The Promise and Peril of Paralegal Aid

Accepted Version, Published in *World Development*, Vol. 106, June 2018, Pg. 51-63
https://doi.org/10.1016/j.worlddev.2018.01.017

Geoffrey Swenson
Fellow, Department of International Development,
London School of Economics and Political Science

Abstract

Strengthening the rule of law and promoting access to justice in developing countries have been longstanding international policy objectives. However, the standard policy tools, such as technical assistance and material aid, are routinely criticized for failing to achieve their objectives. The rare exception is paralegal aid, which is almost universally lauded by policymakers and scholars as effective in promoting the rule of law and access to justice. This belief, however, rests on a very limited empirical foundation regarding what paralegal programs accomplish and under what theory they operate. This paper critically examines the conventional wisdom surrounding paralegal initiatives through case studies of two successful paralegal programs in post-conflict Timor-Leste that are broadly representative of the type of initiatives commonly implemented in developing countries. These programs did improve access to justice services, bolster choice between dispute resolution forums, and increase local knowledge of progressive norms on human rights and women's rights. Yet, as this article shows, even successful programs can expect to achieve only incremental gains in promoting the rule of law because advances largely depend on alignment with the priorities of powerful state and non-state actors, donors, program implementers, and paralegals themselves. To date, the literature has not acknowledged these limitations. This article addresses this gap by demonstrating that paralegal aid faces multiple challenges that mean paralegals cannot necessarily transcend or modify deep seated norms and power structures. These issues include principal agent-problems due to the extensive delegation required, internal limitations resulting from paralegals' limited authority and independence, and external constraints from state and non-state justice actors. Paralegal programs also face program design, implementation, and sustainability challenges. Consequently, scholars, practitioners, and policymakers need to adopt a more balanced view of paralegal aid.

I. Introduction

The rule of law produces immense benefits. It has been widely linked to the creation and maintenance of democratic government (Diamond 1999, Fukuyama 2014) and can foster both economic and human development (North, Wallis and Weingast 2009, Acemoglu and Robinson 2012). Promoting the rule of law and more equitable state legal systems that facilitate access to justice has emerged as a significant, internationally recognized priority. Yet the results of these efforts have been limited (Kleinfeld 2012).[1]

At the same time, scholars and policymakers have increasingly recognized the role of non-state justice in establishing and maintaining local order. Non-state justice systems, rooted in custom, religion, ethnicity, tribalism or some other shared bond, resolve most disputes in developing countries (Kyed 2011: 5). Non-state justice actors can play particularly vital roles in conflict-prone states where state institutions have limited capacity or legitimacy (Menkhaus 2007). International policymakers and practitioners seeking to improve the justice sector have increasingly determined that engaging with justice providers beyond the state is essential. The dual emphasis, however, on promoting a state bound by the rule of law and access to justice while simultaneously engaging powerful and respected non-state actors is challenging because these institutions almost invariably operate according to different normative foundations (Migdal 1988: 31). In some instances, they can even be diametrically opposed (Swenson 2017).

One area of international support, however, where optimism remains the norm is paralegal aid. Paralegals are "lay people with basic training in law and formal government who assist poor and otherwise disempowered communities" (Maru 2006: 429). Paralegal programs are seen as making a significant contribution to the rule of law independent of the state's capacity, reach, and legitimacy and the non-state justice sector's structure and principles. Stephen Golub, for instance, contends that "paralegal development merits special mention because it transcends many societies and sectors" (Golub 2003: 31). Paralegal assistance seems to offer that ever-elusive commodity: a do-no-harm intervention with the capacity to improve both the state and non-state justice sectors in almost any setting, including post-conflict societies (Stromseth, Wippman and Brooks 2007: 340-341).

Yet there is a surprisingly weak empirical foundation for these beliefs that paralegal programs can consistently transcend the challenges of promoting the rule of law and access to justice (Carothers 2003). This article serves, in part, as a corrective to this prevalent narrative. It argues that paralegal aid can have a positive impact, but programming faces far more obstacles and limitations than is generally acknowledged. While paralegal initiatives can help promote the rule of law and access to justice under certain conditions, this article demonstrates that paralegal initiatives face intrinsic obstacles that cannot be eliminated through better program design, management practice, or participant selection. It seeks to add empirical rigor to the analysis of

paralegal assistance and explore its theoretical implications. The research also has significant policy implications because "programmes with paralegals, facilitators or barefoot lawyers are now among the most popular methods to increase access to justice in developing countries" (Barendrecht, Gramatikov et al., 2012: 7). This trend shows little sign of abating as "future justice programming is expected to place greater emphasis on primary justice and non-state actors, including paralegals" (UNDP, UN Women et al. 2012: 257).

Paper Overview

Paralegal programs constitute a vital yet understudied and undertheorized area of inquiry. This article examines the theory and practice underpinning paralegal aid and its implications for policy through six sections. The first section outlines predominant beliefs about paralegal assistance among scholars, practitioners, and donors through a review of existing academic and non-peer reviewed grey literature produced by governments, international organizations, non-governmental organizations (NGOs), and other relevant actors. The second explains and justifies the case selection. The third section provides a historical background of law and justice in Timor-Leste, while the fourth describes Timor-Leste's two largest donor-funded community paralegal initiatives. The fifth section details these programs' accomplishments. The sixth section looks at the intrinsic challenges these initiatives encountered, including principal-agent problems due to the extensive delegation required as well as internal constraints that arose from paralegals' lack of inherent authority. It highlights significant external constraints as paralegals were subject to the influence of both state and non-state authorities. These programs also face design, implementation, and sustainability challenges that influence their ability to achieve their objectives. The conclusion assesses the overall impact of paralegal approaches in Timor-Leste along with their theory testing and theory building implications, and identifies areas for further research.

II. Positive Views of Paralegal Assistance in Academic and Grey Literature

Scholars', donors', and NGOs' generally positive assessment of international paralegal support stands in stark contrast to the sustained criticism development assistance has faced in general (Easterly 2006) and with regards to the legal sector (Tamanaha 2011a).[2] This favorable view extends to support in highly legally-pluralist settings including conflict-prone states (Stromseth, Wippman, and Brooks 2006: 339-340, Maru 2010).

Academic Literature

International paralegal assistance has not received the scholarly attention it deserves, especially given its prominence in international assistance. The existing academic literature is predominantly positive, even in challenging situations. Stephen Golub, the leading proponent of

a legal empowerment approach that prioritizes "strengthening the roles, capacities and power of the disadvantaged and civil society," strongly endorses paralegal assistance (Golub 2007: 53). He maintains that paralegals can undertake a range of activities "from providing basic information and advice on the one hand to representation in administrative processes and assisting litigation on the other" (Golub 2003: 33). Vivek Maru, a scholar-practitioner who is the co-founder of Timap for Justice, a paralegal organization in post-conflict Sierra Leone that has garnered much attention and received extensive donor support including from the Open Society Foundation and World Bank, has drawn upon his experience to write extensively about the benefits of paralegal programs (Maru 2006, Maru 2010). He argues that paralegals promote access to justice and legal literacy in a cost-effective and sustainable manner. Maru highlights that paralegals "provide information on rights and procedures, mediate conflicts, and assist clients in dealing with government and chiefdom authorities" as well as oversee "community education and dialogue, advocate for change with both traditional and formal authorities, and organize community members to undertake collective action" (Maru 2006: 442). Braithwaite posits paralegals can make significant contributions to justice in developing countries like Bangladesh, while also potentially fighting corruption and being "an effective approach to preventing one important root cause of terrorism in the region of greatest rural poverty in Bangladesh" (Braithwaite 2015: 321).

As for post-conflict contexts, Stromseth, Wippman, and Brooks contend paralegals "may be able to develop useful synergies (and even healthy competition) between the formal and informal dispute resolution mechanisms" after conflict as well as increase popular awareness of legal rights and improve the quality of both state and non-state justice in a cost-effective manner (2007: 340-341). The positive role of paralegals in promoting access to justice, knowledge about the legal system, and dispute resolution has been echoed by the RAND Corporation's highly influential survey on post-conflict nation building (Dobbins, Jones et al. 2007: 90). Baker has highlighted the important role paralegals play in linking state and non-state justice in post-conflict and low capacity states (Baker 2010: 610).

Paralegal aid proponents recognize that programming issues can arise. Golub, for instance, acknowledges that paralegals' "effectiveness often hinges on their levels of education, the degrees to which their communities are organized, the extent to which government is responsive, and the overall political milieu within which they operate" while stressing that "even modest initial achievements can set the stage for more dramatic impact down the line" (Golub 2003: 35). In general, paralegal programs' challenges are portrayed as technocratic or implementation issues, such as exercising careful judgment in selecting participants, ensuring paralegals have or can gain access to sufficient training, providing for program sustainability, and maintaining a constructive relationship with the local community, state, and donors (van Rooij 2012). While these considerations are important, this article will argue they are insufficient. Paralegal programs face *inherent* obstacles that cannot be addressed simply by arguing for better program

design, management practice, or the careful selection of paralegals.

Grey Literature from Practitioners and Policymakers

Enthusiasm for paralegal programs extends beyond academia up to the highest levels of the international system and down to in-country NGO operations. The Commission on Legal Empowerment, a United Nations (UN)-backed task force featuring a range of esteemed scholars and policymakers, captures the prevailing ethos. The Commission unequivocally praised paralegals as "critically important to improving legal service delivery to poor communities" (Commission on Legal Empowerment of the Poor and UNDP 2008: 24). The Commission contends that in addition to offering legal education and legal representation, paralegals can "mediat[e] conflicts, organis[e] collective action, and advocate[e] with both traditional and formal authorities" and as a result paralegals are robust sources of legal related services (Id.: 23). In the Commission's view, not only do paralegals offer "cost advantages" relative to lawyers, "but paralegals may be better positioned to engage in a broader, empowerment-oriented method of legal service delivery" (Id.: 25).[3] The Commission is not alone. A joint United Nations Development Program (UNDP), United Nations Children's Fund (UNICEF), and UN Women report on engaging informal justice systems has endorsed paralegal programming (UNDP, UN Women et al. 2012: 27-28). Key international organizations, major bilateral donors, and leading international NGOs have likewise embraced paralegal programming (GTZ 2004, Asian Development Bank and Asia Foundation 2009: 43, Open Society Foundations 2010, International Law Development Organization 2016).

III. Paralegal Program Case Studies Selection and Justification

This article examines the two most important, internationally funded paralegal programs in Timor-Leste: the Avocats Sans Frontières (ASF) Grassroots Justice Project and the Asia Foundation's Access to Justice Program. The analysis offers a mixture of "theory building" by seeking to illuminate some conditions in which paralegal programs may be successful and "theory testing" the dominant view that paralegal programs have significant potential to promote the rule of law in almost all circumstances (George and Bennett 2005: 114-120).

Paralegal programs in Timor-Leste represent strong test cases because the country setting, the program type, and the challenges and opportunities these donor-backed paralegal programs faced are commonplace across settings. While stressing there is no universal template, Maru identifies four main traits that constitute "the essence of the paralegal approach" (Maru 2006: 469). First, paralegals should be "lay people working directly with the poor or otherwise disadvantaged" who have received training on both substantive legal matters and relevant skills such as mediation, advocacy, and community education (Id.). Second, paralegals should aim to "achieve *concrete solutions to people's justice problems*" (Id., italics in original). Third, paralegals should

"make use of the law" to inform both state and non-state dispute resolution (Id.). Finally, paralegals should be "connected to lawyers and litigation" in some way (Id.).

The ASF and Asia Foundation paralegal programs meet these criteria. The paralegals were lay people drawn from their local communities and selected with the aim that they were well-respected and committed to the programs' goals of increasing access to justice for all citizens but particularly the poor and disadvantaged. Paralegals were given educational opportunities in both skills and legal knowledge alongside other forms of assistance. Paralegals actively sought to be solution oriented and solve clients' problems. Paralegals could refer cases to the state justice system. Paralegals' activities linked with partner organization and were subject to monitoring and evaluation. In other words, international-donor-funded paralegal initiatives in Timor-Leste "elucidate the features of a larger class of similar phenomena" (Gerring 2004: 341).

There are additional reasons paralegal programs in Timor-Leste make compelling case studies. Paralegals responded to an important societal need and thus had the potential to make a significant impact. Even at the end of the case study period in 2012, state judicial capacity remained modest and the reach of state courts limited. Most disputes were resolved outside state courts so there was an opportunity for paralegals to meaningfully engage both state and non-state justice actors. Furthermore, programs enjoyed substantial autonomy in how they were designed and executed. As the goals of the paralegal programs were broadly consistent with government policy, state officials accepted the initiatives and by and large did not seek to interfere with their day-to-day operation. Thus, state policy did not prevent them from being effective or determine program outcomes. Finally, both programs were successful in producing at least modest gains towards developing the rule of law. While 'success' is invariably a contentious concept, in this article success is defined as whether programs have enhanced the prospects for developing and consolidating the rule of law.[4] The case studies' implications are particularly compelling because they highlight how all paralegal programs must contend with these systemic challenges, which are not isolated to unsuccessful programs.

This article examines the political economy of paralegal programs by assessing them in light of relevant social, political, and economic factors. It draws upon extensive primary and secondary sources, personal experience, and in-country fieldwork. Primary sources include donor and implementation program reports. The research draws on insights gained from living and working in Timor-Leste from 2010 to 2012 with direct knowledge of how the paralegal program operated. It also reflects fieldwork conducted in 2014 and 2017, including over 40 interviews conducted with relevant state officials, non-state justice actors, local and international NGOs, donors, and paralegals.

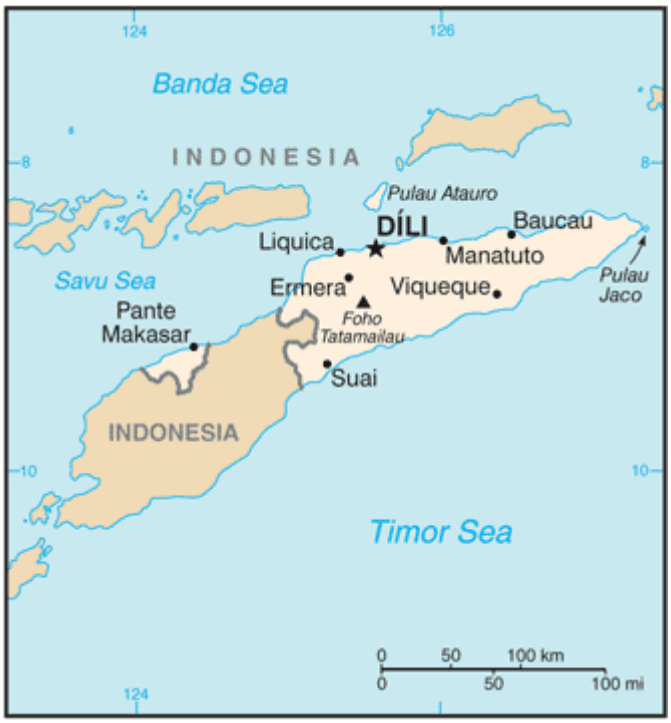

Figure 1: Map of Timor-Leste (Central Intelligence Agency 2017)

IV. Timor-Leste Historical Overview

Prior to its independence in 2002, Timor-Leste (formerly known as East Timor) never operated under a modern state legal system with even a limited commitment to the rule of law (Grenfell 2009: 216).[5] East Timor was a Portuguese colony since the early sixteenth century. Outside the capital and a few coastal areas where colonists exercised direct control, pre-existing political and social authorities maintained some autonomy while allying with Portuguese colonizers (Robinson 2009: 25). The emphasis on maintaining order by administration at the village (also known as a *suco*) level persisted until Portugal's withdrawal in the mid-1970s (Nixon 2012: 31-35). On November 28, 1975, the majority Fretilin party declared independence. Within weeks Indonesia had successfully invaded East Timor. In a country of less than one million, the occupation led to the deaths of up to 200,000 people (Nevins 2005: 26). Nevertheless, an effective independence movement emerged that drew on both domestic opposition and international advocacy for sovereignty. Following the onset of the Asian financial crisis, new leadership in Indonesia agreed to public consultation, which functionally served as a referendum on East Timorese independence in August 1999. Despite intimidation from the Indonesian-backed militias, 98.4 percent of eligible voters participated with 78.5 percent supporting independence. After the vote, pro-integrationist militias unleashed a systematic wave of violence that brought international condemnation and ultimately international peacekeepers. The UN

oversaw East Timor's transition to full sovereignty from October 1999 to May 2002.

Despite widespread popular support for independence, deep structural impediments to a lasting democratic transition with strong rule of law existed. In terms of economic development, human resources, poverty levels, and lack of physical infrastructure, Timor-Leste faced profound challenges (Hill 2001). State institutions present under Indonesian rule had ceased to function or, often even exist. East Timorese legal professionals had not been permitted to serve as prosecutors or judges during Indonesia's occupation. There were no domestic universities. By the time Indonesian forces departed, "all court equipment, furniture, registers, records and archives, … law books, cases files, and other legal resources were lost or burned" (Strohmeyer 2001: 50). When East Timor achieved independence on May 20, 2002, it still faced immense human resource challenges and lacked a high capacity, impartial justice system.[6] Timor-Leste also faced a major political upheaval in 2006, which began with military grievances against the state and escalated into an outbreak of violent confrontation resulting in over 30 deaths and the displacement of 150,000 people (Lothe and Peake 2010). UN troops returned to Timor-Leste to restore order in July 2006 and stayed until 2012.

State Justice in Independent Timor-Leste

The newly independent state of Timor-Leste could be characterized as "low capacity but high legitimacy" (Call 2008: 1496). Structurally, Timor-Leste became a civil law country closely modeled on its initial colonizer Portugal where courts are conceptualized as independent from the executive branch (RDTL 2002: Section 119). In practical terms, the country's judiciary underwent rapid "Timorization," which emphasized hiring indigenous personnel, an approach that won praise from commentators (Beauvais 2001). Yet this strategy also raised difficulties because local judicial actors were inexperienced and needed extensive training. In 2004, the Legal Training Centre (LTC) was established to oversee the training and professional certification of all judges, prosecutors, and public defenders (RDTL 2004a). After the passage of the Private Lawyers Law in 2008, the LTC began training private-sector lawyers (RDTL 2008). By the end of 2012, the LTC had produced a significant number of prosecutors, public defenders and private lawyers. By then, the judicial system was staffed almost exclusively with Timorese judges and courts operated reliably across Dili, Baucau, Suai, and Oeccusse. Paralegals, however, were unregulated except insofar as they were bound by the same laws as all private citizens.

Institutional challenges remained as of 2012. The Supreme Court had yet to be established. Courts were still backlogged. Case resolution was time-consuming and often confusing. Women continued to face structural discrimination even within the state legal system (Niner 2011). While the Constitution provides for the right to an attorney, legal representation could be hard to acquire, particularly for those located outside urban centers or facing economic hardship (RDTL

2002: Article 34). Public Defenders were known to ask for payment and were frequently accused of being excessively interested in profit (Local Development Professional 2014). The number of educational establishments offering law degrees grew, but the quality was often poor as higher education was very lightly regulated. Despite admirable progress, Timor-Leste still lacked a high-capacity modern state justice system in 2012.

Non-State Justice in Timor-Leste

While always a powerful force, the transition from independence further strengthened the non-state justice system's legitimacy and reach. Given that non-state justice varies dramatically from region to region, and even *suco* to *suco*, it is very difficult to generalize. Nevertheless, certain core facets exist when the non-state justice system operated along traditional lines:

> The process of applying indigenous law starts with a report of the issue to the village or hamlet chiefs (depending on the level on which the conflict or the crime occurred) by the heads of the families involved in the conflict, or the family of the victim. The 'helper' takes note and reports to the 'local legal authorities', such as the lian nain. The lian nain know the history and are in contact with the ancestors. They come from specific families that are the 'owner of the words'. They know the rules the ancestors have set and, therefore, they have the competence to speak the law (Hohe 2003: 343).

A mutually agreeable time for the dispute resolution process would be set shortly thereafter, often by the *suco* chief. The process would involve structured discussions, testimony, and negotiations before reaching a final decision.

While its practice varied significantly by location, non-state justice consistently promoted compensation and reconciliation rather than punishment. Non-state justice prioritized communitarian rather than individualistic values. Consequently, even if a state court convicted someone of a crime, the matter was not necessarily resolved locally. Certain disputes, however, were recognized as outside the *suco* system's jurisdiction, most notably significant crimes involving bloodshed. Compensation sought to right the wrong and could involve exchange of money, livestock, land and other goods and services. Once appropriate compensation had been determined, *suco* processes then promoted reconciliation in an attempt to restore communal harmony (Babo-Soares 2004: 23). While the *suco* justice process in Timor-Leste has often been cast as mediation, it was more akin to arbitration as the social pressure to accept a decision can be intense (Tilman 2012).

In independent Timor-Leste, non-state justice still handled the vast majority of disputes although the system has changed significantly with the introduction of competitive elections for *suco* councils (Swenson 2018). Non-state justice was mainly administered by *suco* councils and took on both strong *de jure* and *de facto* qualities. The Constitution explicitly declared, "The State shall recognize and value the norms and customs of East Timor that are not contrary to the

Constitution" or relevant state legislation (RDTL 2002: Section 2.1). While *suco* authorities performed some state-like functions, state officials did not consider them state actors (RDTL Ministry of State Administration and Asia Foundation 2013). The elected role of *suco* chief and *suco* council was initially codified in 2004 (RDTL 2004b), critically shifting the provenance of its authority from one primarily rooted in ancestral legitimacy to one rooted in democratic legitimacy. Under the 2009 Community Authorities Law, *suco* chiefs could resolve "minor disputes involving two or more of the suco's villages" (RDTL 2009a: Article 11.2(b)). The legislation likewise sought to promote gender equality and broader societal representation through quotas in the state-regulated *suco* elections. It stipulated that there be at least two female representatives on the council and two youth representatives (one male and one female) (RDTL 2009a: Article 5).

Forum	Source of Authority	Nature of Process	Binding?
State Courts	State laws and regulations	Formal judicial procedure	Yes
***Suco* Dispute Resolution Process**	Social status and cultural norms	Arbitration	Yes, but depends on the nature of the community
Paralegal Dispute Resolution Processes	Ability to persuade	Mediation	No

Figure 2: Nature of Authority in Different Dispute Resolution Forums

V. Major Paralegal Aid Programs in Timor-Leste

Given the strong legal pluralism in Timor-Leste and the state courts' limited capacity, paralegals faced an environment rich with opportunities and challenges. This section looks at the two largest paralegal programs in Timor-Leste, the Avocats Sans Frontières' (ASF) Grassroots Justice Project from 2005 to 2007 and the Asia Foundation's Access to Justice paralegal program from 2008 to 2012. While distinct, the programs shared some important goals. First, both programs aimed to improve access to state legal services, which was seen as more progressive than the non-state justice system. Second, the initiatives supported community dispute resolution, which was seen as beneficial to the development of the rule of law in Timor-Leste. Third, paralegal aid was seen as a way to bolster constructive engagement and choice between the

services of the state and non-state justice systems. Finally, at the community level, paralegals were charged with increasing local knowledge about international norms on human rights and equal treatment of men and women.

Funder	Number of Paralegals	Number of Female Paralegals	Number in *Suco* Leadership Roles	Compensated	Districts Covered
ASF	110	26	110	No	Cova Lima, Baucau, and Liquisa
Asia Foundation	29	Varied, usually around 30% or more	4	Yes	Baucau, Manatuto, Viqueque, Los Palos, and Oeccusse

Figure 3: Key Characteristics of Timor-Leste's Paralegal Programs' Structures

Avocats Sans Frontières' Grassroots Justice Project, 2005-2007

ASF operated a Grassroots Justice Project from 2005 to 2007 that established a network of paralegals in three of Timor-Leste's thirteen districts, specifically Cova Lima, Baucau, and Liquisa.[7] ASF implemented the program with three local legal aid partners, (i) *Centro Informasaun da Edukasaun Sivika* (CIES TL) in Baucau; (ii) *Fundacao Espinhos da Rosa* (FEDAROS) in Liquisa; and (iii) *Fundacao* KYNTA in Suai. While the program was funded by the Royal Danish Embassy based in Jakarta at a level of USD $678,100, the initiative envisioned volunteerism as essential for program sustainability once donor funding ceased. Consequently, all paralegals were volunteers (Low 2007: 6).

The project sought to promote the development of a legal system that "provides real protection for the population," "increase[s] respect for… fundamental human rights," and advances "real rule of law and democratic culture" (ASF 2004: 3). The specific project objectives involved: (1) creating "a paralegal-like network amongst selected community leaders in rural communities"; (2) building selected community leaders' capacity through imparting "basic knowledge of laws and its procedures" and of legal "mechanisms of protection" as well as equipping them with "skills to provide legal information, education and guidance to rural communities"; (3) providing rural communities with "information on the justice system," "thus increasing their knowledge of their rights and obligations as citizens under the rule of law in a democratic society"; (4)

improving access to "formal justice," by providing information and linking to government-provided legal and social services; and (5) increasing women's access to justice "by providing information to community leaders on women's issues and gender sensitivity" (Id.).

In practice, the parameters of program activities were clearly delineated by state officials (ASF actively sought state support) and non-state justice actors. In 2005, the Deputy Minister of Justice made it clear that the program had the ministry's approval to engage in all legal areas except customary law and ASF followed this instruction (Clarke 2011: 20).[8] Paralegal candidates were "selected from among respected village, youth, women, church, and traditional leaders" (ASF 2009: 6). While characterized as neutral, independent parties, all 110 selectees were deeply enmeshed in their communities' existing power structures. As Low noted during her comprehensive program evaluation, "42 are villages chiefs, 23 are women leaders, 8 are hamlet (*aldeia*), and 19 are youth leaders" holding elected positions and the remaining 18 were unelected *suco* council members (Low 2007: 13-14). Rather than working directly with the local *suco* justice system to build their capacity, the ASF program sought to use paralegals to establish a distinct approach to developing justice capacity by using volunteers to run community mediation processes apart from the formal state or traditional *suco* processes. However, in reality this approach was tightly integrated with the *suco* justice system given that the paralegals chosen were already active *suco* leaders. The program therefore simply bolstered pre-existing *suco* leaders and processes.

The Asia Foundation's Access to Justice Program, 2008-2012

From 2002 to 2012, the Asia Foundation's Access to Justice program, funded by the United States Agency for International Development, sought to promote wider access to, and improved performance of, the justice sector. The program did not include a paralegal component until 2008. While initially almost exclusively focused on state justice, after the 2006 Crisis "the program's priorities shifted to serving as a bridge between formal justice sector institutions… and informal dispute resolution mechanisms" as engagement with customary justice became a major state priority (Asia Foundation 2012: 11). Consequently, paralegal assistance that engaged directly with local non-state justice emerged as a strategic priority in order to bridge the two justice systems and serve as a conduit for education and outreach.

In 2008, the Asia Foundation began a full-scale paralegal initiative building off of a pilot internship program (Asia Foundation 2009: 24-26). Aimed broadly at expanding the reach of legal services, the initiative had six main objectives: (1) expanding "access to legal aid services" across five districts, including in remote areas; (2) improving outreach through *suco* level paralegals; (3) identifying, assisting in contacting, referring to legal aid organizations, and updating paralegals' clients; (4) sharing information on "judicial processes and the law" with "community leaders and members"; (5) assisting "local authorities in resolving civil cases

through mediation" that is principally neutral and non-discriminatory; and, (6) increasing "the number of civil matters resolved at village level through mediation" (Coghlan and Hayati 2012: 32).

Donors and program administrators realized that non-state actors often had little knowledge of state laws. After a wholesale program evaluation in 2010, the Asia Foundation undertook a comprehensive training program for paralegals to make sure they understood the most important aspects of applicable state law and to instill core skills. The Asia Foundation also sought to ensure that *suco* dispute resolution was generally consistent with broad due process and human rights norms.

All paralegals operated under the supervision of local legal aid organizations, either Fundasaun Edukasaun Comunidade Matebian (ECM) or Fatu Sinai Oecusse (FFSO). ECM covered the districts of Baucau, Manatuto, Viqueque, and Los Palos with 18 paralegals, four of which also served as *suco* chiefs. FFSO operated in the Oecusse district and oversaw 11 paralegals (Asia Foundation 2012: 29). Both ECM and FFSO offered individuals unfamiliar with state justice information and referral mechanisms or assistance with the *suco* dispute resolution process. ECM paralegals were empowered to resolve minor disputes themselves when both parties consented. Thus, ECM paralegals did constitute a dispute resolution forum distinct from state and *suco* justice systems. In contrast, FFSO paralegals were prohibited from resolving such disputes themselves.

VI. Program Accomplishments

ASF and Asia Foundation funded paralegals achieved numerous successes in line with the expectations of paralegal assistance proponents. In both programs, paralegals reached remote areas where professional legal services and legal aid lawyers did not routinely access. During the four years of active Asia Foundation programming, paralegals assisted with 3,110 cases "with 38 percent of this number (or 1026 clients) being female" (Asia Foundation 2012: 29). Under the ASF program, participants reported that "between December 2005 and January 2007," paralegals addressed "146 disputes… and of these 109 have involved mediation" (Low 2007: 15). In both instances, paralegal-aided dispute resolution tended to be notably quicker than state courts. These outcomes suggest that paralegal programs did increase access to justice in their targeted communities for some people.

Paralegals provided information on the state and *suco* justice processes. In ECM's case, they directly resolved disputes. Asia Foundation paralegals performed community outreach about the availability of donor-funded legal aid lawyers. These lawyers handled certain civil and criminal matters and facilitated referral of more serious criminal matters to the state court system for prosecution. One example of the program's success is that all 18 *suco* chiefs in the remote district of Oeccusse stated that Asia Foundation funded paralegals were their only link to the

state justice system and the police (Graydon 2011: 33). When using paralegals to bolster state justice capacity, underwriting paralegal salaries cost less than underwriting those of legal aid lawyers, in a sense fulfilling the promise to be cost-effective.[9] Paralegal assistance, particularly when coupled with free professional legal services, increased access to state courts.

Paralegals offered advice and technical assistance to help make non-state justice processes fairer and more respectful of basic human rights norms, most notably seeking to ensure rudimentary forms of due process and equality before the law. However, there was no demonstrable evidence that the presence of paralegals actually changed the operations of *suco* disputes to make them more equitable or gender-sensitive (Low 2007; Interview with International Development Professional 2014). Paralegal assistance programs in Timor-Leste fulfilled some of their promise. Paralegals could resolve disputes or advise on their local processes, particularly in remote or previously inaccessible locations, as well as refer cases to state courts and streamline administration of non-state processes.

Program	**Referral to State Courts?**	**Assist with *Suco* Dispute Resolution Processes?**	**Direct Mediation?**	**Community Outreach?**
ASF	Yes	No	No	Yes
Asia Foundation through ECM	Yes	Yes	Yes	Yes
Asia Foundation through FFSO	Yes	Yes	No	Yes

Figure 4: Activities Undertaken in Timor-Leste Paralegal Aid Programs

Program Constraints, Challenges, and Implications

Both the ASF and Asia Foundation programs achieved notable, if modest, advances in promoting access to justice. However, close examination of these programs highlights how even successful, well-designed programs face significant and systemic programming challenges, including those related to principal-agent issues, internal and external constraints on paralegals, program structure, implementation, and sustainability. While the discussion focuses on Timor-Leste, all paralegal assistance programs would need to confront at least some of these systemic challenges.

Principal-Agent Issues

Paralegals face unclear and overlapping lines of accountability. In Timor-Leste, as with many countries, paralegals worked under the oversight of international donors, international program implementers, and local NGOs. At the same time, they were expected to respond to third parties such as *suco* chiefs, local clients, and state officials, even though they were not state agents and often not part of the non-state justice system. Paralegals were expected to act independently of state and local power structures, while at the same time bolstering access to the state justice systems and improving how non-state justice functions.

		Donor	(Principal)
		↓	
		International NGO	(Agent of donor; Principal of local partner NGO)
		↓	
		Local NGO	(Agent of international NGO and donor; Principal of paralegals)
		↓	
Also subject to third party influence of ***suco* chiefs**, **state officials**, and **local clients**.	→	**Paralegals**	(Agent of local NGO, international NGO, and donor)

Figure 5: Principal-Agent Relationships in Paralegal Aid

From an organizational theory perspective, paralegals raise significant and complex principal-agent incentive issues (Laffont and Martimort 2002), such as those raised by the structure of donor accountability. Donors fund paralegal programs to achieve rule of law and access to justice objectives, but do not seek to implement programming themselves. In practice, donors usually delegate activities to implementing organizations, which in this case were the international NGOs ASF and the Asia Foundation. Implementing NGOs often then delegate work in a specific area to a local NGO partner, such as the legal aid organizations ECM and FSSO contracted by the Asia Foundation or CIES TL, FEDAROS, and KYNTA contracted by ASF. This reflects a belief that the local partner has superior local knowledge and capacity. Local partners additionally delegate by contracting with paralegals. Delegation at any level of contracting involves high agency and transaction costs because the principal's control mechanisms are weak and information disparities are high (Jensen and Meckling 1976). Donors, implementing international NGOs, legal aid organizations, and paralegals all have distinct incentive structures (Gent, Crescenzi et al. 2015). At each level, the principals have limited ability to undertake the systematic monitoring and evaluation vital for mitigating their principal-

agent issues.

Principals did implement a credible, robust monitoring and evaluation regime. Donors required implementing international NGOs to make routine, detailed reports and implementing international NGOs required partner legal aid organizations to do the same. There were also attempts to reach down the chain in monitoring and evaluating. Under the Asia Foundation program, ECM and FSSO organized monthly staff meetings that mandated paralegals' attendance to report on their activities, receive updates and answer questions. The Asia Foundation representatives usually attended these events to further improve accountability of both paralegals and legal aid organizations. The Asia Foundation, ECM and FSSO all undertook spot checks of paralegals' assigned locations as well.

Nevertheless, due to information asymmetries, program size, limited resources and staff time for monitoring, and the remoteness of where paralegals worked, knowledge gaps remained. It was impossible to know with certainty how each individual dispute was being resolved and how paralegals performed on a day-to-day basis. Consequently, while monitoring sufficiently ensured certain outputs, such as if paralegals were carrying out their essential duties, determining more precise realities (for example, what exactly occurred in each dispute resolution, how consistent it was with human rights norms, or what exactly the paralegal's relationship was with the local community and *suco* council) was very difficult.

Client confidentiality requirements further compounded monitoring issues. Both ASF and the Asia Foundation worked to protect client anonymity (Low 2007: 29, Interview with Local International Development Professional 2014). While these protections were essential to respect the sensitive nature of disputes, they exacerbated information asymmetries between paralegals and the parties monitoring their activities by limiting monitors' ability to directly engage with participants. While legal aid organizations and international NGO representatives would sometimes monitor dispute resolution processes as they occurred, they were only allowed to attend with permission of the parties.

Principal-agent issues are intractable in development assistance and must be managed rather than eliminated. Nevertheless, "norms can embed the interests of the principal allowing the agent to significantly reduce the problem," as Fukuyama explains (Fukuyama 2004: 65), citing the example of teachers going above and beyond their contractual requirements to provide an excellent education for their students. Paralegal aid programs were predicated on an implicit assumption that paralegals were motivated primarily by a desire to improve their community. While paralegals took their duties seriously, they did not fully internalize donors' priorities (Low 2007; Asia Foundation 2012). From a political economy perspective, paralegals needed to balance donor priorities with those of external third parties, including local and state justice authorities and international and local NGOs, in order to execute their job responsibilities.

Suco leaders serving as paralegals did not face the same issues of third party influence from the non-state justice sector. However, they were not independent of the *suco* justice system. In reality, they were essential actors in the pre-existing non-state justice sector. The ASF program explicitly selected "community leaders (paralegals) who are in a position of authority to influence and impact their communities" and who were therefore already deeply involved in local dispute resolutions (ASF 2004: 9). Yet, in these instances, paralegals could not be considered an independent source of authority offering unrestricted access to the state legal sector. Rather, paralegal assistance reinforced the existing power structure. *Suco* leaders who served as paralegals in the Asia Foundation program explicitly stated that one of their primary motivations was to become more effective *suco* authorities (Interview with Program Manager 2014). The dualism of roles among paralegals limited the ability of donors and NGOs to influence their behavior as they were imbued with independent sources of legitimacy stemming from their *suco* leadership role and electoral mandate.

Internal Constraints on Paralegals

The paralegal's role raises issues regarding their authority and independence. The paralegal role had no inherent authority bestowed by either state law or social custom. Thus, it was distinct from *suco* processes and state law, which both enjoy the capacity to make binding decisions. Unless already holding a place in the *suco* hierarchy, paralegals resolved disputes based on their own standing in the community, the prestige of associating with an international NGO, or some combination of the two. Moreover, disputants voluntarily chose to employ a paralegal for dispute resolution and could disregard the paralegal's decision without consequence. Therefore, the processes were akin to mediation and the effectiveness of the resolution ultimately relied on the paralegal's persuasiveness. Any legal system, including non-state systems, cannot merely rely on persuading parties to consent to making a binding decision. If a legal system could only resolve disputes when there is total consent by the parties, then rule breakers could simply withhold their consent to participate. Even if all parties give consent initially, one party could just refuse to effectuate the agreement and there would be no mechanism for enforcement. Legal systems, at a minimum, require not only the authority to make determinations with regards to competing interests but also some capacity to enforce their rules on those who fail to comply (Raz 2009). This is what distinguishes a legal system from a mediation system.

Paralegals in practice operate in a highly constrained, contingent space. When paralegals resolve disputes themselves, parties to the dispute must accept their decisions for the matter to be considered resolved. Their decisions must also be at least tacitly accepted by powerful state and non-state justice actors. These challenges are particularly acute when paralegals seek to "advance human rights or women's rights agendas that run contrary to entrenched cultural or religious norms" (Tamanaha 2011b: 17). For example, this reality did not go unrecognized in deciding

whether to create a paralegal program among the Asia Foundation's programming portfolio, where evaluators highlighted "that certain etiquette needs to be observed to maintain good relations with the village leadership if alternative forms of dispute resolution are explored and created" (Chopra, Pologruto, and de Deus 2009: 14). The generalized notion of paralegals being transcendent actors, not to mention a check against human rights abuses or other practices deemed undesirable, should be viewed with skepticism. Certain paralegals may function with a high degree of autonomy and legitimate authority, but this exists on a case by case basis and cannot simply be assumed.

Forum Shopping and Shopping Forums

Trained paralegals in legally pluralist settings facilitate a dynamic whereby "contestants tend to 'shop' for forums for dispute resolution, and forums actively shop for disputes in an effort to consolidate their authority" (Sikor and Lund 2009: 10). In Timor-Leste, this dynamic is confirmed by evidence that paralegals who also held community posts sought to use their stature and authority as paralegals, its access to training, and the other support it entails to bolster their authority in the community (Low 2007: 13-15). Enhancing the ability of disputants to select resolution forums might improve overall justice administration services for a community by pushing all sides to offer the best possible service. This competition between state and *suco* justice mechanisms could be especially beneficial for individuals who were disadvantaged by the *suco* justice system, most notably women or economically vulnerable community members. However, increasing access to state courts does not come without its potential downsides. State courts could still favor those with more resources to dedicate to the proceedings (a situation highly likely in resolving civil matters) and just because a matter is resolved by state courts does not necessarily mean it is resolved locally. The existence of multiple justice forums can significantly disadvantage less powerful parties as those with the most resources and other advantages are able to work to ensure access to the most favorable venue.

These issues can be further compounded by creating a new, third dispute resolution forum in the form of a network of independent paralegals resolving disputes in isolation from the state and *suco* justice systems, such as ECM paralegals authorized by donors to resolve disputes themselves. These new forums risk further confusing an already crowded legal landscape and increase the potential for forum shopping.

External Constraints by State and Non-State Authorities on Paralegals

A well-functioning paralegal program requires tacit, and often explicit, consent from state and non-state justice authorities. Proponents stress that paralegals should be drawn from the communities they serve, the logic being that local paralegals' proximity and experience gives them a greater understanding of how processes in their communities operate both formally and

informally. This led their proponents to conclude that paralegals are ideally situated to navigate the village's legal, social, and political landscape. Yet paralegals were deeply embedded in the areas they served, presenting a paradox. Often paralegals' families were based in their communities. Unless paralegals sought other opportunities in Dili or a regional hub such as Baucau, they would remain in their local villages after the program ceased. Indeed, the notion of paralegal program sustainability assumed that they would not move.

If the paralegals were firmly rooted in their communities then they would have powerful pre-existing relationships and likely preconceived notions about their community. Chopra and Isser, while optimistic regarding paralegal aid, noted there "is a lack of empirical evidence of the impact paralegals may have on local power structures" to promote progressive change in areas such as women's rights (Chopra and Isser 2012: 355). This dynamic was present in paralegal programs in Timor-Leste. Even when not formally a part of the local power structure, paralegals tended to bolster, rather than challenge, existing social and political power arrangements. FFSO paralegals in Oeccusse, for instance, served primarily as helpers of the local *suco* chiefs. They acted on their chiefs' instruction and were routinely tasked with activities such as ensuring that the parties to the dispute knew the date, time, and location of the *suco* dispute resolution processes. Paralegals cannot truly be autonomous to their community and its dominant power structure. Therefore, the idea that they could easily transcend their surroundings is highly optimistic.

While not particularly interested in the everyday operations of programming, the state influenced international initiatives by stipulating key overarching goals. International programs sought buy-in from state authorities to undertake programming and the state usually retained, and frequently exercised, the right to influence international programming. This dynamic is demonstrated by ASF's experience whereby "project content was significantly shaped by the need to respect the policies of the government of Timor Leste" with regards to non-state justice (Low 2007:44). The Asia Foundation sought to respond to prominent state officials' belief that effective international engagement of the non-state justice sector was essential for long-term stability after the 2006 Crisis (International Legal Professional 2014). Therefore, the implemented paralegal programs remained firmly within the state's vision of law and development and worked most efficiently when following those trends.[10]

Program Design, Implementation, and Sustainability Challenges

Apart from internal and external constraints, paralegal programs face design and implementation issues stemming from paralegals' position as intermediaries between state and non-state justice. Challenges related to management and staffing as well as obstacles to achieving key program goals, most notably program sustainability and addressing violence against women, are examined below.

Legal Aid Partnerships

Partnerships with community based NGOs, such as legal aid organizations, offer compelling administrative and practical benefits for paralegal initiatives by facilitating referrals for serious crimes, enhancing program oversight, and providing the legal expertise that paralegals lack. Legal aid organizations or other local NGOs can help manage paralegals and serve as an umbrella for training and other collective endeavors.

These partnerships can, however, generate their own challenges. While no paralegals were accused of wrongdoing, programming had to be paused due to separate financial improprieties at both ECM and FFSO (Coghlan and Hayati 2012: 9). Of ASF's three local partnerships, those with KYNTA and FEDAROS were terminated in 2006 due to financial irregularities (Low 2007: 2010). In short, local NGOs can help manage and coordinate paralegal activities in remote areas far from where the international NGO and donors are based, but it is a challenge to find a credible, trustworthy and high-capacity local NGO partner. Paralegal program design and implementation must be attuned not only to the structure of the paralegal program itself but also to its partnerships with legal aid organizations.

Human Resources

Paralegal programs face significant human resources challenges. Many of the roles performed by professional lawyers cannot be supplanted by paralegals. Paralegals have less education; a more limited knowledge of relevant state laws; lower levels, if any, of professional certification; and cannot engage in state criminal or civil judicial processes. These challenges are particularly acute in post-conflict societies such as Timor-Leste where, due to conflict and external occupation, the nascent state lacked a professional class. Timor-Leste's entire state legal system had to be constructed from scratch after independence. All pre-existing lawyers trained in Indonesia had to be recertified through the LTC.

The pool of paralegal candidates, while almost uniformly well-intentioned, consistently lacked key skills, making recruitment of quality staff challenging. The Asia Foundation offered paralegals compensation, which broadened their candidate pool, though staffing remained a challenge. In contrast, ASF recruited only volunteers in pre-existing positions of authority to serve as paralegals. While this approach ensured paralegals enjoyed local legitimacy, it raises questions over the extent of their independence and neutrality. In general, paralegals were eager to learn more about state law and other relevant topics. Yet even though ASF and the Asia Foundation undertook training that improved paralegals' knowledge, serious information and skill gaps remained.

Gender Equity

Human resource challenges were particularly acute in the recruitment and retention of women paralegals. Gender diversity among paralegals and their clients was a major donor priority. While the ASF program had 26 women paralegals, literacy and community standing requirements were persistent obstacles to recruiting and retaining female paralegals (Low 2007:22-23). The Asia Foundation initiative explicitly set a goal that at least 26 percent of the program's beneficiaries and paralegals, and ideally a greater percentage, should be female. Yet some clients did not feel comfortable with a female paralegal handling their dispute. Another hurdle was that paralegals were routinely asked to travel significant distances. Female paralegals generally did not feel comfortable traveling on their own, and so small payments, dubbed 'cigarette money,' would be required to compensate for the cost of a male relative traveling with the female paralegal.

Compensation

Differences between the ASF and Asia Foundation programs are analytically illustrative as ASF was a voluntary program while the Asia Foundation was a compensated one. The issue of paralegal pay was contentious. Some observers were concerned that payment would attract candidates motivated by profit rather than duty. For example, Asia Foundation evaluators highlighted the "risk that if mediators are initially paid, then this sets a precarious precedent and may attract people who have no sincere desire to help their communities" (Chopra, Pologruto, and de Deus 2009: 16). While this concern may be justified, it is necessary to weigh paralegals' ideological commitment to program ideals against the time and effort they are expected to invest. Paralegals are required to resolve disputes, conduct outreach, assist with *suco* dispute processes, and continue their training. Without payment, only those who are independently wealthy or cannot secure paid employment could be paralegals. Current *suco* officials, for example, were often happy to volunteer as paralegals. This is not particularly surprising as the paralegal role offered increased status and authority. Nevertheless, voluntary work also places distinct limits on the extent of commitment that can reasonably be expected of paralegals, even from those who benefit from the role and have a meaningful commitment to it. Indeed, this is what happened with ASF as all the paralegals were already in the local governance structure (Low 2007: 13-14). A volunteer program can severely hinder the retention of paralegals over time.

Paying paralegals presents its own set of obstacles. Establishing the appropriate compensation equilibrium for paralegals is challenging. If paralegals are not paid sufficiently, there are few incentives to dedicate substantial time and energy to the post. Excessive compensation could provoke resentment locally. Community input is considered when selecting paralegals, although this risks the role becoming a patronage post for powerful local interests. Moreover, regardless of the level of remuneration, payment can increase dependency on donors or state funding.

Ultimately, compensation involves inevitable trade-offs. Paying paralegals allows for more independence from the community, increases the scope of work that can be expected, and broadens the population able to serve as paralegals. At the same time, compensation makes paralegal programs highly dependent on state or donor funds and may make the paralegal role attractive primarily for its economic rewards.

Program Sustainability

International and domestic NGOs are usually unwilling or unable to undertake activities absent donor support (Cooley and Ron 2002). Consequently, paralegal programs seek to have a sustainable, ongoing impact once donor support ends by developing skills that paralegals can use indefinitely. ASF in particular emphasized that its program was sustainable because the paralegals were volunteers rather than employees, so they would not require payment to keep working (Low 2007: 40). This belief made sense in theory but was not borne out in practice. Once ASF programming ended, the network of established paralegals ceased to operate. The former participants with the strongest incentives to continue providing dispute resolution services as paralegals were *suco* leaders. Due to *suco* leaders' pre-existing arbitration role in the community, this hardly amounts to a continuation of the paralegal program; rather, it is more akin to a return to pre-existing practices. Additionally, if the *suco* leaders trained as paralegals were not re-elected as *suco* leaders, they had little incentive to continue in their new role (Low 2007: 40). Similarly, Asia Foundation-funded paralegals stopped working once the program ended. It is possible that paralegals offered advice on an ad hoc basis though there is no indication this happened with any regularity.

Addressing Violence Against Women

The *suco* dispute resolution system often structurally disfavored women. Moreover, *suco* justice traditionally viewed domestic violence against women as a private matter rather than a public crime. Paralegal programs aimed to improve women's rights by promoting gender equity and ensuring that state courts rather than the non-state justice system addressed cases of violence against women. This provision reflected a strategic policy priority for the national government and international donor community, both of whom had invested in eradicating gender-based violence. Domestic political elites in Timor-Leste have been open to progressive reform in this area. Timor-Leste's Penal Code unequivocally declared domestic violence a public crime (RDTL 2009b: Article 146, 154). The Law Against Domestic Violence went further and stipulated victims cannot drop their claims once legal proceedings have commenced which substantially changed the incentive structure regarding the decision to pursue charges in state courts (RDTL 2010). These laws transformed domestic violence from a private issue, as it was established in state and non-state practice under Portuguese and Indonesian rule, to a public crime.

Yet many women still could not access the state justice system or state police simply ignored their claims even after relevant state legislation was passed (Campbell and Swenson 2016). Even when claims reached state courts, Timor-Leste lacked an adequate state- or privately-run support network for victims of domestic violence. Many women risked social ostracism for pursuing state legal remedies for abuse. When charges were successfully pursued in state courts and perpetrators imprisoned, women often still found themselves "in dire situations in which they have no more income, nobody to work their fields and hungry children to feed" (Chopra, Pologruto, and de Deus. 2009: 17).

Addressing domestic violence cases often generated tension between state and non-state legal orders. While non-state justice actors largely supported the state's developmental program, including the government's approach to the state justice sector, they were far more circumspect in their approach to state-backed reforms regarding the treatment of violence against women (Campbell and Swenson 2016). The law envisioned a major role for *suco* chiefs in "preventing domestic violence," protecting victims, and "punishing the aggressor" in a manner that prevents recidivism (RDTL 2009a: Article 11.2(c-d)). While state legislation made gender-based violence a public crime, it also tasked non-state justice actors with a leading role in preventing and addressing gender-based violence. The data is limited, but existing evidence suggests that despite serious investment in the state justice system, the non-state system continued to resolve most cases of domestic violence (Wigglesworth 2013). Despite the state-mandated regulatory framework, how *suco* leaders addressed domestic violence remained largely discretionary in practice, even in locations with paralegals present. While paralegals were technically required to refer all cases involving gender-based violence to the state courts, paralegals often deferred to local authorities in these situations. It was difficult to determine whether referrals were actually occurring and referrals of cases involving violence against women to state courts from paralegal programs were rare.

VII. Conclusion

Overall Program Impact, Theory Testing and Building Implications, and Further Research

Evidence from Timor-Leste's two major paralegal programs has implications for future programming in the country and beyond. This section considers the lessons from the case studies for new initiatives, applies the results from the case studies to theory testing and theory building, and highlights avenues for additional research.

On balance, the case studies from Timor-Leste demonstrate that paralegal approaches have the potential to increase access to, and capacity of, both the state and non-state justice systems. The programs in Timor-Leste created a more fluid relationship between the two systems, even in the trying circumstances of a post-conflict country with weak state capacity. Thus, they provide

empirical support for the contention that paralegals can advance the rule of law and access to justice. However, the scale of impact is more limited than commonly assumed. The case studies also show how the ability of programs to overcome the inherent difficulties of promoting access to justice and the rule of law has, in many cases, been overstated. The ability of paralegal aid to succeed despite significant challenges should be demonstrated rather than simply assumed, as has often been the case to date.

From a theory testing perspective, the case studies from Timor-Leste disprove the dominant view that paralegal programs can transcend obstacles rooted in pre-existing power structures, whether state or non-state. Currently there is insufficient recognition of principal-agent problems inherent in paralegal aid. Future programming requires innovative thinking about how paralegals should balance the competing interests of state and non-state justice actors rather than ignoring tensions between the systems. Certain key goals such as improving human rights standards and treating domestic violence as a public crime are unlikely to be advanced by paralegals without support from powerful actors in both the state and non-state justice sectors. The case studies suggest that when changes do occur, paralegals' influence on state and non-state justice processes and outcomes tends to be incremental rather than transformational. Paralegals' primary impact is to amplify existing justice sector trends rather than create new patterns of behavior.

Conventional wisdom holds that paralegal programs in developing countries are cost-effective, sustainable, culturally intelligible, and effective at advancing access to justice. Yet, evidence from Timor-Leste highlights this is not necessarily the case. The Timor-Leste programs show that while paralegals can work in more remote areas than lawyers, it is very difficult to verify how individual cases are handled or the quality of service provided. Moreover, paralegals cannot perform the full range of services offered by lawyers. While paralegals may address disputes more quickly when acting independently from the state and the *suco* justice systems, their decisions are not binding and thus their intervention may help drag out disputes rather than resolve them. Similarly, there is no reason to believe that paralegals are better suited at resolving disputes than lawyers due to their connection to local communities due to the issues of negotiating existing power structures discussed above. In Timor-Leste at least, paralegal programs were no more sustainable than standard legal aid programs or any other donor funded initiatives. When donor support ceased, so did paralegal activities.

From a theory building perspective, evidence from Timor-Leste shows that while paralegal programs may make a significant, if modest, contribution to promoting access to justice, their success tends to depend on the response of powerful state and non-state justice actors. Paralegal initiatives in developing countries will face a host of challenges including, but by no means limited to, principal-agent issues, the limited nature of paralegals' authority, and issues of design, implementation, and sustainability. These challenges need to be recognized and addressed. The key is not to eliminate these problems, which in most instances is impossible, but rather to

acknowledge them and seek to ensure programming can still have a positive, if limited, outcome. Rather than transcend local context, successful paralegal approaches must skillfully engage it. Consequently, even where programing is successful, inevitable tradeoffs exist and progress is likely to be at the margins.

On a more macro level, paralegal programs' prospects are highly context dependent. When populations see the state legal systems as legitimate they are far more likely follow state law (Tyler 2006). People favorably disposed to state dispute resolution are far more likely to use state-backed dispute resolution when offered access through paralegals. This dynamic also makes non-state justice actors who have autonomy more likely to refer matters to state courts but also respect state-backed jurisdictional divides and even procedural guidelines within non-state justice processes themselves. It is not simply a matter of state courts' legitimacy and effectiveness. Paralegal approaches must be attuned to legal pluralism's challenges and have a coherent vision of how paralegals should navigate the competing demands of different justice sector actors.

Legal pluralism, however, can take a variety of forms. Legal pluralism can be combative, competitive, cooperative, or complementary with major implications for paralegal programs' prospects (Swenson 2018). Under combative legal pluralism, state and non-state systems are overtly hostile towards one another making paralegal programs unlikely to accomplish their goals. With competitive legal pluralism, a dynamic common in many developing counties, "the state's overarching authority is not challenged, but non-state actors retain substantial autonomy" (Id.: 7). Competitive non-state legal systems are frequently rooted in religious beliefs or shared culture, custom, or heritage and do not necessarily share the state legal system's values. These are the most common settings and offer promise but also obstacles for paralegal programs. In a setting characterized by cooperative legal pluralism, "non-state justice authorities still retain significant autonomy and authority" but have "large[ly] accepted the state's normative legitimacy and are generally willing to work together towards shared goals" (Id.: 8). While clashes still exist over important areas such as women's rights, overarching issues of state judicial power have been resolved. In these settings, paralegal programs are particularly promising. Finally, under complementary legal pluralism, the state enjoys a monopoly on the legitimate settlements of legal disputes. Although legal pluralism is still present in mechanisms such as arbitration agreements or alternative dispute resolution, these processes operate with at least implicit state acceptance or risk effective state repression. In such contexts, paralegals exist but do not perform the same functions envisioned under development programs. In the United States, for example, paralegals serve primarily as legal assistants to practicing attorneys and operate under attorney supervision when performing "substantive legal work" (Statsky 2015: 15).

Paralegals are no panacea, but they still have the potential to promote access to justice and the

rule of law. Paralegal programs, even successful ones as in Timor-Leste, face serious obstacles. To date, however, there has been insufficient acknowledgment that paralegal programs face inherent problems and constraints that elude technocratic solutions. Moreover, despite the praise these programs routinely receive, there is a serious gap in understanding what paralegal programs practically entail and their theoretical implications for international efforts promoting access to justice and the rule of law in developing countries. Further scholarly research examining the conditions of programs' effectiveness is needed. Areas for future research include how the state and non-state justice sectors operate in a given area and their relationship to paralegals, particularly in cases where either the state or non-state justice sectors are opposed to the program. Other research avenues include a more critical examination of program funding structures, management styles and how programs do or do not address intrinsic issues such as human resources challenges, principal-agent issues, and internal and external constraints. As paralegal programming promises to be a fixture of international development aid for the foreseeable future, it is vital scholars, policymakers, and practitioners have a more nuanced understanding of these initiatives.

References

Abel, R. L. (1989). *American lawyers*. New York: Oxford University Press.

Acemoglu, D. and J. Robinson (2012). *Why nations fail: The origins of power, prosperity and Poverty*. London: Profile.

Kyed, H. M. (2011). Introduction to the special issue: Legal pluralism and international development interventions. *The Journal of Legal Pluralism and Unofficial Law*, *43*(63), 1-23.

ASF (2004). Grant proposal to the local grant authority of the Royal Danish Embassy. Dili: Avocats Sans Frontieres - Belgium.

ASF (2009). ASF's Actions in Timor-Leste. Dili: Avocats Sans Frontieres - Belgium.

Asia Foundation (2012). Access to justice program: End of program report. Dili: Asia Foundation.

Asian Development Bank and Asia Foundation (2009). Legal empowerment for women and disadvantaged groups. Mandaluyong City: Asian Development Bank.

Babo-Soares, D. (2004). Nahe biti: The philosophy and process of grassroots reconciliation (and justice) in East Timor. *The Asia Pacific Journal of Anthropology*, *5*(1): 15-33.

Baker, B. (2010). Linking state and non-state security and justice. *Development Policy Review*, *28*(5): 597-616.

Maurits Barendrecht, M., M. Gramatikov et al. (2012). Towards basic justice care for everyone: Challenges and promising approaches. The Hague: Hague Institute for the Internationalisation of Law.

Beauvais, J. C. (2001). Benevolent despotism: A critique of UN State-building in East Timor. *New York University Journal of International Law & Policy*, *33*, 1101-1178.

Braithwaite, J. (2015). Paralegals changing lenses. *Restorative Justice*, *3*(3), 311-324.

Call, C. T. (2008). The fallacy of the 'failed state'. *Third World Quarterly*, *29*(8), 1491-1507.

Campbell, M. and G. Swenson (2016). Legal pluralism and women's rights after conflict: The role of CEDAW. *Columbia Human Rights Law Review*, *48*(1), 112-146.

Carothers, T. (2003). Promoting the rule of law abroad: The problem of knowledge. Washington, D.C.: Carnegie Endowment for International Peace.

Central Intelligence Agency (2017). The world fact book: Map of Timor-Leste. https://www.cia.gov/library/publications/the-world-factbook/geos/tt.html.

Chopra, T. and D. Isser (2012). Access to justice and legal pluralism in fragile states: The case of women's rights. *Hague Journal on the Rule of Law*, *4*(2), 337-358.

Chopra, T., S. Pologruto and T. de Deus (2009). Fostering justice in Timor-Leste: Rule of law program evaluation. Dili: United States Agency for International Development.

Clarke, R. (2011). Customary Legal Empowerment: Towards a More Critical Approach. *Traditional Justice: Practitioners' Perspectives Working Paper Series*. Rome: International Development Law Organization

Coghlan, M. and S. Hayati (2012). Final evaluation of component one the access to justice program. Dili: USAID.

Commission on Legal Empowerment of the Poor and UNDP (2008). *Making the Law Work for Everyone: Volume II Working Group Reports*. New York: UNDP.

Conteh, S. and L. Teale (2012). "New Legal Aid Law in Sierra Leone Embraces the Role of Paralegals." Retrieved 24 May, 2017, from https://www.opensocietyfoundations.org/voices/new-legal-aid-law-sierra-leone-embraces-role-paralegals.

Cooley, A. and J. Ron (2002). The NGO scramble: Organizational insecurity and the political economy of transnational action. *International Security*, *27*(1), 5-39.

Cummins, D. and M. F. P. Guterres (2012). "Ami sei vítima beibeik": Looking to the needs of

domestic violence victims. Dili: Asia Foundation.

Diamond, L. (1999). *Developing Democracy: Toward Consolidation*. Baltimore: Johns Hopkins University Press.

Dobbins, J., S. Jones, K. Crane, and B. Cole DeGrasse (2007). *The beginner's guide to nation-building*. Santa Monica: RAND Corporation.

Easterly, W. (2006). *The white man's burden: why the west's efforts to aid the rest have done so much ill and so little good*. New York: Penguin.

Fukuyama, F. (2004). *State-building: Governance and world order in the 21st century*. Ithaca: Cornell University Press.

Fukuyama, F. (2014). *Political order and political decay: From the industrial revolution to the globalization of democracy*. London: Profile.

Gent, S. E., M. J. Crescenzi, E. J. Menninga and L. Reid (2015). The reputation trap of NGO accountability. *International Theory*, *7*(03), 426-463.

George, A. L. and A. Bennett (2005). *Case studies and theory development in the social sciences*. Cambridge: MIT Press.

Gerring, J. (2004). "What is a case study and what is it good for?" *American Political Science Review*, *98*(2), 341-354.

Golub, S. (2003). Beyond rule of law orthodoxy: The legal empowerment alternative. Washington D.C.: Carnegie Endowment for International Peace.

Golub, S. (2007). The rule of law and the un peacebuilding commission: a social development approach. *Cambridge Review of International Affairs*, *20*(1), 47-67.

Graydon, C. (2011). Mid-term evaluation of access to justice program. Dili: Asia Foundation.

Grenfell, L. (2009). Promoting the rule of law in Timor-Leste. *Conflict, Security & Development*, *9*(2), 213-238.

GTZ (2004). Facilitating justice: The work of paralegals. Eschborn: GTZ.

Hill, H. (2001). Tiny, poor and war-torn: Development policy challenges for East Timor. *World Development*, *29*(7), 1137-1156.

Hohe, T. (2003). Justice without judiciary in East Timor. *Conflict, Security & Development*, *3*(3), 335-357.

International Development Professional (2014). Interview with International Development Professional. Dili: Timor-Leste

International Law Development Organization (2016). Statement of International Law Development Organization: 60th session on the Commission on the Status of Women at the United Nations. Retrieved April 6, 2017, from http://www.idlo.int/news/policy-statements/60th-session-commission-status-women-general-debate.

Jensen, E. G. (2003). The Rule of Law and Judicial Reform: The Political Economy of Diverse Institutional Patterns and Reformers' Responses. *Beyond Common Knowledge: Empirical Approaches to the Rule of Law*. T. C. Heller and E. G. Jensen (Eds.). Stanford, Stanford University Press: 336-381.

Jensen, M. C. and W. H. Meckling (1976). Theory of the firm: Managerial behavior, agency costs and ownership structure. *Journal of Financial Economics*, *3*(4), 305-360.

Kleinfeld, R. (2012). *Advancing the rule of law abroad: Next generation reform*. Washington, D.C.: Carnegie Endowment for International Peace.

Laffont, J. J. and D. Martimort (2002). *The theory of incentives: The principal-agent model*. Princeton: Princeton University Press.

Local Development Professional (2014). Interview with Local International Development Professional. Dili: Timor-Leste

Lothe, E. and G. Peake (2010). Addressing symptoms but not causes: Stabilisation and humanitarian action in Timor-Leste. *Disasters*, *34*(S3), 427–443

Low, S. (2007). Evaluation of the "Providing Access to Justice: Legal Awareness at the Grassroots Level" Project Timor Leste for Avocats Sans Frontières Brussels. Brussels: ASF Brussels.

Maru, V. (2006). Between law and society: Paralegals and the provision of justice services in Sierra Leone and worldwide. *Yale Journal of International Law*, *31*, 427-476.

Maru, V. (2010). Access to Justice and Legal Empowerment: A Review of World Bank Practice. *Hague Journal on the Rule of Law*, *2*(02), 259-281.

Menkhaus, K. (2007). Governance without government in Somalia: Spoilers, state building, and the politics of coping. *International Security*, *31*(3), 74-106.

Migdal, J. S. (1988). *Strong societies and weak states: State-society relations and state capabilities in the third world*. Princeton: Princeton University Press.

Nevins, J. (2005). *A not-so-distant horror: Mass violence in East Timor*. Ithaca: Cornell University Press.

Niner, S. (2011). Hakat klot, narrow steps. *International Feminist Journal of Politics*, *13*(3), 413-435.

Nixon, R. (2012). *Justice and governance in East Timor: Indigenous approaches and the 'new subsistence state'*. London: Routledge.

North, D. C., J. J. Wallis and B. R. Weingast (2009). *Violence and social orders: A conceptual framework for interpreting recorded human history*. Cambridge: Cambridge University Press.

Open Society Foundations (2010). Community-based paralegals: A practitioner's guide. New York: Open Society Institute.

Paris, R. (2004). *At war's end: Building peace after civil conflict*. Cambridge: Cambridge

University Press.

Program Manager. (2014). Interview with Program Manager. Dili: Timor-Leste.

Raz, J. (2009). *The authority of law: Essays on law and morality*. Oxford: Oxford University Press.

RDTL (2002). Constitution of the Democratic Republic of Timor-Leste.

RDTL (2004a). On Community Authorities. *Decree Law No. 5/2004*.

RDTL (2004b). Recruitment and Training for the Professionals of the Judiciary and for the Office of the Public Defender. *Decree Law No. 15/2004*.

RDTL (2008). Law On the Juridical Regime Governing Private Legal Professionals and Lawyers Training. *Law No. 11/2008*.

RDTL (2009a). Community Leadership and Their Election. *Law 3/2009*.

RDTL (2009b). Penal Code. *Decree-Law 19/2009*.

RDTL (2010). Law Against Domestic Violence. *Law 7/2010*.

Rhode, D. L. (2009). Whatever Happened to Access to Justice. *Loyola of Los Angeles Law Review, 42*, 869-911.

Rhode, D. L. and L. B. Ricca (2014). Protecting the Profession or the Public: Rethinking Unauthorized-Practice Enforcement. *Fordham Law Review, 82*, 2587-2610.

Robinson, G. (2009). *"If You Leave Us Here, We Will Die": How Genocide Was Stopped in East Timor*. Princeton: Princeton University Press.

Sikor, T. and C. Lund (2009). Access and property: A question of power and authority. *Development and Change, 40*(1), 1-22.

Statsky, W. P. (2015). *Introduction to paralegalism: Perspectives, problems and skills*. 8th edition. Boston: Cengage Learning.

Stephens, M. (2009). The Commission on Legal Empowerment of the Poor: An opportunity missed. *Hague Journal on the Rule of Law*, *1*(1), 132-155.

Strohmeyer, H. (2001). Collapse and reconstruction of a judicial system: The United Nations Missions in Kosovo and East Timor. *American Journal of International Law*, *95*(1), 46-63.

Stromseth, J. E., D. Wippman, and R. Brooks (2006). *Can might make rights?: Building the rule of law after military interventions*. Cambridge: Cambridge University Press.

Swenson, G. (2017). Why U.S. efforts to promote the rule of law in Afghanistan failed. *International Security*, *41*(1), 114–151.

Swenson, G. (2018). Legal pluralism in theory and practice. *International Studies Review,* DOI: 10.1093/isr/vix060.

Tamanaha, B. Z. (2007). A concise guide to the rule of law. S*t. John's Legal Studies Research Paper No. 07-0082.*

Tamanaha, B. Z. (2011a). The primacy of society and the failures of law and development. *Cornell International Law Journal*, *44*, 209-247.

Tamanaha, B. Z. (2011b). The rule of law and legal pluralism in development. *Hague Journal on the Rule of Law*, *3*(1): 1-17.

Tilman, M. (2012). Customary social order and authority in the contemporary East Timorese Village: Persistence and transformation. *Local-Global: Identity, Security, Community*, *11*, 192-205.

Tyler, T. R. (2006). *Why people obey the law*. Princeton: Princeton University Press.

UNDP, UN Women, UNICEF and Danish Institute for Human Rights (2012). informal justice systems: Charting a course for human rights-based engagement. New York:

United Nations.

van Rooij, B. (2012). Bringing justice to the poor, bottom-up legal development cooperation. *Hague Journal on the Rule of Law*, *4*(2), 286-318.

Wigglesworth, A. (2013). Community leadership and gender equality: Experiences of representation in local governance in Timor-Leste. *Asian Politics & Policy*, *5*(4), 567-584.

[1] The rule of law and access to justice are distinct concepts though often related in practice. Unsurprisingly, the rule of law is a contentious concept. At a minimum, the rule of law requires that "law must be set forth in advance (be prospective), be made public, be general, be clear, be stable and certain, and be applied to everyone" (Tamanaha, 2007: 3). Other more robust conceptualizations of the rule of law include significant economic, cultural, and political requirements (Jensen 2003: 338-340). In turn, access to justice is a concept that speaks directly to the idea of equality under the law for everyone, which entails a concern for "both procedural and substantive fairness" (Rhode 2009: 872). International paralegal programs usually seek to advance both the rule of law and access to justice by making sure that people understand the law, ensuring matters that by state law should be resolved in state courts are referred to state courts, and ensuring that all people, but especially vulnerable populations, are able to access state courts and protect their legal rights.

[2] This positive view of paralegals in developing countries also stands in contrast to debates over paralegals' role in developed, high-capacity legal systems, where the use of paralegals has produced controversy for potentially engaging in the unauthorized practice of law (Abel 1989, Rhode and Ricca 2014).

[3] Even commentators skeptical of the commission have lauded its endorsement of paralegals (see e.g. Stephens 2009: 145).

[4] This criterion is consistent with the logic of Roland Paris' influential research on state-building, which examines whether international state-building efforts have "enhanced the prospects for stable and lasting peace" (Paris 2004: 55).

[5] Under the UN transitional administration, there were efforts to create a modern legal system that operated under rule of law principles, but it was an international rather than state system.

[6] The terms “Timor-Leste” and “East Timor” are both used in this article. East Timor is used for the period prior to statehood and Timor-Leste for the period after independence in 2002.

[7] ASF designated these actors “Community Legal Liaisons,” but the term is synonymous with paralegals even in the ASF’s own materials.

[8] State policy shifted to allow direct engagement with customary law with the new post-crisis government in 2007, but ASF still avoided engagement with customary law.

[9] Yet there is a tradeoff here, discussed more below, in that paralegals do not perform the same functions as lawyers and programs tended to be most effective when linked to professional attorneys (Coghlan and Hayati 2012).

[10] Even in Sierra Leone, which is routinely lauded as a model system, paralegals serve state goals. State law “explicitly provid[es] that paralegals are to be deployed in each of Sierra Leone’s 149 chiefdoms” (Conteh and Teale 2012).