

# WORLD BANK COMMUNITY-DRIVEN DEVELOPMENT PROGRAMMING IN INDONESIA AND EAST TIMOR: IMPLICATIONS FOR THE STUDY OF GLOBAL ADMINISTRATIVE LAW

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## I. INTRODUCTION

The literature on global administrative law posits a coherent set of mechanisms, principles, and practices affecting regulatory decision-making at the international level that can properly be characterized as “global” in nature.<sup>1</sup> It also assumes that, through the imposition of various procedures and norms, the transnational structures engaged in these decision and rule-making practices are influencing national and sub-national administrative structures. But how coherent are these procedures and norms? Do they really have an impact on the ways in which communities or individual citizens interact with institutions at the national and international levels? If so, how does the decentralization of decision-making processes affect the perceived legitimacy and actual accountability of decision-makers? This article will consider such questions in the context of the implementation of two World Bank “Community-Driven Development” (CDD) initiatives and attempt to situate these and similar interventions within the larger context of global administrative law.

The emergence of “good governance” as a paradigm structuring international interventions and the related trend of political decentralization have had a profound impact on the roles of, and interactions between, decision-makers at the

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1. Benedict Kingsbury, Nico Krisch & Richard Stewart, *The Emergence of Global Administrative Law*, 68 LAW & CONTEMP. PROBS. 15, 17 (Summer/Autumn 2005).

international, national and sub-national levels. In the 1990s, a variety of factors—including allegations of mismanagement and corruption, global economic crises, and the sudden democratization of a large number of states—led to a shift away from the World Bank’s monolithic structural adjustment policies to more nuanced ones aimed at increasing accountability and participation through the reform of national government institutions and the decentralization of certain funding decisions. This paradigm shift culminated in the implementation of a series of CDD projects, including the two projects which are the subject of this article—the Indonesian Sub-District Development Project and the East Timor Community Empowerment and Local Governance Project—whereby the Bank established a hierarchy of elected, gender-balanced administrative councils at the sub-national level empowered to make decisions regarding the disbursement of Bank development funds.

This paper will explore the hypothesis that these interventions are not only aimed at maximizing the efficient delivery of international aid or bolstering local government institutions, but that they also affect the very way that people think about social relations within their communities and among their communities, the national state, and international institutions.<sup>2</sup> The influence of the community-based administrative regimes established by CDD programs is felt not only through the imposition of procedural requirements, but also through the development and transmission of a normative framework which defines the scope of these interactions—in anthropologist Tania Li’s words, they “conduct conduct.”<sup>3</sup> They do so in part by conditioning the receipt of international development funds upon donee communities’ successful implementation of certain administrative procedures meant to promote self-governance and individual choice. This article will identify some of these procedures and norms, question whether they are accurately described as global in character, and examine the ways in which they complement and conflict with indigenous ideas about political participation, equality, and community.

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2. Some of the author’s ideas regarding the normative power of CDD were influenced by anthropologist Tania Li’s October 18, 2005 presentation at New York University School of Law, and in her working paper, Tania Li, *Government Through Community: The World Bank in Indonesia*, (2005) available at [http://www.law.nyu.edu/kingsburyb/fall05/globalization/Li\\_paper.pdf](http://www.law.nyu.edu/kingsburyb/fall05/globalization/Li_paper.pdf).

3. *Id.* at 2.

These projects are also of interest to scholars of global administrative law as examples of administrative regimes that are implemented at the sub-national level but draw legitimacy from their affiliation with both national and international institutions. This article hypothesizes that such programs constitute a new hybrid form of governance, with characteristics of both traditional governmental structures and more fluid international administrative regimes. The article will go on to examine whether this innovative but schizophrenic model of development funding represents a broader shift in the way that the World Bank and other international institutions function in post-conflict environments, and assess its impact on concepts of global administrative law and state sovereignty.

## II. THE WORLD BANK IN INDONESIA, AND THE “GOOD GOVERNANCE” SOLUTION TO THE PROBLEM OF CORRUPTION

### A. *The Evolution of World Bank Policy on Loan Conditionality and Internal Accountability*

In the 1990s, the World Bank, along with other international financial institutions such as the International Monetary Fund, began to condition its loans and grants to developing countries upon various levels of political and economic reform. While the Bank’s Articles of Agreement clearly prohibited interference in the political affairs of a state, and explicitly forbade Bank decision-makers from taking into account “political or other non-economic influences or considerations” when making loan disbursement decisions,<sup>4</sup> the Bank took an increasingly active role in re-structuring and reforming the political institutions of borrowing countries. By the late 1990s, Bank rhetoric regularly made reference to a link between human rights, democratic development, and economic growth.<sup>5</sup> This thinking led to a radical expansion of the kind

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4. International Bank for Reconstruction and Development [IBRD] Articles of Agreement art. IV, § 10 and art. III, § 5(b), *as amended* Feb. 16, 1989, *available at* <http://siteresources.worldbank.org/EXTABOUTUS/Resources/ibrd-articlesofagreement.pdf>; International Development Association [IDA] Articles of Agreement, art. V, §§ 1(g), 6, Sept. 24, 1960, *available at* <http://siteresources.worldbank.org/IDA/Resources/ida-articlesofagreement.pdf>.

5. Over the course of the 1990s, the Office of General Counsel for the World Bank adopted an increasingly permissive interpretation of the Arti-

of projects that the Bank was willing to sponsor and the types of governance-related conditions that it was willing to place on loan funds.<sup>6</sup> Governance reform has since become both a condition to qualify for Bank funds, as well as an objective of Bank-funded programs.<sup>7</sup>

With policy-makers acknowledging the link between local participation in and the success of Bank-funded development projects, the Bank began to advocate a policy of “decentralizing responsibilities to lower levels of government,” to be implemented through a series of CDD programs.<sup>8</sup> In theory, these programs would help develop the capacity of local institutions to make decisions about and account for the disbursement of aid funds by giving “control over planning decisions and investment resources to community groups and local governments.”<sup>9</sup> The Bank has since initiated CDD programs throughout the world, utilizing a wide array of strategies aimed at delivering development funds directly to communities and

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cles’ prohibitions. By way of example, a 1990 memorandum indicated that Bank involvement in civil service, legal, and judicial reform was acceptable only if requested by a borrowing member and with the caveat that the Bank should not “be involved in the political reform of its borrowing countries.” IBRAHIM F. I. SHIHATA, *THE WORLD BANK LEGAL PAPERS* 269 (2000) (containing legal memorandum of the General Counsel dated December 21, 1990). Compare this to the influential 1995 opinion by Ibrahim Shihata, General Counsel to the World Bank, in which he advises Bank officials to consider political rights issues when human rights violations may have “significant economic effects” that might disrupt a project or when a project requires some level of participation and consultation with local communities, and when denial of political rights would prevent that participation from taking place. IBRAHIM SHIHATA, *Political Activity Prohibited*, in *THE WORLD BANK LEGAL PAPERS* 219, 235 (2000).

6. Ngairé Woods & Amrita Narliker, *Governance and the Limits of Accountability: The WTO, the IMF, and the World Bank*, 53 INT’L SOC. SCI. J. 569, 569 (2001). See generally Devesh Kapur, *Expansive Agendas and Weak Instruments: Governance Related Conditionalities of the International Financial Institutions*, 4 J. POL’Y REFORM 207 (2001).

7. See, Carlos Santiso, *The Paradox of Governance: Objective or Condition of Multilateral Development Finance?*, 3 (SAIS Working Paper Series, Working Paper No. WP/03/03, 2003), available at <http://www.sais-jhu.edu/workingpapers/WP-03-03.pdf>.

8. JENNIE LITVACK, JUNAID AHMAD & RICHARD BIRD, *RETHINKING DECENTRALIZATION IN DEVELOPING COUNTRIES* 1 (1998).

9. See World Bank, *Community-Driven Development*, <http://lnweb18.worldbank.org/ESSD/sdvext.nsf/09ByDocName/BasicConceptsPrinciples> (last visited January 11, 2006).

minimizing unnecessary interference by national bureaucratic structures.<sup>10</sup>

This evolution of Bank policy on loan conditionality occurred in tandem with a related reform effort aimed at increasing the transparency and accountability of decision-making processes within the Bank. In response to accusations of lax project oversight, insensitivity to local social and environmental conditions, and outright corruption, then-Bank President John Wolfensohn initiated a series of reforms intended to make decision-making at the international level more transparent.<sup>11</sup> These efforts included opening up parts of the Bank's decision-making processes to non-governmental organizations, the creation of the World Bank Inspection Panel in 1993, and the Compliance Advisor/Ombudsman in June 1999.<sup>12</sup> Although CDD programs themselves do not act as mechanisms to hold the international administrative apparatus of the Bank accountable, they have nonetheless increased the transparency surrounding the disbursement and use of certain Bank funds where they arguably matter most—at the local level.

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10. For a review, see WORLD BANK, COMMUNITY DRIVEN DEVELOPMENT: A VISION OF POVERTY REDUCTION THROUGH EMPOWERMENT (2000), available at [http://info.worldbank.org/etools/docs/library/6264/CDD\\_Africa\\_vision\\_Final.doc](http://info.worldbank.org/etools/docs/library/6264/CDD_Africa_vision_Final.doc); Ghazal Mansuri & Vijayendra Rao, *Community-Based and -Driven Development: A Critical Review*, 19 WORLD BANK RES. OBSERVER 1 (2004).

11. The reforms promoted by CDD at the local and country level are nothing short of revolutionary in comparison to still restrictive disclosure policies regarding the release of loan and structural adjustment documents at the international level. For a summary of a recent Bank disclosure policy, see U.S. Civil Society Coalition, *Responsible Reform of the World Bank: The Role of the United States in Improving the Development Effectiveness of World Bank Operations* (April 2002), [http://www.essentialaction.org/imf/worldbank\\_report/IDA\\_FINAL\\_REPORT.pdf](http://www.essentialaction.org/imf/worldbank_report/IDA_FINAL_REPORT.pdf). For a skeptical review of Wolfensohn's reform agenda, see Walden Bello & Shalmali Guttal, *The Limits of Reform: The Wolfensohn Era at the World Bank*, FOCUS ON THE GLOBAL SOUTH (Apr. 25, 2005), <http://www.tni.org/archives/bello/wolfensohn.htm>.

12. Woods & Narliker, *supra* note 6, at 576, 580. See Robert O. Keohane, *Global Governance and Democratic Accountability*, in TAMING GLOBALIZATION: FRONTIERS OF GOVERNANCE 130, 144 (David Held & Mathias Koenig-Archibugi eds., 2003) (“[t]he World Bank in particular has done a great deal to incorporate NGOs into its decision-making processes”).

B. *The World Bank Response to Corruption and Political Reform in Indonesia*

The dual problems of poor management of disbursed funds at the international level and endemic corruption at the national level have been particularly acute in Indonesia. Over the decades since General Suharto took power in a military coup in 1965, development funds were a staple source of income for his New Order regime.<sup>13</sup> By the mid-1990s, a number of Bank-funded projects had become the subject of significant national and international media attention, such as the dam-building project at Kedung Ombo,<sup>14</sup> a controversial national family planning program,<sup>15</sup> and the massive transmigration program whereby the national government relocated hundreds of thousands of people from the crowded islands of Java and Bali to less populous parts of the archipelago.<sup>16</sup> Funds relating to these and other projects inevitably found their way into the hands not only of members of the Suharto family and the civilian administration, but also into the hands of the military, which was known to utilize such funds to fur-

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13. The Jakarta office of the World Bank itself went on record stating that by the late 1990s more than 30% of Bank funds were being lost to corruption by Indonesian government officials. JEFFREY A. WINTERS, DOSA-DOSA POLITIK ORDE BARU [POLITICAL SINS OF THE NEW ORDER] 48 (1999); Jeffrey A. Winters, *Down with the World Bank*, FAR E. ECON. REV., Feb. 13, 1997, at 29; see also About 50% Foreign Aid to Indonesia Embezzled, ANTARA/ASIA PULSE, May 10, 2000, available at LEXIS; Glenn R. Simpson, *World Bank Memo Depicts Diverted Funds, Corruption in Jakarta*, WALL ST. J., Aug. 19, 1998.

14. LEMBAGA STUDI DAN ADVOKASI MASYARAKAT [INSTITUTE FOR POLICY RESEARCH AND ADVOCACY], ATAS NAMA PEMBANGUNAN: BANK DUNIA DAN HAK ASASI MANUSIA DI INDONESIA [IN THE NAME OF DEVELOPMENT: THE WORLD BANK AND HUMAN RIGHTS IN INDONESIA] 69 (1995) (Indon.).

15. *Id.* at 131.

16. Tensions between transmigrants and groups indigenous to Indonesia's Outer Islands has remained a common source of conflict even after the fall of Suharto, including violence between indigenous Dayak and Madurese transmigrants in Kalimantan, the Indonesian half of the island of Borneo. See, e.g., INTERNATIONAL CRISIS GROUP, COMMUNAL VIOLENCE IN INDONESIA: LESSONS FROM KALIMANTAN (2001), available at [http://www.crisisgroup.org/library/documents/report\\_archive/A400332\\_27062001.pdf](http://www.crisisgroup.org/library/documents/report_archive/A400332_27062001.pdf). On the impact of the transmigration program generally, see DOWN TO EARTH, INDONESIA'S TRANSMIGRATION PROGRAM - AN UPDATE (M. Adriana, Sri Adhiati & Armin Bobsien eds., 2001), available at <http://dte.gn.apc.org/ctrans.htm>.

ther its own interests in areas of the country under its control.<sup>17</sup>

The onset of the Asian economic crisis in 1997 exposed many of the weaknesses latent in the relationship between international institutions and corrupt authoritarian governments, including that of the Bank and the Suharto government. Public outcry over the misuse of Bank funds became part of a larger national reform movement (*reformasi*), focused equally on the eradication of a political culture of corruption, collusion and nepotism (*korupsi, kolusi dan nepotisme*) and the decentralization of political power. With the demise of the New Order regime in 1998, the newly elected Indonesian government initiated an aggressive agenda of political decentralization whereby significant political and financial decision-making was devolved to the sub-national level. Much of this agenda was implemented with the Indonesian parliament's (*Dewan Perwakilan Rakyat*) passage of Law No. 22 on Regional Governance,<sup>18</sup> which empowered regional legislative bodies to enact and enforce their own regulations without the approval of the local executive, and allowed for the creation of elected village-level councils (Village Representative Councils, *Badan Perwakilan Desa*—BPD) capable of passing regulations governing the village.<sup>19</sup>

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17. For instance, there is evidence that World Bank "Social Safety Net" Funds were diverted to support pro-Indonesian paramilitaries in the run-up to the UN-sponsored referendum in 1999. See Press Release, East Timor Action Network, East Timor Action Network Urges World Bank to Withhold Funds (June 18, 1999), available at <http://www.etan.org/news/news99b/worldbnk.htm>.

18. Undang-undang Nomor 22 Tahun 1999 Tentang Pemerintahan Daerah [Law of the Republic of Indonesia Number 22 of Year 1999 Regarding Regional Governance] art. 1 (Indon.), translated at <http://www.landpolicy.org/lawsregs/eng/act22-99e.pdf>. Law No. 25, 1999 on the Fiscal Balance Between the Central Government and the Regions likewise set the groundwork for an increased financial independence of local governments. Undang-undang Nomor 25 Tahun 1999 Tentang Perimbangan Keuangan Pusat dan Daerah [Law of the Republic of Indonesia Number 25 of Year 1999 Concerning Financial Balance Between the Central and Regional Government] art. 6 (Indon.), translated at <http://www.landpolicy.org/lawsregs/eng/act25-99e.pdf>.

19. The councils were to function as a kind of legislative body, with responsibilities including the organization of village elections, the implementation of village regulations, and the formulation of village budget and tax collecting procedures. This was a radical departure from the BPD's prede-

The intersection of these national-level reforms with changes in Bank policy on the global level created a unique opportunity for the Bank to implement the CDD model in a way that would have been impossible during the many decades of Bank collusion with the New Order's "top-down" development strategies.<sup>20</sup> It was in this context that the Bank's office in Jakarta, taking an approach uncharacteristically grounded as much in sociological as in economic theory, established the Sub-District Development Project (*Kecamatan Development Project*-KDP) in 1996. Three years later, after the withdrawal of Indonesian military forces from the occupied territory of East Timor, the Bank established the Community Empowerment and Local Governance Project (CEP), built upon the KDP model but implemented in the unique environment of a United Nations Transitional Administration.

### III. THE KECAMATAN DEVELOPMENT PROJECT

The KDP was launched in 1996, just as the issues of Bank mismanagement and Indonesian government corruption were becoming subjects of open debate, and as the *reformasi* movement was gaining real strength. The project established a new funding apparatus, to be integrated into the administrative structure of the state and administered by a mixture of national and Bank officials in accordance with procedural and substantive rules largely derived from international standards. In the first of three phases of implementation, councils were established in a selection of sub-districts (*kecamatan*) throughout the country, and empowered to make decisions about development priorities and the allocation of Bank funds for particular projects. Though the councils were established by the Bank as administrative bodies governed by Bank regulation, they technically functioned under the auspices of the Indonesian Ministry of Home Affairs. Notwithstanding initial resistance to the project from both the Indonesian government and within the Bank itself, between 2001 and 2003 the KDP

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cessor institution, the village consultative councils (*Lembaga Musyawarah Desa*), which had historically acted as little more than an advisory body to the government-appointed village administrator.

20. For an interesting analysis of New Order rhetoric of "development" (*pembangunan*), see ARIEL HERYANTO, LANGUAGE OF DEVELOPMENT AND DEVELOPMENT OF LANGUAGE: THE CASE OF INDONESIA 8-27 (1995).

accounted for more than half of Bank lending to Indonesia,<sup>21</sup> and by 2003 was operational in 25% of villages in the entire country.<sup>22</sup> It is now in its third phase, and has been implemented in over 28,000 villages throughout the archipelago.<sup>23</sup>

#### A. *Procedural Innovation and Normative Impact*

The centerpiece of the KDP is the “sub-district council,” consisting of the government-appointed sub-district administrator and elected representatives of the villages within the sub-district.<sup>24</sup> In some regions, these councils, which were set up before the passage of the decentralization laws, existed alongside the subsequently established government village council, the BPD. In other areas, the KDP councils were established without an official counterpart within the Indonesian

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21. SCOTT GUGGENHEIM, *CRISES AND CONTRADICTIONS: UNDERSTANDING THE ORIGINS OF A COMMUNITY DEVELOPMENT PROJECT IN INDONESIA*, 6, available at <http://www.yale.edu/agrarianstudies/papers/Crises.pdf>.

22. Susan Wong, *Indonesian Kecamatan Development Program: Building a Monitoring and Evaluation System For a Large-Scale Community-Driven Development Program 2* (2003), available at [http://www-wds.worldbank.org/servlet/WDS\\_IBank\\_Servlet?pcont=details&eid=000094946\\_03101104002140](http://www-wds.worldbank.org/servlet/WDS_IBank_Servlet?pcont=details&eid=000094946_03101104002140). KDP has been one of the Bank’s largest CDD projects worldwide with a budget of 700 million USD for its first two phases (1998-2006). *Id.* at 1. IDA released at least three large KDP grants to Indonesia during the first phase of the program (1998-2002), valued at 225, 209 and 300 million USD respectively. Each project also included an IBRA loan component of more than 100 million USD. See KECAMATAN DEV. PROJECT, RURAL DEV. AND RES. UNIT, THE WORLD BANK, REPORT NO. 17397 IND, PROJECT APPRAISAL DOCUMENT ON PROPOSED LOAN IN THE AMOUNT OF US\$225 MILLION TO THE REPUBLIC OF INDONESIA FOR A KECAMATAN DEVELOPMENT PROJECT (1998) (hereinafter KDP I APPRAISAL); KECAMATAN DEV. PROJECT, RURAL DEV. AND RES. UNIT, THE WORLD BANK, REPORT NO. 22279 IND, PROJECT APPRAISAL DOCUMENT ON PROPOSED LOAN IN THE AMOUNT OF US\$208.9 MILLION AND PROPOSED CREDIT TO THE REPUBLIC OF INDONESIA FOR A SECOND KECAMATAN DEVELOPMENT PROJECT (2001) (hereinafter KDP II APPRAISAL); KECAMATAN DEV. PROJECT, RURAL DEV. AND RES. UNIT, THE WORLD BANK, REPORT N0PID9850, INDONESIA-SECOND KECAMATAN (SIC) DEVELOPMENT PROGRAM (2001).

23. Scott Guggenheim et al., *Indonesia’s Kecamatan Development Program: A Large-Scale Use of Community Development to Reduce Poverty 1* (The World Bank, Indon. Kecamatan Dev. Program, Working Paper No. 1, 2004), available at [http://www-wds.worldbank.org/servlet/WDS\\_IBank\\_Servlet?pcont=details&eid=000090341\\_20041203153406](http://www-wds.worldbank.org/servlet/WDS_IBank_Servlet?pcont=details&eid=000090341_20041203153406).

24. GUGGENHEIM, *supra* note 21, at 5.

bureaucracy.<sup>25</sup> Bank loan funds were then disbursed pursuant to the decisions of the sub-district council—the product of a series of structured interactions between villagers and the councils' members.

Since the KDP was conceived first and foremost as a response to endemic government corruption, many of the initial regulations attached to the loans focused on procedures which would help ensure transparency in the decision-making process and formal accounting for the use of project funds. For instance, project regulations required the establishment of a formal monitoring and complaints mechanism by which a community member could file a complaint directly with the national KDP secretariat via a special post office box.<sup>26</sup> Local communities implementing projects funded through the KDP were required to contract with independent NGOs to monitor and report on implementation.<sup>27</sup> The KDP rules also made provision for cross-audits between sub-districts, the publication of audit reports, and the public posting of project budgets.<sup>28</sup>

However, the KDP agenda was more ambitious than simply creating a more reliable funding mechanism. The architects of the KDP envisioned that it would not only improve the accountability of existing institutions, but would alter the political culture at the grassroots level by ensuring a high level of community participation in the decision-making process. To that end, any village within a sub-district could submit a funding proposal to the council, provided that the submission conformed to Bank regulations. Each proposal was required to be presented to the sub-district council by a village delegation composed of at least two women and one man, each of whom

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25. Possibly as part of a general government backpedaling on the decentralization laws, the BPD have recently been abolished. E-mail from Scott Guggenheim, Lead Social Scientist, East Asia and Pacific Program, World Bank, to author (Jan. 26, 2006, 02:56:47 EST) (on file with author).

26. Complaints were substantial. As of July 2002, over 1900 complaints had been filed – more than 45 per month – though, notably, the vast majority were reported by private consultants or NGOs rather than community members. Only five complaints involving the misuse of funds resulted in formal legal action. Wong, *supra* note 22, at 15.

27. GUGGENHEIM, *supra* note 21, at 6.

28. *Id.* at 5, 22.

had to be elected by secret ballots cast by all eligible members of the village.<sup>29</sup>

The emphasis on affecting the political economy at the local, rather than national, level is reflected in the theoretical ground upon which the KDP was built. The project was developed by an interdisciplinary team led by anthropologist Scott Guggenheim as a follow-up to a series of Bank-funded ethnographic studies of village-level political culture called Local-Level Institution studies.<sup>30</sup> These studies were methodologically grounded in the sociological theories of Robert Putnam and Michael Woolcock, and in particular their take on the concept of “social capital.”<sup>31</sup> KDP project documents suggest that the success of the project was explicitly tied to its ability to “contribute towards a re-ordering of local political relationships.”<sup>32</sup> This was meant to be achieved in part through the implementation of certain practices and socialization of certain values associated with democratic political systems. For example, the KDP was at least implicitly based on the concept that the legitimacy of decision-making bodies derived from their representative nature, and that the community had the right to scrutinize the decisions of those bodies. Though these

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29. *Id.* at 4.

30. See Social Development Department, The World Bank, *The Local Level Institutions Study, Overview and Program Description* (The World Bank, Local Level Inst. Working Paper Series, Paper No. 1, 1998), available at <http://Inweb18.worldbank.org/ESSD/sdvext.nsf/09ByDocName/LocalLevelInstitutionsWorkingPaperSeries>.

31. ROBERT PUTNAM, *MAKING DEMOCRACY WORK: CIVIC TRADITIONS IN MODERN ITALY* (1993), cited in GUGGENHEIM, *supra* note 21, at 15; see also Michael Woolcock, *Social Capital and Economic Development: Towards a Theoretical Synthesis and Policy Framework*, *THEORY & SOC'Y* 27 (1998), cited in Anna Wetterberg, *Social Capital, Local Capacity, and Government: Findings from the Second Indonesian Local Level Institutions Study, Overview Report 6* (2002), available at <http://siteresources.worldbank.org/INTINDONESIA/Resources/Social/LLI+inal+report.pdf> (“social capital refers to connections among individuals – social networks and the norms of reciprocity and trustworthiness that arise from them”). The concept of social capital is derived at least in part from the influential writings of Pierre Bourdieu. See generally PIERRE BOURDIEU, *The Forms of Capital*, in *HANDBOOK OF THEORY AND RESEARCH FOR THE SOCIOLOGY OF EDUCATION* (John G. Richardson ed., 1986) (discussing social capital). For a critique of Putnam and Woolcock’s take on social capital, see Mansuri & Rao, *supra* note 10, at 9; Bob Edwards & Michael W. Foley, *Civil Society and Social Capital Beyond Putnam*, 42 *AM. BEHAV. SCIENTIST* 1, 124 (1998).

32. GUGGENHEIM, *supra* note 21, at 30-31.

concepts are by no means foreign to Indonesians, their implementation in the context of the KDP councils endorsed an unfamiliar one-person one-vote decision-making model, and system of mandatory gender-balanced village representation.

### B. *Integration and Conflict with Existing Power Structures*

In conjunction with the decentralization program of the Indonesian government, the KDP became a powerful tool to alter political relations between village communities and the state and, to a lesser extent, between those communities and international donors via the Bank. Influencing the legal regimes put into place by local parliaments and councils newly empowered by the decentralization of decision-making power resulting from the enactment of national legislation such as Law No. 22 became an explicit goal of the second phase of the KDP.<sup>33</sup> This included the institutionalization of KDP funding procedures, including accounting and transparency requirements, as well as the procedures for the election of Indonesian administrators.<sup>34</sup> While the early phases of the KDP were administered under Bank loan terms, the later phases sought to enshrine the councils and their procedures in law.<sup>35</sup>

Such an ambitious program inevitably came into conflict with existing political structures. Notwithstanding the recent move towards decentralization by the government, most villages still retained official representatives of both the civilian

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33. "KDP's initial strategy to improve the quality of local governance was simply to increase the involvement and awareness of people who joined the village and kecamatan meetings . . . [but as] *reformasi* had triggered unexpected changes . . . providing support to help the new leaders do their jobs is a constructive intervention that KDP can do well . . ." *Id.* at 23-24.

34. Scott Guggenheim described the goals of the second phase of the KDP as "trying to institutionalize the system by helping the district government pass regulations that ensure democratic village government . . . [including] how village heads and councils are elected and recalled . . ." *Id.* at 6.

35. Because sub-districts have no power to make law in Indonesia, the Bank was forced to open up bank accounts under the names of the sub-districts' constituent villages. Initially, riders had to be added to Indonesian procurement laws to enable village governments participating in the KDP to procure funds for "foreign-funded" projects. New laws apparently do not include these prohibitions on community procurement. E-mail from Scott Guggenheim, Lead Social Scientist, East Asia and Pacific Program, World Bank, to author (Jan. 26, 2006, 02:56:47 EST) (on file with author).

and military hierarchy, neither of which was accustomed to having their decisions subject to scrutiny by the community.<sup>36</sup> Since the management of the KDP was technically the responsibility of the Ministry of Home Affairs, KDP funds were considered public funds, and the government was required to comply with its monitoring and accounting obligations—requirements that went well beyond those for other government expenditures.<sup>37</sup> Strictly enforced electoral rules also came up against an entrenched New Order position that indigenous decision-making was deliberative and consensual (*musyawarah untuk mufakat*) in nature, and incompatible with the adversarial and majoritarian values of the West.

In light of the KDP's goal of harnessing the "social capital," and transforming the political economy of local communities, it is perhaps understandable that some of the fiercest resistance to the project came from those who held political influence in those communities. Though Law No. 22 provided that the BPD councils "be fashioned in accordance with local traditions (*adat*) and needs," Bank requirements that the KDP councils be elected, and that village delegations be gen-

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36. The New Order maintained an extensive hierarchy of administrators down to the village (*desa*) and sub-village (*dusun*) levels. Both indigenous and international reform initiatives risked not only the possibility of resistance by these entrenched government bureaucrats, but also risked disturbing the delicate balance between civilian and military authority. During the New Order, the role of the military went well beyond national defense. In accordance with the doctrine of 'dual function' (*dwi fungsi*), the military also supported the civilian government in administering the country through its own territorial command – a parallel administrative structure which extended to the village and sub-village levels and at times acted with virtually total independence from the civilian government. For further discussion of *dwi fungsi* and the territorial command structure of the Indonesian military, see e.g., Maj. Thomas E. Sidwell, *The Indonesian Military: Dwi Fungsi and Territorial Operations* (1995), available at <http://www.fas.org/irp/world/indonesia/indo-fmso.htm>; DAMIEN KINGSBURY, POWER POLITICS AND THE INDONESIAN MILITARY 9-11, 51-54 (2003).

37. Wong, *supra* note 22, at 9. Indeed, program evaluations have shown "lackadaisical reporting" to be a main weakness of the program. *Id.* at 9-10. On the other hand, KDP project documents state that funds administered through the KDP resulted in a "25% increase in efficient use of funds" in contrast to projects controlled by the national government, though it is unclear what "efficient use" entails. See KDP II APPRAISAL, *supra* note 22, at 103 (Annex 11: Anti-Corruption Strategy).

der balanced, sometimes conflicted with local customary law.<sup>38</sup> As a result, some government administrators and *adat* leaders resisted being subject to the electoral process, and the elected members of the BPD and KDP councils sometimes surrendered their authority for fear of reprisal by politically powerful persons in the community.<sup>39</sup> The Bank's own documents also indicate that the incorporation of women into the decision-making process was resisted by the primarily male leadership of many villages, and female KDP representatives were often excluded from the process or relegated to a support role.<sup>40</sup>

#### IV. THE EAST TIMOR COMMUNITY EMPOWERMENT AND LOCAL GOVERNANCE PROJECT

When the Indonesian military withdrew from East Timor in 1999, the Bank was presented with an opportunity to implement the CDD model in a new environment, free from the constraints of dealing with the bureaucracy of a sovereign state. Building on the already existing KDP framework, but in the unique environment of a country governed by a United Nations transitional administration, the Bank established a new series of village-level councils under the rubric of the

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38. The KDP's interaction with customary law is further complicated by the fact that during the New Order, government and indigenous political structures had become intertwined – with traditional leaders co-opting administrative power, and government officials drawing on “indigeneity” as a source of legitimacy. See, for instance, the contrasting examples of Jambi in Sumatra, where *adat* leaders who were also government officials succeeded in “co-opt[ing] formal government structures to fit with their indigenous structures,” and the case of Aesesa in Nusa Tenggara Timor province, where conflict between national and indigenous understandings of property ownership resulted in further divergence of state administrative and traditional political power. Wetterberg, *supra* note 31, at 47.

39. For instance, BPD members were sometimes nominated by “acclamation” or appointed by village leaders, and little campaigning took place. Leni Dharmawan, *Dynamics of Local Capacity and Village Governance: Findings from the Second Indonesian Local Level Institutions Study*, CENT. JAVA REP., Sept. 2002, at 19-20; see also Wetterberg, *supra* note 31, at 58-61.

40. On the other hand, there is anecdotal evidence that the gender requirements of the KDP may have had an impact on the level of female participation in local *adat* structures themselves. For instance, Scott Guggenheim writes about a woman in Nias, North Sumatra, who insisted on her right to sit at an *adat* council on the ground that women could no longer be properly excluded in view of the central role that they play in the KDP. GUGGENHEIM, *supra* note 21, at 25.

Community Empowerment and Local Governance Project (CEP)—this time with a much more explicit mandate to socialize democratic principles. In November 1999, less than two months after the withdrawal of Indonesian forces, a UN-World Bank Joint Assessment Mission (JAM) was deployed throughout East Timor to assess the condition of the country and set budgetary priorities for the disbursement of development funds, in which the CEP figured prominently.<sup>41</sup> The CEP quickly became a substantial part of the Bank's overall aid strategy in Timor.<sup>42</sup>

### A. *The Legal Status of East Timor and the World Bank in East Timor*

The KDP in Timor was always conducted under legally ambiguous circumstances—first implemented in an illegally occupied territory, and then in conjunction with a UN administered transitional government.<sup>43</sup> In 1975, the Indonesian government annexed the half-island territory of Portuguese Timor, shortly after the departure of the Portuguese colonial administration.<sup>44</sup> During the subsequent 24-year Indonesian military occupation, the territory remained on the list of Non-Self-Governing territories with Portugal recognized by most

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41. WORLD BANK, EAST TIMOR: BUILDING A NATION, A FRAMEWORK FOR RECONSTRUCTION AND DEVELOPMENT ¶ 54 (1999) [hereinafter *Building a Nation*], <http://siteresources.worldbank.org/INTTIMORLESTE/Resources/Governance.pdf>.

42. In its initial phase alone, 408 village councils were established with 6200 members. 619 project proposals were submitted to the councils, half of which were for community meeting halls and schools. See James D. Wolfensohn, *Memorandum of the President of the International Development Association to the Executive Directors on a Transitional Support Strategy of the World Bank Group for East Timor*, Annex D, Report No. 21184-TP (Nov. 3, 2000) [hereinafter *Strategy Memo*]. By November 2001, a total of USD 2,972,467 had been disbursed in 60 sub-districts and over 900 project proposals had been submitted. World Bank, *Community Empowerment Projects I and II: Project Overview 4* (2001), available at <http://siteresources.worldbank.org/INTTIMORLESTE/Resources/Oslo+Report+Appendix.pdf> [hereinafter *CEP Project Overview*].

43. For an examination of the evolution of the concept of "trusteeship" from the Trusteeship Council to the UN Transitional Administrations of late 1990s, see SIMON CHESTERMAN, YOU, THE PEOPLE: THE UNITED NATIONS, TRANSITIONAL ADMINISTRATION, AND STATE-BUILDING 37-47 (2004).

44. For accounts of the occupation and resistance, see MATTHEW JARDINE, EAST TIMOR: GENOCIDE IN PARADISE (1995); JOHN G. TAYLOR, INDONESIA'S FORGOTTEN WAR: THE HIDDEN HISTORY OF EAST TIMOR (1991).

countries as its lawful (but absent) administrator.<sup>45</sup> During the occupation, the Bank funded projects in twenty of East Timor's sub-districts through Bank grants to the Republic of Indonesia as part of the KDP.<sup>46</sup>

In August 1999, the UN conducted a referendum in which 78% of registered Timorese voted to separate from Indonesia, after which the Indonesian military withdrew from the territory.<sup>47</sup> On October 25, 1999, the Security Council adopted Resolution 1272 establishing the United Nations Transitional Administration in East Timor (UNTAET), which then acted as an interim government during an intensive period of post-conflict reconstruction.<sup>48</sup> UNTAET's mandate ultimately expired, and it was disbanded after East Timor became an independent nation in May 2002.<sup>49</sup>

The entry of the United Nations, and its role as a de facto government, radically altered the implementation of Bank programs in Timor. After the departure of the Indonesian military, it was unclear whether the Bank had a legal basis to act in Timor. After Resolution 1272 placed the territory directly under the administrative authority of the United Na-

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45. For a discussion of the status of East Timor in international law, see Thomas D. Grant, *East Timor, the UN System and Enforcing Non-Recognition in International Law*, VAND. J. TRANSNAT'L L. 273 (2000); Roger S. Clarke, *The 'Decolonisation' of East Timor and The United Nations Norms on Self-Determination and Aggression*, in INTERNATIONAL LAW AND THE QUESTION OF EAST TIMOR 65 (Catholic Inst. For Int'l Relations and Int'l Platform of Jurists for E. Timor eds., 1995).

46. See KDP I APPRAISAL, *supra* note 22, at 49. From the Bank's point of view, whether Indonesia or Portugal was the lawful administering authority was apparently irrelevant since both countries were member states of the IMF and World Bank. See *World Bank Assistance to East Timor: Legal Memorandum by the Acting Vice-President and General Council*, iii, September 30, 1999 (hereinafter *Timor Legal Memo*).

47. For an account of the ballot and its aftermath, see IAN MARTIN, SELF-DETERMINATION IN EAST TIMOR: THE UNITED NATIONS, THE BALLOT, AND INTERNATIONAL INTERVENTION (2001).

48. S.C. Res. 1272, U.N. Doc. No. SC/RES/1272 (Oct. 25, 1999); For an analysis of the legal status of UNTAET under international law, see Boris Kondoch, *The United Nations Administration of East Timor*, 6 J. CONFLICT & SECURITY L. 245 (2001).

49. UNTAET was succeeded by a smaller peacekeeping mission, UNMISSET [United Nations Mission of Support in East Timor], which was itself succeeded in May 2005 by a political advisory mission, UNOTIL [United Nations Office in Timor-Leste].

tions, UNTAET became the grantee to which the Bank disbursed funds. The Bank, through the International Development Association (IDA) entered into its first grant agreements directly with UNTAET as it would with a sovereign state, and the Special Representative of the Secretary-General (SRSG), appointed by the UN Secretary General, in turn promulgated “national” regulations establishing the local law under which the grants were implemented.<sup>50</sup> Since the Bank’s Articles of Agreement required it to conduct activities for the benefit of members, in order to justify Bank involvement in “transitional” Timor the Bank Directors had to invoke Article IX which allowed the Bank to disburse funds to non-members if *in their view* to do so would be to the benefit of its members.<sup>51</sup> Once this legal obstacle was overcome, the Directors passed a resolution creating the Trust Fund for East Timor (TFET) designating the IDA itself as the “trustee” of the fund, shortly after which the IDA entered into its first CEP contract agreement.<sup>52</sup>

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50. As he was empowered to do under Paragraph 1 of Security Council Resolution No. 1272, which granted the SRSG the power “to exercise all legislative and executive authority.” S.C. Res. 1272, *supra* note 48.

51. *Timor Legal Memo*, *supra* note 46, iv.

52. Resolution No. 2000/13 on the Establishment of Village and Sub-District Development Councils for the Disbursement of Funds for Development Activities, UNTAET, U.N. Doc. UNTAET/REG/2000/13 (Mar. 10, 2000), available at <http://www.un.org/peace/etimor/untaetR/Reg1300E.pdf> (noting that § 6.01 of Trust Fund for East Timor Grant Agreement designates IDA as trustee for fund). Over the subsequent 2 and 1/2 years, two additional agreements were signed with UNTAET for a total of 21.5 million USD. *Trust Fund for East Timor*, TFET Update (World Bank, Washington, D.C.), Feb. 14, 2002, at 2. Under the original resolution, the IDA held TFET funds in trust for the “benefit of the member countries.” Int’l Bank for Reconstruction and Dev. [IBRD], *Resolution Establishing the Trust Fund for East Timor*, ¶ 2, IBRD Res. No. 99-8, IDA Res. No. 99-5 (1999). Activities funded out of TFET were to be used “only for the purposes of, and in accordance with . . . the Articles of Agreement,” such that Bank prohibitions on taking into account political factors in making project decisions applied to all TFET funded projects. Int’l Bank for Reconstruction and Dev. [IBRD], *Resolution Amending the Trust Fund for East Timor*, ¶ 2, IBRD Res. No. 99-8/1, IDA Res. No. 99-5/1 (1999). The subsequent amendment to the resolution transformed TFET into a multi-donor fund, and created a Donor’s Council, which included the Asian Development Bank and other contributing nations and organizations. *Id.* Interestingly, the amendment to the resolution removed the language “for the benefit of the member countries,” though it did not replace the language with any clear statement that trust funds should be used for the exclusive benefit of East Timorese.

### B. *Procedural Innovation and Normative Impact*

Similar to the KDP, the centerpiece of the CEP was a series of village and sub-district councils. Exercising his legislative authority under UNTAET's Chapter VII mandate, in March 2000, SRSG Sergio Viera de Mello passed Regulation 2000/13 which established the legal framework under which the councils were to function.<sup>53</sup> The regulation reiterated the project's objectives "of promoting effective village and sub-district level *participation* in the disbursement of funds for development activities . . . which is *representative* and *accountable*" (emphasis added),<sup>54</sup> and established the procedures for nominating and electing members to village councils (*conselho de suco*) and sub-district councils (*conselho de posto*), including provisions setting voting eligibility requirements, providing for the publication of election results,<sup>55</sup> and requiring that each village council and sub-district council consist of an equal number of men and women.<sup>56</sup> The regulation also set out a series of strict rules meant to ensure that funds were properly used, including requirements that councils submit biannual progress reports to village and community leaders,<sup>57</sup> that decisions be made in writing and be publicized,<sup>58</sup> that each village establish a monitoring team responsible for reporting "bad practices" to the UNTAET district administrator and the sub-district council,<sup>59</sup> and that sub-district councils submit an annual financial report to the UNTAET-appointed district administrator.<sup>60</sup>

The Bank's governance agenda of developing "a human rights culture," and a "new form of community government" based on a "new vision of rights and accountability" were even more explicitly committed to the socialization of democratic

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53. Resolution No. 2000/13 on the Establishment of Village and Sub-District Development Councils for the Disbursement of Funds for Development Activities, UNTAET, U.N. Doc. UNTAET/REG/2000/13 (Mar. 10, 2000), *available at* <http://www.un.org/peace/etimor/untaetR/Reg1300E.pdf>.

54. *Id.* at Preamble.

55. *Id.* §§ 4-5.

56. *Id.* §§ 2.1, 3.1.

57. *Id.* § 7.3.

58. *Id.* § 8.4.

59. *Id.* § 9. §§ 10-12 establish the same rules for sub-district councils.

60. *Id.*

principles than the KDP.<sup>61</sup> Based on the premise that “successful development requires good governance” and that post-occupation Timor lacked sufficient local governance institutions, the JAM proposed that gender-balanced village councils be democratically elected in each village. The CEP councils would be responsible not only for making allocation decisions but also for preparing development plans, resolving disputes, and ensuring community involvement in the electoral process.<sup>62</sup>

As with the KDP, the normative agenda of the CEP was sometimes perceived as a threat. Anthropologist Tanje Hohe maintains that council proceedings violated, or at best ignored, ritual rules normally associated with community decision-making, thus removing the process from the realm of the sacred (which drew on a political power rooted in a long history of ancestral houses) to the profane (elected bodies explicitly excluding many individuals with the strongest cultural and historical claims to power).<sup>63</sup> The council system also introduced an electoral model of decision-making that by some ac-

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61. *Building a Nation*, *supra* note 41, ¶¶ 42, 53. In discussions with the author conducted in Dili, East Timor in December 2000, Bank-funded CEP consultants said that they hoped that through participation in the elections for the CEP councils, Timorese in rural communities would come to understand “democratic” values such as transparency and the accountability of representatives to their communities.

62. *Building a Nation*, *supra* note 41, ¶ 56. Interestingly, while project documents are filled with references to human rights and democratization, the Bank’s internal evaluation of the CEP is strikingly free of such language. The Bank’s own critiques of the project’s effectiveness were limited to broad statements calling for the “strengthening of the capacity of the councils” and a need to “develop accountability,” and praise for the project’s success in increasing “cost efficiencies” and producing “poverty targeting benefits.” *CEP Project Overview*, *supra* note 42, at 5. The Bank apparently evaluated the project’s progress primarily by examining whether the individual village and sub-district grants were disbursed close to their “disbursement target dates.” *Id.* at 3-4. In contrast, a contemporaneous Joint Donor report released by the Bank, USAID, ADB, and AusAid acknowledged that the function of the councils was widely misunderstood, that efforts at gender-balancing had been less than successful and that some elections had not been democratic. *Evaluating the World Bank’s Community Empowerment Project*, THE LA’O HAMUTUK BULLETIN, Dec. 31, 2000, at 6, available at <http://www.laohamutuk.org/Bulletin/2000/Dec/bulletin04.html>.

63. This shift in power was further reflected in the fact that elected council members tended to be young, literate community members. Tanje Hohe, *Local Governance After Conflict, Report of the Community Empowerment Project in*

counts conflicted with the traditional model of consensual decision-making under the supervision of the village or clan leadership.<sup>64</sup> Moreover, in Timor, a predominantly patriarchal society, the requirement that each village council and sub-district council consist of an equal number of men and women was not always well received. In practice, women were often excluded from the deliberations conducted by the councils, and female council-members were often relegated to activities such as food preparation.<sup>65</sup>

### C. *Integration and Conflict with Existing Power Structures*

Learning from the implementation of the KDP, the Bank attempted to pre-empt concerns about the imposition of Western notions of democracy and interference with indigenous political institutions. For instance, the CEP council members, once elected, were given the option of making determinations by consensus and open ballot, in contrast to the KDP requirement of a secret ballot.<sup>66</sup> The appraisal document for the first two phases of the CEP even expressed the hope that the CEP would unite communities and therefore serve as a “counterbalance” to the “negative effects of party politics.”<sup>67</sup> Still, in the implementation stage, the CEP inevitably came into conflict with pre-existing structures of political power. This reportedly surprised some Bank and UN officials who naively viewed post-occupation Timor as a kind of “clean slate,”<sup>68</sup> without giving much thought to the pre-UNTAET political culture of Timor.<sup>69</sup> As it turns out, segments of both the UN and the

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*East Timor* 11-12 (2003), available at [http://info.worldbank.org/etools/docs/library/109847/SD\\_Communication/epublish/zip\\_files/tslg/papers.html](http://info.worldbank.org/etools/docs/library/109847/SD_Communication/epublish/zip_files/tslg/papers.html).

64. *Id.* at 13.

65. *Id.* at 13-14; see also Jarat Chopra & Tanja Hohe, *Participatory Intervention*, 10 GLOBAL GOVERNANCE 289-304 (2004). For a broad critique of UN treatment of gender issues in East Timor, see Hilary Charlesworth & Mary Wood, “Mainstreaming Gender” in *International Peace & Security: The Case of East Timor*, 26 YALE J. INT’L L. 313 (2001).

66. Approximately 50% of the villages participating in the initial phases of the program opted for the consensual balloting. E-mail from Scott Guggenheim, Lead Social Scientist, East Asia and Pacific Program, World Bank, to author (Aug. 24, 2005, 00:55 EST) (on file with author).

67. *CEP Project Overview*, *supra* note 42, at 5.

68. LA’O HAMUTUK, *supra* note 62; Hohe, *supra* note 63, at 14.

69. For an interesting historical overview of indigenous Timorese politics during the Portuguese colonial period, see Katherine G. Davidson, *The Por-*

Timorese leadership came to view the democratization and centralization agendas of the CEP as encroaching on the scope of their own political power.

Notwithstanding the normative and procedural agenda of the CEP, the mere establishment of the councils was sometimes perceived as a challenge to community leaders, including traditional village leaders and customary law experts who drew their political power from their association with certain genealogies traced back to the pre-Portuguese kingdoms. In addition, over the twenty-four years of Indonesian occupation, a complex hierarchy of resistance leaders, both military and civilian, had developed. When Bank staff reached out to a village in the post-conflict period, they often found several individuals competing for leadership in the community, including the local leadership of the clandestine movement, traditional leaders, and even former administrators who had worked as part of the Indonesian administrative hierarchy.

In order to soften the impact of the councils, Article 1.4 of Regulation 2000/13 provided that they “shall not duplicate or replace the role of traditional and local leaders.”<sup>70</sup> The drafters of the regulation attempted to separate out the responsibilities of the traditional village political hierarchy and the councils by prohibiting traditional leaders from sitting on the councils.<sup>71</sup> At the same time, it gave the village chief responsibility for “organizing” the selection process for nominees to the councils.<sup>72</sup> In practice, however, it was nearly impossible for CEP supervisors, primarily Timorese hired by the Bank in the urban area of Dili, to prevent local leaders from co-opting the process.<sup>73</sup> Local village chiefs would sometimes

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tuguese Colonisation of Timor: The Final Stage, 1850-1912, 108-139 (1994) (unpublished Ph.D. dissertation, University of New South Wales) (on file with author); RENÉ PÉLISSIER, *TIMOR EN GUERRE: LE CROCODILE ET LES PORTUGAIS, 1847-1913* [TIMOR AT WAR: THE CROCODILE AND THE PORTUGUESE, 1847-1913] (1996) (providing history of East Timor from 1847-1913 and discussing several rebellions and resistance movements to Portuguese authority during this time). For a glimpse into pre-Portuguese political structure, see *THE FLOW OF LIFE: ESSAYS ON EASTERN INDONESIA* 9 (James Fox ed., 1980).

70. Regulation 2000/13, *supra* note 53, § 1.4.

71. *Id.* § 4.3(c) (iii).

72. *Id.* § 4.1.

73. Through field interviews conducted in the Ainaro District in late 2000, the author learned that the authority of these leaders was regularly reinforced and that of the councils undermined, by Bank representatives

appoint council members, overriding the election results, and deliberations were often dominated by the village chief or former resistance leaders, despite the Regulation's limitations on their formal participation.<sup>74</sup> By late 2000, CEP supervisors under pressure to disperse funds began to turn a blind eye to the fact that election rules were being ignored or manipulated by local political leaders and that female participation in council deliberations was less than optimal.<sup>75</sup>

In Timor, the Bank also found itself in the unique position of having another UN entity as its "national" partner in the implementation of the CEP, which in theory should have made implementation easier. In anticipation of conflict between the CEP councils and the administrative authority of the UN, Regulation 2000/13 also included a clause requiring that council activities "shall not prejudice any constitutional or institutional development to be provided by UNTAET."<sup>76</sup> Nonetheless, even prior to the project's implementation, UNTAET senior staff expressed concern that the council elections would undermine the authority of other consultative bodies which the UN planned to create at the national and district levels.<sup>77</sup> When implementation began, UN staff in Dili and in New York voiced strong objections to both the CEP's decentralization and democratization agendas. Though the original CEP proposal envisioned that the project would be supervised by UNTAET, by the spring of 2000, conflict between the UN and the Bank team became so heated that the Bank decided to

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who for pragmatic reasons often used village chiefs, and not the councils, as their "focal points" when visiting the districts. In one village, a group of unemployed young men even threatened the council members with violence if they convened at all because they viewed the council as a political tool of the local village leadership.

74. The author's experience as an UNTAET staff member in the district of Ainaro confirmed that village chiefs retained power over the councils in most rural areas and that the first tranche of CEP funds was often used for the renovation of the homes of the village chiefs.

75. The author learned this information from field discussions conducted in December 2000 with CEP supervisors in Dili, East Timor.

76. Regulation 2000/13, *supra* note 53, § 1.3.

77. UNTAET staff members explained this to the author in communications made in East Timor throughout November and December of 2000. For a useful analysis of the evolution of these consultative bodies, see Joel C. Beauvais, *Benevolent Despotism: A Critique of UN State-Building in East Timor*, 33 N.Y.U. J. INT'L L. & POL. 923, 1101 (2001).

implement the CEP scheme by itself without UN assistance, subcontracting Community Aid Abroad/Oxfam to administer the project.<sup>78</sup> Though in November 2000, the project was once again technically managed under the auspices of UN-TAET's Project Management Unit (then integrated into a proto-Timorese national government), in practice UN staff had little to do with the project's implementation in the field.<sup>79</sup>

## V. THE RELEVANCE OF THE KDP AND CEP TO THE STUDY OF GLOBAL ADMINISTRATIVE LAW

### A. *Community-Driven Development and Global Processes of Norm Production*<sup>80</sup>

CDD interventions in general, and the KDP and CEP in particular, are interesting case studies for scholars of global administrative law for several reasons. Above all, an examination of the KDP and CEP helps us to sketch the contours of the global administrative space by identifying some of the principles underlying the actions of one of its main occupants, the World Bank. More than facilitating the implementation of certain administrative procedures, CDD-style interventions may also act to indoctrinate what many believe are emerging "global" norms regarding equality and the role of individuals in the political process.

At first blush, it is tempting to view CDD interventions as little more than a pragmatic solution to the problem of the inefficient administration of loan funds and their loss through corruption. It is true that the KDP and CEP's impact on the nuts and bolts of Indonesian and Timorese state administrative structures has been considerable. Both projects intro-

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78. Hohe, *supra* note 63, at 7. Shortly after Jarat Chopra, the UN-TAET Director of District Administration and one of the proponents of the CEP, controversially resigned 4 months into his appointment. See Mark Riley, *Selfish Bureaucrats Ruining East Timor, Says Ex-UN Planner*. SYDNEY MORNING HERALD, May 6, 2000.

79. Even at later stages of the project, many UN staff and much of the population were unaware that the CEP had anything to do with the UN. Hohe, *supra* note 63, at 8.

80. "Global processes of norm production" is a phrase borrowed from Oren Perez, *Normative Creativity and Global Legal Pluralism: Reflections on the Democratic Critique of Transnational Law*, 10 IND. J. GLOBAL LEGAL STUD. 25, 27 (2003).

duced procedural reforms that either did not exist under Indonesian law, or at the very least went unenforced. Both projects established mechanisms to hold decision-makers accountable directly to the community through formal monitoring and complaints mechanisms, NGO monitoring, the conduct of audits and financial reviews, and the dissemination of their results. In addition, they set ground rules for local elections that departed significantly from normal practice under the Indonesian system and criteria for the composition of the various councils involved in the process.

But the impact of the KDP and CEP is potentially much more profound.<sup>81</sup> Both projects are grounded in a normative framework based on certain, often disputed, assumptions about individual rights and the relationship between the state and its citizens. Arguably, the KDP and CEP model of administrative structures, through which groups of individuals present competing funding proposals, reflects a neo-liberal emphasis on entrepreneurship, individual innovation, and free market competition. Though it is perhaps premature to identify the precise content of an emerging “global norm of good governance,” such a norm would clearly include principles, such as *accountability* (operationalized through rules and procedures requiring increased transparency in decision-making), and an individual right of *participation* (operationalized through rules and procedures such as elections, quota systems, and consultation requirements). As discussed further below, the rationale upon which CDD projects are based also relies heavily on an idealized notion of a “community” made up of individuals who, when empowered by CDD structures, are likely to make rational and socially beneficial choices regarding the use of Bank funds made available to them.

The resistance to both the KDP and CEP by indigenous communities may also reflect a larger struggle over the con-

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81. Though the architects of KDP and CEP clearly recognized the potential normative impact of these programs, their accounts of the programs' implementation and the program documents themselves consistently underplay this impact. For instance, in his informative and insightful review of the implementation of the KDP, Scott Guggenheim writes that “stripped to its essentials, the entire project consists of little more than a disbursement system linked to a facilitated planning and management procedure” and describes the program as having “virtually *no* ‘content.’” GUGGENHEIM, *supra* note 21, at 20.

tent of global norms and how they should be reflected in international law and the regulatory codes of trans-national bodies. Though an electoral process of some kind and equal participation in that process by both women and men have arguably become attributes of a global understanding of what constitutes a legitimate political process, they remain controversial. In Asia, a majoritarian model of democratic participation has been explicitly challenged by Asian leaders for years, as exemplified by the “Asian-values” debate of the 1990s.<sup>82</sup> Others have argued that the notion of “participation” itself is largely a trope exploited by global institutions in order to legitimize their interventions in developing countries,<sup>83</sup> and that the Bank’s obsession with “good governance” and “crony capitalism” in the wake of the Asian economic crisis was to some extent a strategy to deflect criticism of its own mismanagement.<sup>84</sup> Similarly, while women’s rights discourse has gained significant ground over cultural relativist positions, the debate is by no means over, as illustrated by the open debate on female participation in the political processes underway in both Afghanistan and Iraq.<sup>85</sup>

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82. See, e.g., Amartya Sen, *Human Rights and Asian Values*, THE NEW REPUBLIC, July 14-July 21, 1997, at 33; Chan Heng Chee, *Democracy: Evolution and Implementation: An Asian Perspective*, in DEMOCRACY AND CAPITALISM: ASIAN AND AMERICAN PERSPECTIVES 1, 21-22 (Robert Bartley et al. eds., 1993). For a brief but informative take on the applicability of “Asian” vs. “Western” democracy in Indonesia, see also Leo Suryadinata, *Political Culture and Indonesian Democracy* (The Future of the Asia-Pacific Region Conference, 1997), available at <http://www.unu.edu/unupress/asian-values.html#POLITICAL>.

83. See, e.g., David Mosse, ‘People’s Knowledge’, *Participation and Patronage: Operations and Representations in Rural Development*, in PARTICIPATION: THE NEW TYRANNY 16, 30-31 (Bill Cooke & Uma Kothari eds., 2001).

84. Bello & Guttal, *supra* note 11.

85. See generally Hannibal Travis, *Freedom or Theocracy?: Constitutionalism in Afghanistan and Iraq*, 3 NW. U. J. INT’L HUM. RTS. 4 (2005) (arguing that the prospect for women’s rights in Afghanistan and Iraq is far from secure); HUMAN RIGHTS WATCH, *CAMPAIGNING AGAINST FEAR: WOMEN’S PARTICIPATION IN AFGHANISTAN’S 2005 ELECTIONS* (2005), <http://hrw.org/backgrounder/wrd/afghanistan0805/afghanistan081705.pdf> (describing barriers to women’s full participation in Afghanistan’s political process); AARON D. PINA, CONG. RESEARCH SERV., *WOMEN IN IRAQ: BACKGROUND AND ISSUES FOR U.S. POLICY* (2005), <http://fpc.state.gov/documents/organization/50258.pdf> (updated June 23, 2005) (describing the current status of women’s rights in Iraq); Mariana Ottaway, *Women’s Rights and Democracy in the Arab World* (Carnegie Endowment for International Peace, Carnegie Papers, Middle East Series No. 42, 2004), <http://www.carnegieendowment.org/files/CarnegiePa>

It is difficult to gauge the normative impact of such programs upon local communities, especially given the radical changes in political culture that have occurred in Indonesia and East Timor in recent years. While it is clearly naïve to think of post-conflict societies as *tabula rasa*, as certain international bureaucrats have done, anthropologists may also have to adjust their critique to the extent it is based on an assumption that local cultures are so robust that such interventions have minimal impact on traditional dynamics of power. Further fieldwork and project evaluation will be necessary to draw out the subtle interaction between global norms, post-*reformasi* Indonesian politics, and traditional forms of community action.<sup>86</sup>

### B. *Local Politics and the Fetishization of Community*

Perhaps the greatest strength of the CDD model is that it seeks to transcend the institutional constraints of both the Bank and the national government by focusing on the social and political dynamics of the sub-national community—an approach which contrasts greatly with the typical focus of governance reform initiatives on the state.<sup>87</sup> Ironically, the KDP and CEP's grounding in social theory and their consideration of the dynamics of social capital in some ways make them a more intrusive species of intervention than the more familiar top-down Bank approach, akin to earlier colonial experiments which attempted to define and exploit traditional power structures to promote the larger administrative goals of the colonial state.

The “community” imagined by CDD is one that harnesses the power of traditional village culture to police and order its own social relations—a place where Putnam's “social capital” presumably flows more freely—unfettered by the constraints of colonial and post-colonial states. In the Indonesian and

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per42.pdf (describing status of women's political rights throughout the Middle East).

86. One such example is the Javanese tradition of community cooperation exemplified by the *gotong royong*. For an analysis of one attempt by state institutions during the New Order to co-opt and “nationalize” this cultural practice, see John R. Bowen, *On the Political Construction of Tradition: Gotong Royong in Indonesia*, 45 J. ASIAN STUD. 545, 545-61 (1986).

87. For a critique of the concept of “community” in participatory development projects generally, see Mansuri & Rao, *supra* note 10, at 8.

Timorese context, the KDP and CEP assumed, at least implicitly, that the social dynamics of customary *adat* communities were corrupted by decades of exploitation by Suharto's New Order. Through CDD, these "traditional mechanisms of social control" are free to re-emerge.<sup>88</sup> Only now, *adat* must conform to the democratic decision-making model promoted by CDD. The paradox is that it is through the imposition of its own complex set of procedural rules that the projects' subjects become more free to govern themselves. Progress toward achieving the goals set by CDD is then measured against certain technical benchmarks, a process which Tania Li refers to as "rendering communities technical."<sup>89</sup>

But defining and measuring the performance of "communities" is problematic for a number of reasons. First, both programs have had to work within the constraints of pre-existing legal and administrative structures, such as Indonesian administrative law's definition of the village (*desa*), which like the national boundaries of post-colonial states, do not always correspond neatly with ethnic, political and cultural realities. The fit with pre-Indonesian customary law is also imperfect, particularly in places where decision-making positions have historically been held by men and claims to political power have been legitimized through complex and deeply-rooted genealogical and cultural ties. Indeed, the KDP and CEP recognize this paradox by simultaneously celebrating the projects' engagement of traditional village actors and customary law, and their transformative effect upon traditional practices themselves.<sup>90</sup> It is not surprising that, despite their successes, the projects have met with resistance by traditional community power-holders

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88. Tania Li notes that one of the main findings of the Local Level Institutions studies was that the bureaucratic authoritarianism of the New Order resulted in a "lamentable loss of traditional mechanisms of social control" at the village level. Li, *supra* note 2, at 14. The New Order regime was also adept at exploiting indigenous notions of community action and participation. For an interesting study of the New Order's exploitation of traditional Javanese notions of community action and participation, see JOHN SULLIVAN, LOCAL GOVERNMENT AND COMMUNITY IN JAVA: AN URBAN CASE-STUDY (Oxford Univ. Press 1992).

89. Tania Li, *supra* note 2, at 6.

90. See, e.g., GUGGENHEIM, *supra* note 21, at 25 (telling anecdote about possible influence of KDP on female participation in *adat* councils in Nias).

At the same time, it is also important not to overstate the potential for conflict. Communities in both Indonesia and East Timor have a long history of both resisting and strategically accommodating external influences, including complex administrative schemes, without dramatically disrupting local political dynamics or undermining pre-existing notions of political legitimacy. In a way, the parallel administrative mechanisms set up through the KDP and CEP are reminiscent of similar administrative structures set up by the Dutch colonial government in Indonesia and, to a lesser extent, the Portuguese in pre-1975 Timor. The Dutch colonial strategy, in some parts of the archipelago, of co-opting local leaders rather than subduing them militarily was arguably more sensitive to indigenous political dynamics than the traditional Bank strategy of forcing massive infrastructure projects upon local communities based on back-room negotiations with national bureaucrats. Part of the Dutch strategy involved extensive anthropological fieldwork into traditional law and local politics. Indeed, the contemporary notion of *adat* itself is by some accounts largely the result of Dutch colonial efforts to co-opt indigenous polities and absorb them into the colonial state. Similarly, for some Timorese the imposition of CEP councils recalled failed Portuguese attempts to displace traditional political authorities with new colonial administrative regimes in the early nineteenth century.<sup>91</sup> Nor were the reforms of the post-Suharto period the first post-colonial attempt at political decentralization, which was a central concern of political and constitutional debates during Sukarno's early years as President.<sup>92</sup>

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91. For treatments of the indigenous response to Portuguese administrative and military initiatives in the late nineteenth and early twentieth century, see PÉLISSIER, *supra* note 69. Also see Elizabeth Traube's theory that Mambai cosmology's division between "younger brothers" and "older brothers" easily accommodated, and perhaps legitimized the Portuguese colonial presence. Loren Rytter, *East Timor at the Crossroads: the Forging of a Nation, INDONESIA* (1996), available at <http://www.scn.org/timor/htmlpages/crossroads.rev.html> (reviewing Elizabeth G. Traube, *Mambai Perspectives on Colonialism and Decolonization*, in *EAST TIMOR AT THE CROSSROADS: THE FORGING OF A NATION* 42-55 (P. Carey & G. Carter Bentley eds., 1995)).

92. See Kazuhisa Matsui, *Decentralization in Nation State Building in Indonesia* 4-9 (Institute of Developing Economies Research Paper No. 2, 2003), available at [http://www.ide.go.jp/English/Publish/Papers/pdf/02\\_matui.pdf](http://www.ide.go.jp/English/Publish/Papers/pdf/02_matui.pdf) (discussing decentralization efforts during the Sukarno period).

Some of the resistance experienced by KDP and CEP may be attributable to tensions created by substantive differences between the idealized version of “community,” its formal definition by state or Bank administrative rules, and indigenous understandings of similar concepts. However, the extensive resistance to the projects’ implementation by the government, community leaders, and even the United Nations (in East Timor) suggests that pre-existing or potential power holders were disturbed by the mere introduction of a new, unexpected variable in the local political economy. The councils themselves sometimes became a locus of conflict—a new space in which power could be contested at the village level—at a time when competing power structures were still recovering or making the transition from a time of conflict to one of post-conflict peace.

C. *Legitimacy, State Sovereignty, and the Globalization of Governance Reform*

As the KDP and CEP examples show, the transnational institutions and networks which are the subjects of the study of global administrative law are likely to take increasingly complex forms that blur the lines between indigenous polities, states, and the international community. As a result of both projects’ focus on “community,” however construed, they function in a kind of in-between space, drawing legitimacy and legal authority from the international, national, and sub-national realms.

As Bank-funded and established entities, the CDD councils draw their legitimacy from their affiliation with the Bank, an international institution. In many countries where national governments lack legitimacy in the eyes of their own citizens, appeal to international bodies often enhances the credibility of sub-national bodies and civil society organizations. It is this affiliation with a generous and well-funded international institution that has allowed the councils to function effectively, and relatively independently from local civilian and military officials (and, in the case of the CEP, the UN administrative regime). Indeed, the Bank’s own literature on the KDP explicitly recognizes that a primary benefit of the project is its poten-

tial to augment the future credibility of state institutions.<sup>93</sup> At the same time, the Bank's interventions remain vulnerable to critiques that they are neo-colonial in nature—a vulnerability compounded by the fact that the accountability being imposed by the Bank and the UN as part of their “good governance” interventions remains a sort to which neither organization subjects itself at the international level.<sup>94</sup> Community-driven development models attempt to transcend this dynamic by building institutions accountable not only to international and national bureaucracies, but also directly to the community. In the process, the lines between state, international, and community action become less distinct.

It has even been argued that the concept of state sovereignty itself is in the process of “fragmenting” and a “polycentric legal order” is emerging, one in which corporations, NGOs, sub-state entities, and individuals all play a role in creating and enforcing international standards, and in which national administrators are increasingly constrained by procedural norms defined at the transnational level.<sup>95</sup> To the extent that the KDP and CEP reinforce certain principles and procedures, they may be contributing to the creation of this emerging global legal order.<sup>96</sup>

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93. See Judith Edstrom, *Indonesia's Kecamatan Development Project: Is It Replicable?* 2-3 (World Bank Social Development Paper No. 39, 2002) (“[T]he target population's perception of government, and possibly more important, the government's own perception of its credibility with this population, were so negative that the government was willing to experiment with a radical, new approach.”).

94. Allegations of corruption persist, and many continue to view these programs as another example of the Bank “lending” its way out of trouble, rather than cleaning its own house from within. See, e.g., Jeffrey A. Winters, *Criminal Debt*, in REINVENTING THE WORLD BANK 101, 101-130 (Jonathan R. Pincus & Jeffrey A. Winters eds., 2002); see also Press Release, World Bank, World Bank Responds to Reports on Misuse of Funds in East Timor (Feb. 16, 2000), available at <http://www.worldbank.org/id/eap/eap.nsf/0/c709a65c6a81bda047256ace0025122b?OpenDocument>.

95. Kanishka Jayasuriya, *Globalization, Law and the Transformation of Sovereignty: The Emergence of Global Regulatory Governance*, 6 IND. J. GLOBAL LEGAL STUD. 425, 441 (1999); see also Janet McLean, *Divergent Legal Conceptions of the State: Implications for Global Administrative Law* (Int'l Law and Justice, Working Paper No. 2005/2, 2005), available at [http://www.iilj.org/global\\_adlaw/documents/10120506\\_McLean.pdf](http://www.iilj.org/global_adlaw/documents/10120506_McLean.pdf).

96. For a discussion of a “possible development of an *ius gentium* of a global administration,” see Kingsbury, Krisch & Stewart, *supra* note 1, at 29.

Not that the era of the state is behind us. That it is not is amply illustrated by the resistance with which the KDP and CEP were met by not only the Indonesian government, but by the United Nations itself when it was acting in a governmental capacity. In fact, whether viewed as a new form of global administration or an innovative approach to governance reform at the national level, both the KDP and CEP are largely concerned with integrating international standards of accountability and fairness into the administrative structures of the state. In the future, the structures set up by the Bank through its various CDD initiatives are likely to become more, not less, intertwined with state administrative structures. Indeed, the third phase of the KDP is specifically focused on its formal integration into the state apparatus, through linkages with existing state institutions, and through the enshrinement of KDP procedures in law.<sup>97</sup>

A trend toward more profound integration with state structures is also apparent in CDD initiatives now underway in other countries, including the Philippines and Afghanistan. The “Kalahi” project has been implemented with great success in the Philippines, where a well-developed state administrative structure was already in place at the regional level. There, the Bank guidelines governing the “Barangay Assemblies,” the equivalent of the KDP and CEP councils, have been incorporated into law at the national level, and the councils themselves are official government bodies.<sup>98</sup> Through the National Solidarity Project (NSP) in Afghanistan, the Bank and the Afghan government have also undertaken to establish Community Development Councils at the village-level throughout the country, with procedures roughly equivalent to, and largely based upon, KDP and CEP procedures.<sup>99</sup> The Ministry of Ru-

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97. Guggenheim et al., *supra* note 23, at 1-4 (discussing Bank implementation of 100 million USD pilot project to develop a KDP model that can be formally integrated into the district administrative level of government).

98. For detailed information on Kalahi, including reports and evaluations of the program’s implementation, see the Philippine government website at <http://itd.dswd.gov.ph/kalahi/>.

99. Notably, Scott Guggenheim himself was leader of the team that designed the NSP. E-mail from Scott Guggenheim, Lead Social Scientist, East Asia and Pacific Program, World Bank, to author (Jan. 26, 2006, 02:56:47 EST) (on file with author). The implementation of the NSP has also come up against many of the same obstacles as the KDP and CEP, including resistance from government officials and regional warlords concerned that the

ral Rehabilitation and Development of the new government was itself restructured to accommodate the NSP, including the establishment of a Department of Community Led Development.<sup>100</sup> Remarkably, in light of the dysfunctional nature of the post-invasion Afghan government, the NSP may end up being *the* basis for local governance in a new Afghanistan, and the Community Development Councils have already been enshrined in the Afghan Constitution itself.<sup>101</sup> The Bank hopes to have a council set up in every one of Afghanistan's more than 20,000 villages by the end of 2006.<sup>102</sup>

Taken individually, these projects may provide little evidence of a distinctly global approach to questions of governance, but on the whole they surely blur the lines between the international and domestic spheres, and between bottom-up and top-down approaches to development.<sup>103</sup> One thing is certain: A simple dichotomy between national and international, where the only relevant actors are envisioned to be the state and the isolated bureaucrats of a handful of international organizations, has lost its utility both as an analytical tool and as a blueprint for action. It is likewise naïve to think that community-based institutions remain immune from national and

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direct-to-village disbursement model would by-pass them and thus diminish opportunities for graft. The participation of women in the councils, although groundbreaking and in some cases the first time that women have been able to participate in formal decision-making processes, has also encountered substantial resistance. See Abi Masefield, *Afghanistan: The Role of the National Solidarity Program and National Emergency Employment Program in National Reconstruction* 31-32 (2004) (conference paper for Scaling Up Poverty Reduction: A Global Learning Process and Conference, Shanghai, on file with author), available at <http://info.worldbank.org/etools/docs/reducingpoverty/case/102/fullcase/Afghanistan%20NSP%20Full%20Case.pdf>.

100. Masefield, *supra* note 99, at 15.

101. *Id.* at 40. Article 140 of the Constitution reads in relevant part:

“(1) In order to organize activities involving people and provide them with the opportunity to actively participate in the local administration, councils are set up in districts and villages in accordance with the provisions of the law. (2) Members of these councils are elected by the local people through, free, general, secret and direct elections for a period of three years.”

Constitution of the Islamic Republic of Afghanistan [Constitution] art. 140 (Af.), available at [http://www.oefre.unibe.ch/law/icl/af00000\\_.html](http://www.oefre.unibe.ch/law/icl/af00000_.html).

102. Masefield, *supra* note 99, at 8.

103. In this sense, they may be examples of “creative institutions,” as theorized by Oren Perez. Perez, *supra* note 80, at 64.

supra-national influence. As such, the future of global administration will depend on our ability to develop new mechanisms for holding decision-makers accountable, whoever and wherever they are, without retreating back into narrow conceptions of state-centered power relations.

