

Customary Law and Domestic Violence in Timor-Leste

Approaches to Domestic Violence against Women in Timor-Leste: A Review and Critique

Justice System Programme

UNDP Timor-Leste

January 2011

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Terminology

Adat	Indonesian word for the sacred laws and belief systems on which local justice is based, commonly used in Timor-Leste
Aldeia	Hamlet; smallest administrative unit in Timor-Leste
Chefe de Aldeia	Elected head of the Aldeia
Chefe de Suco	Elected head of the Suco
Conselho de Suco/ Village Council	Council made up of a small cross-section of the community, including youth and women, which assists the Chefe de Suco
Dato	Second highest social class assisting the Liurai in tasks such as conflict resolution. The Dato are connected to the spiritual world and make decisions based on the ancestral order
Lian Nain/Lia Nain	Tetum term for the “owner of words”, a customary authority dealing for instance with conflict resolution, who makes decisions based on customary rules and norms
Lisan	Broad term encompassing local law, social norms and morality, art and rituals, and a system of community leadership and governance
Liurai	Highest social class and hereditary political authority
Suco	Village consisting of a number of hamlets; second smallest administrative unit in Timor-Leste
Tetum/Tetun	One of the two official languages of Timor-Leste

Executive Summary

This literature review analyzes the barriers faced by female victims of domestic violence in Timor-Leste and the local-level dynamics which impact women's access to justice regarding both formal and informal systems of justice. The paper identifies major gaps in the literature; recognizing the need for more reliable data on the role of and power relations between various local administrators of justice; the nature of dispute trajectories across Timor-Leste; the central barriers impacting on women's access to justice; local definitions and concepts of domestic violence; the nature and effects of social pressure; and the reasons motivating a victim and their family to approach either formal or informal authorities.

With actors in both the formal and informal justice system at times working to prevent cases of domestic violence being processed formally, women attempting to access the formal justice system face serious barriers. This literature review concludes that it is the concept of and attitude toward violence against women, the idea that domestic violence is a normal occurrence and private matter and general ignorance of the domestic legal framework, which need to be challenged, both in the formal and informal realm.

Further, due to women's high level of economic dependence on their husbands, focusing on punishing the perpetrator will prove insufficient to guarantee access to justice for female victims – and may undermine local social mechanisms which support women and deter domestic violence. Some literature therefore suggests that it may be more beneficial to focus on women's surviving abilities as well as supporting change within local systems.

While much of the literature criticizes local systems for violating women's rights, not enough attention is given to the fact that local law and its focus on collective rather than individual rights serves an important social function: the maintenance of peace and social order within small, close-knit communities. This literature review concludes measures to increase women's access to justice which make use of, rather than undermine, Timorese social systems are the most likely ones to be successful and sustainable.

I. Introduction

Informal justice systems¹ play a central role in the lives of many citizens of contemporary Timor-Leste (UNICEF, 2009; Marriott, 2008; Niner, 2007). Resolving disputes swiftly and with a concern for establishing harmony in the material as well as spiritual world, community leaders and elders rather than police are thought to be responsible for maintaining law and order. The literature suggests that this is true also for the way most Timorese deal with domestic violence, a highly prevalent phenomenon in Timor-Leste today. The majority prefers these cases be dealt with by the informal system, even if the woman is seriously injured. Despite the significant majority of Timorese who have confidence in formal courts (77%)², an even higher number (85%) are confident they will be treated fairly by local justice systems. Similarly, while 64% of those who had been in contact with the formal court system reported feeling “very comfortable” using it, a much higher number (79%) feel comfortable bringing disputes to local administrators of justice (The Asia Foundation, 2008).

A significant proportion of domestic violence cases are being resolved through informal mechanisms, even though the Penal Code of 2009 made domestic violence a public crime, to be investigated and prosecuted by the state regardless of whether a criminal complaint is filed by a victim or not (UNHCHR&UNMIT, 2010); victims likewise cannot request that cases be dropped. Article 2 of the recently enacted Law Against Domestic Violence defines domestic violence broadly as “any act or sequence of acts committed within a family context, with or without cohabitation, by a family member against any other member of that family,³ where there is a situation of ascendancy, notably physical or economic, in the family relationship, or by a person with regard to another person with whom the former has had an intimate relationship which

¹ Many writers use the terms “customary” or “traditional” law to refer to localized, informal justice mechanisms in Timor-Leste. Without attempting to be exhaustive regarding the definition of local practices, this literature review will instead use the terms “informal” or “local” justice. As pointed out by various authors (Mearns, 2002; Swaine, 2003; Hohe, 2003; Butt et al., 2009), the terms “customary” or “traditional” law may imply a timeless and fixed notion of tradition and custom that is opposed to an evolving, universal and “modern” system of formal law. As a result, these terms do not account for the ways in which external forces or internal social dynamics are continuously changing traditions and customs. Using the terms informal and local law, this literature review aims to take account of the highly dynamic and fluid nature of local practices.

² It should be noted that the quoted study only asked those respondents who were aware of the existence of formal courts (59% of respondents) to answer this question.

³ The law defines “family” in quite a broad manner as well: Article 3 Family: “For the purposes of this law, members of a family shall refer to people in the following family relationships: a) Spouses or ex-spouses; b) Persons who live or have lived under conditions analogous to spouses, even though without cohabitation; c) Relatives in the ascending and descending line of one or both spouses or of anyone in the situation referred to in the preceding paragraph, as long as they are the same relationship of dependency and part of the household economy; d) Any other person who is part of the same context of dependency or household economy, including any person who carries out an activity in the household continuously and with a subordinated status.”

resulted, or may result, in physical, sexual or psychological injuries or suffering, economic abuse, including threats such as intimidating acts, bodily harm, aggression, coercion, harassment, or deprivation of freedom” (DRTL, 2010). This review and critique is guided by this definition.

While a number of advantages of informal justice systems can be identified, such as their accessibility, familiarity and legitimacy, literature (Corcoran-Nantes, 2009; Swaine, 2003; Rede Feto, 2009) points out that informal justice mechanisms display serious shortcomings for female victims of domestic violence seeking access to justice. Often cited are a lack of women’s participation and power in decision-making processes, a lack of enforcement of informal decisions and agreements, and a tendency to blame women for violence perpetrated against them. However, other studies, such as Trembath et al. (2010), warn against simplified descriptions of East Timorese custom, culture and gender relations, describing them as multi-layered and adaptable. “Modern” concepts of gender equality are not seen as *per se* absent from and contradictory to Timorese customary systems.

At the same time, the formal justice system, while only re-established over the course of the past eight years, has not yet been fully developed and offers a problematic route for victims of domestic violence seeking justice. Serious barriers remain for female victims attempting to access their rights and protections under formal justice system, including the lack of basic information and understanding of the formal system itself and formal laws which govern it, the lack of physical access to formal justice institutions in most communities, and reported instances of cases of domestic violence being back to local informal justice systems.

This literature review analyses the existing literature with a focus on the barriers faced by female victims of domestic violence and the local-level dynamics which impact women’s access to justice. The role of local justice processes and local administrators of justice are discussed as well as the experience of other countries in dealing with legal pluralism.

As previous work on gender-based violence concentrates relatively little on informal justice processes (UNFPA, 2005), this paper identifies major gaps in the literature which might lead to inadequate policy making in countering domestic violence in Timor-Leste. Although this paper does not aim at analyzing exhaustively all the research on this topic, we recognize the need for more reliable data on domestic violence issues including: the role of and power relations between various local administrators of justice; the nature of dispute trajectories across Timor-Leste; the central barriers impacting on women's access to justice; local definitions and concepts of domestic violence; the nature and effects of social pressure; and the reasons motivating a victim and their family to approach either formal or informal authorities.

Finally, this analysis takes into account the possible consequences of the cultural misunderstanding of a very complex reality. Much of the previous research may have approached domestic violence issues from a Western perspective or a centralized one, coming from the capital city, Dili. This has in some instances led to a coloured interpretation of the reality of domestic violence in Timor-Leste. As a result, both international donors and agencies have pursued the creation of programs which might effect international rights-based agendas, but not have brought effective solutions to the problem of domestic violence in Timor-Leste.

II. The Context

As described below, Timor-Leste suffers a high incidence of domestic violence. One study (NSD et al., 2010) reports that as much as 36% of Timorese married women have experienced domestic violence. The legal framework, though it technically supplants all informal mechanisms in cases of domestic violence, is little understood and often ignored by actors in informal justice systems, and does not yet adequately clearly define the connection between formal and informal justice systems/actors. As a result, the two systems are interacting in an ad hoc and unpredictable manner.

1) Domestic violence in Timor-Leste

Data collection on gender-based violence in Timor-Leste, including domestic violence, has been conducted in a disparate manner, creating a risk of being incomplete and relying too much on anecdotal or partial data. Most of the literature relies on complaints registered by police, patients presenting themselves to the hospital emergency room, court reports, and findings generated by non-governmental organizations and other service providers (Rimmer, 2010). Data collection is not uniform; different organizations have used different collection methods, terminology, even definitions of domestic violence,⁴ and have classified cases differently. Much of the data does not give sufficient information on the exact nature of domestic violence crimes, often mixing, for instance, gender-based crimes and child sexual abuse into the same category.

As a result, although a high level of domestic violence can be confirmed, available figures remain inexact. According to the Demography and Health Survey 2009-2010 (NSD et al., 2010), 36% of married women have experienced physical, sexual, or emotional violence by a husband or partner. In 2009, 679 cases of gender-based violence were reported to the police, of which 462 cases were categorized as domestic violence (UNHCHR&UNMIT, 2010). Across all districts of Timor-Leste between 2000 and 2009, domestic violence was the most frequently reported crime to the Vulnerable Persons Unit⁵ exceeding all other gender-based crimes within its mandate (Rimmer, 2010). According to *Rede Feto* (2009), from 2004 (30 cases) until 2008 (117 cases) the number of domestic violence cases reported to FOKUPERS, a non-governmental

⁴ Much of the literature does not define the term “domestic violence” at all. Some authors refer to specific definitions of domestic violence such as Bye (2005: 18) who defines domestic violence as “physical, sexual, and psychological violence occurring in the family”, while much of the literature refers to broad definitions of gender-based violence (GBV), see e.g. Myrntinen et. al (2010: 14) and Swaine (2003: 12) who refer to GBV as “a broad term for any harm that is perpetrated against a person’s will, that has a negative impact on the physical or psychological health, development, and the identity of the person, and that is the result of gendered power inequities that exploit distinctions between males and females, and among males and females.”

⁵ The Vulnerable Persons Unit (VPU) was created in 2001 by UNPOL and the National Police of Timor-Leste (PNTL) and has jurisdiction over the following crimes: rape, attempted rape, domestic violence, child abuse, child neglect, missing persons, and sexual harassment (JSMP, 2004; Styles-Power et al., 2008).

organization, increased from year to year. Yet, it should be kept in mind that cases of domestic violence are thought to be very much underreported in Timor-Leste with only a fraction of crimes being brought to the attention of the police or service providers (IRIN News, 2010).

In the vast majority of these cases, the perpetrator of violence is a man and the victim is a woman (Pereira, 2001) while at least one survey found younger urban women are most likely to experience domestic violence (The Asia Foundation, 2004). A UNFPA (2005) study found that insults were the most common type of violence, followed by slapping or twisting an arm, and forced sex. The most common injuries included psychological difficulties, loss of consciousness, bruises, scrapes, deep wounds and cuts, and unwanted pregnancies. Almost one fifth of all women presenting at emergency rooms in Dili and Baucau hospitals between 2006 and 2008 were recorded as victims of domestic violence, with the proportion rising to one-third for women aged 20-39 years (TLAVA, 2009).

Despite this apparently high prevalence, according to a 2008 survey conducted by the Asia Foundation, only 15 percent of Timorese claim to have experienced domestic violence within their family in the previous two years. On the other hand, 45% of police officers surveyed in 2008 point to domestic violence as the most serious security problem facing the area in which they work – a much higher proportion than for any other crime (Chinn&Everett, 2008). This dichotomy might suggest that the understanding of domestic violence among the general population differs significantly from the definition of domestic violence established by the law.

The data furthermore does not offer enough information on the percentage of cases that have been pursued before and after the promulgation of the Law Against Domestic Violence or any other data on the sentences applied in domestic violence related cases.

2) Legal background

The Constitution of Timor-Leste provides for equality before the law for all citizens, male and female, with all citizens exercising the same rights and being subject to the same duties. The Constitution also grants equality between women and men in the context of family relations (Article 39). Section 9 furthermore determines that “all rules that are contrary to the provisions of international conventions, treaties and agreements applied in the internal legal system of East Timor shall be invalid” (DRTL, 2002). Timor-Leste has acceded to a number of core human rights covenants including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of Discrimination against Women, the Convention against Torture, and the Convention on the Rights of the Child. This framework prohibits any state discrimination against female victims when dealing with cases of domestic violence (Grenfell, 2006).

While domestic violence was considered a criminal offence in East Timor during the Indonesian occupation (and afterward) as articulated in the Indonesian Penal Code,⁶ this

⁶ UNTAET Regulation 1/1999 provided that the laws that applied in East Timor prior to 25 October 1999 shall apply in East Timor in so far as they do not conflict with the standards referred to in Section 2 regarding conformity with human rights standards and section 3 repealing particular Indonesian laws. This

provision has rarely been used to prosecute (Grenfell, 2006).⁷ In March 2009, Timor-Leste's Penal Code was enacted, which established "mistreatment of a spouse"⁸ (equated to domestic violence) as a public crime, ensuring criminal proceedings do not depend on a formal complaint from the victim; this means the state is obliged to investigate and prosecute crimes of domestic violence, regardless of whether a victim files a complaint - technically citizen can file a complaint with the police about any case they become aware of (CEDAW, 2009; UNHCHR&UNMIT, 2010). Unlike semi-public crimes, a case may be carried forward by the state justice system, regardless of a victim's wishes that it be dropped.

These provisions are supplemented by the recently enacted Law Against Domestic Violence of May 2010. Article 2 of the law defines domestic violence broadly to include physical, psychological, economic and sexual mistreatment. It provides protection to family members, including spouses and ex-spouses, ascendants/descendants and domestic workers (Article 3). According to Articles 15 and 16, victims of domestic violence will be eligible to receive rehabilitative services, including shelter access, legal representation, medical and psychological assistance, and in justifiable cases, training on personal, professional and social skills in order to "contribute to their successful social reintegration". Article 24 obliges police officers, when necessary, to refer victims to a shelter or legal and medical services and inform victims of their rights and the status of their cases. They must file a report with the Office of the Public Prosecutor within five days of receiving information about the case (DRTL, 2010).

Until the recent enactment of the Penal Code and Law Against Domestic Violence, it was local community authorities who, according to Decree Law No. 5 of 2004 on the Authority of the Communities, had the responsibility to "provide for the creation of grassroots structures for the settlement and resolution of minor disputes". The Decree Law was replaced by Law 3/2009 on Community Leadership and their Election which requires Suco leaders to promote the creation of mechanisms for preventing domestic violence and support initiatives aimed at monitoring and protecting victims of domestic violence and punishing the aggressor (DRTL, 2009).

In the absence of specific legislation governing the relation of formal and informal law, the Constitution provides the only vague guidelines in this respect. Section 2(4) provides that "the State shall recognize and value the norms and customs of East Timor that are not contrary to the Constitution and to any legislation dealing specifically with customary law" (DRTL, 2002). Some writers interpret this section as giving only "symbolic respect" to informal law (O'Reilly&Jevtovic, 2008); others such as Grenfell (2006) argue that while this section does not

was widely understood to allow for the continued application of particular Indonesian laws. Article 165 of the RDTL Constitution concerning the applicability of previous laws and RDTL law 2/2002 On the Interpretation of Applicable Law was also widely understood to have maintained this situation post-independence.

⁷ It is unclear how often it was used between 2006-2009 given the gap in research data.

⁸ Article 154 Mistreatment of a spouse: "Any person who inflicts physical or mental mistreatment or cruel treatment upon a spouse or person cohabiting with the perpetrator in a situation analogous to that of spouse is punishable with 2 to 6 years imprisonment, if no heavier penalty is applicable by force of another legal provision" (DRTL, 2009b).

require courts to apply local law as part of Timor-Leste's body of formal law, by giving recognition to local norms and customs this section intends to direct the courts to have regard to local customary law. What is clear is that according to Article 2 of the Law on Community Leaderships and Their Election, the decisions of Suco chiefs and Suco councils are not binding on the State (DRTL, 2009).

While the legal framework prescribes that crimes such as domestic violence cannot be dealt with by local systems, there is no explicit law or policy establishing a legal framework for linking informal practices to the formal justice system (World Bank, 2006; UNFPA, 2005). Article 55 of the Penal Code recognizes reconciliation between victim and perpetrator as a general mitigating circumstance (DRTL, 2009), giving space for local agreements to be considered by formal courts. In practice, courts seem to make use of this provision by taking notice of out-of-court agreements reached through local law (Grenfell, 2009). For instance, one case of physical assault was closed by a judge in Same in October 2010 after the parties presented a peace agreement stating that the case had been resolved using informal law.⁹

3) Informal justice in Timor-Leste

The literature often refers to informal justice in Timor-Leste using the Indonesian term "Adat", while the proper Tetum term for Timor-Leste's various systems of local justice is "Lisan" (Harrington, 2006). It must be noted, however, that Lisan is a broad term encompassing not only local law and prohibitions, but also social norms and morality, art and rituals, as well as a system of community leadership and governance (Babo-Soares, 2009; Butt et al., 2009).

As emphasized by the majority of the literature, Lisan systems across Timor-Leste are highly diverse and localized. There is no unified Timorese informal legal system; there is rather a collection or plurality of local practices (Graydon, 2005; Swaine, 2003; Bye, 2005; Marriott, 2008; UNFPA, 2005). As a result, the ways in which women access local justice and the implications thereof vary from place to place, within single localities, and even from case to case depending on the nature and gravity. There is therefore not one uniform experience of how local justice is used. As local law is usually not written down or standardized, it is subject to the different personalities involved and their own interpretations of how justice should be administered with the effect that rulings may not be consistent (Swaine, 2003; Alves et al., 2009).

This is unsurprising as it is the very context in which local law exists which breathes life into its contents, interpretations and application. Stemming from its very nature, a conventional, stereotypical local justice process or outcome cannot be described definitively. Yet, several authors point out that a number of core traits and common values can be identified (UNFPA, 2005; Graydon, 2005; Butt et al., 2009). These include first and foremost their predominantly oral practice and transmission (Graydon, 2005; JSMP, 2002), though some communities in Liquica district have reportedly produced written regulations of informal justice mechanisms,

⁹ The Mobile Court hearing in Same on 29 October 2010 was monitored by a UNDP Access to Justice Officer.

including regulations specifically dealing with domestic and sexual violence (Myrntinen et al., 2010).

Another common feature and one of the main differences regarding formal law is the prioritization of the community and collective rights over individual rights, based on a concern to establish and maintain community harmony and stability (Butt et al., 2009; Babo-Soares, 2004). Focusing on the survival and peaceful existence of the community as a whole, local legal systems generally serve a different purpose than the protection of individual rights championed by formal and human rights law. Informal law thus addresses domestic violence more as an offence against the community and social relations between families rather than an offence against an individual (Grenfell, 2006; USAID, 2010).

A number of authors (Zifcak, 2004; Hohe&Nixon, 2003) report that in the localities they visited this collective approach can be explained by the existence of a refined socio-cosmic belief system in which kinship concepts are woven into most aspects of life and where supernatural ancestral powers function as controlling and life-giving forces. A need to maintain a cosmic equilibrium based on social reciprocity and exchange lies at the heart of this belief system. Therefore, informal justice is characterized by the need for the replacement of values which were disturbed by a wrongdoing in order to stabilize the cosmic flow, and the need for social reconciliation to ensure continued harmony within the community. Penalties negotiated between a local tribunal and the parties reflect the belief that a wrongdoing creates a debt that must be repaid not only to the victim but also to the wider community. Every effort is thus made to mediate proceedings, and it is expected that the opposing party will act in a forgiving manner and seek to agree upon a compensation, thus paving the way for peaceful relations in the future (Zifcak, 2004; Hohe&Nixon, 2003). These ancient narratives, myths and rituals are a source of, and influence on, local justice systems and principles, along with stories of more recent historical experience recited by customary elders (Zifcak, 2004). Decisions reached with local authorities in turn become part of the body of local law, to be referenced in future dispute resolutions and relied upon by villagers in the maintenance of their rights (JSMP, 2002).

III. Informal Justice Processes in Cases of Domestic Violence

The procedures of dispensing local justice also share a number of similarities. Informal processes usually involve each of the parties providing their version of the events, a process of mediation or arbitration where family elders or community leaders decide who is at fault and then oversee an agreement. Local agreements most commonly result in the payment of compensation but can include other sanctions such as oral or written undertakings to not re-offend, community work, or public shaming. Where an agreement between the parties is reached, it is generally sealed by symbolic acts of reconciliation which includes most often drinking or eating together (Graydon, 2005). The following chapter describes these processes, as applied in cases of domestic violence, discusses their advantages and disadvantages and identifies central authorities in the administration of local justice.

1) Local administrators of justice

The literature identifies three central figures regarding local dispute resolution: the Chefe de Suco, Chefe de Aldeia and Lian Nain. Besides these three main figures, a number of other local authorities such as church representatives and village elders are also identified as conducting local justice processes. In particular in cases of domestic violence, however, usually the first attempt at resolving such an issue is undertaken by family members of the victim and the perpetrator. Family elders, the families' Lian Nain or the families' spokespersons therefore can play a crucial role in resolving cases of domestic violence. The community's Lian Nain, the Chefe de Aldeia or Chefe de Suco usually only become involved once family mediation has failed (Swaine, 2003; UNFPA, 2005; Rede Feto, 2009). This is confirmed by a recent survey of the Asia Foundation (2008) according to which Aldeia chiefs (26%), Suco chiefs (22%), families (22%) and elders (16%) are the most common authorities approached to resolve domestic violence issues. Despite domestic violence being criminalized, only 7% of respondents said they first contacted the police, confirming Timorese prefer mediation processes in cases of domestic violence to remain in the realm of families and communities.

As women rarely hold any of the described positions, most family or community authorities involved in dispute resolution are men (USAID, 2004; Swaine, 2003) with an estimated 2% of local authorities responsible for dispute resolution in Timor-Leste being women (OPE, 2007). In many areas, for instance in Liquica district, women are prohibited from holding traditional leadership positions such as that of the Lian Nain (Myrntinen et al., 2010). Even in matrilineal clans, women are often not necessarily expected to perform leadership roles. This lack of women local leaders is seen by some as impacting on the treatment of women in local justice processes, though the impact can neither be quantified nor definitively proven (OPE, 2007).

It is important to note that in Timor-Leste, the political or "worldly" domain is not the only source of dispute resolution authority since within Timorese communities, political authority is contrasted with, and often subject to, appeals of a supernatural character. This interaction between political authority and spiritual beliefs can have a strong impact on the nature of local justice processes and outcomes. At the community level, a ritual authority is responsible for

contact with the ancestors, while political authorities are responsible for the political and profane world. They are the executives, responsible for the maintenance of judicial order and external relations. As such, the political authority is the focal point for the “outside” society (Hohe&Nixon, 2003). Ospina and Hohe (2001) found many similar examples for this dualistic concept of power across different districts, concluding that the majority of the rural population still orders their world according to this paradigm. It must be noted, however, that this dualistic power structure is not necessarily universal in Timor-Leste. Nixon (2008b) points out that in some parts of Oecussi, ideally – but not necessarily – ritual and political authority overlap.

- Ritual authorities

The Lian Nain – and their analog in non-Tetum speaking communities, such as the Rosatan in Tetum Terik language communities – are the custodians and interpreters of Timorese animistic cosmology. They are the “owners of the word” and they play a central role in the resolution of local disputes. In doing so, they seek to negotiate the relationship between communities and their material as well as spiritual environment which is key to a community’s survival (Marriot, 2010; Hohe&Nixon, 2003). While in some instances, Lian Nain are chosen by the community due to their mediation skills, more typically, the Lian Nain hold that position as a result of their family lineage and the powers that have been vested in them from the ancestors (Swaine, 2003).

The Lian Nain are thought to know the history of the community and of families, including their marriage and kinship relations which often determine the amount of compensation to be paid for a crime. They are connected to the sacred sphere and know the rules the ancestors have set, providing them with the competence to speak the law and make decisions for society. Yet, they are not supposed to be connected to the outside world and therefore only pass on their decisions to the political authorities. As a result, Timorese ritual authorities are often seen by outsiders to play a minor role while in reality, they can have immense influence and power. In some communities, the last agreement to a decision has to be made by the ritual authority, rendering the political authority inferior to the ritual powers (Hohe&Nixon, 2003; Hohe, 2003; Ospina&Hohe, 2001). In other contexts, it is emphasized that the final decision must be based on a consensus of all the law experts, including both ritual and political authorities in order to assure that a decision is in harmony with the different aspects of the cosmos (Hohe, 2003).

While the majority of the literature focuses on the Lian Nain as ritual authority, Trinidad and Castro (2007) identify a second figure, the Dato. The Dato is described as the authority connected to the spiritual world who makes decisions based on the ancestral order and determines social norms. According to these authors, in a local justice process, the Dato must approve that a decision or agreement is in accordance with the spirit world while the Lian Nain must approve that it is in accordance with historical precedents and tradition. The political authority, in turn, acts as witness and gives final approval. It should be noted that Trinidad and Castro’s paper is the only paper reviewed which refers to the Dato in this way. While very little of the literature mentions the Dato at all, Swaine (2003) refers to the Dato as another term for Lian Nain, thus contradicting the above definition of Trinidad and Castro, and exemplifying how incomplete the available information on traditional authority structures and figures in Timor-Leste is.

Another example of a lack of information concerns the role of the Church in dispute resolution. Marriott (2001) argues that in some areas, Catholic priests perform a similar role as the Lian Nain, and appear to be displacing other actors in dispute resolution. While it is clear the Catholic Church plays an active role in dispute resolution – UNFPA (2005) for instance finds that church officials are involved at various stages of dispute resolution in around 30% of cases – priests are generally reported to attend local justice proceedings as witnesses or to make suggestions, not as decision-takers (Mearns, 2002; Grenfell, 2006; Ospina&Hohe, 2001; Alves et al., 2009).

- Political authorities

The foremost political authorities at the local level in Timor are the elected village and hamlet chiefs, the *Chefe de Suco* and *Chefe de Aldeia*, established as “community authorities” by Decree Law No. 5 in 2004. Some authors, such as Zifcak (2004) argue that while political and ritual authorities frequently act in concert, to a significant degree, the responsibility for local dispute resolution and substantive decision-making has shifted from the Lian Nain to the *Chefe de Suco* and *Chefe de Aldeia*.

Chiefs (*Chefes*) are often approached when neither families nor Lian Nain succeed in resolving a case (Alves et al., 2009). While in some contexts, the political authority’s acceptance of agreements is necessary to legitimize the resolution of disputes (Trindade&Castro, 2007), chiefs are never the ones to recount history, as this domain is reserved for the Lian Nain. Since the political authority represents the link to the outside world, the village chief is eventually the one taking a case up to a higher entity, such as the police (Hohe&Nixon, 2003).

While the Law on Community Authorities requires chiefs to be chosen through elections, elected chiefs may come from specific “*Liurai*” families who hold hereditary privileges for political authority (Hohe&Nixon, 2003; USAID, 2004). The village chief therefore represents the junction point where clandestine powers, traditional political concepts and the modern outside world run together (Ospina&Hohe, 2001). Those *Liurai* who have not been elected to the office of chief are still considered legitimate in many rural settings and are able to exercise influence on local people while elected local leaders often maintain close relationships with them (Trindade&Castro, 2007; Cummins, 2010).

While the literature clearly identifies the Lian Nain and the village and hamlet chiefs as the most powerful actors in dispute resolution, the power relation among these actors remains unclear. It is unclear how far decision-making power has shifted from the Lian Nain to the chiefs and in how far ritual authorities are still able to control local justice processes. The significance of other involved actors, such as the Catholic Church, the *Dato* or the *Liurai* also requires further research.

2) Local justice proceedings

Local justice processes in cases of domestic violence generally start at the family level and are usually initiated by the woman’s family (Alves et al., 2009; Swaine, 2003; UNFPA, 2005; USAID, 2009). Since marriage is not only seen as the alliance between two individuals, but seals

an intricate set of relationships, obligations and reciprocity between the bride's and groom's extended families, cases of domestic violence become the responsibility of the respective family heads. Usually, the conflict is brought to a more public level only when family mediation fails (Rede Feto, 2009; Hohe&Nixon, 2003; Ospina&Hohe, 2001). UNFPA (2005) found that of those women seeking help from somebody in cases of domestic abuse, the majority chose to inform female relatives (50.8%) or friends (50.7%) while 84% strongly agreed with the statement "family problems should only be discussed with people in the family".

Dispute resolution at the family level usually entails members of the family coming together to discuss the issue, sometimes with the help of the family's spokesmen, the family Lian Nain or family elders. A hearing takes place where the victim and the accused present their stories while statements from witnesses may also be heard. The administrators of the hearing weigh the stories presented, and apportion blame to one or both parties with the negotiations and decisions normally being dominated by men (Swaine, 2003; UNFPA, 2005; Rede Feto, 2009). Often, these negotiations involve the family of the victim asking for compensation to be paid by the perpetrator and/or his family (Swaine, 2003; Grenfell, 2006; Mearns, 2002; Butt et al., 2009). The literature identifies different ways in which the payment of compensation is administered. For instance, in the districts of Ainaro and Cova Lima, Swaine (2003) encountered cases in which the perpetrator himself was asked to pay compensation to the victim's family as well as cases in which an exchange of goods between the two families took place (though "family" was not defined).

Thus, local justice processes do not necessarily involve actors from the wider community but often occur wholly or initially within the family. The involvement and influence of the victim's family is instrumental in women's access to and achievement of justice as it is usually family members that decide whether to utilize family, local justice or police structures. Without family support, certain women interviewed by Swaine (2003) did not feel confident or empowered to approach local justice.

If no agreement can be found at the family level, the victim or their family can take the case to higher levels of local justice, including hamlet, village, and sub-district levels (Swaine, 2003; UNFPA, 2005; Alves et al., 2009; Grenfell, 2006; UNFPA, 2005). While in some Sucos, dispute resolution processes follow a strict hierarchy – sometimes described as "climbing a ladder", where an unresolved dispute moves progressively "up" from the extended family to Aldeia to Suco and ultimately to sub-district level (Cummins, 2010) – in other contexts, women or their families might seek justice directly at the Aldeia or Suco level, bypassing one or all of the lower levels. The authority approached on a higher level, however, will usually take into account the work of the previous authority (Swaine, 2003). The police are generally considered to be the last resort after all traditional processes have been exhausted (Alves et al., 2009; Grenfell, 2006).

When a case is reported to the village or hamlet chief, dispute resolution meetings are usually set up the next day or in the very near future. The time issue is important; social discord threatens the continuation of life in the community as it could attract the wrath of the ancestors (Hohe&Nixon, 2003). The composition of these meetings varies – while in some areas strictly traditional authorities are present, in others "society representatives" such as the Suco

Council or Church representatives may also take part (Hohe, 2003; Butt et al., 2009), or the chief may seek the assistance of a “council of elders” (Grenfell, 2006). Research conducted in Covalima and Bobonaro Districts found village leaders in some communities chose a council of independent individuals to resolve disputes such as domestic violence. If this council could not resolve the matter, it would be submitted to community leaders at the district level, who would then select a council. In some cases, the District Administrator may be involved as observer or mediator (Alves et al., 2009). In many Timorese communities the respective authority who hears a dispute receives payment for their services, usually in the form of an animal, provided by the perpetrator (Butt et al., 2009).

Members of the community usually attend such meetings as observers and in some contexts they are permitted, even encouraged, to contribute to the discussions (Butt et al., 2009). In other contexts, the actual speaking and negotiating is mainly done by the authorities, particularly the Lian Nain (Hohe, 2003), who weigh the information received from the victim, perpetrator and the witnesses. Here, the role of the victim’s family in defending and speaking out for her can be crucial. However, women from another area are potentially disadvantaged if her family members cannot attend to speak in her favor (Swaine, 2003).

After hearing the case, the approached authority or authorities determine a punishment of the perpetrator. In cases of domestic violence, this can range from receiving moral advice from the elders to the exchange of money or a significant animal or public acts of shaming (UNFPA, 2005). For instance, the husband may be obliged to carry his wife around the village so everybody will know what happened (Swaine, 2003). Often, perpetrators of domestic violence need to speak an oath sanctioned by the Lian Nain or sign an agreement declaring not to repeat the offence (Ospina, 2006; Alves et al., 2009).

The most common outcome if a man is blamed for an incidence of violence against his wife, however, is payment of compensation to the victim's family. It is the victim’s family who receives the compensation since such crimes are seen as an offence against the entire family, not only against the victim as an individual (UNFPA, 2005; Swaine, 2003; Grenfell, 2006). The purpose of such compensation is closely related to a set of spiritual beliefs according to which cases of domestic violence are thought to create a disorder in the world of social relationships, threatening the peaceful living together of a community and affecting the cosmic flow of values. Social or physical harm to another therefore produces a substantial debt for the perpetrator and his family towards the victim’s family or even the whole community. The punishment therefore needs to restore the imbalance of values that has occurred. Once this has been achieved, the way is open to the important stage of reconciliation. This consists of some form of ceremony, usually feasting, which ensures that both sides have re-established a peaceful relationship and that the ancestors are appeased. This means that the perpetrator cannot simply be punished or removed from the community for what he has done, but the two parties need to be reconciled in order to re-establish the cosmic equilibrium. Imprisonment or the imposition of a fine payable to the State will not obviate the necessity to pay one’s debt to the harmed party – potentially leading to situations of “double jeopardy” for those judged, imprisoned or ordered to pay fines by the State, simultaneously judged and found responsible for compensation to the community for the same issue (Swaine, 2003; Hohe&Nixon, 2003;

Mearns, 2002; Hohe, 2003). This is a crucial divide between formal and informal justice systems.

Despite its high social importance, some authors are critical of this system of compensation. For instance, Grenfell (2006) opposes the fact that compensation is made to the family of the woman and not to the victim herself, and the fact that compensation paid by the husband himself effectively penalizes his wife whose economic means which may be based on her husband's are decreased. Some authors point out that while local Timorese systems of justice might give the impression of offering women the option of appeal, in reality, social pressures make appealing a decision from a local leader a practical impossibility, particularly if a ritual authority's decision is seen as sacred – in which case it may not be considered at all. Therefore, while options for appeal are technically available, women may be afraid to anger the authority who made the original decision or may be pressured into accepting the original ruling (OPE, 2007; Swaine, 2003).

3) Critique of local justice systems

In addition to the above mentioned critique of the system of compensation and the lack of realistic options of appeal, further criticism has been voiced regarding processes of local justice in cases of domestic violence, such as the lack of participation and decision-making power of women in these processes, the related enforcement of patriarchal power relations, lack of enforceability of the taken decisions and agreements, and the nature of some of the underlying principles of justice. Despite these controversial issues, local justice remains the dominant mechanism dealing with cases of domestic violence today and there is no reason to believe this role will change in the future – regardless of the formal justice system's status. According to a recent survey (The Asia Foundation, 2008), 83% of Timorese approach local authorities instead of formal justice actors in cases of domestic violence.

- Lack of participation of women

One major area of concern identified by the literature is the lack of women's participation in informal justice hearings with women's participation being minimal and often superficial (ADB, 2005; Rede Feto, 2009). Even when women victims and offenders are able to take part in the discussion of their case, they often feel that their needs and input are ignored and instead, rulings are based on the administrators of justice's own biases regarding women's status in society serving to reinforce the social situation (Grenfell, 2006; Swaine, 2003).

The Asia Foundation (2004) found that while a strong majority of East Timorese believe that women can (63%) and should be able (69%) to speak for themselves in local justice processes, there are major differences in attitude according to geographic lines. While three-quarters of urban citizens say a woman has the option of speaking for herself, only 58% of rural citizens agree, along with 53% in Oecussi and only 39% in the Central region. Similarly, eight in ten urbanites support female participation, while just two-thirds of rural residents do with citizens in Oecussi (52%) and the Central region (48%) being least supportive. A number of case studies support this data. Cummins (2010) finds that in Ainaro and Fatulia only men can speak in dispute resolution ceremonies, including in domestic violence cases, while Alves et al. (2009)

report that in Bobonaro and Covalima, the perpetrator would always be present to answer questions unlike the victim who would be represented by members of her family and thus is unable to speak for herself.

Regarding the districts of Ainaro, Cova Lima and Oecussi, Swaine (2003) explains the fact that more men than women act as ultimate decision-makers in local justice with a common practice of recognizing only those who are given the power to do so by the ancestors, and as a result women are frequently denied a strong role in decision-making. In areas where Community Councils have been established, a female youth representative from the council might be present during a hearing, and might be able to speak. Cummins (2010), however, reports that unlike male youth, it is much less common for women's representatives to be invited to participate or assist in dispute resolution. They are therefore unable to represent women's interests, even in the most serious of domestic violence cases. If women have little influence on decision-making, existing patriarchal attitudes are likely to be reinforced through local judgments. While the process of enforcing social norms may be crucial to the collective interests of a community in the context of the community's socio-cosmic beliefs, this process may entrench underlying values and practices which render vulnerable groups such as women susceptible to violations of their rights (Swaine, 2003; TLAVA, 2009; Graydon, 2005). Nevertheless, it would be wrong to assume that local systems are inherently opposed to change. Custom and tradition are never fixed but rather constantly evolving, thus allowing for a high level of flexibility and adaptability.

- Lack of enforcement for local rulings

Even when a hearing succeeds in putting blame on the perpetrator of domestic violence, the victim cannot be guaranteed the original problem will stop. It has been suggested that awarded fines may not serve as a deterrent if they are not significant enough and may create a risk that wealthier people are able to re-offend without having to fear severe punishment (UNFPA, 2005; O'Reilly&Jevtovic, 2008; Rede Feto, 2009; Swaine, 2003).

In general, local administrators of justice have little power to enforce their rulings. This is so in regard to the actual payment of the agreed-upon compensation as well as the prevention of further violence. There are simply no means available to protect a victim from further abuse (UNFPA, 2005; Swaine, 2003; ADB, 2005). Some women from remote areas interviewed by Swaine (2003) see a role for the police in enforcing local agreements. These women felt that if they had access to the police they would have the power to make the offender pay.

The effectiveness or binding, compelling nature of local agreements fully depends upon the moral authority of the decision-makers and the social pressure generated by the public nature of the proceedings occurring within small communities. The effects of local rulings therefore are hardly predictable and may vary according to the different personalities involved and community dynamics at play (Graydon, 2005; UNICEF, 2009). Social pressure can be highly effective in guiding behavior in Timor-Leste's communities, influencing, for instance, victims' reporting behavior of domestic violence. As described in chapter IV, victims are often reluctant to report a crime in order to protect the good name of their or the abuser's family, particularly since permitting one's family name to be tarnished is thought to cause an imbalance in the

social and ancestral order. As the payment of compensation is thought to be crucial to re-establish such balance, it is noteworthy that social pressure on the perpetrator seems to be less pronounced and/or effective than pressure on victims. The reviewed literature does not address this issue thoroughly and cannot explain why social pressures seem to be more effective in some circumstances than others, requiring further research.

- Justice principles

While local systems of justice are based on the desire to maintain social unity and peace, embedded in a complex set of spiritual beliefs and practices, these principles of justice as applied in domestic violence cases have provoked criticism from some authors.

For instance, violence is not always seen as wrong per se. In some areas such as Lospalos, a distinction between unjustified abuse and justifiable abuse seems to exist. Corcoran-Nantes (2009) found no support for the former but a significant acceptance of the latter. In local mediation processes, the emphasis is often put on the events prior to the violence and on the woman's behavior that might have caused the violence, such as not cooking a meal, or failure to prioritize her responsibilities as a wife or mother. Whoever is seen to be at fault prior to the violence is then blamed for the act of violence – this can be the accused, the victim or both (Corcoran-Nantes, 2009; Swaine, 2003). This focus on who is to blame for the violence in effect demeans the seriousness of the act of violence itself, displaying a lack of appreciation for the seriousness of domestic violence as an offense (Cummins, 2010; Swaine, 2003).

Swaine (2003) furthermore describes local administrators of justice as having “simple solutions” in resolving cases of domestic violence, namely to keep the family together, even in cases of serious violence in order to maintain the social arrangement that was established through the marriage system and payment of the bride price. Local justice processes are therefore being criticized for overlooking criminal offenses in the interest of maintaining social norms and an established social system, which may force victims of domestic violence to remain in violent relationships (Cummins, 2010; O'Reilly&Jevtovic, 2008). On the other hand, the marriage system is described as being at the centre of Timorese social networks, creating the basis for peaceful relations between families and establishing a network of solidarity between them (Babo-Soares, 2009; Ospina, 2006; Alves, 2009; Mearns, 2002). The aim of local law to keep the family together therefore should not be viewed in simplistic terms but must be understood in the context of the collectivist nature of local informal systems.

4) Advantages of local justice systems

Despite these perceived negative aspects, local justice mechanisms continue to be highly regarded throughout Timor-Leste. Surveys of the Asia Foundation (2004; 2008) show that while confidence in the fairness of informal and formal justice dropped between 2004 and 2008, a majority of 85% remain confident in local justice mechanisms, compared to 77% who are confident in the fairness of the formal justice system, and 90% who are confident in the police. In 2008, an overwhelming 92% say they are more comfortable with the informal system than the formal court system – an 8% increase compared to 2004, when 86% said that informal

justice protects rights, including women's rights. Formal courts are perceived to be less accessible, less fair, less protective of rights, and less reflective of community values. Yet, 85% of those who have heard of a formal court before¹⁰ would want a judge from the formal court system to come to their area to help settle disputes – a clear increase compared to four years earlier when only 52% approved of such an option.

The reasons for this favorable assessment of informal justice as identified by the literature include its accessibility (local justice is available in each hamlet and village, while formal justice institutions might be too distant for many villagers to reach), affordability (many villagers are unable to afford a formal process while local systems of law are seen to be relatively inexpensive), familiarity (Timor-Leste's formal justice system only developed over the last eight years) and the use of local languages, speed and legitimacy (Nixon, 2008; Butt et al., 2009; Graydon, 2005; OPE, 2007; Grenfell, 2006).

Furthermore, some features of the state justice system are at odds with local culture and anticipated outcomes, such as the need for reconciliation between the parties which is not achieved within the formal system (O'Reilly&Jevtovic, 2008). Local mechanisms on the other hand are perceived to promote strong family relationships and a sense of community values, both of which are crucial in the context of small, close-knit communities (Graydon, 2005; Butt et al., 2009).

In this regard, local justice is capable of taking into account the spiritual beliefs of a community, which impinge directly on the delivery of justice and the resolution of disputes (Mearns, 2002). Lisan is not merely an alternative form of dispute resolution, but describes a different worldview that acknowledges the continuing presence of the ancestors within daily life and the principle of maintaining communal balance through long-term reciprocal exchange. Failure to observe these rituals are thought to have serious negative consequences such as the spread of disease, harvest failure or natural disasters (Cummins, 2010; World Bank, 2010b; UNICEF, 2009). With local justice processes being in accord with community traditions and beliefs, local decision-makers are therefore perceived to be better able to generate regionally appropriate decisions (Butt et al., 2009).

¹⁰ 61% of respondents of the same survey said they had heard of a formal court before.

IV. Barriers to Women's Access to Formal Justice

In their survey on community perceptions of the police, Chinn and Everett (2008) found that citizens and community leaders do not display clear preferences for how to deal with incidents of domestic violence, with responses spread fairly evenly across several approaches. These include seeking assistance from the police, the Suco Council elder, other family or community members, and negotiating directly with the husband. The diversity of responses was greater than for any other type of crime and may indicate that there is less clarity about which authority can provide an appropriate solution for this type of violence, or is perceived to be able to do so. The majority of preferred approaches, however, are of an informal nature (80%) with only around one-fifth of citizens preferring to go to the police. While male and female respondents express similar preferences, community leaders have a somewhat stronger preference (29%) for initial involvement of the police. These findings correspond to those of JSMP (2006b) according to which 75% of domestic violence clients choose to resolve their cases through mediation, whether by the family, police or other mediators, with only 25% proceeding through the formal justice system.

Of the cases which are reported to the police, however, only a fraction proceeds to court. Part of the reason for this phenomenon, as some authors report, is because police and prosecutors refer cases back to be mediated at the local level. On the other hand, victims of domestic violence seem highly reluctant to engage with the formal justice process (JSMP, 2006b; 2005). For instance, in 2003 there were 179 domestic violence cases and 42 sexual violence cases reported to the Dili District Police, but 104 cases were dropped on the women's initiative (De Sousa, 2005). The reasons for this reluctance as identified by the literature are numerous, including economic factors, family pressure, lack of information, and lack of protection and follow-up services for victims of domestic violence, while economic factors seem to be central to the considerations of many women. JSMP (2006b) found that among the women referred to their Victim Support Unit, those who chose not to pursue cases of gender-based and domestic violence in court, 50% were influenced primarily by economic factors, 17% by pressure from their families, 17% by fear of the court process, 17% by a fear of separation or divorce, and 8% by pressure from the suspect.

1) Referral of cases to the informal system

While a recent report cites increasing awareness among PNTL officers that domestic violence cases brought to them should not be referred to informal mechanisms (UNHCHR&UNMIT, 2010), in practice women who seek help from the police may be sent back to take their cases to the informal system and are persuaded to withdraw formal complaints (Rede Feto, 2009; Grenfell, 2009; Bere, 2005); less than a quarter of cases of gender-based violence reported to the police are sent to prosecution in the court system (Grenfell, 2009).

Some authors (e.g. Cummins, 2010) explain this by referring to a general distinction drawn by some police officers between what they call "small" and "big" cases. A JSMP (2005b) study found that while all interviewed police were aware that domestic violence is a crime and should

be processed through the formal justice system, many nevertheless said they referred some “small cases” to the informal system. Only in cases where the violence caused serious injury did they take the case forward. This corresponds with Cummins’ (2010: 147) recent findings that police may officers consider Lisan appropriate for “small problems” such as domestic violence, but inappropriate for “big problems” such as murder. She quotes a chief of police: “For a small problem, like a problem inside the house, when there is violence between husband and wife, [...] between parents and children, this we solve through the traditions we have [...]”. Swaine (2003) even reports that some cases in the past which reached the courts were similarly sent back to local justice mechanisms by judges and prosecutors.

Women therefore may not be reassured members of the formal system will always take their cases seriously. They may believe instead the violence they have experienced is not serious enough to be dealt with by the formal system (ADB, 2005; Swaine, 2003). In addition to that, once returning to informal justice mechanisms, women may be penalized for not bringing the problem to the attention of local leaders before approaching the formal system (OPE, 2007; Graydon, 2005). Some community leaders argue that a person who bypasses local law disrespects them as an authority and Lisan in general. In order to demonstrate their unhappiness and encourage people to use local law first, these community leaders demanded women who brought the case to the police pay an initial penalty before they would hear their case (Swaine, 2003; USAID, 2009).

Furthermore, PNTL are reported to use the maximum 72-hour detention period before charges must be laid as time for a victim to decide what they want to do about the case – to prosecute a perpetrator according to formal justice or to have him released (JSMP, 2005b; Bere, 2005). PNTL also seem to understand their role as one of mediator in domestic violence cases (JSMP, 2005b; Graydon, 2005). Swaine (2003) explains how in some cases, police facilitate a joint statement between husband and wife in which the perpetrator would promise not to repeat his actions, including a clause that if he did, next time the police would use the statement as a basis for sending him to jail. In this context, women reported that while they did not necessarily want their husbands to go to jail and court, they instead wanted to use the police to scare their husbands and end the abuse suffered at home.

2) Economic dependence

The second major aspect impacting on women’s access to formal justice is widely recognized to relate to women’s economic dependency on their husbands. Both in urban and rural areas, the majority of Timorese women are reliant on their husbands for economic support for themselves and their immediate family (Swaine, 2003; Alves et al., 2009). As traditional gender roles in terms of division of labor persist, and women are most often the housewives and men the breadwinners in the family, their imprisonment would mean a loss of income for the whole family. The prospect of their husband being sent to prison when approaching the police may therefore deter many women from seeking justice through the formal system. Consequently, some women rather risk more violence than economic insecurity and often end up attempting to withdraw complaints, preferring to solve problems through local justice (Bye, 2005; JSMP, 2004; Bere, 2005).

The role of the victim's family in providing economic support can therefore be central to a woman's decision whether to approach formal justice or not. Yet, according to a recent survey, only one in five women have family members who could support her financially if she needed it (NDS et al., 2010). Women who live far away from their own family are at an even greater disadvantage. As Swaine (2003) points out, West Timorese women married in Timor-Leste are the most worrying cases, as the geographic and political distance makes it difficult for them to contact families when in need of support. This problem is compounded by a country-wide lack of confidential and safe places for female victims of violence, particularly in rural areas, and the absence of any national social welfare system that would offer an alternative to such dependence. Women who are unable to return to their families therefore generally lack any alternative support system (Mearns, 2002; Bye, 2005). Bye (2005) therefore concludes that in order to guarantee access to justice for women victims, it is more important to focus on the woman's surviving abilities and on creating alternative income possibilities for the wife than only focusing on punishing the perpetrator.

Besides leaving women without economic support, punishing the perpetrator with imprisonment can have a number of negative side effects since imprisonment may not be considered an appropriate remedy by many Timorese. While a woman who reports her husband to the police is left at risk of abandonment and economic insecurity, the perpetrator on the other hand will have the "privilege" of receiving a free place to stay and free food in jail. Imprisonment may be seen as perverting the point of punishing the perpetrator (Graydon, 2005; USAID, 2009). Furthermore, a victim's family might not be interested in the imprisonment of the perpetrator since this is likely to deny the family compensation they would receive through informal processes (Nixon, 2008). It is therefore not surprising that in cases of domestic violence only 43% believe the perpetrator should go to jail, while 37% think compensation is adequate. Younger, more educated East Timorese are much more likely to support jail for a man who hurts his wife, while older and less educated citizens believe compensation is preferable (The Asia Foundation, 2004).

3) Social pressure

While some women may prefer to take their cases to the informal system, others seem to be pressured by their families or local authority figures to resolve domestic violence cases by informal means, facing repercussions not only from their husbands, but also from their husband's family or their own family (The Asia Foundation, 2004; OPE, 2007; Cummins, 2010). Some administrators of local justice have been reported to instruct victims of domestic violence not to go to the police, penalizing those who bypass local justice, for instance by demanding a fine to be paid by those bypassing the informal system (Swaine, 2003; Graydon, 2005).

Since formal justice may entail a prison sentence for the offender, the formal system may be seen as a gateway to divorce, particularly since domestic violence is now a public crime. Local systems, on the other hand, generally aim at reconciling and keeping families together. Separation from a violent partner is usually not an option and women are not supported if they wish to divorce (OPE, 2007; ADB, 2005; Swaine, 2003; USAID; 2009). The influence of the Catholic church may also be relevant here as many victims of domestic violence who turn to

priests or nuns for help receive the advice to be patient with their husbands and to serve them better in order not to provoke disputes (Dewi, 2002; Bye, 2005; USAID, 2004).

Yet, as pointed out above, the issue of marriage and divorce should not be viewed in simplistic terms. It is the marriage system that lies at the centre of Timorese social networks, creating the basis for peaceful relations between families and a network of solidarity. In the context of the collectivist nature of Timorese society, the institution of marriage is respected above and beyond the individuals involved. The opposition of local systems towards separation of husband and wife must be understood within this wider context. It is therefore unclear whether women victims, while wanting the violence to stop, would in fact want to separate from their husbands, considering not only the social realities of Timorese society, but also economic pressures that women face when separating from their husband.

According to some authors (Hynes et al., 2004; JSMP, 2004), pressure on women not to approach formal justice seems to be closely related to the widespread belief that domestic problems should be solved and discussed only within the family. A majority of Timorese surveyed by the Asia Foundation (2004) considers domestic violence a “family matter” to be dealt with through the local Lisan process; an assessment confirmed by a more recent survey, according to which Timorese prefer mediation processes remain in the realm of families and communities (The Asia Foundation, 2008). Since a woman’s marriage is part of the collective experience of maintaining relations between wife-giver (the family of the woman) and wife-taker (the family of the husband) groups, a married couple’s relationship and everything that happens within it is seen within the context of the two families’ relationships and that of the community as a whole. In this context, the experience of violence is not seen as an individual experience (Swaine, 2003).

As a result, and common reaction of women victims around the world, Timorese women often are reluctant to report a crime, feeling they should not discuss the issue with people outside the family. The desire to protect the good name of their or the abuser’s family which may be seriously tarnished if a crime of domestic violence is made public and reported to the police (UNFPA, 2005; JSMP, 2005b; 2004) makes for a strong incentive to resolve a dispute in accordance with traditional justice using local values and reconcile with the perpetrator.¹¹ This is especially true since, according to local beliefs, permitting one’s family name to be tarnished or failing to comply with established norms causes an imbalance in the social and ancestral order which could attract the wrath of the ancestors sanctioning individual transgressors, their families or even the entire community (Nixon, 2008; Trindade&Castro, 2007). Conflict and crime are communal problems which place community members at risk of supernatural sanctions. This explains communal pressures on disputing parties to resolve an issue expediently and harmoniously (Trindade&Castro, 2007; Mearns, 2002) and explains why domestic violence cases are often kept within the family (Rede Feto, 2009).

While the social reality in Timorese communities stipulates that reconciliation between husband and wife are of an utmost priority in order to maintain social networks, hardly any

¹¹ It should be noted that this is by no means a phenomenon unique to Timor-Leste; however this section details how this universal phenomenon is manifested specifically in Timor-Leste.

research has been concerned with the question how these social pressures could be applied to encourage men to halt abuse. There is thus a need for future research to investigate the dynamics of social pressure in more detail. In light of the need for individuals to maintain the social networks in which they are embedded, rendering divorce an often unfeasible solution to the problem of domestic violence, a more promising approach may be to utilize the existing social framework in order to increase positive pressures on men. For such an approach to be feasible, the dynamics, nature and forms of social pressure in cases of domestic violence need to be investigated further.

4) Perception of domestic violence

As described above, it is often not the victim's decision whether to access the formal or informal justice system. The decision therefore strongly depends on how domestic violence is perceived within the community to which the victim belongs. In this regard, local justice administrators in a similar fashion as police often draw a distinction between what they define as "small" and "big" offences, with usually only the latter being referred to the police. While generally, big offences relate to disputes with a high potential for escalation and social unrest – such as murder or major land disputes – domestic violence is considered a small problem and relatively normal (Chinn&Everett, 2008; Grenfell, 2009; Bye, 2005; Swaine, 2003). This means that there are actors at both the formal and informal level potentially working to minimize the number of domestic violence cases handled by the formal system creating a "double barrier" for women trying to access the formal justice system.

During consultations on the draft domestic violence law in Ainaro district, OPE (2007) found a generally high tolerance of the consequences of domestic violence. Incidents such as "loss or breaking of a part of a body" or "beating that result[s] in injury, swelling or sprain" were seen by some communities as only moderately severe. Only if the violence was continuously repeated or particularly severe, then the problem would be seen as big enough to be referred to police. Similarly, Cummins (2010) reports that often, the point at which an offence becomes "big" is described as when blood had been spilled.

These findings are supported by data from the Asia Foundation (2004; 2008). While in 2004 the majority of Timorese (75%) thought domestic violence is wrong, the 2008 survey showed a drastic change in attitude with only 34% believing that a man has no right to hit his wife. Interestingly, this view was shared by more women than men, while according to the 2004 survey, those most opposed to domestic violence were younger and educated women and residents of the Central region, Oecussi and Baucau. Those who are more likely to believe that domestic violence is acceptable are those over age 50, younger men, urbanites and those without any formal education. Over half the public (56%) feel that if a man beats his wife and seriously hurts her, the case should be addressed by the informal system. Just four in ten believe that such a case should be heard in the formal court. This attitude is reflected in the number of respondents who actually approached the police in a case of domestic violence – a mere 7% compared to 83% who approached their family or a local authority. This data suggests

that domestic violence may not be perceived as an offence serious enough to be dealt with in the formal system.

While traditionally, Lisan does not distinguish between civil and criminal matters but deals with both issues as required, some communities have started to apply these legal terms to Lisan. Cummins (2010) describes how in some communities in Ainaro and Fatulia, a third category of offence has been created, referring to domestic violence as “*violensia sivil*”. The use of this term shows that domestic violence is viewed as different in quality and generally less severe than other violence, leading to cases of domestic violence being resolved via Lisan. Cummins (2010: 154-5) quotes one Chefe de Aldeia who explains that “regarding violence, criminal violence, we cannot adjudicate. That goes to the police. [But] if it is domestic violence, we resolve that within the Aldeia, via Lisan.”

Because female victims often lack a voice, it is rarely the women themselves who decide whether an offence is “big enough” and should go to the police but rather her family or local authority figures (Cummins, 2010), while these actors may base their decision on what they perceive to be best for the whole community rather than the individual. Many women may not realize the abuse they experience is a crime, but may perceive it as a normal and unavoidable part of Timorese society, remaining silent and tolerating the abuse (Alves et al., 2009; JSMP, 2004; UNFPA, 2005). Considering violence in a domestic relationship as normal or even inevitable seems to be a common attitude in Timor-Leste and is reflected in the Tetum saying “*bikan ho kanuru baku malu*”, “a dish and a spoon will hit each other” (UNFPA, 2005).

In a male dominated society as Timor-Leste, this acceptance of violence by women and men means if a woman has not fulfilled her expected role as a housewife and mother, the man may feel he has a right to beat her – to educate her (Bye, 2005). Different surveys support this conclusion to varying degrees. The Demography and Health Survey of 2009 found that an astonishing 86% of women and 80% of men believe that a husband is justified in beating his wife for neglecting her duties such as burning the food, refusing to have intercourse with him, or neglecting the children (NSD et al., 2010). In another study, 51% of respondents strongly agreed that “a man has a good reason to hit his wife if she disobeys him” (JSMP, 2004), while a smaller number (21%), but nevertheless considerable minority, of those surveyed by the Asia Foundation (2008) feels that a man has the right to hit his wife if she misbehaves. Yet, only 34% disapprove of this statement while the highest number of respondents (44%) says it depends on each case individually. Violence may then be seen as an acceptable way of disciplining or educating wives or children (Alves, 2009; USAID, 2004).

Some literature affirms that a third of those who find domestic violence acceptable believe it is permissible due to the bride price¹² which the man’s family has paid to the woman’s family (See The Asia Foundation, 2004). This terminology (“accept”, “believe”, “permissible”), however, is problematic since it may carry different interpretations depending on the cultural

¹² The literature often refers to the bride price using the Tetum term “*barlake*” (See e.g. OPE, 2007; Rede Feto, 2009). Yet, *barlake* is a broad concept with varied meanings across Timor-Leste and goes beyond the mere payment of the bride price, representing a key element in defining the relation between the wife’s and husband’s families (Myrntinen et al., 2010). This literature review therefore uses the term “bride price”.

context, especially when this interpretation does not use the legal framework definition of domestic violence as point of reference. Another study found that only 9% of women felt that the bride price had a negative influence on how their husband treated them while 38% stated that it had a positive effect (UNFPA, 2005). The belief that there is a direct relationship between the custom of paying a bride price and the increase in the incidence of domestic violence in Timor-Leste – a consistent theme which runs through the literature (Corcoran-Nantes, 2009; Rede Feto, 2009; Swaine, 2003; The Asia Foundation, 2004) – therefore cannot be proven and may represent an emotional and generalized interpretation of reality. More in-depth research is required before the effects of the bride price on domestic violence can be determined.

Authors such as Babo-Soares (2009) warn against interpreting the norms of the marriage system in purely economic terms. This author describes marriage as the main nucleus of Timorese social relationships, with two families or clans forming a socio-politic, economic and cultural alliance. In this context, the bride price is required to balance the woman's value based on her fertility and labor which flows from her family to the man's. Hohe and Nixon (2003) point out that the marriage system implies an exchange of goods rather than a one-sided payment. Speaking generally, while the man's family gives goods representing maleness and security such as cattle, buffaloes and money to the woman's family, they return goods representing femaleness and fertility, such as gold, weavings and pigs. The flow of values represented in the exchange of goods creates a socio-cosmic balance assuring families' fertility as well as security. It creates the basis for peaceful relations between the two families, establishing strong social linkages and a network of solidarity between two clans/families, representing a form of social safety net (Ospina, 2006; Alves, 2009; Mearns, 2002).

A disruption of these relations can have serious consequences for the entire community, making the relations between families a central concern for local administrators of justice. Retaining good relations between families may then be perceived as more important to the survival of the community than an individual's experience of violence. Under the full weight of commitments and bonds established between families with the bride price, women may seek to avoid "creating" problems by not seeking justice for crimes of violence (Alves et al., 2009). Considering the complex nature of the marriage system and its important role within communities, further research is required to determine the role of the bride price in creating barriers to women's access to justice. It remains unclear in how far the payment of the bride price is in fact perceived as the "purchase" of a woman, and how socio-economic changes, urbanization, and raising amounts of bride prices are influencing this perception.

5) Accessibility and speed of the formal justice system

As many authors report, practical considerations such as a community's distance to formal justice institutions, their cost and the speed of processing cases, also seem to play a big role when it comes to women's access to justice. Few community members in rural Timor-Leste own mobile phones, and given the distance of many communities to the next police station, transport might not be available or unaffordable (Cummins, 2010; Swaine, 2003; JSMP, 2004; UNFPA, 2005). The lack of accessibility of formal legal institutions is confirmed by data of the Asia Foundation (2008) according to which 60% of respondents who have heard of a formal

court before say they do not have a court house in close enough proximity to use if necessary. Without access to any support systems, this becomes a particular problem for women who generally have very limited financial means available to bring their cases to court (Rede Feto, 2009).

It is impossible to know how many “silent cases” exist in which the victims, but for these material constraints, would prefer to use the formal justice system (Cummins, 2010). Higher reporting rates in districts with courts suggest that when people have access to formal judicial institutions in close proximity they are more likely to utilize the formal justice system. The presence of VPU officers has a similar effect on the number of reported cases which indicates that a strengthening of this unit at the sub-district level is likely to improve reporting behavior (UNHCHR&UNMIT, 2010).¹³

Yet, even when victims do pursue their cases through the formal justice system, problems persist, in particular regarding the slow resolution of cases involving gender-based violence. It is often between six months and one year before such cases are finalized by the court which may cause women to drop their cases or may act as a deterrent to female victims seeking justice in the first place (World Bank, 2006; JSMP, 2005; 2006b).

While the formal legal system is generally perceived to be less accessible, more complex, and a greater financial risk than local justice mechanisms (The Asia Foundation, 2004), it is important to note that the cost involved in local justice processes can also prohibit women from using these mechanisms. For instance, in some areas, it is expected to bring betel nut and cigarettes for the Lian Nain presiding over the hearing. Also, in order to “close the shame” and reconcile, usually the guilty party will have to provide a meal, in some cases for the whole village. Even if the husband is found guilty, his wife as member of his household will end up equally bearing this significant financial burden and may thus be discouraged from seeking justice at all (Swaine, 2003).

6) Lack of understanding regarding the formal system

Female victims of violence often have little knowledge about legal processes, and are unlikely to understand many formal legal procedures, including how to bring their cases to the formal system (Rede Feto, 2009; JSMP, 2009; UNFPA, 2005). Particularly in rural Timor-Leste there is very low awareness regarding how to engage with actors of the formal legal system, with only 34% having heard of public prosecutors before, 41% of lawyers, and 59% of formal courts. As a result, 92% say they are more comfortable with local justice processes than the formal system (The Asia Foundation, 2004; 2008).

This lack of knowledge also extends to the substance of the law. While more than three-quarters of East Timorese understand that it is illegal for a man to beat his wife if he disapproves of her behavior, significant minorities remain unaware of these provisions.

¹³ This statement is based on data collected by UNMIT’s Human Rights and Transitional Justice Section, yet, the report does not specify whether reporting rates are on a per capita basis or based on raw numbers. In the latter case, higher reporting rates could simply be explained by a higher population in districts with courts.

Education and geography are the most crucial factors. Younger, educated citizens have the best awareness of the law, as well as Dili residents while citizens in Oecussi and the Western regions are less aware of legal provisions. In 2004, the laws against domestic violence were most familiar in Baucau (82%) and the Central region (84%), but less so in the East (71%) and the West (69%) (The Asia Foundation, 2004). This lack of legal understanding is compounded by some misunderstandings by certain PNTL officers who do not fully or correctly inform women about procedures and entitlements under the formal system, instead sending cases back to the local system (Swaine, 2003).

V. Interaction Between Formal and Informal Justice Systems

Regarding popular attitudes towards the interaction of the two systems, Timorese seem to recognize a role for both state and non-state actors in the maintenance of law and order (World Bank, 2010), and communities often see no contradiction in seeking justice through both systems at the same time (JSMP, 2006; Trindade&Castro, 2007). Sometimes one system is approached and, if the response or outcome of the initial approach is considered unsatisfactory, then another will be approached (Wilson, 2010). East Timorese therefore clearly display a concept of justice which involves a continuum encompassing both the informal and the formal legal system, in which generally a division between “minor” offenses, to be dealt with locally, and “serious” issues, to be forwarded to the formal system, applies (The Asia Foundation, 2004). According to Swaine (2003), many women think that a forum shopping approach, i.e. engaging both systems in order to maximize their chances of success, is the most fruitful approach for them when seeking justice. While these women see the police as having more capacity than informal authorities to scare violent husbands into stopping their actions and compelling them to pay an agreed-upon compensation, having the matter resolved by informal means guarantees that the process is culturally and socially acceptable.

1) Lack of guidelines for interaction

While it may not be recognizable straight away, in practice there is a close relationship between formal and informal justice systems in Timor-Leste. First and foremost, this relates to the above described practice cases brought back to local justice processes and victims withdrawing formal charges to approach the informal system. The interaction between the police and formal courts on the one hand and local law on the other hand, however, extends far beyond that – yet mostly in an unregulated and ad hoc fashion.

For instance, a recent survey found that the vast majority of PNTL officers (85%) say they play a role in informal dispute resolution, as witnesses, observers or mediators, with domestic violence being the most common dispute dealt with (Chinn&Everett, 2008). Some VPU offices furthermore keep files with information about cases that had been resolved through traditional mechanisms. In one district it is common practice that if a victim brings a signed peace agreement from a traditional proceeding to the police station within three days of having filed an official complaint, the police do not forward the case for judicial action, but instead files the agreement (UNHCHR&UNMIT, 2010).

In a similar fashion, formal courts are interacting with the informal system. Some district courts are making an effort to take into account elements of informal law, for instance the aspects of compensation and reconciliation (Grenfell, 2009). UNDP Access to Justice Officers monitored one case of physical assault in Same in October 2010 which was closed by the judge after the parties presented a peace agreement stating that the case had been resolved using informal law. JSMP (2006) reports that in the court cases they monitored, courts did take into account informal law while maintaining the supremacy of the formal system.

While this practice might increase the legitimacy of court decisions as perceived at the local level, Grenfell (2009) argues that this process is nevertheless problematic since it occurs in an ad hoc, unmonitored fashion and outside of the existing state legal framework. The two systems are therefore in fact highly interdependent but, as Graydon (2005: 68) describes it, “only through the improvised and unregulated decisions made by individuals”, creating confusion among the populace and creating a risk of double jeopardy. It is therefore argued that the current state of legal pluralism needs to be regulated as it is placing strain on both systems and causing confusion for locals (Grenfell, 2006).

Women in particular are suffering from this situation as they are sent back and forth between the two systems, or become the subjects of un-standardized processes (Swaine, 2003). In the absence of legislative guidelines, and in the context of limited state presence in rural areas, the balance between Lisan and formal law tends to be negotiated by local authorities who may not always acknowledge the interests of non-elite community members, particularly those of domestic violence victims (Cummins, 2010). While the regulation of the interaction of formal and informal systems may therefore be desirable, too rigid regulation on the other hand may decrease women’s options to “forum shop”, i.e. to use the most promising justice mechanism for their case. Any formal regulation must therefore be crafted carefully as to not in practice decrease the number of justice options available to women.

2) Experiences of other countries

Some countries, such as Samoa, have made attempts to formalize the relationship and interaction of formal and informal systems of justice. Since 1990, courts have been required to take village punishments into account in mitigation of court penalties. However, a determination of guilt or innocence by an informal court does not bar action by a state court in relation to the same behavior. Similarly, the formal acceptance of the customary ritualized public apology, “Ifoga”, does not preclude a civil action for damages under common law (UNICEF, 2009).

In other contexts, attempts at defining the relationship between formal and informal law have not succeeded in changing the situation on the ground. In Sudan, for instance, attempts were made to define subject matter jurisdiction, but to no avail. Instead, individual chiefs in urban areas adhere to formal regulations only when it suits them while in rural areas jurisdiction on all subjects remains squarely in the hands of the local chief even where the government has established jurisdictional guidelines. This means that cases of gender-based violence are handled almost exclusively at the local level while jurisdictional uncertainty remains a barrier to the administration of justice in cases of gender-based violence (UNFPA, 2008). The same phenomenon was observed among in Liberia during efforts to remove serious cases, such as murder, out of Chiefs’ jurisdiction; instead, Chiefs went “underground”, continuing to hear serious cases to safeguard their legitimacy in the community (Isser et al., 2009).

Similar problems have been encountered in Papua New Guinea, where a village court system has been established, a hybrid institution that draws upon the authority of both state justice and informal justice. Village courts are created by the state, have jurisdictional powers

established under statute, and, in theory, are subject to review by formal state courts. At the same time they are presided over by village leaders and are supposed to resolve disputes in accordance with local custom (UNICEF, 2009). Yet, the village courts are regularly criticized for discriminating against women litigants and victims of crime, reflecting both the failure of formal state courts to properly supervise the village courts and the intrinsic deficiency of the village court model (UNICEF, 2009). More interestingly perhaps, Papua New Guinea has also taken steps to incorporate aspects of informal law into formal law. For instance, the Criminal Law (Compensation) Act of 1991 allows victims of crimes such as domestic violence to claim compensation from the perpetrator. Just as in Timor-Leste, claiming compensation for wrongdoing is a common feature of local law in Papua New Guinea (United Nations, 2010).

Positive international examples are reported in cases where rather than focusing exclusively on the accessibility of the formal legal system, culture and tradition were used to improve the situation of women. Studies on women's access to land rights in Kenya (Harrington&Chopra, 2010; Chopra, 2007; Nyong'o&Ongalo, 2005) have found that the most effective way of tackling local power structures which disadvantage women is by actually working *with* the existent socio-cultural value systems – which are legitimate, acceptable and understood in that community – instead of promoting the formal justice system at the expense of, and despite, the informal system. By supporting and re-emphasizing existing positive values, the support of community leaders and the community at large was gained for initiatives in support of women's rights. Elders were thereby able to intervene successfully and secure women's rights to access land. Locally acceptable initiatives seeking changes were achieved while official rights gained traction, local legitimacy and long-term acceptance since they were attached to existing community values and practices.

VI. Conclusions and Research Implications

Handling cases of domestic violence is proving difficult for both state and informal justice in Timor-Leste. The police system, though only recently charged with upholding the Law Against Domestic Violence, requires additional institutional and individual capacity building to better understand and address complex social phenomena. Without continued capacity building, approaching the police for assistance may prove a negative and disempowering experience for many victims of domestic violence. Local justice processes, on the other hand, may likewise disadvantage and disempower women in cases of domestic violence, as both users of and potential administrators of justice. With actors in both the formal and informal justice system at times working to prevent cases of domestic violence being processed formally, women attempting to access the formal justice system face serious barriers. Police and local authorities display a need for increased understanding of the seriousness of domestic violence as established by the State and the impact this violence can have on women and the wider community.

Building the capacity of the formal system is a long term process. Considering their integral role in local culture, local informal systems will remain a central feature of conflict resolution regardless of the completion of this process, providing Timorese citizens with a culturally accessible alternative to the formal justice system. Being tied up in a set of spiritual beliefs and social norms, local justice systems are fulfilling a purpose the formal system cannot simply replace. It is therefore of crucial importance to engage with these systems and understand the cultural values underpinning various practices and beliefs.

While most of the literature points out that local justice at times runs counter to ideas of equality and international human rights standards, less attention is given to the fact that local law and its focus on collective rights, rather than individual rights, serves a crucial social function: maintaining peace and social order within small, close-knit communities. For any reforms to be acceptable in at the local level, there is a need to make local justice systems “work” for women while maintaining the principles and values which underpin them. Informal systems' focus on collective rights should be understood as an opportunity rather than an obstacle. The Kenyan experience noted above indicates measures to increase women's access to justice which make use of local social systems, rather than seeking to supplant them through a dogmatic rights-based programme, are most likely to succeed and be sustainable. Considering the importance of customary law and the values embodied therein for Timorese communities, this conclusion has important implications in Timor-Leste.

That said, seeking change in local Timorese communities may not face insurmountable opposition. According to the Asia Foundation (2004), 75% of Timorese acknowledge that Lisan could do with some reform while Swaine (2003) found that local holders of justice interviewed for her study were open to and eager for such reformation to take place – as long as it is respectful to their beliefs, and based on an inclusive and open process. Supporting positive changes within local systems while maintaining overall their integrity is likely to be the most successful and desirable approach.

A purely legal approach will almost certainly prove insufficient to change outlooks and deeply rooted behavior. While a necessary factor in social change, law alone often is not sufficient as an agent of social change,¹⁴ particularly in the context of Timor-Leste, where the sequential UN missions deployed to Timor-Leste and the international community have promoted (and continue to promote) a number of laws which do not adequately account for the socio-cultural context over the years.

It is the concept of and attitude toward violence against women, the idea that domestic violence is a normal occurrence and private matter and general ignorance of the domestic legal framework, which need to be addressed and challenged. Further, due to women's high level of economic dependence on their husbands, focusing on punishing the perpetrator will prove insufficient to guarantee access to justice for female victims – and may actually undermine local social mechanisms which support women and deter domestic violence. It may therefore be more beneficial to focus on women's surviving abilities and alternative income possibilities as well as supporting change within local systems.

The unpredictable interaction of the local and state legal systems is compounding existing problems and is inhibiting the development of a secure and supportive environment for women seeking justice in cases of domestic violence. A formalization of this relationship which advances the positive aspects of both systems is therefore crucial. For instance, incorporating aspects of local justice, such as compensation for a crime, into the formal system might increase the legitimacy of formal justice rulings and punishments at the local level. Similarly, clear guidelines on how formal courts should deal with informal decisions are needed in order to remedy the current situation of legal uncertainty.

Research Implications

As pointed out throughout the paper, there are a number of gaps in the literature which compartmentalize the understanding of the problem of domestic violence in Timor-Leste.

1. There is only partially reliable data on domestic violence available, whether quantitative or qualitative. With data collection and terminology inconsistent across studies and definitions of domestic violence not matching the definition in the Law Against Domestic Violence, it remains impossible to map the incidence of domestic violence and to track changes accurately, and to identify the most vulnerable groups of women.

2. Local dispute resolution trajectories in cases of domestic violence are often simplified and homogenized. While the majority of the literature acknowledges the diversity of local dispute resolution mechanisms across Timor-Leste, ideas on concrete trajectories dominant in different

¹⁴ This conclusion is supported by a number of international examples. For instance, while South Africa boasts the continent's most progressive legal protection of women rights (Ozoemena&Hansungule, 2009) and regulates the reform of customary law through its Traditional Leadership and Governance Framework Act promoting equality and the installation of female traditional leaders, in practice, women have not benefited substantially from these prescriptions (Curran&Bonthuys, 2004).

areas, both urban and rural, remain blurred. Questions such as which family or community authority is approached, how the payment of compensation is administered, or how much of a voice women receive in local dispute resolution need to be investigated further in order to map different dispute trajectories across Timor-Leste.

3. There is a need to analyze the dynamics and power relation between authorities in local justice processes – including ritual, political and formal state justice authorities – while taking into account the diversity of local systems in Timor-Leste. It is unclear how far decision-making power has shifted from the Lian Nain to the Chefe de Suco and Chefe de Aldeia and in how far ritual authorities are still able to influence or control local justice processes, particularly in light of socio-economic changes such as urbanization. The significance of other involved actors, such as the Catholic Church, the Dato or the Liurai also requires further research since the role of these actors has rarely been explored even though they may have a considerable influence on the outcomes of informal justice. The same concerns the role of police officers in mediation. While Chinn and Everett (2008) found the majority of police say they help mediate conflicts such as domestic violence at the community level, it remains unclear what exact role police play, at which stage of a mediation process they become involved, and whether they have any decision-making capacity regarding local disputes.

4. The major barriers to women's access to justice need to be identified, among them most importantly the choice of justice institutions, i.e. formal or informal institutions, and the nature and impact of social pressures. While the literature identifies a number of barriers to women's access to justice, it remains unclear which the decisive ones are. While women's economic dependence on their husbands seems to be a central deterrent for women to seek justice, the significance of other factors such as social pressure, or the lack of understanding of the formal system remain hard to determine. For instance, if the formal system were more accessible, would victims of domestic violence actually take advantage of it? In order for successful measures to improve women's access to justice to be designed, such questions need to be addressed and answered by future research.

Moreover, the reasons why either the formal or the informal system becomes a choice for remedy need to be analyzed further with more qualitative and quantitative data and a focus on how formal law is being applied in practice. Since it is the definition of the concepts of violence and crime and the related distinction between small and big offences which seems central to the question whether formal or informal justice is considered appropriate, it is crucial to further explore local definitions of violence. In relation to this, it is important to not only focus on the question of what it is that keeps women from reporting to the police, but to focus on the victim's family's interests. As it is often the family's decision which route to choose, family heads and Lian Nain become crucial figures in domestic violence cases. It is therefore necessary to examine further what it is that stimulates families to contact either the police or the local leader.

Finally, the nature and impact of social pressures need to be taken into account when analyzing the barriers to women's access to justice. While the literature emphasizes the role of

social pressure in influencing the choices made by victims of domestic violence, it is unclear why these apparently strong social pressures are more effective in some than in other cases. Considering the importance of reconciliation in order to restore harmony both in the material and cosmic spheres, it remains unclear why the social pressure generated seemingly is not always enough to compel perpetrators to pay the agreed upon compensation. Most importantly, there is a need to investigate whether and how social pressures could be used to pressure men to stop abuse. Related to this question is the issue of the bride price. Future research should investigate how far the meaning of the bride price has changed in light of socio-economic developments and how far the payment of the bride price creates pressures on women not to seek justice for crimes of domestic violence.

5. Local law and culture are frequently analyzed from a formal legal perspective, missing local realities and opportunities of working within those realities and driving change from the bottom-up. Timorese informal law can at times be discriminatory towards women; however, much of the literature on Timor-Leste tends to draw overly simplistic conclusions advocating the replacement of informal law, if not outright elimination. This literature review shows that local conceptualizations of domestic violence and local value systems do not necessarily correspond with the prescriptions of the 2010 Law Against Domestic Violence. Positivist change from the top down, as often advocated by the various UN missions and international community in Timor-Leste, is unlikely to improve women's access to justice on the ground; it may be a necessary component, but not a sufficient one. Policies aiming to supplant and replace informal justice with formal laws and institutions are misguided; they are neither realistic and nor are they desirable given the importance of informal justice as an integral component of Timorese cultures – not to mention protected as such under international human rights law. Improving access to justice requires a more nuanced and circumspect approach, combining concern and respect for human rights with understanding and respect for local cultural systems given the central role they play in Timorese society. To be effective and legitimate, change should come from the bottom up – rooted in cultural values and practices. There is a need for further research and policy focusing on strengthening values within informal law which protect and promote women's rights (and broader human rights in general) to help bring about locally-owned change.

VII. References

- Alves, M.D.F. et al. (2009): Baseline Study on Sexual and Gender-Based Violence in Bobonaro and Covalima. Asia Pacific Support Collective Timor-Leste.
- Asian Development Bank (ADB) (2005): Gender and Nation Building In Timor- Leste. Country Gender Assessment.
- Babo-Soares, D. (2009): Co-Existence of Formal Law and the Customary Law in Timor-Leste. Culture and Customary Law in Timor-Leste. Paper Presented at the Workshop “Sector Consultation Workshop on Customary Law/Justice”, Centro de Formação João Paulo II, Dili, 27 February 2009.
- 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), pp. 15-33.
- Bere, M.A. (2005): Women and Justice in Timor-Leste. *Development Bulletin*, No. 68, pp. 55-57.
- Isser, D. et al. (2009): Looking for Justice: Liberian Experiences with and Perceptions of Local Justice Options. United States Institute of Peace: Peaceworks Series.
- Butt, S. et al. (2009): Looking Forward: Local Dispute Resolution Mechanisms in Timor-Leste. Sydney Law School, Legal Studies Research Paper No. 09/33.
- Bye, H. (2005): The Fight Against Domestic Violence in East Timor: Forgetting the Perpetrators. Master in Peace and Conflict Transformation, Faculty of Social Science, University of Tromsø.
- Chinn, L. and Everett, S. (2008): A Survey of Community - Police Perceptions: Timor-Leste in 2008. The Asia Foundation, Dili.
- Chopra, T. (2007): Promoting Women’s Rights by Indigenous Means: An Innovative Project in Kenya. Justice for the Poor Briefing Note 1 (2).
- Committee on the Elimination of Discrimination Against Women (CEDAW) (2009): Concluding Observations of the Committee on the Elimination of Discrimination against Women, Timor-Leste.
- Corcoran-Nantes, Y. (2009): The Politics of Culture and the Culture of Politics – a Case Study of Gender and Politics in Lospalos, Timor-Leste. *Conflict, Security & Development* 9 (2), pp. 165-187.

Cummins, D. (2010): Local Governance in Timor-Leste: The Politics of Mutual Recognition. PhD thesis. School of Social Sciences and International Studies, University of New South Wales.

Curran, E. and Bonthuys, E. (2004): Customary Law and Domestic Violence in Rural South African Communities. The Centre for the Study of Violence and Reconciliation.

De Sousa, R. (2005): Women of Timor-Leste: Seeking Freedom in a Free Nation. Development Bulletin No. 68, pp. 34-35.

Democratic Republic of Timor-Leste (DRTL) (2010): Law No. 7/2010 on Domestic Violence.

Democratic Republic of Timor-Leste (DRTL) (2009): Law No. 3/2009 on Community Leaderships and Their Election.

Democratic Republic of Timor-Leste (DRTL) (2009b): Penal Code.

Democratic Republic of Timor-Leste (DRTL) (2004): Government Decree-Law No. 5/2004 of 14 April 2004 on Community Authorities.

Democratic Republic of Timor-Leste (DRTL) (2002): Constitution of the Democratic Republic of East Timor.

Dewi, S. (2002): Staying Together no Matter What: Domestic Violence and Power Relations in East Timor. Human Rights Tribune 9 (1), pp. 19-22.

Graydon, C. (2005) Local Justice Systems in Timor-Leste: Washed up, or Watch this Space? Development Bulletin, No. 68, pp. 66-70.

Grenfell, L. (2009): Promoting the Rule of Law in Timor-Leste. Conflict, Security & Development, 9: 2, pp. 213-238.

Grenfell, L. (2006): Legal Pluralism and the Rule of Law in Timor-Leste. Leiden Journal of International Law, No. 19, pp. 305–337.

Harrington, A. and Chopra, T. (2010): Arguing Traditions. Denying Kenya's Women Access to Land Rights. Justice for the Poor Research Report No. 02/2010.

Harrington, A. (2006): Institutions and the East Timorese Experience. East Timor Law Journal 7, pp. 2-37.

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

Hohe, T. and Nixon, R. (2003): Reconciling Justice. "Traditional" Law and State Judiciary in East Timor. Report prepared for the United States Institute of Peace.

Hynes, M. et al. (2004): A Determination of the Prevalence of Gender-based Violence among Conflict-affected Populations in East Timor. *Disasters* 28 (3), pp. 294-321.

IRIN News (2010): Timor-Leste: The slow death of domestic violence. Published 21 September 2010 on www.alertnet.org/thenews/newsdesk/IRIN/556432dc5ab4076846bfc8beec5af0c9.htm

JSMP (Judicial System Monitoring Program) (2009): Article 125 of the Criminal Procedure Code. Creating a Dilemma for Victims of Domestic Violence. Dili.

JSMP (Judicial System Monitoring Program) (2006): The Law of Gender-Based Violence in Timor-Leste, April – November 2005. Dili.

JSMP (Judicial System Monitoring System) (2006b): Victim Support Service Mid-Year Report 1 January – 30 June 2006. Dili.

JSMP (Judicial System Monitoring Program) (2005): Statistics on Cases of Violence Against Women in Timor Leste. Dili.

JSMP (Judicial System Monitoring Program) (2005b): Police Treatment of Women in Timor Leste. Dili.

JSMP (Judicial System Monitoring Program) (2004): Access to Justice for Women Victims. Dili.

JSMP (Judicial System Monitoring Program) (2002): Findings and Recommendations: Workshop on Formal and Local Justice Systems in East Timor. Dili.

Marriott, A. (2010): Lawyers, Leaders and Lian Nains: Sources of Legal Authority in Timor-Leste. In Leach, M. (ed): *Understanding Timor-Leste: Democracy and Localism*. Melbourne: Swinburne University Press, pp. 159-163.

Marriott, A. (2008): Justice in the Courts, Justice in the Community: Bridging Timor's Legal Divide. In Mearns, D. (ed): *Governance in Timor-Leste: Reconciling Local and National*. Darwin: Charles Darwin University Press.

Mearns, D. (2002): *Looking Both Ways: Models for Justice in East Timor*. Australian Legal Resources International (ALRI) Interim Report on Community Systems of Justice in East Timor.

Myrntinen, H. et al. (2010): Gender Baseline Study in Liquica District (Timor-Leste). AECID Rural Development Project in Liquica II. Dili.

National Statistics Directorate (NSD) et al. (2010): Timor-Leste Demographic and Health Survey 2009-2010.

Niner, S. (2007): The Reassertion of Customary Practices in Timor-Leste and the Implications for Traditional Handcrafts Production. In: Palmer, L. et al.: Exploring the Tensions of Nation Building in Timor-Leste. SSEE Research Paper No. 1, pp. 41-48.

Nixon, R.S. (2008): Integrating Indigenous Approaches into a “New Subsistence State”: The Case of Justice and Conflict Resolution in East Timor. PhD Thesis, Charles Darwin University.

Nixon, R.S. (2008b): Non-State Actors as Agents of Order: Suco Justice and Dispute Resolution Systems in East Timor.

Nyong’o, D. and Ongalo, O. (2005): From Despair to Hope. Women’s Right to Own and Inherit Property. POLICY Project Kenya and Kenya National Commission on Human Rights (KNCHR), Nairobi.

O’Reilly, J. and Jevtovic, P. (2008): On Criminal Silences: Gender-based Violence in Timor Leste. The Journal for Women and Policing, No. 22, pp. 20-26.

Office of the Secretary of State for Promotion of Equality (OPE) (2007): Initial Report. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Timor-Leste.

Ospina, S. (2006): Participation of Women in Politics and Decision-Making in Timor-Leste: A Recent History. Report Prepared for UNIFEM Timor-Leste.

Ospina, S. and Hohe, T. (2001): Traditional Power Structures and the Community Empowerment and Local Governance Project. Final Report Presented to CEP/PMU, ETTA/UNTAET and the World Bank.

Ozoemena, R.N. and Hansungule, M. (2009): Re-envisioning Gender Justice in African Customary Law through Traditional Institutions. Centre for Policy Studies Policy Brief No. 63, Johannesburg.

Pereira, M.L. (2001): Domestic Violence: A Part of Women’s Daily Lives in East Timor. La’o Hamutuk Bulletin 2 (5).

Rede Feto (2009): NGOs Alternative Report. Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) In Timor-Leste.

Republic of South Africa (1996): Constitution of the Republic of South Africa, No. 108 of 1996.

Rimmer, S.H. (2010): Sexual and Gender-based Violence. In: Muggah, R. and LeBrun, E. (eds): Timor-Leste Armed Violence Assessment Final Report, pp. 37-47.

Styles-Power, C. et al. (2008): The Vulnerable Persons Unit in Timor-Leste: An Independent Assessment of its Role and Function. Technical Paper Series, UNICEF Timor-Leste.

Swaine, A. (2003): Traditional Justice and Gender-based Violence. International Rescue Committee Research Report.

The Asia Foundation (2008): Law and Justice in Timor-Leste. A Survey of Citizen Awareness and Attitudes Regarding Law and Justice in East Timor.

The Asia Foundation (2004): Law and Justice in East Timor. A Survey of Citizen Awareness and Attitudes Regarding Law and Justice in East Timor.

TLAVA (Timor-Leste Armed Violence Assessment) (2009): After the Guns Fall Silent. Sexual and Gender-Based Violence in Timor-Leste. Issue Brief No. 5.

Trembath, A. et al. (2010): Impacts of National NGO Gender Programming in Local Communities in Timor-Leste. Globalism Research Centre, RMIT University, Melbourne.

Trindade, J. and Castro, B. (2007): Rethinking Timorese Identity as a Peacebuilding Strategy: The Lorosa'e – Loromonu Conflict from a Traditional Perspective. The European Union's Rapid Reaction Mechanism Programme; Technical Assistance to the National Dialogue Process in Timor-Leste. Dili.

United Nations (2010): Handbook for Legislation on Violence against Women. Prepared by the Department of Economic and Social Affairs, Division for the Advancement of Women. New York.

UNFPA (2008): Adapting Restorative Justice Principles to Reform Customary Courts in Dealing with Gender-Based Violence in Southern Sudan. Final Report Compiled by DPK Consulting.

UNFPA (2005): Gender-Based Violence in Timor-Leste. A Case Study.

UNICEF (2009): "Traditional" Justice Systems in the Pacific, Indonesia and Timor-Leste. Paper commissioned by UNICEF Papua New Guinea for the 2009 Justice for Children in the Pacific, Indonesia and Timor-Leste, EAPRO Sub-Regional Workshop.

UNHCHR and UNMIT (2010): Facing the Future: Periodic Report on Human Rights Developments in Timor-Leste: 1 July 2009 – 30 June 2010

USAID (2009): Fostering Justice in Timor-Leste: Rule of Law Program Evaluation, January 2009.

USAID (2004): Gender Assessment for USAID/Timor-Leste Country Strategy Plan FY 2004-2009.

Wilson, B.V.E. (2010): Smoke and Mirrors: The Development of the East Timorese Police 1999-2009. PhD Thesis, Australian National University.

World Bank (2010): Trust, Authority, and Decision Making: Findings from the Extended Timor-Leste Survey of Living Standards. Justice for the Poor Briefing Note 5 (1).

World Bank (2010b): Expanding State, Expectant Citizens: Local Perspectives on Government Responsibility in Timor-Leste. Justice for the Poor Briefing Note 4 (2).

World Bank (2006): Strengthening the Institutions of Governance in Timor-Leste.

Zifcak, S. (2004): Restorative Justice in East Timor: An Evaluation of the Community Reconciliation Process of the CAVR. The Asia Foundation.