

Managing Customary Land to Reduce Conflict and Promote Development: Research Findings and Developments in Timor-Leste and Vanuatu

Rod Nixon¹

-Draft, Not for Citation-

Theme	Timor-Leste	Vanuatu	
Geography & demography	Land area:	Approx. 1.5 million Hectares.	Approx. 1.2 million Hectares.
	Territorial characteristics:	Half an island (and 2 smaller islands) divided into 13 districts and about 60 sub-districts.	83 islands divided into 6 provinces and 63 areas.
	Population:	1.1-1.2 million	240,000-245,000
	Fertility :	6.5 live births/woman 2005-2010	3.7 live births/woman 2005-2010
	Agricultural conditions:	Fragile erosion-prone non-volcanic soil.	Volcanic soil, contributing to conditions of 'subsistence affluence'
Historical & socio-political	Independence:	2002, after 450 years of Portuguese influence, 24 years of Indonesian occupation & 2.5 years UN administration.	<ul style="list-style-type: none"> • 1980, after French & English settlement and establishment of plantations during 19th Century and French/English Condominium Govt. 1906 onwards. • Land was a key independence issue.
	Conflict:	Civil war 1975; occupation 1975 – 1999; conflict 2006.	Brief limited conflict on Santo at independence.
	Socio-political structures:	Subsistence overlaid with unstable & warring micro-kingdoms.	Subsistence with legends of partial unity but in reality much diversity.
Economy	Growth (2008):	Over 12 per cent	Over 6 per cent
	Rural/broader economy	<ul style="list-style-type: none"> • Fundamentally subsistence • Minimal post-subsistence economic development in rural areas. • Challenges include how to intensify agricultural production and improve access to markets. • Govt. has vision of on-shore petroleum processing activities but outcomes uncertain. 	<ul style="list-style-type: none"> • Fundamentally subsistence. • Agricultural leasing, including 58,000 Hectares of registered leases listed as agricultural, plus other large areas of leased rural land thought to be agricultural. • Also, especially on Efate and Santo islands, tourism, expat. settlement and related activities (construction, land market, etc.) contribute to economic growth. However, there are questions about tourism-dependence and what the long-term benefits for landowners are given the poorly managed lease-creation and lease-management processes.
	State budget	US 660 million, most of which comes from petroleum	US 146 million (Leading source VAT at 35%; second source

¹ The author is grateful for input received from Dr Rae Porter, who also participated in research activities in Vanuatu which inform this presentation. The author also gratefully acknowledges the Timor-Leste J4P/Haburas research team led by Laura Plested and Carlos Alves, whose findings are referred to in this presentation.

		revenues. Possibility of increased petroleum income in future.	import duty at 30%)
	Representation & other	<ul style="list-style-type: none"> • National: 65-seat national parliament with no constituencies (raising questions about representation) • Regional: Discussion about introducing municipalities. • Village: Elected village councils introduced in 2004. 	<ul style="list-style-type: none"> • National: 17 constituencies with 52 members. • Provincial: Councils comprising elected members and chief, women, youth and church appointees. • Councils of Chiefs (non-elected) exist at national, island, area and village level.
Governance	Transparency	2009 Transparency International ranking of 146 of 180	2009 Transparency International ranking of 95 of 180
	Alienated land:	Approx. 5%	Approx. 1-2%
Land	Land ownership:	<ul style="list-style-type: none"> • The Constitution (sect. 54) reserves the right of property ownership for national citizens. • Leasing of customary land is likely under future Land Law, and will (probably) be regulated as outlined in Community Land provisions of draft Land Law. 	<ul style="list-style-type: none"> • The Constitution (Art. 73) states that 'All land...belongs to the indigenous custom owners and their descendents.' • Later legislation and regulations facilitated leasing arrangements, under which many colonial agricultural titles became agricultural leases.
	Area under lease:	Very little (apart from urban land)	Approx 25,000 leases, comprising estimated 20% – 25% of land. Most leases for 50 years, but 75-year leases are increasingly becoming standard. Savvy real-estate agents include clauses requiring land-owners to compensate lessees for improvements at expiration of lease, or renew lease.
	Policy & legislation challenges:	<p>Awareness of issues (customary land now on policy agenda)</p> <p>Passing of land law that includes provisions on Community Land. The Current version, which has been approved by CoM and goes to parliament in June, includes community land provisions including the following:</p> <ol style="list-style-type: none"> (1) Establishment of 'Community Protection Zones' (2) Ensuring that third-party economic activities benefit 'local community as a whole' and are environmentally and socially/culturally sustainable. (3) Third-party economic activities to be preceded by consultation. (4) Community property to be 'inalienable and unseizable'. (5) State to assist community in negotiations with investors and ensure compliance with terms/conditions (<u>role of industry certification schemes?</u>) 	<ul style="list-style-type: none"> • 2006 Land Summit determined 20 resolutions that were endorsed by the Council of Ministers, however few advances have been made in implementing these. Key themes include: <ol style="list-style-type: none"> (1) Shared ownership of land among community members. (2) Importance of inclusive decision making including participation of women (3) Determination of customary boundaries (4) Review of leases, inc. rent & lease conditions (5) Approval of leases by island council of chiefs (6) Removal of power of minister of lands to approve leases over disputed land & the need for disputes to be resolved first (7) Determination of fair land rents and premium payments (8) Zoning of land prior to leasing (9) Advancement of cultural, environmental & access provisions. • J4P research endorses the validity of these key recs., as well

		<p>Development of supporting regulations</p> <p>Concerns over expropriation law</p> <p>Implementation challenges.</p>	<p>as the need for attention to lease benefit distribution and benefit prolonging aspects.</p> <ul style="list-style-type: none"> • JBE research endorses the validity of these key recommendations, as well as the need for attention to lease benefit distribution and benefit-prolonging aspects. • Improving benefit distribution and benefit-prolonging aspects takes time. <u>WB Index 'Doing Business'</u> measurements for property registration not appropriate. More, not less time is needed to ensure fair outcomes for custom owner groups who are losing access to their land.
<p>Examples of challenges and potential for conflict</p>		<p>Govt. initially had little understanding of customary land issues (or 'strong state' approach), eg. leasing 3000 Hectares of 'state land' (occupied for many decades by community groups).</p> <p>Govt. Ministers on several occasions signing MOUs with agribusiness actors for 100,000 Hectares or more</p> <p>Investors engaging with farmers (<u>who have very little experience of post-subsistence agriculture</u>) before completing experimentation/demonstration work, and providing inadequate outreach, thereby resulting in high risk for farmers.</p> <p>References by Govt. investment officials on obtaining 'clean title' to community land cheaply to enable leasing to investors ('two story story')</p> <p>Questions of sustainability concerning contract farming arrangements, with investors seeking donor support.</p>	<p>Lease Creation:²</p> <ul style="list-style-type: none"> • (Secret) registration of leases based on customary claims (either to develop land themselves or lease to other parties) without consulting women, broader customary groups/land users, other possible claimants. • Custom Owner Declarations not always available. • Govt. Impact Assessment requirements not followed. • Authority of Island Councils of Chiefs not drawn on to reduce No. of audacious leases. • Poor benefit distribution/benefit-prolonging mechanisms. In a case where a Trust existed, it privileged senior male land owners in relation to decision making. • Premiums paid up-front represent by far the greater proportion of total lease payments and are easily spent. • Little information available to custom owners to guide decisions (including alternative development paths and in relation to disputed leases for which Min. Lands becomes lessor). Leases written in English. • Lease registration corruption. • Poor lease creation outcomes include minimal rent for some (Ag.) leases (ie. US 1.50-2.00/Hectare/Year). Land tied up for long periods of time (50-75 yrs) with few benefits for communities (either commercial or subsistence).

² Information in this box mainly based on study of 23 leases on the island of Epi, Vanuatu. Some information also based on preliminary research on Tanna Island.

			<p>Lease Management/Administration:</p> <ul style="list-style-type: none"> • Conflict resolution: Characterised by multiple forums. Of 23 leases, 13 had disputes. Most common dispute (6 cases) custom owner dispute. Island Councils of Chiefs an appropriate forum to resolve custom owner dispute but does not have authority to resolve decisions. • Conflict resolution: Cases identified where courts have issued determinations but no conflict resolution/acceptance has occurred at local level, hence risk of conflict remains high. • MoL/DoL(Ministry/Dept. Lands) procedural irregularities: Case where Minister of Lands fails to recognise determination of Supreme Court. • MoL/DoL monitoring: Rent reviews and lease conditions not necessarily monitored or enforced. • Little action taken to resolve disputed leases administered by Minister of Lands, or to report on status of funds in trust. • Short-term Lands appointments appear to contribute to lease being registered, unregistered, then re-registered depending on who is wielding authority.
	How is Justice for the Poor (J4P) contributing?	<ul style="list-style-type: none"> • Awareness-raising concerning customary land challenges in T-L. • TA to Min. Justice to support development of options for regulation of community land provisions of draft land law. • Research into engagement between customary groups and investors. 	<ul style="list-style-type: none"> • Island leasing studies identifying leasing issues. • Feedback Feedback to (Jastis Blong Evriwan) Research Reference Group (comprising reps. from civil society and Govt.) to facilitate policy dialogue and advancement.
What can be gained from comparing these case-studies	Pacific vs Lusophone (cultural)	While rural land tenure system in Timor-Leste may be similar to the Pacific, modernist cultural influences in T-L have complicated recognition of customary land rights (and also conflict resolution approaches). Meanwhile in Vanuatu, as in other regional Pacific states, the validity of customary land tenure patterns has been recognised and emphasised since independence. However, because of the role of (predominantly male) chiefs, this presents problems in relation to the participation/decision-making and benefit sharing rights of women and other members of the community. Women in particular can lose out in relation to both models (modernisation and customary).	
	Administrative boundaries (technical)	The Vanuatu leasing case-study highlights the problems associated with customary chiefs approving leases without defined chiefly/customary borders, although this can be overcome to some extent by requiring Island Councils of Chiefs to approve all leases.	

		<p>There is a lesson here for Timor-Leste, in the event that village (<i>suco</i>) councils are given a role in identifying customary land owners in relation to future leasing arrangements. Like the Vanuatu case-study, village boundaries are uncertain Timor-Leste since official boundaries do not correspond with the distribution of local political communities.</p>
	<p>The importance of good decisions-making processes</p>	<p>Vanuatu provides a warning to land owners both in Vanuatu and in less developed jurisdictions (Timor-Leste) about entering into long-term agreements with investors (especially plantation/grazing investors) for little gain. Some of the lessons are that (1) any premium payments must be securely invested so that they provide long-term benefits, (2) decision-making processes must be inclusive, (3) landowners need to be informed about benefits and other options (opportunity costs) (4) Lease provisions must be monitored and enforced to be of value. The Epi case-study, where the best 12% of the island's agricultural land has just been leased for grazing for 75 years highlights this. Although the enterprise may be profitable and contribute to positive economic growth figures (estimated US1 million/year from cattle sales), the investors are likely to be the winners.</p>