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# TRADITIONAL AND CUSTOMARY LAW IN SOUTHEAST ASIA

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# TRADITIONAL AND CUSTOMARY LAW IN SOUTHEAST ASIA

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**ABSTRACT:** This is an annotated bibliography of documents describing the use of traditional and customary law in countries of Southeast Asia including Thailand, Indonesia, the Philippines and Timor-Leste. These documents are derived from a variety of sources including donor agencies like the United Nations and academic journals such as the *Journal of Peacebuilding and Development*.

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## SUMMARY

Traditional and customary law plays a prominent role in developing countries throughout the world including Southeast Asia. According to the UNDP, traditional law is popular because any disputes are viewed as “relating to the whole community as a group and there is strong consideration for the collective interests at stake in disputes, while decisions are based on a process of consultation”. There is also focus on “using reconciliation and restoring social harmony” and “arbitrators are appointed from within the community on the basis of status or lineage”. Many citizens use traditional law perhaps because of “flexible rules of evidence and the lack of professional legal representation”, creating a “high level of acceptance and legitimacy”. Finally, there is “no distinction between criminal law and civil law and developing societies often merge informal justice systems with local governance structures”.<sup>1</sup>

Traditional and customary laws may be broken down into personal laws that govern a people or community’s rules on marriage, inheritance or child custody. Traditional laws may also focus on tenurial rights over forests, lands, water bodies and other natural resources. Personal laws have the greatest variety in South Asia and Malaysia where English common law also influenced the evolution of legal systems.<sup>2</sup>

In Indonesia, the largest country in Southeast Asia, traditional law has force in meeting halls across the archipelago, and customs serve to arbitrate and mediate disputes. Village heads, customary leaders, neighborhood leaders and religious chiefs all implement traditional law as it helps bind social stability and the livelihoods of the poor who often cannot resolve criminal issues, land conflict and marital problems without significant economic consequences.<sup>3</sup>

In Timor-Leste, formerly a part of Indonesia, *Hatutan Lei ba Komunitad* serves as a network that provides legal information and mediates disputes while building trust across communities. This network emphasizes the traditional role played by the village and hamlet chiefs who serve vital needs in maintaining a criminal justice system there.<sup>4</sup>

In the Philippines, the Marcos administration set up the system of alternative dispute resolution called the *Katarungang Pambarangay* (KP) that was designed to build on the informal Philippine tradition of dispute settlement at the *barangay* level. USAID has attempted to use barangay law in efforts to decentralize government administration particularly in areas populated by Muslims or characterized as politically unstable.<sup>5</sup>

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<sup>1</sup> Wojkowska, Ewa. 2006. “Doing Justice: How informal justice systems can contribute”. UNDP. P. 16

<sup>2</sup> Roy, Raja D. 2005. “Traditional customary laws and indigenous peoples in Asia”. Minority Groups International. P. 9

<sup>3</sup> “Forging the middle ground: Emerging non-state justice in Indonesia”. 2008. P IX

<sup>4</sup> Low, Sally. 2007. “Evaluation of the “Providing Access to Justice - Legal Awareness at the Grassroots Level” Project Timor Leste for Avocats sans Frontières Brussels. Final Report”. P. 4.

<sup>5</sup> Blue, Richard N., Emmanuel Leylo and Agnes Devanadero. 2002. “Assessment of the centers of local governance: Implementation of the Barangay justice service system (BJSS) project in Mindinao, Philippines.” P. 16.

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(Map of informal legal systems on P. 15)

(Indonesia and East Timor on P. 18-19)

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