

## Re-interpreting customary practice as a framework for development: lessons of Timor-Leste's Community Reconciliation Process

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Among the many challenges that confronted the newly liberated nation of Timor-Leste in 1999 was how it should begin to address the widespread human rights violations so inextricably intertwined with its recent past.<sup>1</sup> Ultimately, the nation's transitional justice system would forge a hybrid system of 'complimentary' mechanisms, comprising both retributive and restorative processes, working across two jurisdictions and drawing together both customary and modern forms of law.<sup>2</sup> While there has been a great deal of analysis of the transitional justice system as a whole, this article is interested in exploring how some of the strengths of that process – in particular the Community Reconciliation Process (CRP) undertaken by the Commission for Reception, Truth and Reconciliation (CAVR) – can inform contemporary development practice. The article is concerned with the ongoing challenges that face development in Timor-Leste and identifies several factors critical to the CRP's success that could provide a more sustainable way forward for development activities.

Following the havoc of 1999, the CRP was a unique attempt at resolving thousands of so called 'less-serious' crimes<sup>3</sup> and reintegrating victims and perpetrators<sup>4</sup> back into their communities.<sup>5</sup> At its conclusion in late 2004, the CRP had successfully completed 1,371 cases and attracted the participation of some 40,000 people from across Timor-Leste.<sup>6</sup> While not without its detractors, many of those who participated in the CRP felt that it had significant benefits, with observers noting the CRP's contribution to re-establishing community-level cohesion and stability.<sup>7</sup> In all, the CRP can be taken as a durable process of reconciliation, due at least in part to the way in which the process drew together different patterns of political-cultural authority.

Notably, the CRP drew from East Timorese custom in a range of ways, including using *nahe biti*<sup>8</sup> to inform, instruct and facilitate a process of reconciliation and reintegration within local communities. Structured around an unfurled woven mat, *nahe biti* brings together aggrieved parties to discuss and debate issues, resolve conflict and ultimately mend relationships. The significance of the mat is that once unfurled, it would not be rolled up again until a resolution had been found or consensus reached.<sup>9</sup> This use of *nahe biti* in the CRP was partly in recognition of the importance of the

customary world in dispute resolution but also because of the prospect of an 'overloaded, inexperienced and under-resourced' formal legal system collapsing under the weight of numerous challenges.<sup>10</sup>

While *nahe biti* had traditionally been the preserve of familial and social domains, its application expanded during the civil war of 1974 to include political divisions and acts of violence.<sup>11</sup> The CRP incorporated and synthesised many of the ceremonial procedures associated with *nahe biti* including: the reception of perpetrators and victims; facilitating testimony, admissions and questions; encouraging humility and expressions of remorse; establishing community consensus; and proscribing symbolic acts of contrition.<sup>12</sup> Critically, the CRP drew together both customary and modern forms of leadership. This included a community panel made up of local elders who held customary sway as well as representatives drawn from modernised institutional forms, local offices (such as local government, education and so forth) and the CAVR itself. Working at times in tension with each other, the representatives helped facilitate resolutions between the victims and perpetrators that led to the creation of a Community Reconciliation Agreement, which in turn, would be registered with the state.<sup>13</sup>

It is this sense of drawing together different patterns of authority, even when in tension, that I suggest could be used more regularly in development practice. Ten years on from independence, the development record in Timor-Leste, even when measured against its own terms of reference, is mixed to say the least. The United Nations Development Programme 2011 *Human Development Report* states for example that while there has been some progress (predominately in urban environments) 'much of the population remains poor, and there is considerable scope for improvements in human development'.<sup>14</sup> The report's use of the Multidimensional Poverty Index – an index drawing on education, health and standard of living data to identify multiple deprivations in the same household – also provides a sobering account of achievements in Timor-Leste; 68.1 per cent of the population still suffer multiple deprivations while 18.2 per cent continue to be vulnerable to multiple deprivations.<sup>15</sup> Consequently, 'there remain significant human development problems, notably in the areas of energy provision, food security and nutrition, access to education and health services and high levels of employment – of concern particularly for the country's youth'.<sup>16</sup> Progress toward Timor-Leste's Millennium Development Goals is equally partial as each of the positive achievements are undermined by continued challenges elsewhere. Despite 5.5 billion dollars<sup>17</sup> of programmatic assistance – equivalent to \$5,500 for every man, woman and child – Timor-Leste is unlikely to fulfil a number of its 2015 targets. These include specific reductions in the:

...proportion of population below the poverty line, prevalence of underweight children under five years of age, the proportion of children reaching fifth grade, proportion of children immunized against measles, maternal mortality ratio, proportion of population

with comprehensive correct knowledge of HIV/AIDS, incidence associated with malaria, and proportion of population using an improved sanitation facility.<sup>18</sup>

In presenting the above scenario, my intention is not to denigrate the commitment and passion so evident in the work of development practitioners and agencies operating in Timor-Leste. Nor is it designed to deny or obscure the severity of the challenges they face, or the multiplicity of approaches they have adopted in response to such challenges. Indeed, as we shall see, a number of organisations have responded to different challenges, and as will be discussed this includes a recognition of the importance of the customary world. Instead, the above detail is used more generally to highlight how the modernising practice of development has in many instances struggled to gain traction in Timor-Leste. Consequently, the scenario asks us to think upon two questions. First, why has development practice generally struggled to adapt and culturally situate itself within the socio-cultural norms of the East Timorese in the same way as a process such as the CRP was able to? Second, why, given all of their apparent strength and flexibility, does development tend to view customary systems unfavourably?

In considering the first of these questions, and more specifically how the practice of development could be re-configured or re-cast, it is worth coming back to reflecting on the CRP once again. For instance, the single most important factor driving participation and involvement was that the practice underpinning the CRP held intrinsic value and meaning for people. Moreover, the CRP drew upon and was integrated within prevailing social values and practices. This approach contrasts with what often appears to be an un-reflexive modernity on the part of the development industry which still often attempts to introduce and operationalise external practices through a myriad of integrative means.<sup>19</sup> Indeed, the key aspects of the CRP were found not in newly constructed and predominately imported institutions, but in a deeply ingrained customary practice which, as Babo-Soares has argued, has been a part of the East Timorese 'ways of being and doing' since 'time immemorial'.<sup>20</sup> Constituting 'reconciliation' across the customary and modern meant that much of the disjuncture and dysfunction associated with drawing from one form (typically the modern) in the place of, or with a disregard to, customary 'ways of being and doing' was reduced.

Another factor underlying the CRP's ability to connect with local populations lay in the redistribution of power and control. Crucially, the CRP was critical in restoring and reaffirming many of the social norms, practices and structures prohibited or marginalised under Indonesian rule.<sup>21</sup> In so doing, even if in a small and momentary way, the CRP helped to re-establish the community's locus-of-control as well as its capacity to interpret and mediate change and answer to a desire for social cohesion.<sup>22</sup> This is in part because the CRP understood customary practice to be a vibrant, constantly evolving and capable of adaptation. For instance, while the term *nahe biti* can be

found in almost all ethno-linguist groups in Timor-Leste, even within the relatively localised domain of Timor its application and form varies from one place to another.<sup>23</sup> It was therefore quite unlikely that a ‘universal’ approach to reconciliation – something which writers like Escobar and Esteva have long argued frames development ‘planning’ and ‘practice’<sup>24</sup> – would allow communities to interpret the proceedings with different levels of adherence, recognition and legitimacy. Consequently, a key to successfully re-casting development in Timor-Leste – much like the positioning of the CRP itself – can be found in:

...the extent to which local people and organisations are able to appropriate development interventions to their own ends... by relocating them in constructive ways within their local and social terrains.<sup>25</sup>

In responding to the second of these questions, namely ‘why does development tend to view customary systems unfavourably’, I draw from the CDA’s *Listening Project* in order to outline aspects of development practice which limit a practitioner’s engagement with the customary world.<sup>26</sup> The first lies in the short-term, cyclical and programmatic nature of development practice itself. For instance many interviewees in the *Listening Project* felt that development practitioners were more interested in completing the project associated with their deployment than ‘getting close to the community and building sustainable relationships’.<sup>27</sup> Moreover, they expressed frustration at a perceived unwillingness to learn about their ways. In other words, ‘they just come, do their project, go back, and there is no change’.<sup>28</sup> The second relates to the notion of pre-set ‘development outcomes’ and the perceived externalisation of the community’s ‘priority-setting’ and ‘decision-making’ functions. This in turn appears to be further complicated by the need to meet the ongoing expectations of donors, technical advisors and political actors.<sup>29</sup> As one participant noted, ‘sometimes NGOs want to implement their own projects, and don’t really see the problems the community confronts’.<sup>30</sup> Encapsulating the complexity of this challenge another added:

The target groups don’t care for the targets of the donors or international politics. They want to see their situations improved. The NGOs or the implementing organizations are in between the two, managing the expectations of both sides. The expectations of our target groups may differ from those who give us money. We just have to admit that there may be a gap.<sup>31</sup>

Taken individually, each of the above pressures represents a significant challenge to the adaptive capacities required for effective development practice. Taken as a whole however, they also seem to conspire against the identification, recognition and comprehension of other ‘ways of being and doing’. Consequently, customary forms – despite their robust nature and capacity to adapt – are often ignored, overlooked or dismissed.<sup>32</sup> Such an appraisal is broadly consistent with the more critical views of development’s

discursive framing.<sup>33</sup> Put in their simplest form, these critiques posit that the modernist discourse of development 'encourage[s] people to see themselves as being underdeveloped and in need of capacity building'.<sup>34</sup> Critically, this discourse also promotes 'others' to recognise and meet the needs of the 'underdeveloped' through the application of modernist systems. Spurred on by the desire to construct modern structures, the resultant intersection generally leaves both the 'developed' and 'underdeveloped' closed to reflection, learning and adaptation.<sup>35</sup>

Again, in presenting the above discussion, my intention is not to provide definitive statements that cover all development related activity in Timor-Leste. Indeed, documentary and anecdotal evidence suggests that there are a number of agencies or organisations who, over the last ten years, have sought to build and retain a working knowledge of customary practice in order to assist them in connecting with local communities. Moreover, there are those whose respect, recognition and understanding of customary practices has seen their 'modern' work drawn into customary domains to form new and meaningful frameworks for development. The work of Caritas Australia in the areas of peace-building, gender-based violence, prisoner support and reintegration provide us with three such examples. Like the CRP, these programs draw together customary leaders such as the *lia-na'in* (spiritual leader) and *liurai* (political leader), local authorities like the *xefe aldeia* (hamlet chief) and *xefe de suku* (village chief) that are part of modern institutional forms, as well as other local government officials, education providers, the police, and the non-government organisation itself. Following the delivery of these programs, customary structures have supported and, where necessary, reinforced this learning through a variety of ceremonial events and community-based sanctions. Numerous iterations of each program have been delivered over the last several years, each with noteworthy support and appear to be delivering positive results.<sup>36</sup>

Intriguingly, the studies of Lisa Palmer also provide us with a glimpse of what these new and meaningful frameworks might look like. In examining the sensitive issue of water management in the city of Baucau, Palmer's work articulates 'a vibrant customary sector built on richly complicated processes of exchange, which are also enmeshed in complicated relationships with the state and market sectors'.<sup>37</sup> Part of this exchange involves the customary 'owners of the water' (known as *bee na'in*), government officials, formal sector water officials and the wider community all coming together in annual ceremonies of invocation and sacrifice before deciding on where the water flows for the forthcoming year will be directed and at what levels. Underground channels and 'modern' pipelines are then accessed to deliver water to nominated areas while local springs on conduits are managed in accordance with local tradition. Significantly, the *bee na'in*, acting on ancestral instruction, can deny a request to divert spring water even if this request is made by the formal sector. While this centuries old practice continues to regulate access and control to water resources, it has been modified in recent

years in order to recognise formal sector claims. Conversely, Palmer notes that greater formal sector support and recognition of these local customary institutions is now required as new forms of national community come to sit in relation with local communities. In short, the *inside* practices are capable of supporting a multiplicity of activities, provided the *outsider* is willing to recognise their meaning, authority and adaptive capacity.<sup>38</sup>

The work of Caritas, much like the water management program in Baucau, seem to replicate some of the ways the CRP drew together different forms of authority and legitimacy in order to create a sustainable and binding agreement. All too often however, these 'adaptive' or 'hybrid' forms of development are restricted to the margins of practice as exceptions, rather than a rule. In saying this, it is also important to note that the CRP did encounter a number of challenges. For instance, *nahe biti's* long-term focus appeared to prioritise the need for social harmony and deponent re-integration over the needs, rights and healing of individual victims.<sup>39</sup> Furthermore, female and minority participation in some locations was quite low. While social conditioning, patriarchy and fears associated with 'coming forward' were all partly responsible, hearing times and material needs also conspired to produce highly-gendered outcomes in a number of communities.<sup>40</sup> A third area of tension was found in some international donors, humanitarian organisations and multi-lateral agencies who were concerned with the CRP's compatibility with international human rights standards, not least when sanctions were applied to perpetrators.<sup>41</sup>

These and many other problems could emerge from the development framework being advocated here, as each of the above noted challenges reflect possible points of tension that lie between modern and customary practice. At first glance, the resultant intersection could be problematic: any development framework which seeks to integrate itself across customary and modern patterns of practice would almost assuredly face these very same tensions. However, it is argued that this is better than trying to establish one mode at the cost of another where working at the intersection of different ways of being in the world allows opportunity for negotiation and mediation that would not otherwise occur.

Using the well-known framework of the CRP as a lens, I have attempted in this essay to create a space in which the apparently 'incongruous' notions of development and customary practice could be re-interpreted, re-framed and most importantly, re-imagined. The justification for considering such a framework is straightforward: the people of Timor-Leste remain deeply connected to the customary world. Furthermore, the practices, rituals and authority associated with these 'ways of being' continue to be observed and respected on a daily basis. These practices have also shown themselves to be remarkably robust and adaptable. For some, this re-imagining may well challenge the essence of what they consider 'Development' to be. It is clear however that, despite considerable time and resources, development's

modernising processes have struggled to significantly reduce poverty and improve human development in Timor-Leste as well as might have been the case. Perhaps now is the time for development actors to embrace the challenge of reflecting on their processes, to learn and adapt to their 'on-the-ground' experience.

## Endnotes

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- 3 These crimes included acts such as assault, arson or theft.
- 4 Also known as 'deponents'.
- 5 CAVR, *Chega! The Report of the Commission for Commission for Reception, Truth and Reconciliation in East Timor (CAVR)*, CAVR, Dili, 2005, pp. 19–22.
- 6 *ibid.*, p. 23; D. Grenfell, 'When remembering isn't enough', *Arena Magazine*, no. 80, 2005–6, p. 33.
- 7 Statistics are taken from D. Grenfell, 'When remembering isn't enough'. See, for example, CAVR, *Chega!*; M. Schlicher, *East Timor Faces up to its Past*; JSMP, *Unfulfilled Expectations: Community Views on CAVRs Community Reconciliation Process*, Judicial System Monitoring Programme, 2005, available from [http://www.cavr-timorleste.org/otherFiles/Lia%20Kent\\_Report.pdf](http://www.cavr-timorleste.org/otherFiles/Lia%20Kent_Report.pdf), accessed 9 September 2011, p. 9. However this point has been qualified by numerous conceptual and operational challenges – including access, time constraints, political pragmatism, and the absence of high-level prosecutions. CAVR, *Chega!*
- 8 *Nahe biti* literally translates as 'stretching, lying or rolling the mat'. As a term or concept, *nahe biti* can be found in almost all ethno-linguist groups in Timor-Leste. While its application can vary from one place to another, the philosophy underpinning its use is commonly understood to be 'the healing of past mistakes' and 'the restoration of harmony': the balance of *Hun* and *Rohan*. See, D. Babo-Sores 'Nahe biti: the philosophy and process of grassroots reconciliation (and justice) in East Timor', *The Asia Pacific Journal of Anthropology*, vol. 5, no. 1, 2004, pp. 23–5. Also see M. Tilman's comments on *nahe biti* in connection with the customary authority of the *liurai*, this volume.
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- 19 D. Babo-Soares, 'Nahe bitit', p. 30; B. Larke, '... And the truth shall set you free': confessional trade-offs and community reconciliation in East Timor', *Asian Journal of Social Science*, vol. 37, 2009, pp. 646–76; L. Palmer, 'Enlivening development: water management in post-conflict Baucau City, Timor-Leste', *Singapore Journal of Tropical Geography*, vol. 31, no. 3, 2010, p. 357.
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- 22 L. Palmer, 'Enlivening development', p. 357.
- 23 D. Babo-Soares, 'Nahe Bitit', pp. 23–5.
- 24 See A. Escobar, 'Planning', pp. 132–45; A. Escobar, *Encountering Development: The Making and Unmaking of the Third World*, Princeton University Press, Princeton NJ, 1995; A. Escobar, 'Power and visibility: development and the invention and management of the Third World', *Cultural Anthropology*, vol. 3, 1998, pp. 428–43; G. Esteva, 'Tepito: no thanks, First World', *In Context*, vol. 30, 1991, pp. 38–45; G. Esteva and M.D. Prakesh, 'Beyond development, what?', *Development in Practice*, vol. 8, no. 3, 1998, pp. 280–95; G. Esteva, 'The indigenous people of Chiapas and the state in the time of Zapatismo: remaking culture, renegotiating power', *Latin American Perspectives*, vol. 28, no. 2, 2001, pp. 120–48.
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- 32 L. Palmer, *Enlivening Development*, pp. 357–9.



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