

AusAID/World Bank Collaboration

**EAST ASIA AND THE PACIFIC *JUSTICEFOR THE POOR* INITIATIVE
2008 – 2012**

TIMOR-LESTE PROGRAM FRAMEWORK DOCUMENT

May 2009

I. Introduction

The East Asia and the Pacific *Justice for the Poor* (EAP -J4P) program is a collaboration between the World Bank and AusAID which supports intensive analytical and programmatic work in countries where legal pluralism presents a central challenge to equitable development. A crucial premise of the program is the appreciation that issues of law and justice cut across all sections of political and economic life, and that an engagement with the dynamics of existing rule systems and the relationships of power that underpin them is a prerequisite to equitable development.

This program framework document (PFD) lays out a rationale and overview of J4P programming in Timor-Leste. The program design was derived from an analysis of the country context, government and World Bank priorities (set out in sections II & IV below), and is based on a strategy of close collaboration with existing and planned World Bank programs. To allow for responsive program development, the PFD presents objectives and summarizes initial activities. Further structure will be provided through a series of concept notes for key initiatives which will be produced as the program develops during the period 2009 – 2012.

II. Country Context

The Government of Timor-Leste (GoTL) faces the challenge of governing and resolving conflict in the face of plural legal orders. Legal pluralism in Timor-Leste does not simply encompass the contrast between state law and traditional authority but includes (1) the interaction between diverse indigenous regimes; (2) the fact that state law itself is the product of outside influence, both historical and ongoing; and (3) the direct impact on local law and practice of forces emanating from outside the state, ranging from human rights norms to contractual dealings with foreign companies. These interactions play out through complex processes of accommodation, competition and hybridization.

Far from being merely a matter of ethnographic curiosity, legal pluralism in Timor-Leste is a major development issue. For example, the conflict of April / May 2006 can be read at least partly as a result of unreconciled legal pluralism; arising because institutions of law and governance were not able to process conflicting claims being made by groups with quite different understandings of what is fair and just and without a system of meta-rules and institutions within which such conflicts might be processed. In the post-conflict environment, state institutions struggle to resolve competing claims to land and natural resources, shifting factions arise to fill perceived power vacuums, and authorities compete for management of new resources from development aid and foreign investment.

Taking over from the United Nations Transitional Administration (UNTAET) in 2002, the Government of Timor-Leste (GoTL) achieved clear benchmarks - drafting of a constitution, holding of free elections, demobilization of former combatants and securing a solid petroleum revenue for the country. All this was done by reinforcing and strengthening the central institutions of the state – as well as supplementing them with continued outside support (most notable in relation to security); however, a broader set of questions about how Timor-Leste will be governed remain largely unanswered. These questions are made particularly complex by a number of factors including (1) the emergence of fresh divisions in the population (geographic, political); (2) the weakness of the state, particularly outside of Dili, and (3) processes of economic and social change to which the country is subject as it encounters a diverse range of outside influences.

government's current development strategy and likewise, donor strategies, are increasingly focused on laying the foundations for stability and growth. The needs are many – among the most urgent are basic food security, employment, and agricultural development. Responding to these needs, however, involves a major expansion of the state, as a service provider, a regulator and a facilitator of private sector expansion. And it is as institutions of state, market, donor and investor penetrate a formerly relatively isolated local sphere with its own norms and forms of authority that issues of legal pluralism come to the fore.

The classic modern response to these sorts of issues is to build 'the rule of law'; that is, a formal regulatory system (either unitary or federal) in which there is a clear hierarchy of law. While the formal legal system may recognize some traditional forms of authority, traditional authority will only be valid to the extent that it is recognised by the state. In practice, however, in Timor-Leste traditional authorities have their own legitimacy separate from state law and as such represent a competing rather than a sub-ordinate legal order. Timor-Leste thus displays a situation in which "several legal orders coexist irrespective of their mutual recognition" (Benda Beckmann 2006:59).

While the construction of a regulatory system in which clearly articulated state law plays the defining role may be a desirable goal in a modern state, it is one which is difficult to achieve in the face of conflicting and/or competing legal orders, and the competing sovereignties they imply. If, however, this is the goal - and both current policy and the constitutional framework of Timor-Leste suggest that it is - two further questions arise. Firstly, how does a society make a peaceful and generally equitable transition from conflictual to ordered and/or complementary legal pluralism; and secondly – accepting that this is likely to be a long term process – what to do in the meantime.

Designing a practical response to what Benda-Beckmann (2006) describes as 'strong legal pluralism' is arguably one of the central challenges facing the GoTL and its development partners. The J4P program does not pretend to have simple answers to the question of how to do this. Indeed, the thinking underlying the program would suggest that the rule of law can only emerge out of social processes of interaction, deliberation and contest which are inherently unpredictable and as such difficult to engineer (March & Olsen 2006). Nevertheless the hypothesis around which the J4P-TL program is built is that the successful implementation of the GoTL's development agenda requires concentrated engagement with the questions raised by this normatively complex context; questions that we would argue are neatly encompassed in the concept of expanding meaningful citizenship.

III. Program Description: Justice for the Poor in Timor-Leste

(a) Key Themes

The J4P program in Timor-Leste will order itself around the theme **"Expanding Citizenship in an Expanding State."** Under this broad theme, J4P-TL will support a program of analytic and advisory work linked to World Bank and GoTL initiatives. In particular the program will focus on:

- Understanding the ways in which citizens and state institutions define rights and entitlements, and how they negotiate and ensure access to these rights - with a view to;
- Contributing to improved accountability and responsiveness of state institutions, particularly where these are being supported through World Bank projects; and

- Understanding the ways in which customary owners/users encounter the formal sector in relation to land and natural resources management - with a view to;
- Supporting the development of improved frameworks for engaging with customary authorities (particularly in relation to land and natural resources management).

(b) Initial Activities

Two key areas have been identified where the J4P program will commence its work: (a) state-building at the local level, and (b) land and natural resource management. A summary of these initial activities is provided below. A more detailed description of activities, methodology, timeline and implementation arrangements will be described in separate concept notes.

(i) State-building at the Local Level

Under the heading “State Building at the Local Level” the program will engage with issues of how the state projects itself at the local level and the inverse of this, namely how citizens understand, access and claim rights and entitlements.

The various iterations of the state in Timor-Leste – a distant and disengaged colonial architecture under the Portuguese; a far-reaching but oppressive authority under Indonesian occupation; a well-resourced yet underdeveloped democracy under UN administration – have been embedded in different concepts of governance and statehood. Each variant of the formal state has come into contact with ‘traditional’ structures of governance and decision-making, and the relationship between the formal and the traditional – partnership, co-optation, or mutual distrust and disengagement – has helped to define and formed the nature of citizen-state engagement. Post-independence, the new Timorese state, development actors, and a burgeoning private sector are engaging anew with citizens and non-state authorities, and in the process are shaping new rule systems and power relationships.

The reach of the Timorese state is focused significantly on Dili and the district centers. This reflects the government and their international counterparts’ prioritization of building central state institutions in the years following Independence. The structure of the state relies on international models, largely foregoing local experience, existing social structures and local authorities. However, the current government’s focus on rural development, decentralization and the growth of disbursements of cash transfers are indicative of a more expansive vision of the role of the state. As formal institutions of governance expand their reach in rural areas, many important questions on citizen expectations of the state, the form of state/non-state engagement, and sources of authority and accountability at the local level remain unanswered. Answers to these questions could influence the success and legitimacy of the government’s state- building efforts at the local level.

Informed by previous work on state-building and local level decision-making, analytical activities will contribute to an understanding of local concepts of ownership, rights and entitlements and societal expectations of the state. They will seek to clarify the means of citizen-state engagement as well as the relationships between central and decentralized authorities, and between state and non-state actors. This research will also examine how the government’s current methods of expanding state presence impact the state’s legitimacy and helps (or not) to meet citizen’s expectations. Analytical activities will be linked to existing or planned World Bank programs, and findings will be disseminated in a manner and timeframe that allows for input at critical stages in policy and program development.

and claim rights to both state and non-state resources. In partnership with a local non-governmental organization, J4P will initially examine the ILO's TimWorks program and UNCDF's Local Development Programme (LDP) grants, using lessons from these programs to inform the design and operation of the government's planned Youth Development Program (YDP) and National Workfare Program (NWP). Research will include a desk study to show how selection, distribution, and dispute resolution mechanisms within these programs function *on paper*, followed by qualitative field research (consisting primarily of semi-structured interviews and case studies) that will examine implementation *in practice*. Timelines for field research have been developed in cooperation with the SDV team, and findings will have immediate impact on the design and operation of the NWP and YDP programs.

The initial research program will feed into policy and operational activities, beginning with (i) the government's decentralization program, (ii) efforts to define a social protection strategy, and (iii) World Bank-supported grant programs.

Written Outputs in CY2009

Written outputs^a associated with this research are expected to include:

- (i) a briefing note on preliminary findings, feeding into the design of the NWP Project Operation Manual (expected July 2009);
- (ii) a literature review on state-building and local governance (expected July 2009);
- (iii) a series of case studies from two YDP and NWP districts (expected October 2009); and
- (iv) a draft synthesis report with recommendations for the NWP and YDP programs (expected December 2009).

These and other written outputs will target World Bank TTLs and GoTL implementing agencies. Initial analytical products will inform additional activities in CY2010, including community dissemination of research findings and input into the design of possible SDV social accountability pilots.

(iii) Land and Natural Resource Management

Under the land and natural resource management component of J4P-TL, initial activities will examine how more equitable engagement between government, private industry, and customary landholders might be supported.

Timor-Leste is a primarily agrarian economy, with 73% of the population (and 86% of the poor population) resident in rural areas, and 80% of the population dependent on agriculture, livestock, fisheries or forestry for their income.³ In both rural and urban areas, land and property are the primary household assets. As an expanding population seeks access to employment and income, land will remain an essential source of economic growth and stability.

Clarity in land ownership and access and reduced land conflict are important elements of the Government of Timor-Leste's efforts to improve prospects for rural development. Increased foreign investment in rural areas, fostering of larger-scale post-subsistence rural industry, investment in large-scale (and occasionally land-intensive) infrastructure projects and increased agricultural productivity will all require clarification of rural land ownership and access, and thus engagement with the customary institutions which manage approximately 90% of Timor-Leste's land. While the government is currently implementing a program of land registration to clarify ownership in peri-urban areas, however, no clear mechanism or policy exists to guide negotiations in the parts of the country over which customary systems of authority predominate.

To foster more effective and equitable ways to protect different communities' and customary landholders' rights over and access to land, reduce incidences of land- and property-related violence, and promote a stable foundation for investment and economic development in rural areas in support of the government's rural growth agenda, J4P-TL will undertake analytical activities to identify successful and unsuccessful models for facilitating private sector and government engagement with customary landholders. This will include (a) case study research examining transactions between the private sector (primarily agribusiness operators) and customary landowners and (b) a comparative report on good practice in facilitating engagement with customary landholders incorporating regional experience.

Written Outputs for CY2009

Written outputs under the land and natural resource management component of J4P-TL include:

- (i) a briefing note on key challenges for potential agribusiness investors (expected June 2009);
- (ii) a section on land-related barriers to trade in the Diagnostic Trade Integration Study (expected August 2009); and
- (iii) a policy paper reflecting regional experience on facilitating equitable engagement with customary landowners (expected December 2009).

These and other written outputs will target World Bank TTLs and relevant GoTL ministries. Analytical activities will inform policy advice around rural development and investment activities of the GoTL, and is expected to lead to development of pilot activities on landholder negotiation in CY2010.

IV. Strategy for Engagement

Justice for the Poor country programs have worked best when they support existing and planned World Bank operations. These relationships provide a direct avenue for J4P's analytical findings to be translated into reforms in policy and operational activities. J4P-TL's activities are designed to support World Bank task teams as described in the table below. Please note that findings from one field research activity will have multiple applications, and will be used to inform various programs. Therefore, products listed in the below table are not meant to indicate separate research activities.

World Bank Task Team	Program Description	J4P Added Value
Human Development	<ul style="list-style-type: none"> • Developing strategies for social protection and consolidated cash transfers 	Providing <i>suca</i> and community-level perspectives to efforts to improve planning and administration of cash transfers: <ul style="list-style-type: none"> • Provide data on information flows between line ministries, district (or municipal) level authorities, <i>sucas</i>, and communities to diagnose and address gaps in information-sharing. ■ Using NWP and YDP as starting points, identify key implementation challenges related to targeting, information-sharing, beneficiary and/or project selection, feedback and complaints-handling.
Public Sector Governance	<ul style="list-style-type: none"> • Decentralization and local governance 	Complementing work on fiscal and administrative decentralization to municipalities by focusing on <i>suca</i> /municipal engagement:

	<ul style="list-style-type: none"> • Diagnostic Trade Integration Study (DTIS) 	<ul style="list-style-type: none"> • Identify barriers to accountability, dispute resolution and information-sharing between the <i>suca</i> and municipality in order to improve procedures and support planned municipal Public Information and Service Delivery offices. • Analyze local level development planning to support creation of a joint <i>suca</i>/municipality development planning process (through the planned Municipal Development Planning Board or another mechanism). • Use information on challenges in <i>suca</i>-level project and cash transfer implementation to inform the MSATM's planned capacity-building efforts for the new municipal administrations. <p>Feed into DTIS analysis on barriers to growth in key sectors:</p> <ul style="list-style-type: none"> • Author a section of the DTIS on land-related barriers to trade, and provide recommendations on facilitating pro-poor agribusiness investment.
Rural Development	<ul style="list-style-type: none"> • Rural development/private sector development in rural areas 	<p>Ongoing discussions with the Bank's rural development advisor will contribute to the rural development strategy, identify land-related constraints to agricultural and infrastructure development, and support an improved private sector business environment:</p> <ul style="list-style-type: none"> • Identify challenges to land access for agribusiness operators and infrastructure development projects requiring large tracts of customary land, to inform development of landholder-business-government dialogue processes. • Contribute comparative international experience on facilitating equitable engagement with customary landowners.
Social Development	<ul style="list-style-type: none"> • Youth-focused employment and development programming 	<p>Augment efforts to combat youth unemployment and conflict:</p> <ul style="list-style-type: none"> • In partnership with SDV team members, examine understanding of, access to, and dispute resolution around youth-related cash transfer programs to improve the implementation of SDV-supported programs. • Develop understanding of how transfers change power relationships, contribute to

		ownership of development processes, and impact conceptions of citizenship, to help define strategies to prevent youth alienation and conflict.
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Key government counterparts for J4P include: the Ministry of State Administration and Territorial Management, the Ministry of Economy and Development, the Ministry of Agriculture and Fisheries, the Ministry of Justice, the Ministry of Trade, Commerce and Industry, and Commission A of Parliament. The program has strong relationships with AusAID's Justice Sector Support Facility, the USAID/ARD *Ita Nia Rai* program, the Timor Institute of Development Studies, the NGO Luta Hamutuk, and several academic research institutions. Each of these partners has participated (or will participate) in project design and planning, field research activities, dissemination of research findings, and design and implementation of follow-on activities.

V. Timor-Leste's Development Priorities

The *Justice for the Poor Timor-Leste* program design is supported by analysis of the government's policy priorities and the World Bank's interim country strategy.

(a) Government Priorities

In late 2008, the Government of Timor-Leste declared three national development priorities:

- i) Infrastructure Development
- ii) Rural Development
- iii) Human Resources Development

These priorities complement the government's ongoing work to achieve its previously established seven National Priority Programs for 2009: food security, rural development, human resources development, social protection and social services, public safety and security, clean and effective government, and access to justice.

To achieve the above priorities, the GoTL has begun implementation of several programs and policies where J4P could provide support:

Land mapping and tenure

The Ministry of Justice (MoJ) has launched a major land registration initiative to create a cadastral (land boundary) map of the entire country. Commenced in November 2008 and running until 2012, it aims to enhance prospects for rural growth and social stability by identifying ownership and resolving competing claims over land in urban and peri-urban areas.⁶ However, neither the land cadastre nor currently proposed land legal frameworks address the key issue of customary land tenure, which encompasses an estimated 90% of land in Timor-Leste.

Decentralization and cash transfers

The Timorese government has pursued a clear policy of expanding the footprint of the central state throughout the country, with varying degrees of success. The government's decentralization agenda, implemented through the Ministry of State Administration and Territorial Management, and use of cash transfers (primarily, though not entirely, through the Ministry of Social Solidarity) to meet the needs of rural communities are key elements of this strategy. The relevant ministries have actively sought World Bank assistance in developing appropriate policies and implementation mechanisms for these programs.

(b) The World Bank's Interim Strategy

The World Bank's interim strategy for 2009-10, as detailed in the current draft Interim Strategy Note, focuses on preserving immediate post-conflict stability while laying the basis for growth. It recognizes that, in the long run, stability will come from the state's legitimacy, which is in turn enhanced by its ability to deliver economic benefits. The Interim Strategy is thus composed of three complementary prongs: (i) supporting the formulation of a coherent national development strategy; (ii) supporting short-term stabilization measures; and (iii) deepening the foundations for sustained non-oil growth. Relevant pieces of this strategy are described in more detail below:

- *Supporting formulation of a national development strategy.* The World Bank is currently providing a broad range of analytical, operational and policy programs aimed at improving budget execution, improving resource governance (particularly involving petroleum revenues), addressing difficulties in service delivery (especially in rural areas), and promoting transparency, communication and public awareness through the Planning and Financial Management Capacity Building Program (PFMCBP). The program is also engaged in dialogues with the government around support for a strategic planning technical assistance program in the Prime Minister's Office that will be informed by international experience in sustainable post-conflict transitions and help to prevent resource-curse outcomes. To help inform this exercise, the Bank will also conduct analysis on the dynamics of poverty and potential for economic growth, through such exercises as the diagnostic trade integration study (DTIS).

- *Supporting short-term stabilization measures.* J4P's work features strongly in this pillar of the ISN, as it bridges short-term stabilization and longer-term development. Other World Bank efforts for maintaining stability will tackle youth unemployment and alienation, and social protection/cash transfers. The World Bank is supporting the government's employment and income generation efforts through the National Workfare Program, which will provide temporary employment through labor-intensive public works projects, bridging the employment gap while providing the skills and market development necessary for medium-term growth of the formal sector. The World Bank is also supporting youth employment and empowerment through the MSATM/Secretary of State for Youth and Sports joint Youth Development Project. The project seeks to assist in the operationalization of the National Youth Policy and establishment of an effective mechanism to distribute small grants in *sucos* and *aldeias* through the Local Development Program (LDP) platform.

At the request of the Ministry of Social Solidarity, the World Bank is also providing advice on a comprehensive social protection strategy that will bring coherence to the government's numerous cash transfer programs. This initiative will also provide advice on pro-poor targeting and implementation of transfers.

- *Deepening the foundations for sustained non-oil growth.* The primary vehicles for non-oil growth will be rural development and private sector development. The Bank has placed an advisor in the Ministry of Economy and Development to support drafting and implementation of a rural development policy. For wider private sector development efforts, the IFC is supporting business-government dialogues to overcome barriers to private investment.

VII. Monitoring and Evaluation

A detailed monitoring and evaluation framework is currently being developed, in consultation with the regional management team and M&E experts. While this framework will detail outputs, outcomes and indicators specific to J4P Timor-Leste's proposed operational programs and areas of focus, it will also fall under the broader M&E efforts of the EAP-J4P initiative.

As part of the wider EAP-J4P initiative, the overall program will use an electronic Bank standard reporting system to monitor trust fund activities. Other reporting will include:

- Monthly and semi-annual informal **progress reports** that include questions and ratings on the achievements of grant objectives, implementation of the grant, expected follow-up activities, issues for management attention; and
- A **completion report** that includes information on progress and additional assessment of lessons learned and outcomes.

In addition to formal reporting as required under the World Bank/AusAID Trust Fund agreement, J4P country level staff will undertake informal reporting to the AusAID TimorLeste post as needed.

i These will include description of products, partnerships, and implementation strategies.

ii Initial outputs include major written products expected before the end of the 2009 calendar year. This is by no means a comprehensive list of J4P products over this time period, however. Rather than relying solely on reports, J4P-TL will provide feedback to World Bank, AusAID, target communities, and government partners through presentations, short strategy documents, and targeted inputs on specific partner products.

iii World Bank, Rural Development and Agriculture in Timor-Leste website, accessed 2 Aug 08.

<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/EXTEAPREGTOPRURDEV/0,,contentMDK:20534357—menuPK:3127810—pagePK:34004173—piPK:34003707—theSitePK:573964,00.html>

iv While there is not universal agreement on the impacts of land mapping and land formalization on economic growth, the government's land agenda is proceeding on the assumptions that (1) mapping and titling will clarify ownership over land and lead to a reduction of land disputes and (2) once ownership is determined, individuals will be more comfortable leasing or selling their land.