REFLECTIONS ON LAW Nº 3/2009: COMMUNITY LEADERSHIP AND THEIR ELECTION (II)
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PREPARED BY
THE ASIA FOUNDATION
DILI, TIMOR-LESTE

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FOREWORD

The Fifth Constitutional Government of Timor-Leste has committed to implementing a policy of decentralization in Timor-Leste in order to improve service delivery and governance in all parts of the country. As part of this process, it is important that we in the government seek to define the status of suku councils insofar as this relates to our future plans for decentralization.

For this reason, the Ministry of State Administration, with technical support and assistance from The Asia Foundation, has undertaken this research into the status of suku councils under Law No 3/2009: Community Leadership and Their Election, focusing in particular on suku councils’ understanding of their role and responsibilities, their election and budgeting processes. This resulting report forms part of the evidence base being utilized by the Ministry of State Administration to revise Law No 3/2009, and offers valuable insights into both the current state of affairs, and the potential future for the suku.

On behalf the Ministry of State Administration, I would like to thank The Asia Foundation for both their technical and financial support to this research project. I would also like to congratulate the Ministry’s research team for their efforts and dedication in conducting the field work for this research.

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The Asia Foundation is pleased to present the findings of the second phase research on “Reflections on Law No. 3/2009: Community Leadership and their Election.” This research was jointly conducted by The Asia Foundation and the research team from the Ministry of State Administration between March and June 2014.

This research is conducted at a time of great importance for the devolution of power from the central government to the districts and beyond, and forms part of a larger body of work by the Foundation on decentralization and local development projects. The findings in these two papers provide an important window into the functioning of the suku councils and the role which they play in the everyday lives of Timorese citizens. The purpose of the research is to further explore perspectives from within community leadership and communities themselves, as to the roles and responsibilities and mandate of local leadership in Timor-Leste. The intention is to use this and other research like it, to inform policy makers on necessary reforms to the legislation governing village leadership in Timor-Leste.

The importance of harmonizing local development priorities with the government’s decentralization policy cannot be overstated. The Foundation hopes that through increasing the use of evidence-based research such as this in policy making, reforms will be reminiscent of the desires of the broader Timorese society.

The Foundation extends its compliments and thanks to our government counterpart in the Ministry of State Administration, in particular to the guidance and support from Director General Miguel de Carvalho, as well as the dedicated team of researchers who worked diligently with us on gathering information, checking data, and coordinating focus group discussions. Further thanks to our consultant, James Scambury, who worked with the team on analysis and drafting of the report. The Foundation is also grateful to the Australian Government through its Aid program for the continued financial support to our programming and trust that this information will add to the growing discourse around local development needs and decentralization in the country.

Susan Marx
Country Representative, The Asia Foundation
Dili, June 2014
I. INTRODUCTION

The centralization of power and wealth in capital cities and major urban centers, and attendant faltering service delivery in the hinterland, is a feature of many developing countries. National governments and donors have long seen decentralization as a solution to this problem; as a means by which to ensure the dispersal of wealth, services and development to a sub-national level, and also to promote greater accountability of national governments to their constituencies. Empowering local level government has been an integral facet of decentralization strategies. In the last quarter of a century, over 75 countries have attempted to transfer responsibilities of the state to lower tiers of government.\(^1\)

However, the experience of decentralization, and attempts to empower local governments, have been highly variable. Indonesia’s post-Suharto rapid decentralization process, for example, has produced starkly uneven growth results across different districts.\(^2\) In terms of accountability, as one report found, decentralization may even have resulted in an increase, rather than a decrease, in corruption there. As service delivery can be decentralized, the report argued, so can corruption.\(^3\) In Papua New Guinea, the experiment in using local level government as a focal point for basic service delivery has generally ended in failure. By most accounts, state service delivery has all but collapsed outside the capital, Port Moresby.\(^6\) In Samoa, however, the emphasis has been on strengthening relationships between the government and localized community representative bodies, such as the traditional village councils or matai. Rather than invest them with more powers and bigger budgets, many of their powers and responsibilities have actually been curtailed – although they have been given limited powers to enact local by-laws. While it could be argued that such relations are easier to manage in a country as small as Samoa, nonetheless, the results can still be considered as a measured success.\(^6\)

The mixed results of these endeavors rest on a variety of factors. The most frequently cited barrier to successful implementation was the lack of capacity at sub-national levels of government to exercise responsibility for public services. Poorly managed processes have also meant that decentralization has led to misaligned responsibilities between different layers of administration, leading to confusion over lines of communication, chains of command and levels of authority. What these experiences have mainly revealed, however, is that the relationship between local governance and district growth is somewhat more complex than first thought, and that the decentralization process is considerably more multilayered than merely a set of technical or legislative adjustments.

What is also perhaps overlooked is that decentralization also significantly alters the nature of relationships between different levels of government and local leaders, and between local leaders and their communities. How these relationships are managed and defined can

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7 Ahmad et.al. op. cit.
be a pivotal factor in the success or failure of decentralization projects.

The Government of Timor-Leste commenced the development of its own decentralization strategy as early as 2003, when it established an inter-ministerial working group. The *Programa Dezenvolvimentu Lokál* (Local Development Program, or PDL) was developed in 2004 with the objective of testing different models for decentralization and local governance. First piloted in 2005, this program was later rolled out to all districts in 2010. While the impetus towards decentralization has wavered over the years, particularly after the communal conflict between 2006-7 and a change of government, it is now firmly back on the agenda.

In tandem with legislative initiatives, there have been a number of programs to stimulate sub-national development through small infrastructure programs, including PDL, *Pakote Dezenvolvimentu Desentralizadu* (Decentralized Development Package, or PDD), and more recently, *Programa Nasionál Dezenvolvimentu Suku* (National Program for Suku Development, or PNDS). Loosely based on a similar scheme in Indonesia, PNDS provides for block grants for small suku (village) infrastructure projects, to be managed by suku-based community councils.

Suku councils’ legal status, roles, responsibilities and competencies are set out in Law No 3/2009. Until now, suku councils largely functioned as an elected community voice and as the custodians of traditional customary authority. They mediate in disputes and act as a conduit between the government and their communities, facilitating government programs and projects at the suku level. While their scope of competencies and responsibilities is broad, suku councils are defined as community organizations under Law No 3/2009. However, with the current impetus behind a raft of recent district level development initiatives such as PNDS, the traditional roles and expectations of suku councils have substantially changed and expanded, but without any attendant increase in training, funding, support or authority.

In recognition of this increased role in service delivery, oversight and involvement in planning, and in an effort to make councils more accountable for funds management, the government is currently considering possibly amending the law to make suku councils part of government. As described in the first phase of this research report by The Asia Foundation (the Foundation), in their current composition and definition, suku councils are a hybrid governance body, containing elements of both customary and state-based attributes. While they are elected through a formal process, they must also possess cultural legitimacy, preferably as being a member of the hierarchy of a common descent group. This hybrid nature poses a number of complex challenges to any attempt to legislate a change in status, particularly in terms of the competencies, and levels of authority and responsibility required. A respected head of a descent group, for example, may not necessarily have the skills required to administer funds and monitor projects. Also, if the suku council is to take on a range of new administrative functions, would the current structure, with its requisite position for a traditional elder, for example, be adequate or

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8 ibid.
10 The Asia Foundation, 2013 ‘PPA component Two: state society relations at the suku level’ in The Asia Foundation Timor-Leste PPA year two annual component report' Dili
even appropriate? Given that suku councils have hitherto been more closely identified with traditional culture than as an arm of government, there are also implications for the nature of relationships between suku councils and other agencies, and also with their communities.

Building on the first phase of the report ‘Reflections on Law No. 3/2009: Community Leadership and their Election’, this second phase report seeks to answer some of these questions. While the focus of this report remains broadly similar to the previous report, a number of additional lines of inquiry were included, such as questions about the suku councils’ future composition, competencies and limits of authority. Carried out jointly between the Foundation and the Ministry of State Administration (MSA), field research for this report was conducted in rural and urban centers of five districts: Aileu, Ermera, Viqueque, Lautem and Manufahi. Interviews, focus groups and public meetings were held with civil society organizations, local authorities and members of suku councils. The field research set out to examine four key areas of suku councils’ status and responsibilities:

1. Understandings of suku council functions and competencies as they currently stand under Law No. 3/2009
2. What competencies and functions suku councils should have in the future
3. The electoral process and the suku council composition
4. The suku council budget

This report proceeds in three parts. Beginning with an executive summary, which sets out the key findings, the main body of the report is divided into the four headings outlined above, before concluding with a summary and reflections on the key findings.
This report summarizes the findings of a one month research project carried out over four weeks in May, 2004, by the Foundation and MSA in five districts of Timor-Leste. The key findings are set out here according to the outline of the field research, which are as follows:

1. Understandings of suku council functions and competencies as they currently stand under Law N° 3/2009
2. What competencies and functions suku councils should have in the future
3. The electoral process and the suku council composition
4. The suku council budget

1. Understandings of suku council functions and competencies as they currently stand under Law N° 3/2009

Most local authorities and civil society organizations felt that suku councils had a poor understanding of their competencies. Predictably, suku council members themselves generally thought the opposite. There was a common agreement, however, that suku councils needed more training, orientation and support in performing their roles in accordance with their obligations under the law. Most sources reported a sound understanding of the procedures for dispute resolution in civil cases and the limitations of their authority in criminal cases, which were referred to formal authorities.

Most sources agreed that there were generally positive relations between suku councils and their communities, but that relations were sometimes adversely affected by low legitimacy. In most cases, this was attributed to the pakote (or package) system of elections, whereby community members did not feel that they had chosen the suku council members themselves, or situations where community members felt that politics interfered with the suku council’s decision-making. Another criticism was that the failure to access funding for community needs, such as through proposals to line ministries, also caused the suku council or xefe-suku (village chief) to lose face in the community. Relations between suku councils and xefes-suku were generally positive. This harmony was attributed by some to the use of the pakote system of elections, where the belief that possessing common political beliefs and values facilitated cooperation, while others attributed this to strong cultural bonds. Others however point out that the pakote system diminishes the ability of voters to choose qualified candidates for each position, diminishing the overall competency of the council members as ‘strong candidates’ are spread across the top of each package.

Relations with line ministries and sub-district administrations were generally reported as working well. In cases where problems were reported, this was chiefly attributed to either staff of line ministries or sub-district administrations not respecting the authority of suku councils due to their status as community organizations, or, conversely, the suku councils themselves not respecting the authority of sub-district administrations. There was a general sentiment that relations could be much improved if there was a much better defined chain of command between these different levels of governance.

2. What competencies and functions suku councils should have in the future

A major component in this section of the research was the question of whether suku councils...
should become part of the formal government administrative system (civil service). While the majority of responses among suku councils appear to be in favor of this change in status, the extent to which the implications are clear remains to be seen. Notably there was a more mixed response from civil society organizations and local authorities. There was general consensus, however, that whether or not suku councils enter the civil service, there should be minimum educational requirements for the positions, including completion of secondary school and, at the very least, basic literacy skills.

While there were some exceptions, most sources argued for the continuation of the suku councils’ role in cultural preservation and implementation of customary laws such as tara-bandu. There was also an almost unanimous call for suku councils to be given authority for monitoring projects within the suku, and to be able to cancel projects should they not conform to standards or community needs.

3. The electoral process and the suku council composition

The questions pertaining to suku council elections drew fairly unequivocal responses. There was general agreement that suku council elections should continue and that they should be held simultaneously. There were a variety of suggestions about how the suku council should be chosen, the most common one being that the xefe-suku directly choose the suku council members from among the xefes-aldeia (sub-village chiefs). While some sources defended the pakote system as saving money and promoting harmony among the suku council, most responses recommended a return to open elections. The chief complaints about the current pakote system were that it reduced the legitimacy of the suku council, as it did not allow people to know whom they were voting for, and that it promoted nepotism. There was also a general sentiment that anybody, including civil servants, should be eligible as candidates, but as stated above, should possess minimum qualifications such as the completion of secondary school or basic literacy skills.

Most people thought that the suku council structure was adequate as it was, although there were some suggestions for the addition of a treasurer, a church representative, and a secretary for the xefe-suku. There were also numerous recommendations for more assistance to the suku administrative support staff (pesoál apoiu administrativu suku nian or PAAS) and for a suku security officer. The idea of line ministry placements was also highly popular. There was particular demand for placements in the areas of agriculture, health, water and sanitation, education and forestry.

4. The suku council budget

As with election related questions, the topic of suku finances drew very emphatic and almost unanimous responses. There was general agreement that the current incentive payment was insufficient, as it did not reflect the current workload of xefes-suku and suku council members. Many argued that they should receive the same amount as xefes-aldeia, as they felt that they were doing similar work. There was also general agreement that the maintenance and operational budget be paid directly to the suku council, who all sources believed could manage it transparently if given the right training and adequate supervision.

As with the previous report, from the perspective of the respondents, the option of making the suku councils part of the civil service was universally popular. The key finding to emerge from this research, however, was the gap between the diverse roles and responsibilities
the suku councils are tasked with, and their capacity and the resources and authority they have at their disposal to fulfill them. Finding a satisfactory solution to bridging this divide will be the key challenge for the government. Without the requisite skills, experience and qualifications to carry out their current mandate, it is unlikely that being given more responsibility, and more funding, will result in any improvement in service delivery or development at the suku level.

There were also clear indications of expectations of the attendant benefits of government positions such as pensions, so making suku councils part of the government structure could create more problems, and vastly more costs, than it solves. Given the hybrid nature of suku councils, the clearly still contentious nature of the closed nature of suku council elections and a potential increased access to funds, there is every indication that such a reform could generate greater community tensions and even more diminished authority among suku councils and their communities.

III. METHODOLOGY

Fieldwork for this research was conducted in 20 suku, in ten sub-districts across five districts of Viqueque, Lautem, Manufahi, Alieu and Ermera. Targeted suku were split between urban and rural areas to capture the variation between these two distinct populations. Research and transcription was conducted from April-June 2014, with analysis and final write-up in June. Research was conducted using a mixed-method approach of focus-group discussion (FGDs), in-depth interviews with key informants, participant observation and an additional method of public consultation was added in the Second Phase report. Interviews conducted included locally elected leaders, government officials at district and sub-district level, traditional leaders, council members, community members, political parties and civil society representatives, including the Church.

For full Methodology and research framework see Appendix A
IV. SUKU COUNCILS’ CURRENT FUNCTIONS AND COMPETENCIES

Understandings of Law No 3/2009

The list of activities, competencies and responsibilities for suku councils listed under Articles 10 to 14 of Law No 3/2009 runs to nine different areas, including assisting in the maintenance of social infrastructure, economic development, and the promotion of national languages. Clause ‘c’ of Article 12 is even broader and more open-ended, requiring the suku council to ‘identify, plan and accompany the implementation of activities in the areas of health, education, environment, promotion of employment, food security, others to be realized for the development of the suku’. In addition to these duties are obligations towards conflict resolution, and to ‘promote the establishment of mechanisms for the prevention of domestic violence.’ There is also a stipulation for the referral of unresolved or criminal cases to the police.

Responses to the question of how well suku councils currently understand their roles and responsibilities according to Law No 3/2009 were predictably split along the lines of suku council members and non-suku council members. The most common sentiment among local authorities and civil society organizations was that many suku councils have little understanding of their competencies and function, chiefly because they had received insufficient orientation or training. Sources from within civil society organizations believed that while the suku councils organized their communities reasonably well, with regular and extraordinary meetings, there was often low participation from suku council members. One respondent said that the large amount of meetings that council members are required to attend was part of the reason for their ineffectiveness. While the sentiment is that some suku councils have shown initiative, drawing up suku development plans together with the community, very few alluded to their role in promoting, for example, initiatives aimed at reducing gender-based violence (GBV). Most agreed, however, that without the proper resources, training and remuneration, suku councils do not have much incentive to take on or create new initiatives.

Both urban and rural sukus had a more positive self-assessment on this point, although the response was slightly more mixed among the rural sukus. One suku council had a plan to socialize programs such as PNDS and the 2010 Law Against Domestic Violence (LADV) at the aldeia level, but there were very few responses detailing such initiatives, reaffirming the view of civil society and local authority sources of suku council ineffectiveness. They also echoed the sentiment that they needed more training and more detailed instructions - some requested formal instruction booklets, and referred to a manual developed by The Asia Foundation on the role of suku councils. Women’s representatives reiterated this point, but some claimed that they still performed their roles to the best of their ability, such as socialization about GBV prevention. Some claimed that they received no support at all and found their roles difficult to perform. As one urban women’s representative on the suku council reported:

“We don’t understand our functions and competencies. Because we are not clear about our role, we do not really know what we are supposed to do. We regularly attend meetings, but we’re not involved as we are usually just making the coffee.”

Under Articles 11, 12 and 13, Law No 3/2009, suku councils must conduct a continuous process
of community consultation in the planning and development of community programs. They must also prepare an annual development plan, and meet once every three months or more as necessary. Most sources – both suku councils and observers, reported that suku councils actually held regular monthly meetings, and extraordinary meetings as required. Most described a process whereby they hold a meeting with the community to formulate the suku annual development plan. One urban xefe-suku described their process as follows:

“First, we hold a meeting with the community to identify the community’s needs in the suku. When this process is finished, we hold regular suku council meetings to evaluate these needs as submitted by the xefes-aldeia. We then sit together to formulate a proposal, which is then submitted to the sub-district administration and then the district administration.”

In one suku, the women make a separate plan, which they present to the suku initially before passing onto the sub-district administration. In most cases, the whole suku council attends these meetings but sometimes the community is also invited. One suku council even has a meeting every Monday to make a weekly plan and review the previous week’s plan. Article 15 of Law No. 3/2009 provides for a subsidy for xefes-suku and suku council members for attendance at meetings, and as one source claimed, the regularity of meetings depended on available funds.

Respondents indicated however that incentive payments might only be received every three to six months. Given that members of the suku councils often have to travel long distances to meetings, the lack of compensation for expenses incurred in the process of attending meetings such as petrol or meals, or lack of immediate remuneration, could be a strong disincentive to attendance.

Relations with the community

The majority of responses, particularly within urban suku councils, indicated that relations between the suku council and the community were good. However, one source claimed that while it always promotes the community’s needs to the line ministries through proposals and at meetings, few of these proposals are ever approved, so they lack legitimacy in the community’s eyes. Some local authorities also reported that relations can sometimes be adversely affected by political or other private interests interfering with the suku council’s work. Compared with the urban suku councils, there was a more mixed response among rural suku councils about relations with the community. One suku council claimed to be proactive in its role in organizing the community. It had formed youth and women’s groups and developed action plans with them. However, a number claimed that in other cases, there was little community participation in the suku councils – which some attributed to low legitimacy due to the pakote system.

Relations within suku councils

In terms of relations within the suku councils, there were very few detailed responses to this issue. Most sources, form both suku council and non-suku council sources thought that relations are harmonious between the suku councils and xefes-suku – one attributed this to the pakote system. Most claimed that suku council relations function well and harmoniously. A number of rural councils claimed that there were regular monthly meetings, with tasks and responsibilities equally shared, and decisions made by the entire council, not just the xefe-suku.
Conflict resolution processes

The majority of responses indicated that suku councils had a firm understanding of their responsibilities, the processes involved in conflict resolution and the limitations of suku council authority. With only one exception, in the case of a rural suku council member, who voiced a preference for attempting to resolve GBV cases through customary methods before referral to the police, most sources cited a process whereby civil disputes were first mediated at the aldeia level, usually in cooperation with a lianain and the Church. If not resolved then, these cases were referred to the suku level. Criminal cases were referred to the police and formal judicial process.

Coordination with line ministries

There are generally good relations with line ministries, with regularly scheduled meetings, but sometimes there is minimal participation from the government. As both suku council and non-suku council sources reported, sometimes government officials or ministers see the suku councils as community leaders only, not part of the civil service, although one source claimed that it was the suku councils who are uncooperative with other levels of government. As one source described the relationship,

‘There is good coordination with the line ministry because the suku councils understand that they are the government’s feet’.

Some ministries, like the Ministry for Land and Property, were reported as coordinating well with the suku councils, as they respect their knowledge of suku boundaries and local culture, but other ministries have been known to implement projects directly at a suku level without consultation. One rural suku council member complained that sometimes suku councils cannot participate in activities at the district or sub-district level due to lack of information or invitations, while another reported that they do not really have any authority, because again the government sees them solely as community leaders. One rural suku claimed that there was no coordination at all with the line ministry. Another rural council claimed that there were only irregular meetings with the line ministries, and even then, with low participation.

Coordination with district and sub-district administration

Other than a commitment to cooperate with the municipal administration, Law N° 3/2009 contains only vague provisions setting out the relationship between the suku council and other layers of government, such as the sub-district administration. Given that suku councils receive funding directly from the government, their chief reporting obligation, on paper, would appear to be only the national government and associated line ministries. However, by most accounts, the coordination with the sub-district administration was generally working well. All sectors reported that there were, on the whole, regularly scheduled meetings, and regular progress reports to the sub-district administration and line ministries. A number of sources set out the process whereby the suku councils assess the community’s needs and submit an annual plan to the sub-district administration to make a decision, which is then submitted to the district administration and then to the line ministries.

Sometimes relations have been poor for a number of reasons, with most criticisms arising.
from interviews with local authorities. One local authority reported that problems sometimes arise when the suku councils fail to recognize the sub-district administration’s authority over them:

“There is usually good coordination between the sub-district administration and the xefe-suku; the xefe-suku comes and gets approval from us before submitting proposals to the government and their partners. But sometimes they won’t attend meetings because they say only they are the real community leaders because the community chose them.”

Another local authority source complained that suku councils do not always follow the sub-district administration’s instructions or respect their authority, so they have no control over suku activities. Sometimes it is the other way around, wherein as some sources claimed, the sub-district administration do not really listen to suku councils or regularly attend meetings. As with some line ministries, it appears this lack of recognition may be a result of the classification of suku councils as “community authorities”. Given that Article 2 of Law No 3/2009 stipulates that the government is not required to follow suku council decisions, it is difficult for them to compel government agencies to act on suku council requests.

**Key Findings**

- Suku councils generally perform their most basic functions well, such as organizing the community, coordinating with the sub-district administration and line ministries, and conflict resolution processes. They struggle to understand, and, therefore, implement the broader or more complex tasks that are part of their mandate.
- Competing claims of legitimacy are a key challenge in relations between suku councils and different layers of government.
- There is a need for a more defined chain of command between the sub-district administration and the suku councils.
V. SUKU COUNCILS’ COMPETENCIES AND FUNCTIONS IN THE FUTURE

Article 2 of Law N° 3/2009 explicitly states that suku councils are not part of the public administration. The majority of responses were in favour of this article being amended. There was, however, a more measured response from local authorities. Some said that the current status quo should prevail, that the suku councils should remain as community leaders, but there needs to be a clearer chain of command, with suku councils directly reporting to sub-district administrations, and a stronger line of communication so that they might monitor the suku councils’ performance better. As one rural sub-district administrator reported,

“I don’t agree with suku councils becoming part of the civil service. They were elected by their community for their leadership abilities, not their technical skills. If they become civil servants, they must have the relevant qualifications.”

One source observed that sometimes the suku council reported directly to the district administration, leaving out the sub-district administration altogether. Most urban suku councils reiterated a desire for a more articulated chain of command and lines of communication with the sub-administration. One recommendation from this sector was that becoming part of the civil service meant that they could assist the sub-district administration with work such as collection and sharing of the suku tax. Rural sukus were also fairly unanimous in their desire to become part of the civil service, and were comfortable with reporting to and being supervised by the sub-district administration.

Cultural role

Many responses indicated that suku councils continued to play a strong cultural role in their communities. A number of sources described the role of xefe-suku and suku councils in conducting ceremonies such as tara bandu in dispute resolution, and a number of other customary rituals such as the blessing of the corn harvest, maintain the uma lulik (sacred house) and commemorating special ritual events and commemorations such as ‘Loron Matebian’.15 Most respondents advocated for a continued cultural role for suku councils, although two local authority sources argued that this should be left up to the liurai (customary king) and lia-na’in. There was both a limited and mixed response from rural sukus to the questions of what cultural values the suku councils should represent, with some saying they should continue to represent customary law. A small number of sources, however, asserted that if the suku councils become civil servants, they cannot represent culture at the same time. One urban suku council member complained that when together with the Church, they conducted customary ceremonies such as tara-bandu, some members of parliament came and told the community that the suku council does not have authority to enforce this law.

15 All Souls’ Day
Future roles and responsibilities

The main sentiment expressed as to what new competencies and functions were required in the suku council was a need to give authority to suku councils to do project monitoring and make decisions when the project did not meet standards or the community’s needs. This is an important development in light of the ongoing community-level programs funded by government and other development agencies including PNDS. As the law currently stands, the suku council only have an obligation towards planning and implementing community development programs, assisting the municipal administration and government departments in suku development, and the maintenance of social infrastructure, which includes roads and communication. However, this research indicates a strong desire to give suku councils monitoring and oversight responsibilities for (including the ability to cancel) projects which are being implemented in their suku.

Another common recommendation was for the suku councils to have control over their natural resources. Some recommended the need to authorize suku councils to collect natural resource taxes. One rural suku council member also requested the authority to resolve land disputes according to cultural laws, and to formulate suku regulations. This of course is a complex area that requires the harmonization of laws and policies, and not something which can be adequately captured nor addressed in this paper.

Further suggestions, in particular from some urban councils pertained to the notion of holding individual council members accountable. Specifically, there were suggestions that suku councils should have the ability to replace individual council members who do not perform.

Other recommendations pertained to particular programs and oversight mechanisms, many of which relate to the desire to improve services at the suku level. Specifically, ideas around the need to give authority to women’s representatives in charge of school fees and to coordinate this from within the suku council.

Key Findings:

- There is broad support across the board for suku councils to enter the government structure, but at the same time, to continue to play a role in preserving cultural values and heritage.
- There is a strong demand for suku councils to have the authority to monitor and when necessary, cancel projects within their suku boundaries.
VI. ELECTORAL PROCESS AND SUKU COUNCIL COMPOSITION

The majority of responses were positive to the question of whether elections to choose community representatives should continue. Most responses advocated for joint xefe-suku and xefe-aldeia elections. While the general feeling toward the importance of elections remained strong, views on the technical administration thereof varied greatly. In terms of the selection of the suku council, there was a range of alternative suggestions. One response called for the sub-district administration to nominate the xefe-suku. Another said that if the xefe-suku becomes part of the public service, an election would be unnecessary, but they would still have to be qualified for the job. Another suggestion was that suku council members should be chosen according to their lineage and seniority in the uma lulik. One urban suku council member recommended that elections should be held only in less developed sukus, claiming that the advanced or better developed sukus do not need elections, and that the government should just appoint a public servant to become xefe-suku. According to respondents, this system, known as the Sistem Kelurahan, was apparently in place during the Indonesian occupation era, particularly in urban sukus.

As stated previously, there was widespread dissatisfaction with the pakote system. Under the current system, people are required to vote for a pre-'packaged' suku council rather than individual members on the council. As the first phase of this report noted, while it may be cheaper and easier to administer this system, its closed nature has created a number of further issues. While a small number of sources called for the continuation of the pakote system, believing that it enhances stability and cooperation if all council members have the same political views, there was an almost unanimous call for elections to be open. A common criticism of the pakote system was that people do not know who the candidates (other than the xefe-suku) are before they choose them. Legitimacy also emerged as a strong theme, and a number of sources even suggested that the xefes-aldeia, together with the community, should select the suku council directly from the elected xefes-aldeia. As one suku administration assistant noted:

“In my opinion, the package system has advantages and disadvantages. The advantage is that the xefe-suku can choose their own suku council team, but the disadvantage is that they have no legitimacy as the public feel that they did not choose them.”

A large number of respondents also claimed that the package system encouraged nepotism. The substitute or reserve system came in for particular criticism, both for being a waste of time and human resources, and for creating a demand among the reserves to also receive the incentive payment.

Eligibility

Article 19 of Law No 3/2009 currently excludes civil servants from eligibility for suku council elections. With few exceptions, the general opinion as to whether they should be eligible again was that anyone could stand for election (including civil servants), but that they should be able to read and write and educated to a minimum of secondary school, be healthy, and that they should live in the suku. Some said that members of political parties should not be able to run, while one suggested that they should have to be nominated by

the uma lisan.

**Current composition**

Apart from *xefes-aldeia*, the *suku* councils are currently composed of two women, two youth of both genders, an elder and a *lia-na’in* - who is appointed by the *suku* council. The common response from local authorities on the adequacy of the current *suku* council composition was that it was sufficient as it is. Most suggested, as did the other sectors, that there should be increased staff to work with PAAS, including governance, development and technical staff, or to assist the *xefe-suku* in *suku* development and governance, and a *suku* security officer.

There were a variety of suggestions from among urban *suku* councils for additions to the *suku* council composition. Apart from the abovementioned suggestions, there were recommendations for a treasurer; a church representative; a secretary for the *xefe-suku*, planning and development staff, and someone to look after *suku* assets. One source recommended that *xefes-aldeia* also need a *xete-bairru* (neighborhood/area chief), claiming that many *xefes-aldeia* have difficulties controlling their whole community. A small number of respondents argued that there was no need for a *lia-na’in* or an elder in the *suku* council, on the basis that both members perform the same role, while some argued that there should not be women’s or youth representatives. These were minority opinions, however, perhaps in part based on the competency of local incumbents in these positions. A number of respondents made comparisons with Indonesian local governance systems. As one rural *xefe-suku* recommended:

“In Indonesian times, in the suku there was a kepala urusan pemerintahan (governance unit head), a kepala urusan pembangunan (a development unit head), and a kepala urusan desa (suku administration head) who helped the chefe de suku in their duties. In my opinion, we should adopt the Indonesian system.”

**Ministerial secondments**

There was general approval for the need for ministerial placements or secondments, mainly to help with planning and development to assist PAAS. There was a suggestion from local authorities that this should be just at the sub-district level, because of human resources and budgetary limitations. Another response was that these placements would give greater responsibility to the *suku* in such sectors as agriculture, education, health, water and sanitation, social security, forestry, and a gender focal point. There were also some suggestions for technicians (unspecified) and a technical plan. One source suggested that the placement be made at a sub-district level only. There was also a request for a house for civil servants in the *suku*, so that they can stay regularly in the districts.

**Key Findings:**

- There is widespread support for a return to the former open election system. The *pakote* system is seen as problematic both because it is perceived to encourage nepotism, and also because *suku* councils struggle for legitimacy if the community feel that they did not choose them.
- While there were a number of suggestions for additions or adjustments, the general opinion was that *suku* council composition is adequate as it is, but more support staff were needed, particularly a security officer.
- The idea of line ministry placements with forestry, agriculture, health, education and water and sanitation was broadly popular.
Incentive payments

The funds and resources with which the suku councils are to achieve the broad objectives they are tasked with are less well defined, and considerably less voluminous, than their allocated roles and responsibilities. Article 15 of Law No. 3/2009 contains few specifics about the nature of the payments suku councils should receive. There is a set of rights to receive reimbursement for attendance at meetings and other costs incurred, and an ambiguous clause that cites their rights to materials that may help them fulfill their tasks. Anything more substantial must be applied for via a proposal from the suku council, which, as a number of responses indicated, are seldom granted.

Most discussion on the budget revolved around two themes; the incentive payment, and control over the maintenance and operational budget. Most local authority responses described the current suku council incentive payment as adequate, but asserted that it should be paid on a monthly basis. There were also mixed feelings about the incentive payment among civil society organizations. One source believed that the incentive is insufficient; that it does not reflect the amount of work suku councils perform, while another believed that the payment should not be increased as suku council members are community leaders only.

The chief complaint among suku council members was that the incentive payment did not reflect the amount of work performed, such as for implementing PNDS, or cover their costs. As one urban xefe-suku described:

“The (incentive) payment the government gives to the suku is not enough because sometimes we have to use it as part of our work; for example, when we have visitors to our aldeia, we have to raise money among ourselves to provide food and refreshments.”

A number of respondents requested that the incentive be paid to the entire suku council, and that the incentive should be the same amount as that paid to the xefes-aldeia, as they felt that suku council members did similar amount of work. Some requested that the incentive be converted into a salary - there was one recommendation that the rate be set at that of a level five civil servant - and paid monthly (instead of every three to six months as frequently reported). There was also a suggestion to give pensions to the xefe-suku when their mandate finishes, as with civil servants.

Control of the maintenance and operational budget

Currently, suku councils receive funds for day to day requirements through two subsidies: a fixed fund and an operational fund. These funds are first initiated through the National Directorate of Community Development and Suku Support, before final approval in the Ministry of Finance. They are then disbursed to the suku administrative support officer (PAAS) via district branches of the National Commercial Bank of Timor-Leste. However, for ancillary costs such as vehicle or motorbike repairs, they must go to Dili, an exercise that is often more time consuming and costly than the repair itself. This need for frequent trips to the city to collect relatively minor sums drew criticism from a number of quarters.

There was general agreement among all sectors that there was a need for an increase in the maintenance, administrative and operational budget, and to let the suku manage
the budget so that it could implement its own programs. Control over the budget, many sources claimed, would give the suku council the ability to plan and act more quickly to address suku needs. One urban suku council source recommended a system similar to that which was used under Indonesian times wherein the suku could manage funds directly.

In addition to overall budgetary requests and constraints, some respondents focused on the specific needs of vulnerable groups, as well as more detailed requests for particular pieces of equipment. As such, there were a few requests for a special budget allocation for women and youth, a social security fund for the poor and for families of those who have died prematurely, as well as requests to replace typewriters currently in use in some areas for a computer and printer. There was also a request for uniforms, a suku emblem and a wooden signboard.

On the matter of accountability, there was unanimous agreement among all sectors that the suku councils could indeed manage budgets and be accountable and transparent with the right amount of training and supervision, and adequate oversight from both the sub-district administration and the government.

Key Findings:

- There is a broad consensus that the incentive payment is inadequate for the amount of work performed, should be more formalized and paid in more regular installments.
- There was also broad support for suku councils to have greater control over their own budget. There was unanimous agreement that the suku councils could transparently manage this fund as long as they had adequate training and supervision.

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17 The system is known as Inpres, Banpres, Bantuan Langsung Presiden or IDT
The findings in this report largely mirror the findings of the first phase report “Reflections on Law No 3/2009: Community Leadership and their Election”. That report, published in November 2013, noted a similar desire among suku council members to become part of the government structure, and become salaried civil servants. That report also identified that while suku council members needed more training in their roles and responsibilities, there was a similar level of frustration in the high expectations of their role and the work involved, but the lack of authority, support, and funding to adequately perform these roles. Most sources expressed a desire to have the authority to manage budgets and monitor projects within their suku boundaries, to ensure they conformed to community needs. There was also similar dissatisfaction with the closed pakote system of suku council elections, and a demand for minimum qualifications.

Drawing on the previous report and the findings of this current research, two key and related themes merge. The first theme is legitimacy. Responses in this research, as with the first phase report, indicate that perceptions of legitimacy, or lack of thereof, have had a significant impact on the relationship between suku councils and government bodies such as line ministries and sub-district administrations. Government bodies sometimes do not accord suku councils legitimacy, as they see them solely as community leaders. In turn, it was also observed that suku councils may also refuse to acknowledge the legitimacy of sub-district administration staff, as they are unelected civil servants. There is a clear need to harmonize the recognition and lines of authority between and among the various levels of authorities. Responses also indicate that the pakote system has clearly diminished the legitimacy of suku councils, through perceptions that the community did not choose them, but also their inability to attract funding for suku development, and exercise control over development projects within their sukus.

This last point directly relates to the second major theme, which is the community’s high expectations of the suku councils and the broad scope of their roles and obligations. The breadth of the roles and obligations under Law No 3/2009 contrast sharply with the lack of clarity around the obligations of the different levels of government towards suku councils in terms of support, training, and funding. There is also a contrasting lack of detail describing the relationships between government agencies and suku councils. This is especially true of the lack of clarity around the chain of command with the sub-district administration. Aside from lack of resources and support, comments from independent civil society and local authority sources, in addition to numerous calls for minimum educational standards for suku council members, raise serious questions about the capacity of xefes-suku to fulfill their mandate. Given that even well-funded state agencies with qualified staff often struggle to adequately plan, implement, manage and monitor projects, or roll out campaigns on gender based violence and other related issues, it seems unreasonable to expect largely untrained suku council members, who often have minimal education, to adequately understand and perform these roles.

Looking at the current scope of suku council roles and responsibilities, it would seem only fair that they become salaried civil servants. However, given the manifest lack of capacity among suku council members, there is little evidence to indicate that changing the status of suku councils to become part of the government structure, and increasing their responsibilities in such areas as project monitoring for example, would result in any significant improvements for communities at the suku level. If anything, apart from creating an added administrative burden in terms of financial oversight and monitoring for the government in a country with a population of this size, this would generate an even greater burden of expectation of suku councils to deliver on suku development. The
failure to meet such expectations, together with an injection of funding, can easily lead to declining legitimacy, and even allegations of corruption and nepotism which can, in turn, lead to communal tensions.

The popularity of the option of suku councils becoming part of government should not necessarily be seen as an indication of collective wisdom. As the previous report noted, this response might sometimes be offered as a straightforward and practical solution to a complex issue, but given the universal attraction of a paid government position – and all the benefits that accrue, a strong element of self-interest should not be discounted. The expectations of civil service entitlements, as some responses indicated – such as suggestions to make the position permanent and eligible for a pension, would create myriad new legal and social complications. If they were civil servants, for example, would they still be community representatives? Would they still be elected? Again, such expectations create the very real potential for communal tensions. When, for example, the prospect of decentralisation and attendant increased funding to sukus was first raised in 2009, at least two reports noted a rise in communal tensions as a consequence.

The solution would then seem to lie somewhere between decreasing and refining the breadth of responsibilities and expectations of suku councils, and increasing the district level administrations’ capacity and resources to enable better service delivery at a suku level. If suku councils feel their remuneration does not reflect the amount of work they do, perhaps it seems more logical to reduce their roles, as with the Samoan model mentioned earlier, than increase their remuneration. Bearing in mind however the potential repercussions of reducing the mandate and responsibilities of one authority, without replacing it with an adequate solution. Suku council strengths, as indicated in this research, are in acting as conduits between their communities and government. More capacity and resources, then, could be allocated to district levels of administration, rather than burden suku councils with more administrative tasks and attendant public expectations, thereby lessening the risk of potential communal tensions. Given the evident popularity of the idea of line ministry placements in this research, these would seem like a worthy consideration as an ideal means through which to implement suku level development and the socialization of government campaigns such as GBV reduction. Civil servants could then perform civil service tasks, and community leaders could go back to leading their communities.

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18 See Muggah, Robert and LeBrun, Emile (eds), 2010, ‘Timor-Leste Armed Violence Assessment: Final Report’ Geneva Small Arms Survey, Geneva, and Catholic Relief Services 2010, ‘Laletek (Bridge) program baseline study report’ Catholic Relief Services Timor-Leste, Dili. These reports attributed these tensions to both competitive positioning to access these funds, and due to incumbent xefes-suku who had lost in the previous suku elections but refused to relinquish power.
IX. REFERENCES


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A Reflection on Law N° 3/2009: Community Leadership and their Election

Objectives

This research aims to investigate the application of the Law N° 3/2009 in order to make a substantial contribution to relevant policy documents and allows for revision of the law based on the experiences of the past few years. This research will focus on the relevant electoral process and suku council composition, suku council’s competencies and functions and examine how suku councils have exercised their respective functions and competencies. It will also examine suku’s budgetary execution capacity.

Scope and focus

In general, this research will be carried out with a view to investigate the status of suku councils from suku leaders, community members, and government officials’ perspectives at the district and sub-district level. The following questions will explore in detail the key themes described below:

1. How does the suku council exercise its functions and competencies: this examines suku council’s competencies as granted to them by law and how the suku council exercises its functions. It will also analyze challenges/problems facing suku council in the exercise of its functions and competencies and why.
   • How do xefe-suku and suku council members understand their competencies and how do these competencies fit in with the Law N° 3/2009? How does the law support them in the exercise of their functions?
   • How do xefe-suku exercise their competencies and how do xefe-suku and suku council members carry out their functions?
   • What is the working relationship between the suku council and the xefe-suku?
   • What is the relationship between suku council and xefe-suku with line ministries?

2. Suku council’s competencies and functions in the future: this examines which competencies and functions the suku council shall exercise in the future and analyzes why these functions and competencies are important.
   • Suku councils play an important role in representing suku cultural values and the council also serves as government or municipal representative at the suku level. What type of cultural values should the suku council represent in the suku in the future? Which sectors of government should devolve responsibilities to the suku council as government or municipal representative at the suku level?
   • What competencies and functions should the suku council seek to improve in the future to enable them to exercise their functions better?

3. Electoral process and suku council composition: this investigates which electoral process/model and composition are best suited for suku council to ensure the legitimacy of suku council’s representation in suku and why?
• Is it necessary to have community leader elections to secure legitimacy?


• What is the suku council’s preference in relation to suku elections? Open or closed? Why? And how?

• Which citizens are eligible to run for suku elections and be elected as xefe-suku and members of the suku council? Should civil servants be eligible to run in these elections?

• Is the suku council’s current composition adequate? Does it need to be enlarged or reduced? Why?

• Does the suku council need secondment of civil servants to provide advisory support to the suku? Why or why not? If it does, which line ministries’ staff are most important to be seconded to the suku?

4. Suku’s budget: this examines the financial support needed by the suku council to exercise their functions well, and how the suku council will use the budget while at the same time ensuring transparency in budget execution.

• What financial support should be provided to suku councils to ensure that suku councils can exercise their functions well? How can it be ensured that the suku spends their annual budget? How can it be ensured that there is accountability for the suku’s expenditure to the public?

• What strategies does the suku council need to have to ensure the flow of financial support?

Fieldwork

The fieldwork will be carried out in 5 districts: Lautem, Viqueque, Manufahi, Aileu and Ermera. In each district, the research team will conduct in-depth interviews with community representatives, government officials and civil society representatives of two sukus from each district (one from an urban and one from a rural area). The research team will also conduct focus group discussions with two members of the suku council in each district. Lastly, the research team will conduct a public consultation with community leaders (including the xefe-suku) in the five target districts.

Workplan

Guide for fieldwork will be developed by The Asia Foundation in collaboration with MSA’s team (DNPACHE and DNDCAS). The Asia Foundation will carry out further consultation with the DGDL on this.

Fieldwork team: the fieldwork will be carried out jointly between DNPACE, DNDCAS and The Asia Foundation team.

Analysis and report writing: The Asia Foundation will do the analysis and will regularly consult with the research team and DGDL in the process.

Detailed Questions:

I. Suku council’s competencies and functions (existing)

1) As a member of suku council, are you aware of your competencies and roles? If not aware,
why? Do you think understanding your competencies and roles can help you serve your suku?

2) Do you think the suku council has exercised its functions effectively and efficiently?

3) How does the suku council exercise its functions? Does the council have a daily workplan?
   - How many meetings do xefes-suku organize each month? Who takes part in these meetings and can members of community participate in these meetings?
   - How is work coordinated with line ministries at the district level? At district administration and sub district level?
   - How do you solve problems which cannot be solved at the suku level? How does the suku council refer cases to the formal justice system?
   - How does the suku council support the formulation of the suku annual development plan?
   - How can the suku council uphold the principles of equality, improve the environment and provide support in maintaining local customs, traditions, tourist attractions etc?

4) What is the relationship between xefe-suku and suku council?

5) What is the relationship between suku council and the community? How does the council represent the community’s needs in development?

6) What is the working relationship between suku council and line ministries at the district level, for instance in education, health, agriculture and other sector?
   - Do you have regular meetings? How frequent are these meetings and who takes part?
   - How does the suku council represent community needs in line ministries?

II. Suku council’s competencies and roles (in the future)

1) Do you think the existing suku council’s competencies and roles as defined in Law N° 3/2009 are adequate?

2) Is there a need to review the existing competencies and roles? If there is, which roles and competencies should be enlarged or reduced?

3) Looking forward, what do you think of suku council’s relationships with line ministries at the district and national level should look like? Or at the municipal level?

4) What do you think if we were to maintain suku’s status as it is (status quo)? What do you think the relationship between suku and municipalities will be in the future?

5) What competencies and functions in line ministries should devolve to the suku council to exercise at the suku level?

6) Suku councils represent the suku’s cultural values and also serves as the government or municipality’s representative:
   - What cultural values and traditional roles should the suku council retain besides tara-bandu?
   - What functions of which line ministries, government or municipal, should devolve to the
suku council as the government’s representative at suku level?
- What competencies and functions of suku councils can contribute to other levels of government or municipalities?

III. Electoral process and the composition of suku council

Electoral process

1) Is there a need for retaining the electoral process for community leaders or should it be replaced with appointment? Why do you think it should retain election and why not?

2) Who do you think should be elected through a direct election? The whole suku council? Only the xefe-suku? Xefe-suku and xefe-aldeia? How?

3) What do you think of the pakote system for suku election?

4) Which do you prefer, suku election with a closed list or open list? What are the advantages and disadvantages of each option?

5) Who do you think should be eligible to run in these elections and be elected as xefe-suku and members of the suku council? Liurai? Civil servants? Or all citizens are eligible?

Suku Council’s composition

6) Is the existing composition of the suku council adequate and representative enough? If not adequate, does it need reduction or enlargement? Why and how?

7) Do you think women’s representation in suku council is adequate? Why?

8) Do you think there should be secondment or recruitment of civil servants to provide advisory support to suku council? If yes, why? If no, why?

9) Do you think there should be line ministries representatives or staff seconded to work in the suku? If yes, which line ministries is more important and why?

IV. Budget

1) Is the existing incentive in the form of financial support that the government is providing to suku adequate for xefe-suku to exercise their functions? Why do you think it is sufficient or why not?

2) What financial support should be given to suku councils to enable them to exercise their functions well?

3) If there is financial support to suku councils, how does the suku ensure that the financial support is used for public and government interests every year?

4) If there is financial support from some agencies or government, how does suku council ensure accountability to community in relation to suku expenditures?