco* and district. Others understood that local people would sell the wood themselves or would receive an unspecified percentage from the timber sales. Several mentioned that the land passed to the state at the moment of planting the HTI trees, thereby changing the tenurial status of the land. For land subject to HTI agreements which was never planted or where trees did not survive (approximately 70% of the planned HTI land area), most people believed that such land reverted to (or remained under) pre-existing communal *suco* or individual ownership, unless there were any future government programs to plant trees on that land.

Issues Surrounding the Current Status of the Former HTI/HKM Land and Trees

When asked about the current status of the HTI land with standing trees, half of the respondents said the land was currently owned by the state³⁶ or the HTI corporation and half said the land still belonged to the people of the *suco*, who gave the state the right of use only. Most people interviewed believe that the trees belong to the members of the *suco* who planted them with only two interviewees stating that the trees belonged to the state. In all locations, people reported few or no people cutting trees in the HTI area for timber or to make gardens. These incidents mostly occur where trees were planted close to settlements or on former garden areas. In many locations, former overseers³⁷ and laborers reported that they continue to guard the HTI plantations for the eventual benefit of the *suco*. No sites reported active individual or family claims to HTI land. Former HTI staff felt that employing some people to ensure communal access was preferable to one family group gaining exclusive rights to all the currently planted, valuable land. When asked about their aspirations for the HTI land, most villagers and former HTI staff wanted the government to recommence the forestry activities so the people can work again. In all locations, community members expect that any future government programs will consult closely with the local community about placement of forestry sites, use of trees, and the benefits of income and employment to the host *suco*.

Residents of all HTI sites stated that their primary reasons for accepting the HTI/HKM program, which included an agreement of handing over *suco* land for use by the state, were to receive the promised jobs for local people or because *suco* leaders pushed the community to accept the HTI. A former village leader said that the key to winning community acceptance of the HTI was the promise that the products of the planted sites would be managed by the members of the local *suco*. In communities where a *suco* leader pushed the community to accept the formation of a HTI on individual landholdings close to settlements, the extent and use of the land area concerned will need to be renegotiated with customary claimants. Local communities maintain a strong and active interest in the use of the trees planted in the HTI program. In accordance with the understood agreement when the transaction was arranged, members of the local *suco* expect to be involved in any future activities relating to harvesting the HTI, changing its status, or negotiations with new corporate or government programs. Since only approximately 30% of the agreed-upon

land area met the contractual conditions of the HTI in planting trees, the status of the remaining areas where trees were not planted, as well as areas where trees did not survive, remains a matter of discussion with local communities.

Case 3. Forest and Water Resources in Viqueque District

Context

The *Ira Bere* River flows from a sacred *lulic* spring in the mountains in the *Uato Carbau* Sub-district, providing a rich and steady supply of water to the irrigated rice fields that lie along the coast of *Uato Carbau*. The water source is high in the hills above *suco Ira Bin de Cima* and runs through several waterfall cascades before falling into a deep pool and continuing into the river *Ira Bere*. This river feeds a rich complex of rice paddy fields throughout the area and also provides a freshwater source for the people of *Ira Bin*. The spring is often referred to by the name of the river, *Ira Bere*, which means “big water” in *Noheti* language. However, the water source and the kingdom are called *Ira Bi*, or *Ira Bin*.³⁸

A very strong system of customary clan-inherited governance operates in *Uato Carbau*. Land resources are managed according to clan-inherited usufruct rights under customary law. The original landholder in the area occupies the top of the hierarchy of clans. His descendant is responsible for holding the ritual ceremonies at the water source called *Ira Bi*, which is considered to be the property of the *Ira Bi* lineage. There are four major lineages or *dato* which each have their own territories, forest and water resources (in addition to *Ira bere*) that are communally owned. Members of each clan have private landholdings within their clan’s territory.

History

Since before Portuguese times there has been a *tara bandu* (customary bans) that prohibits activities such as farming or cutting trees above or near the water source. This customary management practice continued throughout the Portuguese era. During Portuguese times, people were moved down from the hills to the coast to cultivate wet rice. In Indonesian times, the settlement to these areas intensified. With the influx of newcomers to the *Ira Bin* area and the changes in use of agricultural land, the *tara bandu* practices could not be enforced. However since independence, there has been a strong desire to reinstate the customary ban.

Tara Bandu

In January 2003, the customary leaders and people of *Ira Bin*’s four communities, together with government officials from the Ministry of Agriculture, Forestry and Fisheries (MAFF), the Department of Land and Property (DLP), and a number of Non-Governmental Organizations (NGOs) held a *tara bandu* ceremony to mark the reinstatement of a ban on cutting of trees in the hills above and near the water source. Over four hundred people came to witness and participate in the *tara bandu* ceremony. Government officials said they find contributing to the *tara bandu* rituals (by offering a buffalo or another animal) an extremely efficient way to help local communities to enforce management rules compared to government staff trying to manage these resources themselves. The officials also took the opportunity to hold a four-day workshop to discuss the need for reforestation of the hills to ensure a steady water supply. The ceremony included the ritual sacrifice of a water buffalo (with particular markings that make it worthy of this sacrifice)³⁹. The ceremony symbolically as well as officially announces that the ban on cutting was in force. A sacred house or *uma lulic* was built for the ceremony and stands as a reminder of the need to obey the *tara bandu*. In the hills above there is a small wooden statue that stands guard as well. These structures reinforce the need to protect the forest around the water source.

Problems with ‘Outsiders’

A fear of supernatural consequences acts as a powerful deterrent on cutting around the water source for local residents. The supernatural consequences of cutting forest around *Ira Bi* are less of a deterrent to people who are not originally from the area. There are many newcomers to the area from during the Indonesian era (from 1979 onwards) as well as the social upheaval experienced during 1999. These ‘outsiders’ receive temporary use rights of the land (*hak pakai*) from the customary (host) community. If trees are planted by the ‘outsiders’, they will continue to have access to the trees (this form of tree tenure is referred to as horizontal separation in legal terms). When the *tara bandu* ceremony was held, there were still about thirty families farming in the hills above the water source. These were outsider families originally moved to this area from *Baquia*, in *Baucau* District. There is a common sentiment among customary residents in the sub-district that the ‘outsiders’ should leave. Many of the ‘outsiders’ who were transmigrated to *Ira bin de Cima* during the Indonesian times are returning to *Baucau* District while other customary residents are also returning to their ancestral land in the hills in *Uato Carbau* Sub-district.

The sub-district administrator is concerned about these villagers who are returning to their ancestral lands because in their ancestral villages they have no access to government services like health clinics, schools, clean water and roads. There is also some concern about the implications of re-opening what is now forested lands in the hills. However, because this forest is their ancestral land, there is little the government administrators feel they can do if people choose to move there. In all, the sub-district administrator estimated that more than 100 families have returned to ancestral villages within the sub-district’s hills (the total population of *Uato Carbau* sub-district was estimated at 1,437 families in 2002⁴⁰).

The reintroduction or recognition of customary management practices is continuing based on traditional practices. For example in the *aldeia*, of *Uani Uma*, there is a sacred grove around a water source called *Bada ho’o*⁴¹ where the trees continue to be protected for spiritual and practical reasons. In August 2003, a new *adat* law was introduced forbidding the cutting of trees near any water source (not just *Ira Bere*) and there is also a plan to ban cutting of all forests throughout the sub-district.

Wet Rice Land

Wet rice cultivation is currently a major livelihood activity in *Uato Carbau* Sub-district taking advantage of the rich water resources there. Until 1968, very little wet rice was produced in the area and people lived in small hamlets in hilly areas where they had cultivated upland rice. Forced relocation of people from the hills to the fertile coastal watersheds was undertaken by the Portuguese authorities in order to open large wet rice areas. According to the former headman who was a young man at that time, every family got a small amount of wet rice fields to work. Those who owned water buffaloes got more (as much as one hectare). Currently, wet rice has taken precedence over upland rice, if indeed upland rice is still cultivated. Local systems of water management have evolved so that each group of landholders elects a gatekeeper called *wae cabo* (literally “water chief”) to manage the water for a season. The *wae cabo* takes responsibility to ensure that the water from this source is distributed equitably among the paddy owners.

Meeting with Elders

At a meeting with thirty-three *adat* leaders from the four clans of the Kingdom of *Ira Bi*, the ongoing need for *tara bandu* was emphasized. The headman of *Suco Ira bin de Baixo* urged the government to find policies that would strengthen the jurisdiction of the clans over their territory. According to the elders, the management system for distribution of water for rice paddy irrigation and household needs is functioning well at the local level in *Uato Carbau* as is the management

of agricultural land including resolution of conflicts. Their main challenge is in forest management, both in enforcing the ban on cutting and in rehabilitation of critical watersheds.

According to the consensus of *adat* leaders present at the meeting, the main obstacle to enforcing the *tara bandu* is the presence of ‘outsiders’ in the community who do not recognize or comply with these local prohibitions. These ‘outsiders’ were dislocated from their own ancestral lands through the upheaval of occupation and warfare and currently have rights of use to the land they occupy. Local customary leaders would like these ‘outsiders’ who are not native to the area to return to their original homes. These *adat* leaders argued there is a need to strengthen the existing *adat* systems of regulation and enforcement. They would like to have more power at the local level. They would like to see some form of legislation explicitly recognizing the jurisdiction of the *adat* government and particularly their authority over determining local boundaries. Local sub-district government officials reiterated this request. Both customary and local government leaders blame the Indonesian occupation for the chaos of natural resource management.

Case 4. Customary Use of Land in a Resettled Area in Viqueque District

Context

The case of *Uma Tolu* provides an example of the resilience of customary tradition in Timorese society. *Uma Tolu* was one of hundreds of villages whose residents were forcibly relocated during the Indonesian occupation.⁴² In 1979, the village of *Uma Tolu* was burned to the ground by the Indonesian army and the villagers forcibly moved from their ancestral lands to its current location where it occupies part of the clan land of the adjacent village of *Luca*.

History

When *Uma Tolu* residents arrived in their new location, they found bamboo forests, coconut trees, and rice paddy bunds, all markers of property from *Luca*. Under the direction of the military, the villagers constructed houses and established gardens in the limited space allowed by the military. They had to farm within one kilometer of the road, and within the strictly enforced working hours of seven to three in the afternoon. Anyone found outside the village was detained as a suspected rebel. The area surrounding the village was considered a military zone (*garis merah* or “red line”), with fences and military checkpoints. Leaving the village without authorization in the 1980s could result in summary execution. The Indonesian forces gradually relaxed restrictions over time and by the 1990s, villagers were fairly free to come and go to their fields, and began to expand their agriculture land.

Residents of *Luca* had been placed under the same restrictions as those from *Uma Tolu* and were not able to complain about the taking of their ancestral land. At present the *Uma Tolu* residents remain conscious that they do not have ancestral claims on this land and can only hold rights of use (*hak pakai*). Nonetheless, they continue to manage the land according to their customary management practices.

Re-establishment of Customary Management

When they left their ancestral village, the customary leaders of *Uma Tolu* transported sacred objects from the sacred house (*uma lulic*) and built a new *uma lulic* in the new *Uma Tolu* as a symbol of the continuation of their customary practices. They thus re-established the agricultural practices and customary rule from their lands in the hills. Agricultural practices in the original village were suited to mountainous land where they grew upland rice, corn, and a variety of tubers and legumes. The new *Uma Tolu* has a mix of hilly and flat land including *Luca*’s pre-established wet rice fields. The *Uma Tolu* community adjusted rotational agricultural practices

and established a new set of property relations within the new territory defined by the Indonesian military. Their original property system was a mix of communal land with different levels of ownership over individually-owned swidden (rotational or shifting agriculture) plots. In this system, individuals retain rights over fallow land with actively maintained property markers. In the new *Uma Tolu*, the people found that the hilly land there was suited to their swidden agriculture system with the same planting (two to three years at a time) and fallow periods. The flat land however were found to be much richer and could be continuously planted, burned and replanted for up to six years, with shorter fallow periods. Meanwhile, some families began to irrigate the abandoned wet rice fields for cultivation. Land availability within *Uma Tolu* is reportedly not a problem, but some conflict over the use of the old irrigated rice fields has arisen.

Customary Practices

Despite the removal from their ancestral village the people of the new *Uma Tolu* still adhere to their customary practices as an important part of everyday life. They still perform a ceremony associated with opening of new land called *Tos Lien* which involves the sacrifice of a goat or a pig to give thanks to the land, nature, and the ancestors. At harvest, another ritual sacrifice called *Sao* is needed to give thanks to nature and the ancestors before eating of the harvest. The first ears of young corn cannot be eaten until the harvest ceremony is performed. Even in the ancestral village, customary management practices persist. In this area there are rich forest resources and a sacred water source called *Wei hass*. A strict sanction on cutting of the forest continues particularly for the forest near the water source. It is said that if the rule on cutting the forest is violated heavy rain will immediately begin to fall, only on the ancestral village. If forest adjacent to the water source is violated, it is said that the person who cut the trees will lose their sanity.

While some customary practices were carried over to the new location, their lack of ancestral connection to the land at the new *Uma Tolu* means that they do not have clan land. In their ancestral village, there remain clearly defined clan lands, which have defined rights of use and protection responsibilities for each clan. Each clan in the ancestral area has particular sacred areas (*rai lulic*) including forest surrounding ancestral graves, or sacred rocks or sacred water sources. Each clan has responsibility to maintain these sacred ancestral places. In the new location, there are no sacred ancestral places. While customary law continues to function particularly for ensuring harmony within the community, it has largely been used to issue customary sanctions. For example, careless burning of a neighbor's fields while clearing land in preparation for planting would require a fine. Likewise sexual misconduct is fined. The customary leaders have thus continued to play an important role in the community.

Post-1999 Return to Ancestral Land

Since 1999, with the withdrawal of Indonesian forces and the achievement of full independence in 2002, many of *Uma Tolu's* residents have returned to their ancestral village. The *Chefe do Suco* (Village Chief) estimated that approximately 120⁴³ of *Uma Tolu's* 452 families have moved back including all of the customary leaders who in 2000 re-established the *uma lulic* at the original location. The ancestral location is an eight-hour walk from *Uma Tolu*, or with transportation to the end of the road, a two-hour drive and a two-hour walk. The *Chefe Suco* makes the journey every two months to check on the residents that have returned.

Current Status

The *Uma Tolu* residents claim that there are no problems with living in their new location because they have been continuously cultivating the area since 1980 and feel that by law (Indonesian Agrarian law) even if it is not their customary land they should have the right to remain there. Some also cite other historical reasons⁴⁴. They claim that the trees they have planted have grown tall and are very valuable. They would like the state to recognize their rights over the

land. The *Chefe do Suco* reported that there are no conflicts with the customary leaders of *Luca* regarding *Uma Tolu*'s continuing to live in its current location.

Case 5. Customary Land Rights of the *Luca* Kingdom in *Viqueque* District

Context

Luca was once one of the most powerful kingdoms in Timor. The area has now been significantly reduced, but the clan management of the land remained very strong until the Indonesian occupation. The hilly lowland area of *Luca* is forested with teak, coconut, and *areca* palm forests. Significant patches of sacred forest remain throughout the *suco* of *Luca*. These forest patches remained untouched throughout the Indonesian period, despite widespread cutting throughout the area because these particular forests are said to be protected by supernatural forces. This has acted as a strong deterrent. Water resources are rich in *Luca* from a number of springs that flow from the coastal floodplain. However, as is true throughout Timor, rivers change course seasonally periodically leaving large wet rice areas that might have been cultivated for decades without water. Irrigation efforts are renewed annually with customary rituals to redistribute water. *Luca*'s customary land management is clan-based.⁴⁵ There are four main clans in *Luca*: *Iramer*, *Umabot*, *Umalor*, and *Kanlor*.

History of Resettlement in *Luca*

Luca was also forcibly relocated during the Indonesian period. In 1979, the population of *suco Luca* was forced to move to an area called *Wae Todo*. This area was fenced off as in *Uma Tolu* and checkpoints and watch posts established to monitor their movements. Restrictions on farming meant they could go no further than one kilometer from the village and had to return by four in the afternoon or be detained. Leaving the area unauthorized was, according to the elders, a death wish, resulting in summary execution. Any travel outside the village required authorized traveling papers. These restrictions were eased in the early 1990s.

The village of *Bibileo* was also moved to *Luca* lands during this period. *Luca* has been asking *Bibileo* people to return to their ancestral lands since 2000. The *Kanlor* elders have given the *Bibileo* people permission to continue to use the land and harvest from the trees, but they can no longer build new houses, and they are no longer allowed to engage in ritual sacrifice on *Kanlor* land. The *Luca* leaders are more disturbed about the worship of *Bibileo* ancestors on *Kanlor* land than about the use of the land per se. By forbidding them to practice their obligatory ritual sacrifices before planting and harvesting, they are sending a strong signal to the *Bibileo* people that they must leave.

Another area of *Luca* was taken in 1996 for the establishment of a transmigration settlement. In all two hundred-eighty hectares of irrigated rice fields were taken with an undelivered promise that the *Luca* residents would be compensated for the loss. The sacred water source for those wet rice fields, called "*Tis no Saen*" was also lost. Some ninety-one *Umabot* families lost land to the transmigration project, which is also a plantation industry development (HTI) growing teak and candlenut trees. The project continues to attract newcomers, such as thirty families from *Uma Tolu* who have recently moved there.

Traditional Clan Management

During Indonesian times, a clan's natural resources were managed by a particular individual, called the *ai matan* in the *Luca* area who was the eldest male in the princely or *dato* lineage. Each sub-clan also had an individual responsibility for watching over a particular resource: forest, water source, or wet rice fields. This position is called the *kabo leha* (from Portuguese *cabo* or

“chief”). This position is widespread across Timor Leste but in many cases is no longer inherited but elected. The name varies across the region. The *kabo leha* (also referred to at times as *kabo ronda* or “head of rounds”) reports offenses to the customary elders, the *Chefe Aldeia* (hamlet chief) or even the *liurai* (the king). The perpetrator will then make an appearance before the elders, who will conduct a trial. The *ai matan* can potentially also be caught by a *kabo leha* and fined.

Customary prohibitions, or *tara bandu*, are intended to be village-wide in *Luca*. The announcement of sanctions for cutting trees, or harvesting fruits or fish from a forbidden zone or from someone else’s land is made in a public ceremony. Subsequently, the sanction is advertised by hanging the jaws of a pig, or the horn of a water buffalo as an indication of the fine that will be imposed. In other places, the item that should not be harvested is itself hung to demonstrate what is forbidden. In *Luca*, if an individual enters the forbidden zone and violates a prohibition, then he or she should be prepared to pay the consequences according to the indicator. The perpetrator will have to produce the animal indicated at a customary feast shared by the whole clan or village, depending on the violation.

In the *Umabot* clan, a man named Ze⁴⁶ explained that by virtue of being the eldest male of his family, he is the *ai matan*. He is responsible for ensuring that all the natural resources in his clan land are respected. His job is to watch over forest, water, and land resources. He guards the sacred forests in the clan land as well as the planted forests of coconut trees which have individual owners on communally-held clan land. He also guards the *pinang* forest (*areca* palm) that was planted by his ancestors. While the customary prohibitions on particular activities are still in place, since Indonesian times, Ze reports that newcomers to the area have not respected these prohibitions. For example, they are harvesting *pinang* seeds outside of the customary period of harvest and taking products from other people’s trees. During the Indonesian period, there was little they could do to get newcomers, ‘outsiders’ to the clan, to pay the sanctions. Consequently, the system has fallen into disarray.

The system of *pinang* harvest was similar to the king’s *pinang* forest in Oecussi. The *pinang* forest was planted by Ze’s ancestors during the Portuguese era. The forest covers about five hectares. Until the Indonesian occupation, the collective harvest period worked well. Ze would announce the opening of harvest period when the fruit was ready to be picked. There was an open invitation to come. Each clan had their own *pinang* harvest to collect. So, it was essentially a clan-based harvest. Men, women, and especially children, participated for the period of harvest. Each harvester, except for members of Ze’s family and his sub-clan, would give Ze a basket of *areca* (or about 15 kilograms) in payment for the harvest. Ze would divide this payment equally and share it with his family, although not with his sub-clan.

Usually over the harvest period, a harvester could collect an average of seventy kilograms of *areca*. The *areca* fetched a high price. For example 40 bunches of dried *areca* nuts could buy two water buffalo (costing about US\$600). By hosting the communal harvest, Ze performed a function of sharing the wealth, while also getting help in harvesting the *areca*. He pointed out that he could be a rich man if he wanted to because the *pinang* nuts are so lucrative. However, for Ze’s family, the communal harvest is a tradition. He would like to see the tradition continue but under the current circumstances, before the *pinang* are ripe, they have been stealthily plucked from the trees by others. This problem has really only been acute since the transmigration site was established nearby in 1996.

The communal harvest principle was also applied to harvesting of fish from a lake in the clan land as well. Prior to the Indonesian occupation, in the dry season in August, Ze would make an

announcement that there was a prohibition on taking fish from the lakes in his clan's land. This was not a *tara bandu* but a simple prohibition announcement. Then in October, he would announce that on a particular day, everyone from the clan should come for a communal harvest. The people would come, again men, women, and children, to collect fish. They could collect as much as 50-100 kilograms each which they could dry and eat, or sell, to get them through the dry season. This practice was abandoned during the Indonesian period. The last communal fish harvest was held in 1981 when an Indonesian military officer wanted the fish. By now the lake has been fished out. Moreover, since the transmigration site was established, the lake has been reportedly poisoned by transmigrants who used chemicals to stun fish for collection.

Forests

Throughout the Indonesian period, *tara bandu* could not be put into effect for any of their natural resources. Despite this, *Luca* still has a number of lush forest patches. Before the Indonesian occupation, the forests were richer because there were strict controls on the cutting of forest. Large old trees were off limits because they tended to host beehives, and might even have individual owners who collected the honey as well as the wax, to make candles. Whoever wanted to cut a tree for timber had to ask permission first. For example in *Ze's* clan land, an individual would have to get *Ze's* permission. Even if an individual went to the head of the village, they could not get permission. Only *Ze* had the authority.

Rice Fields

In *Ze's* clan land, *Ze* has the responsibility for ensuring that the irrigation of the wet rice paddy fields is implemented smoothly. He must be present to lead a small ritual ceremony at the opening of the irrigation channels into the fields. This role has not changed and the ceremony called "*fasi karowae*" remains important. He must also attend when they are planting their seedlings. For upland or dry rice fields, *Ze's* presence is also required. He must attend when farmers are opening their fields by clearing the land through cutting and burning the fallow vegetation. He must attend when they begin to turn the soil, with traditional sharpened wooden hoe-like tools called *tugal*. He must also attend when they are planting their first seeds. *Ze* must attend these events for every farmer farming in the *Ze's* sub-clan territory. Likewise, other *kabo leha* for other sub-clan's must attend these events for every farmer's land within their sub-clan's territory. In this way, the activities of all the farmers and the areas of all the farmer's fields, and particularly boundaries of the fields, are monitored while at the same time *Ze's* ceremonies ensure a harmonious relationship with ancestors, warding off bad luck.

Recommendations From the Elders of *Luca*

The elders in *Luca* explained that the Indonesian period was extremely difficult and through the uprooting of populations and the addition of new people to the area, the traditional systems of management were disrupted. However, they still feel that their customary systems have validity. The *Chefe do Suco*, of *Luca* argued eloquently that *adat*, or customary, law has the potential for becoming the basis for an extremely fair and good system of local governance. He argued that custom forms the basis for Timorese identity. Customary law serves as an organic system of law that deals at the local level with every aspect of social, political, economic and agrarian life.

While problems of violence and conflict require some new approaches, customary law can form the basis of a Timorese legal system. He recommended that customary law be given more authority at the local level by the state. Secondly, he argued that customary values be explored for what aspects could be taken to the national level, perhaps through a workshop on how to bring customary law into national law.

Luca elders said that their people would like to see a policy that recognizes customary communities as the rightful owners. They are open to a form of collective title over their land. Their main concern is that any titling process should benefit the local customary people and not the ‘outsiders’. Regarding the issue of *Uma Tolu*, there is now mutual respect between the two communities for the most part. *Uma Tolu* residents, according to the *Luca* elders, respect the fact that they only have rights of use over the land. The problem of people from outside the clan using their land is not really a new problem and the customary manner of handling this problem is to give the ‘outsiders’ rights of use. However, if these ‘outsiders’ do not respect local customary law, it is a problem. The *Chefe do Suco* is concerned that if the government decides to administer titles, or deeds to the land then, ‘outsiders’ may be better positioned economically and maybe better educated to take advantage of the titles and then take full ownership of the land

Case 6. Sacred Water Source in a Coffee Growing Area in Ermera District

Context

Sacoco is an *aldeia* of *Suco Ponilale*, located in *Ermera* District. During Portuguese times, *Sacoco* people were instructed to clear their land and plant shade trees and coffee plants. The introduction of the coffee plantation changed patterns of agriculture and ownership from a formerly rotational system of upland agricultural plots to a mix of rotational agriculture plots and permanent coffee plots. However, people retained their customary system of land management through clans. They worked coffee as individual smallholders with the coffee bean harvest secondary to the principal activity of food production. There were no major upheavals or resettlements during the Portuguese or Indonesian times and *Sacoco* has continued to honor the sacred water and forest sites in its ancestral territory.

History

There is a strong *adat* structure in *Sacoco*. Yet, the *Sacoco* elders have made some innovative adjustments to their systems of clan land management. Rather than having the eldest member of the clan and sub-clan act as the keeper and monitor of forest and water resources, the *Sacoco* people elect four or five *kabo leha* through a community-wide vote. These *kabo leha* will take on the responsibility for monitoring resources for a given period of time, reporting offenses to the customary leaders. *Sacoco* has traditionally honored the *Maosa* River which flows from a source in the heart of their ancestral territory through the valley into neighboring districts. The river has a legend attached that is known across the mountains of this region.

During Portuguese times, when there was a long dry season, people from villages in *Ermera*, *Ainaro* and *Liquica* Districts would gather together for a ritual ceremony and offerings, in the form of animal sacrifice, which were made to ask the spirits of the river for rain. This practice continued throughout the Indonesian period but without the participation of all the communities. The most recent ritual sacrifice was held in 2002. The villagers gathered by the river for one week to call for rain for a ceremony called “*dululi*” (in *Mambai* language).⁴⁷ The adjacent communities did attend the ceremony and at the end of the week, the rain began to fall.

The Legend of the River

According to the legend, there was a spirit in the river that took the form of a fish (*ikan tuna*) named *Tat Blae Blae Kas*. One day he was injured by the brother of a young girl named *Nondae Da Roma* and as revenge he made all the water in the river dry up. The elders convinced *Nondae* to go to *Tat Blae Blae Kas* to negotiate but she was swallowed up by the river and never seen again. Her ceremonial bracelets and necklace were washed up downstream. The descendants of *Nondae*’s family continue to live downstream in an area called *Fatulara* and because of their great

sacrifice, it is said that they can control the course of the river⁴⁸. This one human sacrifice was made to ensure that *Tat Blae Blae Kas* would never take away their water again and would cease to harbor anger at the family who injured him.

Today, when there is a long dry season, the customary leaders of *Sacoco* can call the rain and it is believed that any kind of offense can cause *Tat Blae Blae Kas* and *Nondae Da Roma* to deprive the community of rain. For example, offenses include catching fish that are too small or cutting trees near the river. The local people believe that they should be very conscientious in protecting the water source or it will dry up. This belief also extends to other communities far away who also worship the same water source and respect the same beliefs.

Tara bandu Ritual Bans

The *Sacoco* people use the concept of *tara bandu* more liberally than in *Viqueque* District demonstrating the potential of these bans to evolve. In *Sacoco* the whole village gathers and determines the fines for different offenses. The fines relate not only to the cutting of trees, burning of someone else's land, or stealing of someone's produce, but also to matters of sexual misconduct which have the highest fines. There were no offenses reported since 1999. The people say that everyone follows the rules in *Sacoco*.

When there is a *tara bandu* put into effect, the people from neighboring areas are invited so that they are aware that they will be fined if they violate the *tara bandu*. Then at the end of a ceremony, an animal foot from the sacrifice made at the ceremony, and a coconut palm frond are tied together with the leaves of everything that is forbidden to take, and they are hung in a place where everyone can see it so that the fines for violations are clear. The village currently has elected four *kabo leha* to guard against theft, illegal cutting, or mismanagement of resources in *Sacoco*. The *kabo leha* handles matters of people harvesting other people's fruit, including coffee cherries and is responsible for every aspect of managing natural resources.

Land

The farming practices in *Sacoco* reflect the steep terrain on which they farm. They begin by clearing land by cutting the vegetation, clearing a firebreak around the plot and then burning the land. When the rains begin, they plant corn, and as the corn grows they plant pole beans, cassava, taro, sweet potatoes, tubers, cucumbers, squash and other vegetables. Although there is enough land at present, the people estimate that because much land is now used for coffee production, in five years time, there will not be enough land for crops for everyone. Consequently, they are starting to intensify their plots by planting a variety of crops. There are also permanent home garden plots where women grow chili plants, onions, tomatoes, fruit trees and other crops.

These hill plots will be cultivated for two to three years before letting them lay fallow. Their rights over the fallow plots are retained until the land has become reforested at which point it can potentially be opened by another person in the sub-clan, but generally this is not done without permission. Because land is not abundant, rights in *Sacoco* now are retained over fallow plots by a family or an individual. Forest around the river *Maosa* is strictly forbidden to cut. Consequently, *Sacoco* farmers cannot farm next to the river. The terrain is very steep. The soil is rocky and filled with loose shale. The tops of the hills are generally planted with coffee and shade trees, the middle zone is planted with crops, and the valley zone has natural forest and lush vegetation. The river is at least a forty-minute walk from the village downhill through the coffee trees, past the fields and into the river's greenbelt. Some sacred groves remain in the area, but most of the original natural forest has been converted to coffee land.

Case 7. Customary Prohibitions in Coffee Growing Areas in *Liquica* District

Context

Suco Maubaralisa is located high in the hills along the Northwestern coast of Timor Leste, in the sub-district of *Maubara*, in *Liquica* District. The Sub-district stretches from a narrow coastal plain through lowlands and midlands to an inland valley through which the river *Loes* flows. This is the only permanent river in *Liquica*. *Maubaralisa* is lush compared with the dry landscape nearer to the coast below. Coffee gardens filled with an array of other leafy root crops and fruit trees line the road to *Maubaralisa*. *Maubaralisa* is composed of five *aldeias*: *Bikenlau*, *Disalara*, *Mumulete*, *Darulema*, and *Watgile*. *Aldeia Disalara* instituted a *tara bandu* in 2002 but this has not yet been extended to all of the *aldeias* within the *suco*.

History

The legend of the origin of *Maubaralisa* revolves around a person called *Dasi Doi Rai Doi* who emerged from the earth after a flood and became king of the land. He was joined by a voyager from *Alor* island. Later the *Loro Liurai* (king) from *Suai Kemonassa* made a pact with him and they merged their kingdoms. The descendant of the *Dasi Doi Rai Doi* is the *Chefe do Suco*, and according to legend, holds the power of the law for the kingdom. Because the *Loro Liurai* had three sons, when *tara bandu* is paid, it is always divided into three, when given to the customary elders.

Agricultural Land Tenure

The landscape around *Maubaralisa* is hilly and dry. The farmers clear plots in the beginning of May and begin burning it in July. When the rains come in November, they plant corn and pole beans and later other food crops. A local community organization has been trying to teach the farmers to terrace the land and fortify the soil rather than using fire. There is a *tara bandu* on burning in some of the *aldeias* in *Maubaralisa*. They are also promoting tree planting in the hills with a very wide range of useful fruit and shade trees.

In *Maubaralisa*, individual tenure over farmland is very common. There are three main clans in *Maubaralisa*, descendants of the three sons of the *Loro Liurai*. Each clan has its own area, and families should farm only on their clan's land. However there are multiple levels of ownership within the clan land. An individual may co-own various non-contiguous plots of land and also have access to land that he is not working. There may be family, sub-clan, or clan reserve land. Consequently, if an individual wants to farm outside his clan's land, he must seek permission. If it is done without asking, the individual will be fined.

Land is passed through the male line in *Maubaralisa*. However, a woman can acquire land from her father if he has no sons. If he has a younger brother, or nephews, they may have to negotiate for the land, or the woman may receive rights of use only. Boundaries both between plots and between hamlets and villages are marked with a variety of distinctive plants. Rocks, rivers, hills, and large trees can all serve as boundary markers.

Normally farmers have two or three places that they are currently cultivating. They will cultivate a particular plot for three to six years, depending on the fertility, before letting it go fallow. Fruit trees can be planted in the fields because the farmers will clear the land around the tree or tie coconut palm fronds or banana tree trunks around the trees to protect them from the fire when they clear the land for the next planting. Other vegetables are grown in home gardens in household plots. Coffee land is used for more than just coffee and shade trees. Taro is planted under the shade in the coffee gardens. Fruit trees like banana, jackfruit, avocado, and other trees for firewood are grown. The coffee land is considered important because they can sell it. If there

is enough clan land, farmers can expand their coffee plots into it. Where there is not enough clan land, it can only be used for food crops.

Most of the coffee land has individual owners from *Maubaralisa*. However, there are thirty-six hectares of coffee gardens that are claimed by the state, and a total of 242 hectares of coffee gardens that are claimed by the descendants of Portuguese landowners. The people say that when the state planted coffee, they promised that the land would be returned to them once the coffee plants were producing, but that land was never given back. The individual Portuguese claimants acquired land when people in *Maubaralisa* were unable to pay the required taxes to the Portuguese colonial authority. Various individuals bought paid land and consequently were able to acquire in some cases as much as 100 hectares of land.

During the Portuguese period, the customary law was very strong. Things changed dramatically during the Indonesian period. The boundaries of villages were redrawn so that they were straight lines on maps, rather than following the natural contours of the river. Consequently, in 2002, when *Maubaralisa* wanted to institute a *tara bandu*, they found it difficult to get all the people now included in their *suco* boundary to participate. In *Maubaralisa*, the *kabo leha* is selected for each area by a meeting of everyone in the *aldeia*. The position was previously appointed by the *Chefe do Suco*, but now they are chosen through a democratic process.

Case 8. Customary Prohibition in a Coastal Upland Area in *Liquica* District

Context

Suco Motaulun is close to the coast, but immediately surrounded by coastal foothills. The farmland is mostly on steep hilly terrain. The climate is very dry. Coffee is not cultivated here but used to be in the ancestral lands in the hills where they used to live before they were forcibly relocated during the Indonesian period. The village has three *aldeias*. One of the *aldeias* is on the coast and the people living there are fishers as well as farmers although farming is very marginal. One of the main sources of income for this community is from collecting and selling firewood in bundles by the side of the main coastal road. In May 2003, *Suco Motaulun* put a *tara bandu* into effect, but this *aldeia* closest to the coast was afraid to participate. The other two *aldeias*, that rely more on farming, are participating in the ban.

Rain Rituals

Rain is difficult in this area. There are a number of *lulic* or sacred places, including sacred water sources to which the customary elders will go when they are in search of rain. In 2002, the customary elders did a ritual ceremony to ask for rain. This is a long process and requires an intimate knowledge of all the *lulic* sites in the area as well as knowledge of the proper mantras to recite in order to ask appropriately to determine the appropriate sacrifice. In 2002, the people had to sacrifice both a goat and a pig. They went through the ritual and by the time they were cooking the meat, before they had eaten, the rain started. There thus remains a strong belief in this ritual.

Forest Management

During Portuguese times the forest was reportedly thick throughout the area. Only one of the customary leaders lived at the foot of the hills, the rest of the villagers lived in the hills. In 1975, with the start of the Indonesian occupation, everyone retreated to the forest in the mountains. In 1980, they returned to their village but their homes had been burned and they were made to settle at the foot of the hills by the road. There was a large river that used to flow through the area, called *Mota Ulun*, which the village is named after, but the river has since changed course or become dry.

From 1980-1984, the people were not allowed to leave the village. They could not collect their coffee in the hills. By 1984, they were allowed to collect their coffee but they had to be accompanied by armed guards. In 1985, they were allowed to come and go to the forest to collect their coffee but they had to go in groups and carry authorized papers. By 1990, the villagers were free to farm in the hills again. Since 1999-2000 there are a number of families who have moved back to the hills however, only four families have remained there. According to the *Chefe do Suco* this is because there are no services in the ancestral village and it takes one day to walk there. *Motaulun* has a population of approximately 200 families.

Agricultural Land

There have been no major changes in the way the people of *Motaulun* farm since Portuguese times. They have always cleared and burned upland plots for corn, beans, and root crops. They do not have irrigated rice fields. In November, they usually begin to plant corn, banana trees and a local variety of bean, which keeps the weeds away. Later other crops are added. Cassava along with many other perennials is planted near the house because they move from plot to plot annually. In Portuguese times they also planted upland rice in a separate plot. They do not plant it now because of the ease of buying rice.

Rituals associated with opening land, planting, and harvest continue to be obligatory for land that has laid fallow for more than five years. Because the fertility of the soil is low, they cultivate plots for only one year before letting it go fallow. This means that almost every year they will be re-opening an old field. In *Tetum* the term for an old field that was opened before is *ama dana* and the term for an area that has not been opened before is called *ala*. For *ala* lands, there must be a ritual ceremony. For *ama dana* lands, there is only a ritual if the land has not been used for some time. This time period varies from place to place. In *Viqueque* District there is only a ritual ceremony if the land has not been used in fifteen years. In *Motaulun*, there is a ritual if the land has not been used in five years. There is one area of agricultural land that was by custom only opened every seven years and required an elaborate ritual. The area has not been opened since 1973 because the adat elders no longer know the proper mantras for the ritual and they are afraid of the consequences of doing it incorrectly. This demonstrates that the rituals are very important.

Tara bandu in *Motaulun*

Motaulun instituted a *tara bandu* in May 2003 and is unusual in that it has been documented by the Sub-district administrator. The village leaders said they decided to make a *tara bandu* in reaction to the power vacuum of 1999-2001. They took inspiration from the new constitution and felt it was important to start with fresh legislation in the new era of independence. The villagers selected *kabo leha* to monitor the compliance. There are four or five *kabo leha* per *aldeia*. The *kabo leha* know the boundaries and ensure that they are not violated. They do not need to be present when people are opening their land, but they do check to make sure that burning of the land follows regulations. Firebreaks must be made to protect standing forest. Sacred forest cannot be disturbed. Most of the sacred forest is far away from people's fields. One patch of sacred forest that was more accessible was chopped down during the Indonesian period, but the village has since started to protect this area and encourage reforestation.

A number of cases have been solved through customary channels although many of these involved events that predate the recent *tara bandu*. One of these includes a case of animal theft. The customary leaders are pleased with the results, and they want to renew the *tara bandu* in 2004, perhaps increasing the level of fines depending upon what the community decides at their village meeting. Some issues however fall outside the powers of customary leaders. An example

of these types of cases is the loss of land to another *suco* (about ten hectares) by some families as a result of changes to village boundaries during Indonesian times.

Part III. Analysis and Recommendations

Analysis of Major Findings

Customary systems of land and natural resource management are complex and widespread in Timor Leste. This finding is consistent with the existing literature on land and natural resource tenure in rural Timor Leste. Land and natural resources continue to be managed through customary authorities across most of Timor Leste and customary rituals associated with ancestral lands, forests or water resources are widely practiced. In many locations, especially remote areas, customary practice is the only existing system of land and resource management.

Land and natural resource ownership can also be quite complex in Timor Leste and there appears to be much variation from place to place. Multiple levels of ownership that relate to different levels of access and control over resources are common. Any one family's holdings may include multiple non-contiguous plots, with different levels of access. A particular individual may have one land plot that is his or hers by inheritance, a second plot which is his or hers but co-owned with another family member, a third plot which might be co-owned with a cousin. Moreover, he or she may own particular trees in an area that is not his or her land. This horizontal separation of ownership where trees are owned by one person and land is owned by another is very common.

In determining land ownership there are different levels of control and access to land that an individual has access to.⁴⁹ They may have some individual land. They may have access to some family, clan, and village land. Some of this land may be laying fallow (not actively worked), but rights are retained over this land. There is also land that is considered village reserve land where it may not be farmed or used but it may not be available to be used. Permission to use this land must be sought from the relevant customary authority. This is especially the case for someone from outside the community. It may also be difficult to distinguish between landlessness and someone without access to valuable land. Irrigated rice land, for example, is valuable land. People from within the community who do not own valuable land tend to borrow land sometimes without any formal system of payment or exchange. The borrower may be responsible for fence-building to keep livestock out of the fields which can be considered a form of 'rent'.

Customary land and natural resource management systems have been weakened by past government policies but are now being re-established in many places: Where customary control over resources may have been weakened, most notably through state policies during the Indonesian occupation, there is now a strong move, initiated by traditional leaders often with the support of local authorities to re-establish customary land and natural resource management practices and to revitalize connection to ancestral territorial resources. In many remote areas these revitalized customary management systems remain the only short and medium term option for management of land and natural resources. In almost every case study, customary leaders expressed a desire for some form of recognition of ancestral customary territory and customs as well as more control of natural resource management at the local level. The reintroduction of customary prohibitions, *tara bandu*, to protect natural resources reflects their commitment. Many communities visited had or have *tara bandu* that are working successfully.

The strong link between communities and ancestral land is an important factor for customary management: Even in cases, where entire communities such as *Uma Tolu* were removed from their original village (which was also destroyed) more than 24 years previously and have established new settlements and agricultural systems in their new location, there remains a strong connection to their original ancestral lands. Consequently, a significant part of *Uma Tolu*'s population have returned to their ancestral territory. They are returning despite the difficulties

posed by the remoteness and lack of roads and government services in their ancestral area. This situation is occurring in numerous locales where the case studies were undertaken suggesting a general pattern of population movement of communities who have been forcibly resettled back to their ancestral land.

Because customary belief systems in Timor Leste tie ancestors to place of origin, when communities have to make offerings for planting or harvest ceremonies, they are paying tribute to the ancestors of the land. Some customary communities find the worship of other ancestors on their land by 'outsider' communities to be more troublesome than the actual presence of the 'outsiders' who are using the land. They are concerned that the ritual ceremonies typically performed for planting and harvesting by these 'outsiders' are directed at the wrong ancestors. Some communities have outlawed ritual ceremonies to ancestors from elsewhere. This is understandable given the strong role which respect for ancestors and local beliefs play in maintaining customary authority. This demonstrates the importance of the connection between communities and their ancestral land, the strength of which forms the basis for effective customary management of land and natural resources.

Customary land and natural resource management systems cannot address land and natural resource tenure situations involving relocated communities and state appropriation of ancestral land : A major finding that emerges from the case studies is the ongoing discontent over the loss of control of ancestral land by customary authorities through the presence of 'outsiders' on their lands through past state policies during the Indonesian period such as :-

- Resettlement policies
- Redrawing of village administrative boundaries
- Appropriation of ancestral land

In these cases uncertainty of future tenure arrangements and loss of management control by customary authorities is exacerbating this discontent.

Resettlement policies

In many cases, a particular clan, or set of clans, have lost their ancestral territory to communities resettled by Indonesian armed forces in the late 1970s and 1980s. The resettlement of 'outsiders' on ancestral clan land may have restricted the 'host' community's access to ancestral graves, sacred places of origin, sacred water sources, or forest resources, as well as to cultivation land or individually-owned trees. The loss is both a cultural and economic one; and for the communities involved these values are closely interrelated. This is a particularly important issue for communities who are trying to exert customary prohibitions associated with resources within their ancestral territory. Some communities attempting to enforce a ritual prohibition on use of a resource (*tara bandu*) have difficulty when there is a significant population of 'outsiders' living on their ancestral land or utilizing resources within their ancestral territory. In some cases 'outsiders' may be either unaware of the prohibition or maybe unwilling to comply which ultimately threatens the success of the prohibition.

It is important to recognize that there are different categories of 'outsiders' or settlers. There are relatively homogeneous communities like *Uma Tolu* who were forcibly resettled as a unit for military reasons. There are also individual settlers who may have left their ancestral lands for political or economic reasons and there are also transmigration settlements including settlers from other islands within Indonesia that were organized under the Indonesian administration (some as late as 1998). Transmigrant settlements tended to be highly heterogeneous communities and some have returned to Indonesia since 1999. While individual settlers tend to respect customs of a community in which they have settled, the relatively large homogeneous groups tend to maintain their own rituals and customary systems of land management from their ancestral lands. In

addition, some of these communities were also moved to highly cultivable land belonging to other communities.

In *Luca*, for example, approximately 280 hectares of irrigated rice land was lost to the *Uma Tolu* community without compensation. Now, there is considerable anxiety among the 'host' communities that the 'outsiders' will receive land titles from the state or where land titles have been issued by the Indonesian authorities these will be recognized by the state. This would effectively convert the existing 'user right' of the 'outsiders' to the land of the 'host' community into an ownership right which would sever the relationship between the 'host' community and their ancestral land. This issue is intractable within the framework of customary tenure and will require state intervention. Policies will be required that balance the needs of both the 'host' and 'outsider' communities.

Redrawing of village administrative boundaries

The redrawing of village administrative boundaries have in some areas also had a similar effect. Some communities have lost access to particular resources because the village administrative boundaries no longer reflect ancestral *suco* boundaries. This restricts access to land and natural resources as well as control over their management. Because the resource is no longer inside their territory, the customary authorities no longer have authority to exert control over the use of them. This raises the issue of the roles of customary and administrative leaders in the management of natural resources. In some cases the administrative authority such as the *Chefe do Suco* is also a customary authority but this varies between locations. In many cases the customary leaders play a greater role in the management of the land and natural resources within the *suco* but often the *Chefe do Suco* is also involved. This issue is particularly important given the plans for *suco* elections in the coming year. The definition of the role of the *Chefe do Suco* in land and natural resource management in relation to customary authorities is a priority and will frame the need for redefinition of *suco* administrative boundaries.

Appropriation of ancestral land

This issue appeared in this study within the context of forest policies during the Indonesian period. Much of the land depopulated due to resettlement policies was subsequently designated as state forest under the jurisdiction of the Indonesian forestry department. Under the terms of the first land law of the República Democrática de Timor Leste (RDTL), land that was state property under Portuguese or Indonesian periods now becomes the property of the RDTL. Many families from resettled communities are returning to ancestral land that may have become forested in the intervening years since they were forcibly relocated. These people are returning to forested areas that hold sacred value, markers of property such as ancestral graves, former coffee gardens, or ancestral trees and other sacred places. For some their ancestral land was designated as state forest in their absence.

Should these communities have the right to return to their ancestral lands ? Do they have the right to convert their land back into productive agriculture land or does it remain part of the state forest of the RDTL ? Should the state relinquish its claims? Also, if the state allows these communities to return to their ancestral land, are they able to retain rights over land and property in the new location where they have been living, continuously cultivating land, and planting trees, for the past 24 years? These issues cannot be resolved by customary and local authorities. State intervention is required.

A different situation is found in *Covalima* where the state established tree plantations on community land. In this situation, there is horizontal separation of tenure, or ownership, over the trees, which at least initially belonged to the state, and the land, which despite the trees, still

belongs to the community. Some clarification of the tenure regime is needed. The communities agree that the trees are planted on their ancestral land, but the land came from a combination of private clan land and other village land which belonged to individuals within the community. Once the trees were planted, the land became communal village forest. Yet, the communities would like the state plantations to employ them again rather than having the land returned to the community. This does not mean that these communities are not interested in this forestland. On the contrary, the communities consider the plantation land to be their communal village forest, for the benefit of the villagers. Consequently, there is a strong interest in protecting the forest. With the wide range of useful trees that were planted under the Indonesian program, communities have a strong interest in protecting the trees in order to protect their access to these communal resources. The community says they own the trees and see the forest as theirs to use.

However, if the state allows the unclear tenure status to continue, as forest guards are no longer paid to do the work of protecting and managing the forest, the forest is in danger. It is possible that the original owners of the land could reclaim this land in order to clear for agriculture. The communities do not want this to happen. Neither do they want the state to come back and claim the land. A sharing arrangement for the tenure and management responsibilities of the forest and land is required between the state and the local communities including an agreement on perceived unpaid salaries. This case is beyond the capacity of customary and local authorities. State intervention is required.

Customary land and natural resource management systems have limitations but can be strengthened and improved with support from the state : A key component of customary land and natural resource management are *tara bandu* prohibitions that often require an elaborate ceremony the procedures of which are passed down orally. In one location certain ceremonies have been forgotten and the community do not feel able to proceed. In other places, the *tara bandu* rules are decided by a community meeting with the participation of government leaders, and the rules and customary fines for violations are written up and referred to by the customary elders. In *Liquica*, the sub-district administrator has played a key role in supporting communities interested in *tara bandu* by writing up the results of the agreements on fines made at village-wide meetings. The meeting and agreement on the fines for particular violations is a key part of the *tara bandu*. The participation and support of government officials in these ceremonies demonstrates the credibility of *tara bandu*. Senior government officials find *tara bandu* an extremely cost-effective way to approach resource management. A forestry official commented that all he has to do is supply a cow to the community for the *tara bandu* ritual, and the community takes care of protecting the forest resources.

Local and national government officials may be able to play a useful role in helping communities to create more flexible systems of *tara bandu*. With the recognition of new pressures on resources, such as the pressure of 'outsiders', there may be ways to adjust the ritual prohibitions to become more fluid systems of resource management. Customary prohibitions are essentially a prohibitive system of resource governance. Rather than banning all collection of one product, management of resources would be enhanced by approaches that include monitoring, selective harvesting, enhancement etc. However, the principles of *tara bandu* can be adapted to allow for more productive use of forest, water and land resources. For example, perhaps the communal harvest of *pinang* on a single day of the year is very effective, but the communal harvest of fish on a single day of the year may not be the best system of fisheries management. Involvement of government officials will also add further legitimacy to local *tara bandu* systems in particular with regard to supporting compliance by 'outsiders'.

Customary practices can also be improved to become more inclusive and democratic. Most decisions are made by hereditary or appointed authorities who are men. There is strong gender bias in land ownership in some areas. For example, even when a father has a daughter but no other sons, he may have to negotiate with (possibly with payment to) family members to ensure she inherits his land. There can also be discrimination against non-clan members as to what land they can use or hold and their rights are often linked to their marriage ties which if broken can leave them vulnerable. However there is evidence of these traditional systems adapting to the modern context:-

- In some areas, decisions are made in community meeting including local administrative authorities
- In some areas the results of these meetings are documented and referred to
- In some areas the customary authorities for natural resource management are elected by the community

Recommendations for Strategies to Incorporate Customary Practices into a Land and Natural Resource Management Policies

Defining and demarcating the state forests : Current forestry officials point out that the Indonesian forestry department never completed an inventory of the state forests in Timor Leste. The Indonesian forestry service was only able to demarcate some of the outer boundaries of the state forest area. Because forest categorization was never completed the RDTL forestry department is unable to implement forest laws and policies regarding state forest categories such as protected forest, production forest, reserve forest etc. This situation is an opportunity for the RDTL forestry department to develop forest policy including categorization and demarcation of state forest with the participation of local communities.

This should be viewed as a conflict resolution or mediation process that should ultimately lead to improved land and forest management systems based on local customs and practices while also meeting the needs of the state. This process should also encourage local communities to be more active in protecting and managing forests through recognition of their ancestral claims. Recognition of ancestral claims by the forestry department can be a starting point for the development of new tenure arrangements over forestland which should focus on Community Based Management (CBNRM) strategies because these resources belong to them by custom.

In particular policies for protected areas must be developed with caution. These maybe seen by communities as a large *tara bandu* imposed by the state on communities occupying ancestral lands. Where possible, protected areas should be based on the IUCN (World Conservation Union) zoning and use of natural resources which allows for local access to and control over resources. This sets a precedent for extractive reserves, allowing for the harvest of some products within a forest and not others. The role forests resources play in sustaining rural livelihoods must be recognized and protected and the best approach for managing these resources will involve the local communities (CBNRM). To safeguard these resources, the state can draw up agreements, based on community maps, which recognize ancestral claims on the land and concur on the basic principles of keeping these resources intact and well-managed for the long term benefit of the local community and the state. This requires above all a certainty of tenure, or at least of usufruct rights. Legislation guaranteeing rights over ancestral territories may be the best way to do this in conjunction with an active outreach program that establishes a high degree of understanding of the land legislation as it applies to rural communities and rural livelihoods.

Further research on customary land and natural resource management : It is critical for RDTL to recognize existing customary tenure, management and use of land and natural resources as the foundation for the emerging policy framework for rural land and natural resource management. However before this process begins, more assessment of customary practice is required to balance the cultural dimensions of customary practices with modern values of equality, democracy and sound land and natural resource management. These kinds of assessment will require a range of approaches including :

- Ethnography in order to ensure understanding of customary practices and rituals from a social perspective. The importance of local beliefs in local land and natural resource management should not be underestimated
- Participatory methods such as community mapping⁵⁰ in order to identify ancestral boundaries, sacred sites, multiple ownership and access rights etc, seasonal calendars in order to determine land and natural resource use practices etc. These should be conducted separately for men and for women, young and old, rich and poor to ensure a holistic view of community land and natural resource use and management is captured. Modern technology can also be utilized in the village setting. Aerial photographs can be used as a basis for community maps and the Global Positioning System (GPS) used to plot community maps on topographical maps.
- Technical assessment to ensure that the use and management of land and natural resources are optimized and sustainable.

Importantly, this assessment should be seen as part of the policy development process.

Policy Development Processes : Policies for management and tenure of land and forests must be developed in relation to each other in order to ensure that the existing concept of 'horizontal separation' of ownership of land and trees on the land are recognized and to ensure that rights of access to ancestral land is balanced with forest protection. A mechanism for inter-agency coordination in the development of land and forest policy is essential. The creation of a working group on land and resource policy could provide a forum for the policy coordination of different government agencies as well as a forum for discussion of policy questions including participants from academia and NGOs and other interesting organizations including representatives from rural communities.

Such a process could begin as a follow-up to or in conjunction with an innovative approach to mapping levels of ownership directly onto aerial maps of property. Such maps are already in the hands of the land and property agency. The process of marking different levels of ownership directly onto maps, including individual private ownership could greatly facilitate the process of discussion at the village level while also giving an indication of areas where conflicting claims are found. This process could also raise other issues. For example, where administrative boundaries have been altered and no longer match ancestral *suco* boundaries, or natural contours (lakes, rivers, mountains), and there are local conflicting claims, government agencies can address these problems with local government and customary authorities. Communities could address specific concerns about land rights and claims. This process could ease tensions about the titling process and create a sense of national ownership of land legislation. Private titling does not appear to be a priority in rural areas of Timor Leste. However, there is a lot of concern about it, particularly from customary communities. More research is needed to gather enough information to make informed policy decisions.

A national level workshop on the findings from the grassroots workshop involving customary leaders could highlight and define the role of customary law in national legislation. As the *Chefe do Suco* in Luca explained, customary law has the potential for becoming the basis for an

extremely fair system of local governance. He argued that custom forms the basis for Timorese identity. Customary law serves as an organic system of law that deals at the local level with every aspect of social, political, economic, and agrarian life. Customary law deals with issues that directly affect the lives of people living in rural communities, and the management of natural resources is a huge part of rural life. Consequently, bringing customary leaders together to identify ways that the state can help them by giving them more formal recognition and power, so that they can adjust systems of management to new pressures at the local level. In return these leaders can identify ways in which they can support the development and implementation of state policies and how their traditional systems can be improved to reflect modern values of equity, democracy and sustainability.

Discussion on land and natural resource management policies should begin with questions arising from real case studies. Analysis of these types of questions should be the basis for policy discussion among stakeholders. During the workshop⁵¹ conducted as part of this study forestry, agriculture and land officials agreed on the need for consultative processes for policy analysis with respect to the question of whether resettled communities should receive land titles. They argued that it was important to meet with communities to determine the potential impacts of a policy, and the rights and responsibilities of the potential property holders and the state. In one case where a community was resettled from the forested mountains during the Indonesian period, some of the community members are returning to their ancestral lands. The question arises, should they get land titles in their ancestral lands if they return there? Officials agreed that there has not been a debate about whether they have the right to be there. The RDTL Constitution recognizes customary rights over land. However, officials raised concerns about handing over forest to communities. Specifically, they acknowledged the rights of communities who were resettled to return to their ancestral lands. However, they were concerned that these ancestral forest areas, which may have become good forest during the period of the Indonesian occupation, might be cleared for agriculture. This type of discussion is essential for the development of public policy concerning rural land and natural resource management in Timor Leste.

Priority policy areas : Priority areas for State intervention are policies regarding :

- Tenure rights, communal or individual, for land and natural resources for relocated communities in both their resettled location and their ancestral lands
- Definition of policies for state forest land in particular those previously designated as HTI/HKM
- Definition of the role of administrative and customary leaders in land and natural resource management
- Redrawing administrative boundaries to reflect customary/ancestral territories

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¹ Timor Leste is a newly independent republic that emerged in 2002 from a turbulent past including 500 years of Portuguese colonialism, the brief but deadly invasion during the Second World War of Japanese which left over 60,000 dead, and the twenty-four year occupation of the Indonesian military that resulted in the death of an estimated 200,000 people and the forced resettlement of many more (du Plessis 2001).

² (Fox 2001)

³ (Monk and de Fretes 1997)

⁴ (Gunn 1999)

⁵ (Metzner 1977)

⁶ (Board 1991)

⁷ It is illegal to export raw or unmodified sandalwood timber and root wood (Kehutanan 1998).

⁸ See McWilliam (n.d.) where this data was compiled based on 1998 Forest Department forest inventory data (McWilliam n.d.)

⁹ (Fitzpatrick 2002)

¹⁰ (Barlow 2001)

¹¹ (Fox 2001)

¹² (Hohe and Nixon 2003)

¹³ (Susanto-Sunario 1994)

¹⁴ (Susanto-Sunario 1994)

¹⁵ (Xavier 1998)

¹⁶ (Metzner 1977; Forman 1980; Xavier 1998; Fox 2001)

¹⁷ (Metzner 1977)

¹⁸ (Susanto-Sunario 1994)

¹⁹ (Metzner 1977)

²⁰ (Traube 1986; Soares 1999)

²¹ (McWilliam 2001)

²² Entering requires offering *pinang* (betel-nut) and sirih leaves, tobacco, and or food with some ritual prayers. Entering at midday is particularly avoided.

²³ See Aifu case in Ermera district.

²⁴ See SAPT case in Ermera district.

²⁵ See Sacoco case.

²⁶ For example, in *suco* Uatolari, Viqueque district.

²⁷ The two forestry cases were conducted and written by Laura S. Meitzner Yoder.

²⁸ or *puah* (Meto), or betel-nut (English).

²⁹ Tree tenure for the *tepas* is the same as for many other locations in Timor with *pinang* trees. The rule is that non-*pinang* trees belong to the landowner, and the *pinang* trees belong to the tree's owner.

³⁰ The HTI sites cover 10.7% of the land area of *Covalima* District. Similar programs covering a few hundred hectares also occurred in the districts of *Bobonaro* and *Viqueque*, with initiatives of this scale only in *Covalima* District.

³¹ According to a Forestry Department official who oversaw the initiative, the program's name was officially changed from HTI to HKM in 1995-6 to reflect the addition of procedures more useful to local communities, e.g. fruit trees included in the planting schemes. Villagers and program staff in *Covalima* District generally attribute the name change to a greater recognition of the forests as belonging to the local communities. Throughout *Covalima*, people continue to refer to the program as HTI.

³² The actual number of workers employed is unknown but estimates of those involved in the program recall employment for 'tens of thousands of people'.

³³ We interviewed all five Indonesian-era village heads (*kepala desa*) who managed these agreements and who are still living in Timor Leste, and all reported that no copies of the agreements survived the widespread burning in 1999. Village heads involved in the other eight sites have died or are living in Indonesian West Timor. One forestry official stated that *Perum Perhutani* may have records of these agreements that were transported to Kupang in 1999 along with other forestry records, and they are probably in Surabaya, Indonesia at present.

³⁴ We conducted 15 separate semi-structured interviews with a total 49 people participating, including former and present village government and traditional leaders, former HTI overseers and laborers, and other residents of HTI *sucos*.

³⁵ No sites had reached commercially harvestable age by 1999.

³⁶ According to Timor Leste's law #1/2003 (Article 16), state property from former regimes is now property of the new state of Timor Leste.

³⁷ All former overseers interviewed raised the issue of their wages or severance pay unpaid since 1999; several mentioned that they expect to be paid for these intervening years of service when forestry activities start again in the HTI areas.

³⁸The “n” was added by the Portuguese who also divided the *suco* of *Ira Bin* into two: *Ira Bin de Cima* and *Ira Bin de Baixo*.

³⁹ The water buffalo must be black and white with a white nose and blue/white eyes and well shaped ears. If a cow is used instead—this happened once—the *adat* leaders will be chased out by bees and stung for the insult that this gives to the ancestors.

⁴⁰ Based on Council for National Resistance Timor (CNRT) records from 2002.

⁴¹ The name means “Candlenut tree” because there once were candlenut trees among the trees that stand in the sacred grove.

⁴² This occurred across the country with the exception of *Oe-cusse* and *Bobonaro* districts.

⁴³ Another 30 families have left *Uma Tolu* to move to a former transmigration plantation estate settlement.

⁴⁴ In an interview with the former headman, and a member of the royal lineage, we learned that nineteen members of the royal (*liurai*) lineage from the *Lacluta* and *Uma Tolu* line were massacred by the Japanese on August 4, 1945. This former headman who is also related by family to Luca was a young boy at the time. The story was that when the Japanese were in pursuit of Australian and Portuguese troops hiding in the forest in the *Viqueque* area, they asked the *Luca* people whose land they were hiding on. Not wanting to be implicated, the *Luca* people claimed it was the *Lacluta* kingdom’s (*Uma Tolu*’s) land. The *Luca* people disavowed ownership of the land, and their disavowal resulted in the massacre of the royal *Lacluta* family. So, the former headman argues that *Luca* cannot be very vocal about wanting *Uma Tolu* to go back to its ancestral land, because they have the responsibility of the massacre hanging on their heads. The *Luca* people apparently indicated an area that is far closer than the area that *Uma Tolu* now occupies.

⁴⁵ We met with the headman who has held office continuously since Portuguese times and four customary elders representing three of the major clans. Incidentally, within *Suco Luca*, there are three different languages. The *Iramer* clan speaks *Makassae*; *Kanlor* and *Umabot* clans speak *Tetum Terik*; *Umalor* speaks *Kairui*.

⁴⁶ Not his real name.

⁴⁷ The same kind of ceremony is held in *Viqueque* but is called *luli* in *Noheti* language.

⁴⁸ During the fieldwork for this study we met with the family who showed us the bracelet of *Nondae* and explained how they use it to control the flow of the river.

⁴⁹ Laura S. Meitzner Yoder has been collecting data on these multiple levels of ownership in *Oe-cusse* District. Her findings might assist in explaining a potential framework for the development of land policy on this topic.

⁵⁰ Trainers can help communities produce hand-drawn maps that are often illustrated with features that depict the location of critical resources from the perspective of the local people. For example, different symbols assigned to represent particular local resources like water, housing materials, or coffee in the forest are drawn onto the map without necessarily being to scale, identifying generally where these resources are sought. The idea of the drawings is to convey details about the landscape and their meanings, without necessarily providing the precise amounts or locations of these resources. The local villagers creating the drawings may not be accustomed to holding pencils and creating repetitive icons across the surface of the map, but the symbols are meaningful to the mapmakers. These maps can be used to define the boundaries of their territories and can serve as the basis for negotiation with the state or other claimants.

⁵¹ The Direccção de Terras e Propriedades (DTP-Land and Property Agency) of Timor Leste hosted a validation workshop on October 30, 2003. Senior members of the Departments of Forestry and Agriculture, and Land and Property attended. There were district level officials of these agencies, in addition, to senior members of the Centro Nacional de Investigação Científica (National Research Centre) of Universidade Nacional Timor Lorosa’e (National University of Timor Leste). Representatives of the Administration of Local Government, donor agencies, and other agencies also attended.