TIMOR-LESTE
GENDER-BASED VIOLENCE AND THE LAW
AN ASSESSMENT OF LAWS, POLICIES AND PRACTICES AFFECTING GENDER EQUALITY AND GENDER JUSTICE IN TIMOR-LESTE
FULL REPORT 2021
Spotlight Initiative to Eliminate Violence Against Women and Girls

Gender-based Violence and the Law: an assessment of laws, policies and practices affecting gender equality and gender justice in Timor-Leste

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### ACRONYMS

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<th>Acronym</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>AIDS</td>
<td>Acquired immunodeficiency syndrome</td>
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<tr>
<td>CEDAW</td>
<td>Committee on the Elimination of Discrimination against Women</td>
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<td>CRC</td>
<td>Committee on the Rights of the Child</td>
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<td>CSE</td>
<td>Comprehensive sexuality education</td>
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<td>DHS</td>
<td>Demographic and Health Survey</td>
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<td>DNA</td>
<td>Deoxyribonucleic Acid</td>
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<td>EU</td>
<td>European Union</td>
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<td>GBV</td>
<td>Gender-based violence</td>
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<td>HDI</td>
<td>Human Development Index</td>
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<td>HIV</td>
<td>Human Immunodeficiency Virus</td>
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<td>HRC</td>
<td>Human Rights Committee</td>
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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<td>ILO</td>
<td>International Labor Organization</td>
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<td>IOM</td>
<td>International Organization for Migration</td>
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<td>JSMP</td>
<td>Judicial System Monitoring Program</td>
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<td>LADV</td>
<td>Law against Domestic Violence</td>
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<tr>
<td>LGBTIQ+</td>
<td>Lesbian, gay, bisexual, transsexual, intersex or queer</td>
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<td>MSS</td>
<td>Ministry of Social Solidarity</td>
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<td>NAP-GBV</td>
<td>National Action Plan on Gender-Based Violence</td>
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<td>NDRN</td>
<td>National Directorate of Registry and Notary</td>
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<td>PDO</td>
<td>Public Defender’s Office</td>
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<td>PPO</td>
<td>Public Prosecutor’s Office</td>
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<td>SDG</td>
<td>Sustainable development goal</td>
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<td>SRHR</td>
<td>Sexual and reproductive health and rights</td>
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<td>STD</td>
<td>Sexually transmitted disease</td>
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<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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<td>UNDP</td>
<td>United Nations Development Program</td>
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<td>UNFPA</td>
<td>United Nations Population Fund</td>
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<td>UNGA</td>
<td>United Nations General Assembly</td>
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<td>UNICEF</td>
<td>United Nations Children’s Fund</td>
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<td>VAWG</td>
<td>Violence against women and girls</td>
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<td>VPU</td>
<td>Vulnerable Persons’ Unit</td>
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<td>WHO</td>
<td>World Health Organization</td>
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THE SPOTLIGHT INITIATIVE

To address the challenges of violence against women and girls (VAWG), the European Union (EU) and the United Nations (UN) have embarked on a new multi-year program called the EU-UN Spotlight Initiative. The Spotlight Initiative aims to support transformative changes on the ground to end violence against women and girls and harmful practices in numerous countries around the world. The Initiative enjoys the highest level of global support and is governed by the UN Deputy Secretary-General and the Vice President of the EU Commission.

The Spotlight Initiative in Timor-Leste will be implemented through five UN agencies (UN Women, UNFPA, UNDP, UNICEF, and ILO) with a focus on addressing intimate partner violence and domestic violence. In addition to the five agencies above, the Program will involve collaboration with the International Organization for Migration (IOM), the Human Rights Advisor’s Unit, and the World Health Organization (WHO).

The framework of the program is based on six key outcome pillars, namely legislation and policies; institutional strengthening; prevention of violence; available, accessible, acceptable, and quality services; good-quality and reliable data; and supporting women’s movements and relevant civil society organizations.

The overall vision of the Spotlight Initiative in Timor-Leste is that women and girls are able to enjoy their right to a life free of violence within an inclusive and gender equitable country.
INTRODUCTION

Timor-Leste has been independent since 2002, making it one of the youngest democracies in the world. In only 17 years, the country has taken significant steps to rebuild the nation and redefine its future, following centuries of colonization and a violent occupation that killed approximately a third of its population and displaced almost half a million people in 1999. Timor-Leste’s current population of 1.4 million is one of the youngest in the Pacific, with 75% being under the age of 35.

Despite notable efforts in State-building and economic growth, Timor-Leste is one of the least developed nations in the region, with 41.8% of the population living below the poverty line in 2014. Despite having a Human Development Index (HDI) of 0.626 in 2019, when weighed against the inequality factor, the HDI drops to 0.450. There are high levels of inequality between urban and rural areas, with 70.5% of the population in the latter areas affected by poverty, malnutrition, and unemployment; and lacking access to quality education and basic infrastructure.

Inequality particularly affects women and girls, who face discrimination within the home;

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“... more than a third (38%) of women in Timor-Leste have experienced physical violence during their adult lives...”
in sectors such as health, education, and employment; and in accessing justice. Women occupy 40.6% of the labor force, while men occupy 53%\(^5\).

Timor-Leste ranks 117th out of 153 countries in gender equality\(^6\). Gender-based violence (GBV)\(^7\) has been a persistent challenge in pursuing effective equality in the country. The 2009–2010 Demographic and Health Survey (DHS) shows that more than a third (38%) of women in Timor-Leste have experienced physical violence during their adult lives\(^8\). Other studies show that 59% of women aged 15-49 have experienced physical and/or sexual intimate partner violence at least once in their lives\(^9\).

A. The international framework on gender-based violence

Article 1 of the 1948 Universal Declaration of Human Rights (UDHR) establishes that “all human beings are born free and equal in dignity and rights”. It also provides that the rights enshrined in that document are due “without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (Article 2). Aligned with the principles of equality and non-discrimination, the 1966 International Covenant on Civil and Political Rights (ICCPR) and the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) reaffirm these guarantees.

Other core human rights instruments ratified by Timor-Leste, such as the 1979 Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the 1989 Convention on the Rights of the Child (CRC), and its optional protocols, provide an international framework for the eradication of gender-based violence and discrimination against women and girls.

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\(^7\) For the purpose of this report, gender-based violence and violence against women and girls will be used interchangeably, taking into consideration the definition of violence against women established in Article 1 of the UN Declaration on the Elimination of Violence against Women: “... the term ‘violence against women’ means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”.


Additionally, Timor-Leste has ratified ILO Core Conventions No. 100 and No. 111 on gender equality and in June 2019 contributed to the adoption of a new international labor standard concerning the elimination of violence and harassment in the workplace, Convention No. 190.

Despite the evident commitment of the Timorese state to end GBV demonstrated by the ratification of these key international instruments, the lack of ratification of the 2006 Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol remains a serious obstacle for achieving international standards of non-discrimination and equality before the law. In the same vein, Timor-Leste should ratify the 1973 ILO Minimum Age Convention, Convention No 138, to further solidify its commitment to protecting children and vulnerable persons.

Finally, the Sustainable Development Goal (SDG) 5 (“Gender equality”) and SDG 16 (“Peace, justice and strong institutions”) are directly linked to the goal of eradicating gender-based violence and discrimination against women and girls. SDG 1 (“No poverty”) and SDG 10 (“Reduce inequality within and among countries”) are also relevant for the development of sustainable and systemic strategies to combat gender-based violence.

“...further reforms to laws and policies are needed, especially with regards to establishing mechanisms for effective implementation, in order to ensure de facto equality and access to justice ...”
B. Current state of the legal and policy framework in Timor-Leste

Timor-Leste recognizes women’s rights as human rights and views violence against women and girls as a serious and pervasive human rights violation, as well as an extreme form of discrimination. Violence is criminalized in the 2009 Penal Code. The Law Against Domestic Violence (LADV) was enacted in 2010, less than ten years after the country regained independence. Additional laws, such as the 2009 Protection of Witnesses Law and the 2017 Law to Prevent and Combat Human Trafficking, play a key role in the national framework on GBV, however fail to meet international best practices regarding the protection of women and children.

The Timorese Constitution provides special provisions on gender equality (Article 6(J)), non-discrimination (Article 16), and security and personal integrity (Article 30). It also encompasses special protection of children (Article 18), persons with disabilities (Article 21), and pregnant women (Article 39(4)). Likewise, it establishes an old age policy with measures of a socio-economic and cultural nature (Article 20).

Over the past decade, a number of draft laws have been initiated but not finalized, including a draft law on traditional justice, a draft Child Code; as well as other laws on child protection and juvenile justice. The Committee on the Rights of the Child has recommended that Timor-Leste ensure a consistent legislative framework in all areas affecting children, including by adopting its specialized draft laws.

Therefore, to fulfil this recommendation, there should be a thorough, coordinated and consolidated review of all related draft laws and policies to form a cohesive legal framework for the protection of children. This review should further take into account the Labor Code, Civil Code, draft Juvenile Justice Law, and draft Customary Law, and ensure full compatibility with all relevant international standards of human rights, both individual and collective. In addition, draft bills should provide sufficient instructions on institutional competencies and include regulatory mechanisms that correspond to the social context and institutional capacity of Timor-Leste.

Key policy frameworks are also in place, particularly the 2012-2016 National Action Plan on GBV (NAP-GBV), followed by the 2017-2021 NAP on GBV; the 2012 Child and Family Welfare Policy; the 2014-2018 National Plan on People with Disabilities; the 2016-2020 National Action Plan on Children; the 2016-2020 National Action Plan on Women, Peace and Security; the 2017 Inclusive Education Policy; and the 2018-2030 Maubisse Declaration, focused on upholding rural women’s rights and promoting their economic empowerment.
However, further reforms to laws and policies are needed, especially with regards to establishing mechanisms for effective implementation, in order to ensure de facto equality and access to justice. This is especially relevant for survivors of intimate partner violence\(^\text{10}\).

Special provisions are necessary for effectively including women with disabilities, those living in rural areas and/or those employed in the informal economy; girls not in school, pregnant and/or those married before the age of 18; and women and girls who identify as lesbian, gay, bisexual, transsexual, intersex or queer (LGBTIQ+).

These and other groups in vulnerability are often excluded from State interventions against gender-based violence. Consequently, members of these groups may not have access to information or have the necessary support to seek services, or approach the formal justice system.

C. Institutional framework for responding to gender-based violence and violence against children

The Ministry of Social Solidarity (MSS) is responsible for coordinating GBV services such as social assistance and legal referrals\(^\text{11}\). Its National Directorate oversees and supervises case workers at municipal levels who act as focal points for reporting cases, as well as manages the survivors’ cases. Every municipality has a designated gender-based violence focal point and a child protection officer, supported by social animators in each administrative post. The tasks of these focal points include conducting rapid assessments of the needs of survivors and accompanying survivors to the police, the latter of whom has a special division, the Vulnerable Persons Unit (VPU), specialized to work with women.

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\(^{10}\) For the purpose of this report, the definition of intimate partner violence is aligned with the World Health Organization (WHO)’s definition: “Self-reported experience of one or more acts of physical and/or sexual violence by a current or former partner since the age of 15 years. It may include physical violence: being slapped or having something thrown at you that could hurt you, being pushed or shoved, being hit with a fist or something else that could hurt, being kicked, dragged or beaten up, being choked or burnt on purpose, and/or being threatened with, or actually, having a gun, knife or other weapon used on you. Sexual violence: being physically forced to have sexual intercourse when you did not want to, having sexual intercourse because you were afraid of what your partner might do, and/or being forced to do something sexual that you found humiliating or degrading.” World Health Organization (WHO) 2013. Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence. Geneva, Switzerland: ILO.

and children.

Child Protection Officers and GBV focal points are based at the municipal level and most care services are based in municipal or regional capitals, which may impede access to victims who live in rural or periphery areas and/or lack resources to access these services. While inter-sectoral Child Protection Networks are in place in all 13 municipalities and are currently being established at an administrative post level, the functioning and quality of these networks are inconsistent\(^{12}\).

These formal services along with informal mechanisms comprise the Social Service Workforce, which underwent a professionalization initiative in three pilot municipalities through the Child and Family Welfare Policy rollout. The initiative has improved the Workforce’s coordination and capacities and there are plans to roll out the policy and capacity building in additional municipalities this year.

In addition, under Article 211.1 of the Criminal Procedure Code, a police officer must issue a notification when she/he learns that a crime has been committed. This obligation is extended to any civil servant, public manager or any other public agent or authority while exercising her/his functions.

Therefore, teachers employed by the Ministry of Education, doctors employed by the Ministry of Health, public servants such as social workers, Child Protection Officers, and GBV focal points employed by the MSSI have a positive obligation to report crimes of domestic violence\(^{13}\). The role of health professionals, who often have the first interactions with survivors, is particularly important to address violence against women and children.

The LADV establishes in Article 28 that it is the Public Prosecutor’s Office’s (PPO) duty to offer direct assistance to survivors of violence. This includes providing information on the rights of survivors and methods of exercising these rights, notably through the services of the Office of the Public Defender (PDO) in cases where survivors cannot afford legal counsel. In addition, if not already done, the PPO must refer survivors to hospitals or shelters.

Article 25 of the LADV reiterates that the PDO must offer legal assistance to survivors of domestic violence who do not have lawyers. According to this provision, the PDO must report the case to the police and the Public Prosecution Service, unless doing so would infringe on the survivor’s confidentiality. Finally, the public defender must monitor

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\(^{13}\) Justice System Monitoring Program (JSMP); ALFeLa 2015. Improving the Penal Code to better protect women and children. Dili, Timor-Leste. P. 6.
the conduct of judicial and law enforcement authorities who handle cases of domestic violence. While in theory commendable, in practice, the protection offered by the PPO and PDO is limited due to staff shortages and only operating in urban centers.

There are also national human rights bodies with mandates for protecting the rights of women and children, including the Ombudsman for Human Rights and Justice established in Article 27 of the Constitution, and the State Secretariat for Equality and Inclusion. The establishment of the National Commission on the Rights of the Child, with the mandate to promote and protect children’s rights, was a positive step in monitoring the progress of child welfare and justice in Timor-Leste. However, according to reports from civil society organizations, formal justice structures for supporting children remain limited, and children are still subjected to abuse, exploitation, neglect and violence. Ultimately, traditional authorities remain the most popular mechanism for maintaining the wellbeing of communities.

D. Social obstacles for ending violence and discrimination against women and girls

Family ties and social scrutiny

In addition to the limitations of the formal justice system discussed above, traditional family dynamics have considerably affected the efficacy of the 2010 Law Against Domestic Violence as well as the implementation of related protective measures. Social norms that sustain violent practices against women and girls are aggravated by certain legal and administrative instruments, which reinforce the core role of the family and its primacy over the individual.

The central role of the family in Timor-Leste, as well as the high level of social scrutiny faced by women seeking remedies for violence, frequently cause secondary victimization. Through marriage, women are considered to break ties with their household of origin to join a new household. This means that securing rights for married women occurs within a complex chain of decision-making; as conflict, harmful practices, violence and potential divorce affect a greater number of stakeholders than only the married individuals.

Financial factors frequently play a significant role in situations of family violence since women in Timor-Leste are often economically dependent on their husbands. In addition, it has been suggested that barlake, also called bride-price, negatively affects a woman’s ability to leave a violent marriage and increases social tolerance of domestic violence.

Traditional conflict resolution

Likewise, the role of traditional leaders in the resolution of family conflict and divorce proceedings is particularly important in ending GBV. Three main categories of leaders influence family relations in Timor-Leste: the Chefe de Suco, Chefe de Aldeia and Lian Nain. Despite enjoying widespread social legitimacy and often more normative influence than State institutions, in practice traditional leaders often cannot enforce the payment of alimony or prevent family violence.

Decree Law No. 5/2004 and Law No. 3/2009 on Community Leadership and their Election recognized the prominent role of community leaders in organizing communities. According to both laws, the role of traditional leaders includes the creation of mechanisms for the prevention of domestic violence and the protection of domestic violence victims. This was reaffirmed in the 2012 Child and Family Welfare System Policy, which, along with the State, designated families and communities with the primary task of “finding solutions within their resources and capacities” to address GBV.

By way of contrast, the more recent Law No. 9/2016 assigns a secondary role to community leaders in the resolution of family conflicts.

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leaders in ending domestic violence. Their prescribed roles are now to sensitize, mobilize, collaborate and support State bodies working on initiatives and services related to domestic violence.

The role of traditional and community actors in combating gender-based violence has long been debated in the Timorese context. The widespread perception that traditional justice mechanisms are more accessible, quicker and often cheaper may profoundly influence the decisions of survivors of gender-based violence in seeking remedies.

For instance, a 2019 UNDP survey found that about 65% of respondents considered the formal justice system to be too complicated and time-consuming in Timor-Leste. Further, in response to the likelihood of using the formal justice system in the future, 48% of participants indicated that they would opt for traditional means of conflict resolution, while 15% responded that they would use both traditional and formal systems.

Key policies have been developed that aim at providing a positive foundation to support strong and healthy families and communities in a way that is congruent with traditional beliefs and values, while dually aspiring to international standards on the rights of women and children. The 2012 Child and Family Welfare System Policy, for instance, establishes a plan to promote community engagement and integrate customary institutions into state formal mechanisms designed to combat and eliminate gender-based violence.

The Child and Family Welfare System Policy adopts a social-ecological approach to address vulnerability through increased emphasis on preventive strategies and services, acknowledging the roles of the State, communities and families in ending violence in the home. In this regard, relevant studies have identified that communities acknowledge the central role of both State and non-State actors in the maintenance of law and order, and often see no contradiction in seeking justice using both systems in parallel. Integrated initiatives, such as the Child and Family Welfare System Policy, can therefore significantly improve the efficacy of laws and policies focused on gender justice.

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E. State challenges related to ending violence and discrimination against women and girls

Age of majority and liability

In attempting to apply international and regional instruments to address violence and discrimination against girls, a major challenge relates to different legal frameworks’ definition of a child. According to Article 1 of the CRC, “a child means every human being under the age of 18, unless, under the applicable law, he/she reaches the age of majority earlier”.

In Timor-Leste, a child is defined differently in various laws establishing the age of majority. While Article 118 of the Civil Code establishes that civil liability starts from age 17, criminal liability starts at 16 years of age according to Article 20 of the Penal Code. The Penal Code establishes that a specific law shall regulate aspects of liability for people between 16 and 21 years. Likewise, both the 2010 draft Code of the Child (Article 2) and the 2017 draft Law on the Protection of the Child (Article 3) fix the age of majority at 17 years.

A number of other legislative provisions determine the age at which a person is able to exercise certain rights or be held responsible for their actions, including:

→ Article 47 of the Constitution, which sets the age for voting and for being able to choose Timorese citizenship at 17 years, consistent with the age of majority;

→ Article 1500 of the Civil Code, which allows people aged 16 to marry with parental consent;

→ Article 68 of the Labor Code, which establishes 15 as the minimum age for admission to work;

→ Article 17 of the Decree 17/2009, which establishes that the minimum age for compulsory and voluntary recruitment by governments and armed groups is 18 years.

The inconsistency between these different ages of majority may cause challenges when establishing the minimum age for acts that require minors’ informed consent, for instance in the case of sexual acts with minors (Article 177 of the Penal Code), and for prohibiting child marriage (Article 1490 of the Civil Code).

In addition, Article 9 of the Constitution of Timor-Leste prescribes that following the approval, ratification and accession of international laws into the domestic legal system,
all norms contrary to the provisions of international conventions, treaties and agreements applied in the internal legal system of Timor-Leste shall be invalid. Therefore, such domestic provisions, by contradicting international standards, should be invalidated.

The Committee on the Rights of the Child in this regard requires that States ensure that all domestic laws concerning the rights of children apply to all individuals under 18, in accordance with Article 1 of the Convention. Therefore, for full compliance with the CRC and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, the age of majority should be standardized in all Timor-Leste’s laws in conformity with international standards. This includes the age of majority and any kind of legal liability.

In addition, complementary laws regulating exceptions for minors should be enacted for issues such as informed consent, and these should be based on the principles enshrined in the CRC, namely protection, participation, equity, and the evolving capacity of the child.

**Women and girls with disabilities**

The Timorese legal system ensures special protection to groups facing greater risks or vulnerabilities, such as persons with disabilities, the elderly, young people and members of rural communities. The Constitution provides special protective provisions to youth (Article 19), the elderly (Article 20), and persons with disabilities (Article 21).

Various policies reinforce this protection by establishing the duties of different State bodies and special measures aimed at promoting the rights and protection of these groups. Key policies include the 2012 Child and Family Welfare Policy; the 2014-2018 National Action Plan for People with Disabilities; the 2016 National Youth Policy; and the 2017 Inclusive Education Policy.

Each of these Plans include gender as a ground for discrimination, restating the multiple forms of discrimination that women and girls in vulnerable groups face. However, there remains a need for effective gender mainstreaming in other thematic areas in order to ensure that all policies and practices of different government bodies employ a gender sensitive lens.

While the National Action Plan for People with Disabilities addresses areas such as employment, health, social services, and access, its proposed actions and established commitments appear to be implemented autonomously by each corresponding ministry, and hence lack a coordinated gender mainstreaming approach.

The Plan establishes a task force with focal points targeting each relevant ministry,
indicating that it is intended to be implemented via independent measures. However, enhancing the effectiveness of such intersectional policies requires improved coordination and collaboration across government agencies and institutions involved in data collection, analysis, decision-making, and policy development.

In the context of eliminating violence against women and girls with disabilities, the coordinated action of health, social services and justice sectors is especially key, particularly since such women and girls often lack access to justice.
METHODOLOGY

This study was conducted in three phases. First, a literature review was conducted examining laws and policies affecting gender equality and gender justice in Timor-Leste. The objective of this phase was to identify, gather and classify the main instruments that guide the State’s response to gender-based violence and discrimination.

In this preliminary analysis, the researcher considered both laws and policies that directly or indirectly interfere with the full enjoyment of the rights of women and girls according to international standards. In addition to legal analysis, the input of the UNDP, UN Women, and UNICEF country offices teams was consulted to ensure a broader understanding of current trends and recent debates in the country.

The second phase entailed consultations with civil society organizations. These meetings were held online through a video conference platform, allowing for the participation of non-governmental organizations and think-tanks. The consultations were previously planned to be held in person in Dili, however, with the outbreak of Covid-19, it was necessary to host the meetings online. The main findings of these consultations were incorporated to validate, refute and/or contextualize the desktop review produced in the first phase of this research.

The extent to which these meetings were fully representative of Timorese society, however, must be critically evaluated considering that, according to the World Bank, in 2017 only 27% of households in Timor-Leste have access to the internet. Therefore, this phase potentially lacks sufficient representation from key vulnerable groups, particularly those represented by grassroots organizations, such as rural women, women living in poverty, and older women.

The third phase included a broader review of the laws and policies earlier identified. In this phase, current legislative initiatives and other State efforts to improve the current framework on gender equality and gender justice were considered. Finally, recommendations were drafted focusing on legal reforms and policy improvements aimed at enhancing compliance with international standards.

While initially this study intended to look into law enforcement practices in addition to the effectiveness of the system for gender-based violence, due to the outbreak of the Covid-19 pandemic and time constraints it was not possible to interview government officials and key-actors working in the implementation of the National Action Plan on
Gender-based Violence. Therefore, subsequent research may be necessary to examine topics such as law enforcement. In addition, subsequent research should aim to increase the participation of vulnerable groups lacking access to internet.

This study serves as a baseline document for the implementation of the Spotlight Initiative in Timor-Leste. Through its multi-year implementation, the Initiative seeks to improve Timor-Leste’s laws and policies on violence against women and girls and harmful practices, in order to ensure that all women and girls’ human rights, including sexual and reproductive health and rights, are in line with international standards and treaty bodies’ recommendations.\(^{19}\)

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CHAPTER 1
CRIMINAL LAWS
AND POLICIES
CHAPTER 1

CRIMINAL LAWS AND POLICIES

Timor-Leste’s legal order provides for protection against violence by an intimate partner in many settings, and, as stated in the Constitution, includes special protections of children (Article 18), persons with disabilities (Article 21), and pregnant women (Article 39(4)).

As it will be further discussed, some acts of violence and/or discrimination against women and girls identified in the 2009 Penal Code and the 2011 Civil Code lack a gender lens, enabling discrimination and bias from law enforcement officials. Provisions based on concepts such as morality, public decency, and honor, for example, invite gender stereotypes from judicial and law enforcement actors.

A. Domestic Violence

The 2010 Law Against Domestic Violence and the 2017-2021 National Action Plan on Gender-Based Violence constitute the main regulations for combating and eliminating gender-based violence in the country.

Timor-Leste’s promulgation of LADV was a milestone in establishing measures to combat and eliminate gender-based violence. LADV not only punishes perpetrators of gender-based violence, but also establishes protective, educational and health measures for the prevention and handling of domestic violence. In addition, LADV enshrines the principle of equality (Article 4) and the principle of free and informed consent (Article 6), including the obligation to providing appropriate information to the survivor/victim (Article 7). This expanded approach to dealing with domestic violence is particularly relevant for addressing types of violence that historically have been widely accepted in society, such as threats and certain types of sexual violence—for example marital rape.

LADV introduced significant changes to the role of the State in combatting and eliminating domestic violence (Article 13), particularly because previously this task was thought to be the duty of traditional leaders. In contrast, through LADV’s recognition of the centrality of State institutions in ending domestic violence, other actors, such as community and traditional leaders, are now assigned a supporting role.
Despite these innovations to the justice system, LADV does not provide sufficient measures to protect children from the collateral effects of domestic violence. An example is when the remedy to domestic violence involves the withdrawal of the survivor from the household, usually the mother, which may cause harm to the children or other dependents. The nature of such harm includes, but is not limited to, trauma related to separation from caregivers, continuous cohabitation with perpetrators of domestic violence, and secondary victimization through exposure to negligence and suboptimal treatment in the medical system and from social services.

The 2017-2021 National Action Plan on Gender-Based Violence aims to address different categories of gender-based violence, including, but not limited to “any act whether occurring in public or in private life or perpetrated or condoned by the State, that results in, or is likely to result in, physical, sexual, psychological, emotional, psychosocial or economic harm or suffering to someone based on gender discrimination, gender role expectations and gender stereotypes”. The Plan is structured according to four pillars, namely prevention measures; provision of services; access to justice; and coordination, monitoring and evaluation.

Major gaps in NAP-GBV relate to an absence of intersectional approaches addressing the needs of groups with greater levels of vulnerability and/or those affected by intersecting forms of discrimination, such as girls and women with disabilities, those who are illiterate, or who have no or limited knowledge of the official languages of the country. Additionally, NAP-GBV lacks adequate development and budget allocation for key autonomous bodies, such as the Public Defender’s Office, which are crucial to promote access to justice to victims of gender-based violence. Finally, the lack of coordination with the National Human Rights Institution may jeopardize the effectiveness of the NAP-GBV.

Although the PDO is supposed to monitor the handling of domestic violence cases of different legal actors, there is no specific mechanism for doing so or example of this having been done. In 2017, the Public Defender’s Office Statute was reformed to provide for the establishment of justice clinics; standardize, simplify and clarify procedural rules; and establish that survivors of GBV, including domestic and sexual violence, are presumed financially vulnerable. Nevertheless, according to reports of civil society organizations, these reforms have insufficiently accommodated children, and justice clinics remain underdeveloped.

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Other State policies, in contrast, apply a more intersectional approach. The National Plan on People with Disabilities, for instance, recognizes the increased risk faced by women and girls with disabilities to gender based violence. Additionally, the National Guideline for Health Care Providers to Address GBV includes special protocols to respond to gender-based violence against persons with disabilities.

The Maubisse Declaration Phase Two on Improving Rural Women’s Lives provides important direction for ending gender-based violence. It highlights that throughout the 5-year implementation period from 2018 to 2023, the State must guarantee that rural women survivors of gender-based violence have immediate access to health assistance, including gender-sensitive forensic examination, medical treatment, and counselling. In the same document, the State commits to providing rural women and people with disabilities who are survivors of gender-based violence with financial support and economic assistance. Despite being a non-legally binding instrument, it is in line with CEDAW Committee’s Recommendation No. 25 on Article 4 of the Convention regarding the adoption of temporary special measures aimed at enhancing gender equality.

Nature of domestic violence crimes in Timor-Leste

The Timorese legal system classifies crimes as public or semi-public in nature. Crimes of a public nature are considered harmful to the interests of society. The list of crimes covered by LADV are of a public nature.

As defined in Article 106(2) of the Penal Code, a public crime is a crime that does not depend on the report of the victim to initiate judicial proceedings. As a result, any individual can report such a crime to either the police or the Prosecutor’s Office, as established in Article 213(1) of the 2006 Criminal Procedure Code. Once the complaint is received, the Prosecutor’s Office files a crime report before the judiciary.

LADV’s classification of domestic violence as a public crime places due diligence obligations on both police officers (Article 19) and prosecutors (Article 28). In
particular, it makes it possible to hold accountable State officials who do not comply with their duties to prevent, investigate and impose penalties for domestic violence. Further, the act of accepting reports of violence by any individual sends a message that combating and eliminating gender-based violence is not a private family matter, but every citizen’s duty.

The definition of family under LADV

Article 3 of LADV establishes the familial or intimate nature between the survivor and perpetrator in domestic violence. In defining domestic violence through relational terms, the law does not specify the gender of survivor and perpetrator, meaning that a person of any gender can benefit from LADV.

Secondly, the law’s definition of family member includes those who live or have lived in conditions similar to that of spouses, irrespective of cohabitation; relatives; and non-relatives who exist in a state of economic dependency or within the household. This provision acknowledges that economic bonds, in addition to spousal or kindred bonds, can also link the perpetrator to the survivor.

Thus, LADV, unlike the Civil Code, acknowledges civil partnerships/de facto unions in line with CEDAW Committee’s General Recommendation No. 21 on equality in marriage and family relations. However, this poses an internal contradiction in the national legal framework. While LADV recognizes the existence of civil partnerships for the purpose of prosecuting domestic violence, such partnerships are not legally recognized, and hence stripped of ensuing benefits, contrary to the intentions of the CEDAW recommendation.

By establishing that former partners can also be perpetrators of domestic violence, LADV addresses a legal gap in the Penal Code, which formerly only considered the status of current partners to be an aggravating circumstance in crimes of violence (Article 139(g)), aggravated homicide (Article 173(a)), and sexual violence. Still, for full compliance with CEDAW Recommendations on Timor-Leste, the State should amend the Civil Code to recognize de facto unions and to safeguard the rights to land and property of women in de facto partnerships.

Inconsistencies between LADV and the Penal Code

The promulgation of LADV led to an amendment of the Penal Code updating criminal offences accordingly. However, despite being recognized as domestic violence in LADV, the Penal Code did not criminalize psychological and economic violence. While Article 2 of LADV lists in its definition of domestic violence psychological and economic violence, including threats such as intimidating acts, bodily harm, aggression, coercion, harassment, or deprivation of freedom, these acts are not mentioned in later sections of the law, namely Article 35, which explicitly lists which acts of family violence are criminal offences. This is despite the fact that these and similar acts are crimes in the Penal code:

→ **Article 157**: threats
→ **Article 158**: coercion
→ **Article 159**: serious coercion
→ **Article 258**: property damage
→ **Article 259**: aggravated property damage

The failure to link the above criminal offences in the Penal Code with corresponding acts of domestic violence creates legal uncertainty, and undermines the law’s capacity to protect survivors of domestic violence. This is because the above criminal practices are common in domestic violence cases and often determine survivors’ capacity to stay or leave a violent relationship. In this regard, Judicial System Monitoring Program (JSMP) and ALFeLa\(^\text{26}\) argue that this lack of coverage can discourage survivors from reporting behavior or threats that constitute domestic violence.

Suspended sentences and payment of fines by perpetrators

Article 38 of LADV provides for the conversion of custodial sentences into the payment of fines or suspension of the sentence established in Articles 67 and 68 of the Penal Code when the following conditions are met:

\(^{26}\) JSMP, ALFeLa 2015. Improving the Penal Code to better protect women and children. Dili, Timor-Leste. P. 43.
While the imposition of fines and the suspension of sentences have the potential to promote behavioral changes in the perpetrator without disrupting community ties, there remain concerns about the monitoring and effectiveness of these alternative mechanisms.

JSMP court monitoring statistics from 2010 to 2013 showed that in most judicial decisions concerning cases of domestic violence, the courts either suspended the sentence (52%) or imposed a fine to the perpetrator (24%)\textsuperscript{27}.

While the imposition of fines and the suspension of sentences have the potential to promote behavioral changes in the perpetrator without disrupting community ties, there remain concerns about the monitoring and effectiveness of these alternative mechanisms\textsuperscript{28}.

Imposing fines may cause financial hardship to survivors and children, particularly where the relationship between the survivor and perpetrator is characterized by economic dependency. Further, despite the requirement that the survivor’s safety be assured before using the alternative measure of a fine, there is no evidence that this has been properly verified as there are no regulatory measures to verify the safety of survivors.

\textsuperscript{27} JSMP; East Timor Justice Sector Support Facility; Australian Aid, 2013. Law Against Domestic Violence Obstacles to implementation three years on. P. 17.

\textsuperscript{28} According to the Penal Code, the substitution of prison sentence for fine is only applicable when a prison sentence does not exceed twelve months (Article 67), while the suspension of execution of a prison sentence is only applicable when a prison sentence does not exceed three years (Article 68).
While further studies are needed, it can be inferred that imposing fines as a deterrent for domestic violence can potentially burden the survivor to absolve the perpetrator, and therefore serves as an inappropriate form of punishment. It is thus recommended that the imposition of fines be combined with treatment and supervision of the perpetrator through a period of probation.

Moreover, with regards to the suspension of sentences, JSMP research indicates that when a suspended prison sentence is given without any other obligations, victims may not feel that the perpetrator has been appropriately punished and therefore feel denied of justice. Thus, this alternative mechanism should be accompanied by additional orders, such as community service or civil compensation.

Nonetheless, studies indicate that the lack of clarity regarding the content and consequences of fines and suspended sentences leads to a perception, among both survivors and the broader community, that perpetrators are being acquitted and receiving impunity.

When adequately regulated, the coordination of judicial measures and follow-up mechanisms administered by community actors are shown to be an efficient model for responding to GBV. In the context of widespread critiques about the use of alternative justice mechanisms, the Special Rapporteur on the Rights of Indigenous Peoples has praised the country’s hybrid justice system and noted that formal and customary justice systems can coexist harmoniously and complementarily to improve access to justice.

This hybrid use of formal and informal mechanisms has the potential to better fulfill the CEDAW Committee’s General Recommendation No. 35, which requires that States ensure that gender-based violence against women is not mandatorily handled with alternative dispute resolution procedures, including mediation and conciliation. The use of the latter procedures should be strictly regulated and permitted only following an evaluation by a specialized team to ensure the survivor’s free and informed consent and that there are no indications of further risk to the survivor or family members.
B. Sexual violence

WHO and UNODC establish that sexual violence refers to “any sexual act that is perpetrated against someone’s will” 33. It can be committed by any person regardless of their relationship to the victim and in any setting. It includes, but is not limited to, rape, attempted rape, sexual slavery, as well as unwanted touching, threatened sexual violence, and verbal sexual harassment.

While sexual violence does not exclusively affect women and girls, women and girls disproportionately experience it. A 2004 WHO worldwide review estimated the prevalence of childhood sexual violence to be about 27% among girls and around 14% among boys34. In Timor-Leste, 14% of girls and women aged 15–49 years have experienced sexual violence perpetrated by someone other than a partner at least once in their lives35. These figures are likely even higher, given that globally the vast majority of sexual violence goes unreported.

The Timorese legal system recognizes and prohibits rape, sexual coercion and sexual harassment. While the former two categories are covered by LADV, sexual harassment is discussed in the Labor Code as a subset of labor harassment. As will be further discussed, the differentiation between rape and sexual coercion is based on the occurrence of penetrative sexual intercourse, contrary to international standards on sexual violence.

Equally concerning is the requirement under Timorese law of establishing the use of force or threat as a necessary condition to proving sexual violence. This requirement is not exclusively a challenge faced by Timor-Leste. Many countries inadvertently engender discrimination through the use of obsolete force-based laws that often cause secondary victimization to survivors and impunity for perpetrators.

Force-based system

Under the current framework on sexual violence in Timor-Leste, proof of use of force or threat by the perpetrator is required in order to demonstrate the complainant/survivor’s lack of consent. JSMP and ALFeLa stress that this is often difficult for survivors to prove, particularly when they have been raped or otherwise sexually

abused in coercive circumstances not involving obvious force. Consequently, these provisions do not afford women and girls, the most common survivors of such crimes, adequate protection. Moreover, as mentioned above, this requirement often causes secondary victimization.

In this regard, the Penal Code’s differentiation between sexual coercion and rape based on whether penetrative intercourse has occurred should be eliminated. Instead, there should be a provision clarifying which acts constitute sexual violence, including coercive methods not based purely on force; as well as recognizing the long-term psychological and economic consequences of such acts. Likewise, it is necessary to broaden the range of evidence accepted by police and judicial actors, including the consideration of contextual information surrounding acts of sexual violence.

In Vertido v. Philippines, concerning the rape of a woman from the Philippines, the CEDAW Committee recognized the challenge of meeting legal standards of evidence in cases of sexual violence, particularly in cases of rape. The Committee acknowledged the limitations of definitions of rape based on force and called for the elimination of penetration as a requirement for the recognition of sexual assault. Instead, they argued that evidence should be on the basis of determining “unequivocal and voluntary agreement”. Further, the Committee highlighted the need for reform focusing on minimizing secondary victimization.

Additionally, extra measures should be adopted in order to ensure the well-being of child victims and witnesses of crime, particularly through the effective implementation of the right to be treated with dignity, protection and non-discrimination. In particular, these measures should limit interference into the child’s private life as far as possible while still maintaining the highest standards of evidence collection, based on principles of fairness and justice.

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36 Obstacles faced by survivors of violence when reporting a crime, besides the evidentiary ones, include: the limitations of forensic capacities, medical facilities, health personnel training, evidence of timing. These obstacles are especially prevalent in rural areas.


39 In particular, judicial proceedings that involve the participation of children either as victims or witnesses should consider the following measures identified by the United Nations Economic and Social Council Commission on Crime Prevention and Criminal: (a) In order to avoid further hardship to the child, interviews, examinations and other forms of investigation should be conducted by trained professionals who proceed in a sensitive, respectful and thorough manner; (b) All interactions described in these Guidelines should be conducted in a child sensitive; (c) manner in a suitable environment that accommodates the special needs of the child, according to his or her abilities, age, intellectual maturity and evolving capacity. They should also take place in a language that the child uses and understands; (d) Ensure speedy trials, unless delays are in the child’s best interest. Investigation of crimes involving child victims and witnesses should also be
The CRC Committee in General Comment No. 13 likewise observes that children are often subjected to further harm through the process of the investigation of sexual violence. Therefore, the Committee recommends that specially trained officers be in charge of investigations involving children who should dually consider the involved children’s views.40

Following this Recommendation, Timor-Leste should review its rules of evidence and their implementation, especially in cases of violence against women and girls, and adopt measures that give due regard to the rights of litigants and their dependents, ensuring that the evidentiary requirements are neither overly restrictive, inflexible nor influenced by gender stereotypes.41


Rape

The provision that criminalizes rape in Timor-Leste is found in Article 172 of the Penal Code:

Article 172: Rape

Any person who, by the means referred to in the previous article, practices vaginal, anal, or oral coitus with another person or forces the same to endure introduction of objects into the anus or vagina is punishable with 5 to 15 years imprisonment

While rape is punishable with 5 to 15 years' imprisonment in Article 172, Article 171 punishes sexual coercion with 2 to 8 years’ imprisonment. These different punishments are thus based on whether penetration has occurred, without taking into account other relevant factors, such as the psychological effects on the survivors.

Article 173 describes two categories of aggravating factors that determine the seriousness of the crimes of rape (Article 172) and sexual coercion (Article 171): (1) based on the characteristics of the survivor and her/his capacity to make informed decisions; (2) the nature of the relationship between the perpetrator and the survivor, particularly if there is a relation of dependency between the parties.

The first category considers the circumstances of the survivor. Minors, that is persons younger than 17 years (173(d)) and persons who are unconsciousness or have mental/physical disabilities (173(c)) are not considered able to consent to sexual acts.
The second category of aggravating factors focuses on the nature of the relationship between the perpetrator and the survivor. This includes whether perpetrator and survivor are linked through family or labor relations (173(a)); or whether the perpetrator is able to exercise authority over the survivor through the former’s employment in medical, educational or prison facilities (173(b)). The existence of such aggravating factors can increase the penalty length in cases of rape and sexual coercion.

The Code’s recognition of these aggravating factors is key to enhancing the protection of groups in vulnerability. By examining the ways in which the perpetrator and survivor relate to one another and recognizing that asymmetrical power relations in the home or workplace may foster sexual violence, the Penal Code increases the protection of women and girls.

Nonetheless, Timor-Leste’s legal framework on sexual violence still lacks a survivor-centered approach. Such approach should have three features: consideration of the individual nuances of the survivor; consideration of the multiple vulnerabilities that s/he faces; and the adoption of a gender and child-sensitive approach. The first feature focuses on the priorities established by the survivor/complainant, rather than treating all survivors/complainants as a single homogeneous group.

The second relates to assessing the individual needs of every survivor, cognizant of her/his unique rights and interests. Finally, a gender and child-sensitive approach should tackle the issue of sexual violence experienced by male and female victims in a manner that is comprehensive, non-discriminatory and inclusive. Additionally, a child sensitive approach requires balancing children’s protection with an acknowledgement of their individual needs and views. Finally, guiding principles such as strict accountability, comprehensive protection and accessibility are crucial in the response to sexual violence.

In this sense, sexual offences should be classified under a general category of sexual assault graded on harm. Such provisions should then include aggravating circumstances including, but not limited to:

A. the age of the survivor;

B. the relationship of the perpetrator and survivor;

C. the use or threat of violence;

D. the presence of multiple perpetrators;  
E. and the physical or mental consequences of the attack on the survivor⁴³. Additionally, a non-exhaustive list of punishable acts should serve as a guideline for police officers, prosecutors and judges to establish the seriousness of the crime and determine proportional penalty.

Finally, the requirement that sexual assault be established by proving force, violence, or any proof of penetration should be eliminated, as these factors are not only difficult to ascertain in a court, but also often cause secondary victimization in proceedings⁴⁴.

Marital rape

In many jurisdictions across the world, men are legally and culturally authorized to have sex with their spouse as a condition of the validation and continuation of their marriage. Legal provisions to this effect have persisted in Western jurisdictions until the 1970s. According to UN Women, by 2018 only 42% of countries (77 out of 185) had enacted legislation explicitly criminalizing marital rape. The direct criminalization of marital rape is crucial to reinforcing the definition of rape as non-consensual sex between any individuals, regardless of their relation⁴⁵.

There are no specific provisions under the Timorese legal system that expressly criminalize marital rape. According to JSMP and ALFeLa, marital rape in Timor-Leste can be prosecuted in the same manner as rape outside a marriage. While Article 173(a) of the Penal Code provides as an aggravating circumstance sexual violence based on family bonds, this does not constitute a clear and explicit prohibition of marital rape⁴⁶.

It is therefore crucial that the Penal Code be reformed to clarify that the prohibition of rape applies irrespective of the nature of the relationship between the perpetrator and complainant. Furthermore, Timor-Leste should review its Penal Code and Criminal Procedure Code to specify that the definition of rape includes any non-consensual sexual act⁴⁷.

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Sexual coercion

The provision that criminalizes non-penetrative sexual violence is found in Article 171 of the 2010 Penal Code:

Article 171: Sexual coercion

Any person who, by means of violence, serious threat, or after having made, for the purpose of compelling another person to endure or to practice with the same or a third person any act of sexual relief, such a person unconscious or placed the same in a condition where resistance is impossible, is punishable with 2 to 8 years imprisonment.

Article 171 broadly covers sexual acts forcibly committed against a person aged 17 or older. Likewise, Article 173(d), concerning aggravating circumstances, applies to victims younger than 17 years, implying that Articles 171 and 172, namely sexual coercion and rape, equally apply to minors. Specifically, Article 172 on rape does not establish a lower age limit to which it is applicable. This highlights the internal gaps and inconsistencies within the Penal Code’s definitions of sexual crime.

Additionally, the vague language in Article 171 grants wide discretion to the interpretation of judges, prosecutors and police agents in determining sexual coercion. From the perspective of securing the rights of women and children, this raises concern, given that these actors are not exempt from misleading notions based on gender stereotypes.

Globally, the criminal justice sector’s response to gender-based violence often fails survivors of domestic violence and inadequately addresses the severity, nature and extent of the problem. Even in cases where convictions are secured, survivors of gender-based violence are frequently subjected to secondary victimization and trauma due to the insensitive or harsh treatment they experience from criminal justice officials.  

Millions of children and adolescents around the world are subjected to sexual abuse, including coercion and rape. A 2011 study estimated that 18% of girls and 8% of boys worldwide have experienced sexual abuse. In most cases, perpetrators are part of the survivor’s inner circle, and include parents and other family members.

This was reiterated in a survey targeting the South Pacific conducted by UNFPA and UNICEF, which found that in most cases sexual abuse of children younger than 15 was committed by family members, including fathers. In Solomon Islands, perpetrators were family members or family’s friends in 38% of cases. In Vanuatu, perpetrators were family members in 55% of cases. Various studies have identified a similar pattern in Timor-Leste, where perpetrators of sexual violence against children are typically family members, particularly older men such as fathers, uncles and grandfathers.

The provision that criminalizes sexual offences against minors in Timor-Leste is found in Article 177 of the Penal Code:

**Article 177: Sexual abuse of a minor**

1. Any person who practices vaginal, anal or oral coitus with a minor aged less than 14 years is punishable with 5 to 20 years imprisonment.

2. Any person who practices any act of sexual relief with a minor aged less than 14 years is punishable with 5 to 15 years imprisonment.

As in Article 172 on rape, Article 177(1) considers penetrative sexual intercourse to be the gravest offence of sexual violence against a child, punishable with 5 to 20 years’ imprisonment. Article 177(2) focuses on other sexual acts, which is punished with a slightly shorter prison sentence.

As previously discussed, the distinction between sexual coercion and rape based on penetration should be eliminated. There should instead be a clarifying provision that

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encompasses different forms of sexual violence, taking into account the victim’s suffering; coercive methods other than physical force; as well as the long-term psychological and economic consequences of sexual abuse.

Abuse of children by family members

The Penal Code considers as aggravating circumstances to rape and sexual coercion the nature of the relationship between the perpetrator and the survivor (Article 173(a)), as well as whether the victims is younger than 17 (Article 178(d)).

On the other hand, Article 182 applies to all the sexual crimes reviewed.

It is therefore recommended that there be an amendment establishing the applicability of the aggravating circumstances provided in Article 173 to cases involving children. In doing so, the criminal justice system could better address cases of sexual violence committed by family members against girls, commonly classified as incest.

This would render the addition of incest as a new criminal offense redundant, simplifying and consolidating the existing legal framework. However, to better protect children, further analysis of social and political factors that promote incest is required. As incest has historically been embedded in moral and religious arguments, a survey on community perception of incest should be developed in order to identify whether it should be addressed on its own terms or incorporated into the existing framework.

Awareness-raising campaigns, sensitization initiatives and capacity-building programs are often recommended for changing preconceived social practices and stereotypes based on gender. The 2016-2020 National Action Plan for Children specifically addresses child sexual abuse, exploitation and incest. The Plan...
establishes a Case Management Policy and Standard Operating Procedures to guide inter-ministerial agencies in managing child abuse cases. Additionally, the Plan also focuses on building the capacity of law enforcement, lawyers, prosecutors, judges, and social workers to achieve administrative justice for children.

Ultimately, it is crucial that child sexual abuse is addressed using multiple avenues, including engaging with the consequences that emerge from it, such as the practice of forcing girls to marry their perpetrators.

**Sexual acts with adolescents**

Regarding the consent of minors, legal definitions and law enforcement practices are even more complex. In this regard, there has been significant debate throughout the last few years in Timor-Leste. Article 178 of the Penal Code therefore provides a distinct protective framework for teenage survivors of sexual abuse:

**Article 178: Sexual acts with an adolescent**

Any person who, being an adult and apart from situations provided in this section, practices any relevant sexual act with a minor aged between 14 and 16 years, taking advantage of the inexperience of the same, is punishable with up to 5 years imprisonment.

Article 178 of the Penal Code punishes adults who engage in sexual acts with teenagers aged 14 to 16, based on the victim's capacity to give consent. According to this provision, it is only punishable when the adult takes advantage of the “inexperience” of the adolescent.

This provision ultimately aims to protect children and adolescents from situations in which they are compelled to engage in sexual activity with an older person in which there is an imbalance of power, authority or offered benefits. Nonetheless, it may inadvertently criminalize consensual sexual acts.

For instance, a teenager who is legally an adult may engage in consensual sexual acts with another teenager who has not yet reached the age of majority. Under the Timorese legal system, criminal liability starts at 16 years. This means that a 17 year old who has consensual sex with a 16 year old could be punished according to Article 177.
Despite the lack of consensus on the legal minimum age to engage in sexual acts, the complete prohibition of sexual activity below an age at which adolescents might already be engaging in sexual acts may effectively criminalize common adolescent behavior\textsuperscript{52}. This could have a significant impact on adolescents’ perceptions of sex, leading to reluctance to seeking medical counseling and use of contraception. Ultimately, this may increase adolescents’ vulnerability to sexually transmittable diseases (STDs), such as AIDS.

The difficulty of determining the age of consent for adolescents has been approached differently in various jurisdictions. Some States permit sex between an adult and a minor if the age difference between the parties is not more than 2 or 3 years\textsuperscript{53}. Timor-Leste should consider such approaches. Furthermore, vague terms such as “inexperience”, found in Article 178 of Timor-Leste’s Penal Code, is open to subjective interpretation and should thus be removed.

**D. Sexual and reproductive health and rights (SRHR)**

Article 57 of the Constitution addresses the right to health and establishes a national free and universal healthcare system in the country, according to the State’s available resources. Nonetheless, there are is little national legislation establishing a comprehensive approach to SRHR. Similarly, there is an absence of policies focused on bodily autonomy and the psychological, emotional and social wellbeing of women and girls\textsuperscript{54}.

An urgent issue in the Pacific region related to sexual and reproductive health is adolescent pregnancy. The birth rate among teenagers aged 15 to 19 in low- and middle-income countries in the East Asia Pacific has risen over the past 10 years from 18 to 23 births out of every 1,000\textsuperscript{55}. In Timor-Leste, according to UNFPA, of all 15 to 19-year-old women with children, half already have had more than one child\textsuperscript{56}. This contributes to a cycle of violence, as young mothers are more likely to marry early.


\textsuperscript{53} Ibid. P. 18.


...In Timor-Leste, according to UNFPA, of all 15 to 19-year-old women with children, half already have had more than one child...

and hence more vulnerable to family violence.

Factors such as poverty, cultural practices, rural conditions, and religion may influence young mothers to drop out of school. Therefore, efforts to delay marriage and childbearing and keep girls in school must address underlying socio-economic and cultural factors.

The 2017 Inclusive Education Policy acknowledges that adolescent pregnancy and school dropout rates are a significant national challenge. However, this policy does not sufficiently engage with the root causes of this phenomenon, limiting its response instead to advising the sensitization of education professionals; providing information on the benefits of going back to school; and coordinating special enrollment arrangements with school management.

A more comprehensive policy that includes special measures and affirmative actions is crucial to better encourage the return of these teenagers to school. It is important to offer free kindergarten facilities to ensure that the children of young parents will be taken care of; financial benefits to encourage adolescent parents to study instead of finding means to provide for their children; as well as alternative assignments and class schedules that take into account breast or bottle-feeding conditions.

**Comprehensive Sexuality Education (CSE)**

The National Health Sector Strategic Plan 2011-2030 lists maternal and child health as among the two highest priorities of the national health programs. Along the same line, both the 2016 National Youth Policy and the 2017 Inclusive Education Policy emphasize combatting HIV infection among the youth as a State priority.
The National Youth Policy highlights that from 2003 to 2014, a total number of 484 people were diagnosed with HIV/AIDS, of which 76 males and 65 females (over a quarter of the total diagnosed) were aged 15 to 24. The Policy thus proposes measures aimed at young people, such as providing education and disseminating information about sexual and reproductive health, including HIV/AIDS, in cooperation with Youth Associations and non-governmental organizations.

While this approach is commendable, a Comprehensive Sexuality Education (CSE) policy should be developed in order to approach challenges related to sexuality more holistically. CSE covers a wide range of topics, some of which may be culturally sensitive. CSE is thus distinguished from existing pedagogical approaches in that it not only focuses on technical aspects of sexual health, but also engages more broadly with the concept of sexuality as perceived by that community.

There is an increasing international appreciation of CSE as a tool for preparing young people for risks such as sexually transmitted diseases, unintended pregnancies, child marriage and gender-based violence, without shaming or undermining the agency of adolescents who choose or do not choose to engage in sexual activities.

It is thus advisable that a broader strategy on SRHR be developed that includes a high-quality, curriculum based CSE program. This should be delivered by well-trained and well-supported teachers in school settings, or may be taught outside the classroom if necessary. The Strategy should be designed and implemented using a gender lens that highlights the life-long effects of gender disparity and gender-based violence.

**Children’s consent to medical care**

The principle of the evolving capacity of the child, enshrined in Article 5 of the CRC, should govern the provision of counseling, advice and medical care to children, particularly regarding their sexual and reproductive health.

Timor-Leste’s legal system has progressively been incorporating this, seen for instance...
in the 2010 Law Against Domestic Violence and the 2017 Law on the Prevention and Fight Against Human Trafficking. Both laws recognize the principle of consent in health and social services for victims of domestic violence and trafficking, and further recognize the evolving capacity of children aged 12-16 years old to consent to medical and social interventions.

More recently, the Guidelines on the Health Sector Response to GBV established a detailed protocol for obtaining the free and informed consent of survivors of gender-based violence, particularly children and persons with disabilities, in medical procedures\(^59\). In particular, the Guidelines offer an extensive explanation and a checklist outlining all aspects of the survivor’s care; including disclosing information about confidentiality and its limits (particularly how the obtained information may be used); and requiring that medical professionals suspend certain examinations or procedures when refused by the patient, depending on the urgency of the case. Further, the guidelines adopt a survivor-centered approach, as well as alerting medical professionals to the fact that children’s caregivers are often perpetrators of violence or accomplices to the perpetrator.

Still, children’s consent to medical services remains under-examined in the national legislation. This is despite General Comment No. 12 of the CRC, which establishes that, in accordance with their evolving capacities, children should have access to confidential counseling and advice without parental or legal guardians’ consent. In this regard, the CRC Committee has called on States to reform laws and practices to allow children to consent to certain medical treatments and interventions without the permission of a parent, caregiver, or guardian\(^60\). This should include HIV testing and sexual and reproductive health services, together with education and guidance on sexual health, contraception, and safe abortion\(^61\).

**Interruption of pregnancy**

In contrast to Timor-Leste’s regard for individual consent in medical procedures, there is a vastly different approach regarding the right to voluntarily terminate a pregnancy. Article 141 of the Penal Code punishes both the third party who carries
out the termination of the pregnancy and the pregnant woman who decides to carry out the termination by herself or through a third party.

**Article 141: Termination of pregnancy**

1. Any person who, by any means and without consent of the pregnant woman, causes an abortion shall be punishable with a prison sentence between 2 and 8 years.

2. Any person who, by any means and with the consent of the pregnant woman, causes an abortion shall be punishable with a prison sentence not exceeding 3 years.

3. Any pregnant woman, who consents to an abortion committed by a third party or, by her own actions or those of a third party, causes an abortion, shall be punishable with a prison sentence not exceeding 3 years.

4. The provisions in the previous sub-articles shall not be applicable in the event that the termination of pregnancy constitutes the only means of removing the pregnant woman or fetus from danger of death or serious and irreversible harm to the body or physical or mental health, as long as performed pursuant to authorization and supervision of a medical panel, professional physician or health professional in a public health institution and with consent of the pregnant woman and/or the spouse.

5. Provisions in sub-article 4 of this present article are correspondingly applicable.

In the circumstances outlined in subsections (1) to (3), the nature of the crime and length of the penalty depends on the consent (or lack thereof) of the pregnant woman. It is necessary to highlight the absence of a provision related to the termination of pregnancy in children, a right particularly relevant to child victims of sexual violence.

The CEDAW Committee has called for the adoption of legislation allowing for abortion in the following cases: (1) threat to the pregnant woman’s physical or mental health; (2) Rape and incest; (3) Severe fetal impairment, including fatal fetal abnormality, without perpetuating stereotypes towards persons with disabilities and ensuring appropriate and ongoing support, social and financial, for women who decide to carry such pregnancies to term\(^2\). In the Committee’s Concluding Observations on Timor-Leste, it reinforced the need for the Timorese state to reform

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its legislation in accordance with these standards\textsuperscript{63}.

The UN Human Rights Committee (HRC) established that laws expressly criminalizing abortion are discriminatory, affect women’s rights to life and privacy, and constitute a barrier to women’s access to health care\textsuperscript{64}. It therefore recommends that States review their national legal frameworks in order to remove the prohibition of all instances of voluntary termination of pregnancy. Finally, the HRC provided that such laws criminalizing abortion may cause pregnant women and girls physical or mental suffering, which violates Article 7 of the ICCPR, particularly in cases of incest or rape.

** Interruption of pregnancy for sexual violence survivors **

Timor-Leste’s legal framework does not allow the interruption of pregnancy for survivors of sexual violence. Article 141(4) of the Penal Code establishes the exceptions to this and allows women to access therapeutic termination only due to:

\begin{itemize}
  \item danger of death;
  \item serious and irreversible harm to the body or physical or mental health.
\end{itemize}

In both circumstances, the termination of pregnancy requires the consent of the pregnant woman but must be authorized by a medical panel, professional physician or health professional. A concerning feature of the law is the possibility that the spouse’s consent may overshadow that of the pregnant women, indicated in the phrase “and/or” in Article 141(4). Furthermore, despite allowing for termination where the life or health of the pregnant woman or fetus is severely in danger, the wording of Article 141(4) does not allow for the other liability exemption causes considered to be the SRHR minimum standard, namely rape and incest.

The application of the exemption provision relies predominantly on the interpretation and discretion of judicial and medical actors. This violates women and girls’ reproductive rights firstly by causing delays in abortion proceedings, secondly by potentially submitting pregnant women and girls to public scrutiny and trauma, and thirdly by generally creating a chilling atmosphere with respect to access to abortion, even at earlier stages of pregnancy\textsuperscript{65}.


\textsuperscript{64} United Nations, Human Rights Committee 2018. General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life. CCPR/C/GC/36. Adopted by the Committee at its 124\textsuperscript{th} session (8 October to 2 November 2018). Para. 8.

\textsuperscript{65} Center for Reproductive Rights 2018. Ensuring reproductive rights reform to address women’s and girls’ need for abortion after 20 weeks in India. New York; United States. P. 13.
E. Sex work and anti-prostitution laws

Article 174 of the 2009 Penal Code criminalizes the sexual exploitation of a third party:

Article 174: Sexual exploitation of a third party

1. Any person who, with intent to derive profit or any person who makes a livelihood from, promotes, facilitates, or by any other means, contributes toward engaging another person in prostitution or other sexual acts, is punishable with 3 to 10 years imprisonment.

2. The perpetrator is punishable with 4 to 12 years imprisonment, if any of the following circumstances arises: a) Exploitation of the situation of abandonment or economic necessity of the victim; b) Use of violence, serious threat or coercion over the victim; c) Displacing the victim to a country different from where the victim was born or was resident; d) Withholding any identification document belonging to the victim.

Through this provision, the Penal Code criminalizes sexual exploitation and not sex work itself.

Aggravating circumstances apply to cases in which there is exploitation of survivors who were abandoned or are in economic need; when there is use of violence, serious threats or coercion; when victims are displaced to a country other than that of origin or residence; or when the perpetrator confiscates the victim's identification document.

Additionally, Article 175 of the Penal Code concerning “child prostitution” criminalizes acts of sexual exploitation to children below 17 years old, even with the complainant's consent. It also makes punishable any act offering, obtaining, seeking or delivering children younger than 17 years for the purpose of child prostitution. As previously discussed, the age of minority under the Timorese legal system does not comply with international standards, which defines a child as someone under the age of 18, thus creating inconsistency in the protection of children of certain ages.

It is further recommended that the term “child prostitution” be replaced with “child sexual exploitation”, thus shifting the focus of the crime to the perpetrator and her/his exploitative acts. By adopting this language, the State better expresses the principle of the best interests of the child and acknowledges the lack of capacity of a child to consent to any sexual practice.

Poverty and unemployment are common factors that motivate women to do sex work. Working in a nonregulated and potentially illegal environment makes such women especially vulnerable to violence; marginalization; infectious diseases, such as HIV; discrimination; and limited access to health services and counseling.
Despite the lack of direct criminalization, the absence of a provision explicitly legalizing sex work causes indirect discrimination against sex workers. In this regard, the adoption of more progressive approaches towards sex work has been recommended by different international bodies.

For instance, the ILO advocates for the regulation of sex work, its recognition as an occupation, and provision of protection to both workers and customers. Such proposals are relevant for improving social protection nets and establishing minimum labor protection standards at a national level. The regulation of sex work and subsequent provision of services may also provide benefits such as reducing stigma, violence and harassment of sex workers, and increasing access to healthcare.

Providing access to healthcare and counseling to sex workers without prejudice or discrimination will improve sexual and reproductive health, including by increasing the use of contraception and decreasing the transmission of STDs. Likewise, this will delegitimize acts of violence against sex workers, reinforcing the message that laws and policies addressing gender-based violence are applicable to everyone. Finally, improved inclusion in social services will reduce the stigma and prejudice that makes sex workers reluctant to report abuse.

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F. Sexual orientation and gender identity

The Yogyakarta Principles\textsuperscript{68} defines sexual orientation as the ability of each person to experience a deep emotional, affectional or sexual attraction to, and intimate and sexual relations with, individuals of a different gender, the same sex or more than one gender. Gender identity, on the other hand, is understood as the internal and individual experience that each person has to their gender, which may or may not correspond to the sex assigned at birth, including the sense of their body (which may, if freely chosen, involve modification of appearance or function by doctors, surgeries or other means) and other gender expressions, including dress, speech and mannerisms.

No provisions within Timor-Leste’s legal framework expressly discriminate against individuals based on their sexual orientation or gender identity. However, conversely, Timor-Leste does not have gender recognition laws that allow trans and intersex people to change the gender reflected in their identity documents\textsuperscript{69}.

Article 52 of the Penal Code provides that an aggravating circumstance to a crime occurs when motivated “by racism or any other discriminatory feeling on grounds of gender, ideology, religion or beliefs, ethnicity, nationality, sex, sexual orientation, illness or physical disability of the victim”. This provision potentially applies to acts of violence or discrimination against lesbian, gay, bisexual, transsexual, intersex, and queer individuals.

Despite the prohibition of discrimination on the grounds of gender and sexual orientation, much is left to the discretion of the judiciary, police and prosecutors, who may themselves be prejudiced in this regard. In addition to sensitization and awareness campaigns, the text of the law should be rephrased to include definitions of gender and sexual identity in terms of the Yogyakarta Principles.

While the Penal Code does not criminalize consensual relationships between adults of the same sex, Article 1467 of the Civil Code defines marriage as a contract entered into by two persons of different genders, which has discriminatory consequences for same sex partners with regards to inheritance, alimony, guardianship, and adoption. For full compliance with international standards on equality and non-discrimination, this provision should remove the requirement that for a marriage to occur the parties must be of different genders.

Finally, a policy of comprehensive sexuality education should be adopted, which is


grounded in a broad understanding of relationships, emotional attachment, gender identity, and sexual orientation. Such an approach is crucial to the development of gender equality, tolerance and the wellbeing of LGBTIQ+ individuals. Therefore, the inclusion of topics such as sexual orientation and gender identity in the classroom may foster a more inclusive and respectful environment that can contribute to supporting human rights at an individual level.

CHAPTER 2
FAMILY LAWS
AND POLICIES
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FAMILY LAWS AND POLICIES

A comprehensive understanding of family affairs in Timor-Leste, including the role that women and girls play in society, requires an analysis of the country’s historical background and the different cultural elements that shape the present. Marriage is not only seen as the alliance between two individuals, but also initiates an intricate set of relationships, obligations and reciprocity between families, which turns intimate issues into a matter impacting the community71.

Article 39(1) of the Constitution emphasizes that the family is the basic unit of society and the condition for the harmonious development of an individual. Likewise, it establishes that marriage is based upon the free consent of the parties and full equality between spouses (Article 39(3)). Further, this provision establishes that the conditions for consent must be interpreted in accordance with the law.

In practice, religion and customary law play a crucial role in family affairs. The importance of religion is seen in the choice of marriage categories recognized in the Civil Code, namely civil marriage, Catholic marriage, and marriage through bride-price.

Furthermore, as indicated by the recognition of marriage through bride price, Timor-Leste has high levels of legal pluralism, with a significant amount of the population deferring to traditional justice systems whose authority comes from cultural, customary or religious institutions72. The role of traditional leaders is thus crucial in securing the rights of women and children, although has unfortunately at times prevented the effectiveness of formal State mechanisms, particularly in rural areas73.

The customary practice of mediation has been absorbed into the national legal system. Litigious divorce proceedings, according to Article 1651 of the Civil Code, must include an attempt at reconciliation, which has the negative side effects of causing secondary victimization to survivors of violence and subjecting women to social pressure to abandon the divorce proceedings.

In certain areas, traditional practices have been absorbed into the formal laws. The recognition in the Civil Code, for instance, of bride-price marriage raises concerns about women’s autonomy to consent to entering a marriage. According to Babo-Soares, bride-price is not merely economic, but plays a significant social role. The author describes marriage as the nucleus of Timorese social relationships, through which two families or clans form socio-political, economic and cultural alliances. 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 her husband’s family\textsuperscript{74}. In this regard, the formal recognition of bride-price may encourage gender stereotypes and hence impede the effectiveness of interventions against gender-based violence.

A. Equality in Family affairs

Under Article 64 of the Civil Code, all adults, including women, have full legal capacity, which allows them to enter into contracts and access financial credit. Additionally, Article 1583 establishes that both spouses in a marriage may incur debts without the consent of the other spouse. However, the effective implementation of these provisions is compromised by centuries-old traditions that prevent women from owning property\textsuperscript{75}.

In this regard, economic disparities between men and women are a known cause of dependency, creating an imbalance of power concerning decisions about entering and leaving a marriage. In the context of community-based proceedings aimed at promoting reconciliation, not only do husbands have greater claims to family assets, but they also enjoy advantages in the grounds for divorce and separation\textsuperscript{76}. Despite these asymmetrical patterns of power, there is a strong legal framework for promoting gender equality within the family.

The Constitution of Timor-Leste enshrines gender equality as a core principle in social life, including family affairs:


Article 17: Equality Between Women and Men

Women and men have the same rights and duties in all areas of political, economic, social, cultural and family life.

The 2011 Civil Code establishes in Article 1559 that marriage is based on equality of rights and duties between the spouses. Following this provision, Article 1560 provides that:

Article 1560: Duties of spouses

The spouses are reciprocally bound by the duties of respect, fidelity, cohabitation, cooperation and assistance.

This provision is complemented by the duty of spouses to cooperate with one another (Article 1562); to assist one another by providing food and sharing other responsibilities (Article 1563); and to contribute to the responsibilities of family life (Article 1564).

Article 1494(1) of the Civil Code, however, provides a different treatment of women and men regarding the interinuptial period following the death of a spouse:

Article 1494(1): Period during which a widow(er) is not allowed to marry again

1. The impediment arising from the period within which a widow(er) is allowed to marry again prevents the marriage of the party whose previous marriage was dissolved, declared void, or annulled, as long as one hundred and eighty or three hundred days have not elapsed since the dissolution, declaration of nullity or annulment, depending on whether the person concerned is a man or a woman.

Article 1494 of the Civil Code stipulates that a man can remarry 180 days after divorce or the death of his spouse, while a woman who is divorced or widowed shall wait 300 days. Exceptionally, subsection 2 of the same clause provides the possibility of a woman's remarriage upon a judicial declaration that she is not pregnant or, if she has had a child after the dissolution of the marriage, a declaration of nullity or annulment of the previous marriage.
The rule established in Article 1494 is not only discriminatory on the grounds of gender, but also increases the stigmatization of single mothers, who are obliged to undergo an invasive judicial proceeding to remarry, thereby violating Article 16 of CEDAW which prescribes for the right to enter into marriage on the basis of equality.

Article 1565, which regulates surnames, requires that both spouses keep their birth surnames, but provides the option to adopt their spouse's surname in addition. This is in line with CEDAW General Recommendation No. 21 on equality in marriage and family relations, which notes that the right to adopt a marital name helps preserve spouses' individuality and identity in the community and distinguishes them from other members of society.

However, despite this guarantee, Article 1568 of the Civil Code establishes that in the case of death, divorce or separation, the court may prevent one of the spouses from using the other's surname when doing so “seriously damages the moral interests of the other spouse and her/his family”.

Article 1568 thus raises concern regarding the right to a name, since whether an individual's name will be forcefully changed essentially hinges on moral interests rather than fundamental rights. Ultimately, conservative views and perceived transgressions of a woman's sexual behavior or professional activities could limit this right and infringe upon a woman's identity.

Further, despite the codification of formal equality in family affairs in both the Constitution and the Civil Code, particular practices could indirectly cause inequality for women. The formal recognition of bride price marriages (Article 1475), for instance, may increase the vulnerability of women and girls to violence.

as discussed earlier.

While it is argued that bride price does not have a purely economic character\textsuperscript{78}, social perceptions of the relationships that are built on these exchanges often undermine women and limit their capacity to respond to violence and discrimination\textsuperscript{79}.

A 2009 survey by the Asia Foundation found that only 34\% of Timorese believed that “a man has no right to hit his wife”, while 44\% responded that it depended on each case individually. Likewise, the survey found that 58\% of Timorese disapproved of a woman speaking on her own behalf in local disputes/adat processes\textsuperscript{80}.

This has grave implications when it comes to the social perception of inter-partner violence, or violence committed by family members and subsequent treatment by police and justice actors\textsuperscript{81}. A UNDP report from 2011 found that in both the formal and traditional justice system, there was wide social consensus regarding the distinction between serious violence and cases of violence considered “small”. Police officers in particular endorsed this distinction, which is highly problematic given that they are generally the first State officials in charge of registering cases of intimate partner violence\textsuperscript{82}.

The link between the trivialization of gender-based violence and bride price is highlighted in key guiding international human rights documents. Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child reinforce that States parties to the CRC Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography have explicit obligations with regards to child and/or forced marriage that include dowry payments or bride price, which could constitute a “sale of children” as defined in Article 2(a) of the Protocol\textsuperscript{83}.


States are thus required to adopt measures in order to reverse the historical inequality of women, and fully comply with the principles of equality in marriage and family relations, particularly where this conflicts with religious, customary or private law. In other words, formal equality is not enough. Instead, gender-sensitive provisions are needed in order to acknowledge the historical and structural disparities between men and women.

B. Minimum age of marriage

According to the National Statistics Directorate, in 2010 19% of women aged 20-24 were married before 18 years and 24% already had a child by the time they turned 20. Child marriage is a relatively common practice in Timor-Leste. UNFPA has mapped out the main factors causing child marriage: (1) pregnancy; (2) arranged marriages; (3) parental pressure on young dating couples; and (4) escaping from an unhappy situation at home, particularly common among women. The prevalence of customs such as bride price may serve as a catalyst to the social acceptance of child marriage.

There are two critical weaknesses in the current framework for child protection in Timor-Leste. The first is the different ages of minority in different laws, none of which follow the international standard of defining a child as anyone under 18. The second is not establishing clear requirements for the exercise of relative capacity from 14 to 16 years old, and not including adolescents’ consent as a requirement for relative capacity, which disregards the principle of the progressive development of the child. This is particularly relevant regarding consent for sexual acts (Article 178 of the Penal Code) and consent for marriage (Article 1536 of the Civil Code).

Article 1490 of the Civil Code establishes that the age of the parties in a civil marriage is among the factors that immediately invalidate a marriage, with marriage of persons below 16 being strictly forbidden.
Article 1500: Parents’ or guardian’s authorization

1. Authorization for the marriage of a minor under the age of 17 years and above the age of 16 years shall be granted by the parents exercising parental authority or by the guardian.

2. The civil registrar may grant the authorization referred to in the preceding paragraph if there are any reasons of sufficient weight to justify the celebration of marriage and the minor has sufficient physical and mental maturity.

As seen in Article 1500(1), an exception occurs when the marriage is authorized by the parents or the guardian, or by a judicial decision. The free and informed consent of the minor involved is not listed as an essential element.

Therefore, while the current legal framework fulfills the requirement of absolute prohibition of marriage of children younger than 16 years, the laws are not clear with regards to exceptions. Further regulations are also necessary to ensure that children who marry below the age of 18 are still able to enjoy their rights to education; health; and a life free of violence.

Article 1536(1) regulates marriage of minors without parents’ consent:

Article 1536: Marriage of minors

1. A minor who marries without obtaining his or her parents’ or guardian’s authorization, or the respective judicial supply, continues to be considered a minor with regard to the management of the assets that s/he brings into the marriage or that s/he might subsequently acquire gratuitously until s/he reaches the age of majority, but the alimony
Despite the imposition of limitations regarding the administration of assets to protect children (Article 1536(2)), this provision does not encompass any gender-sensitive considerations regarding civil capacity, consent or the uneven relationship between the parties.

Under international standards, the minimum legal age of marriage for girls and boys, with or without parental consent, is established at 18 years. When a marriage at an earlier age is allowed in exceptional circumstances, the absolute minimum age must not be younger than 16 years.

In this regard, the CRC Committee has highlighted the need for the Timorese State to raise the minimum age of marriage for girls and boys to 18, and ensure that no one under the age of 16 is allowed to marry. Likewise, in light of the Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women and General Comment No. 18 of the Committee on the Rights of the Child on harmful practices (2014), the CRC Committee has urged Timor-Leste to take active measures to put an end to harmful practices against children.

In conclusion, in order to comply with international standards on the protection of the child, the State should carry out broad legal reform, including revising the draft Code of the Child, draft Law on the Protection of the Child, the Civil Code and the Penal Code, in order to establish 18 as the age of majority. Through this reform, any civil or penal act with the potential to jeopardize the best interest of the child, including the child's free consent, should be removed.


C. Marriage and divorce

In light of the societal significance of marriage in Timor-Leste, it is important to understand local conceptions that influence decisions and proceedings in marriage and divorce.

In this context, the role of lisan and lulik is particularly important. Lisan refers to the customary practices that traditionally regulate social relations within extended families, and lulik describes sacred values of a given place, item, or type of building.

Another distinction for understanding marriage in Timor-Leste is the distinction between kaben sai (married out) and kaben tama (married in). Kaben sai refers to the practice where a woman leaves her household to join her husband’s household; whereas kaben tama involves the husband leaving his household to join the woman’s family\(^8\). These practices affect experiences of belonging and ownership and will have particular effects on women’s access to property in inheritance and divorce.

Marriage

Title II of the Civil Code regulates marriage. Article 1475 prescribes three categories of marriage: civil marriage, Catholic marriage, and marriage through bride-price. The same provision establishes that all marriages are monogamous. Additionally, Article 1560 of the Civil Code establishes that fidelity is one of the duties of spouses. No laws punish polygamy in Timor-Leste, and there are no punishments expressly prescribed for infidelity.

The exclusive recognition of Catholic marriages, and not marriages from other religions, indirectly discriminates against religious minorities, particularly those of Indonesian descent. In 2017, the Ministry of Justice issued Directive No. 9/2017 that established that marriages from other religions would be registered by State officials as long as the marriage did not contradict national principles or the public order\(^9\).

As women in Timor-Leste have historically been excluded from owning property, Article 1538 of the Civil Code, which makes the registry of marriage mandatory, strengthens the implementation of an evidence-based system that will help foster gender equality in both divorce and succession proceedings. According to publicly available information, in 2013 the State launched the National Directorate for


Registration and Notary (NDRN), specialized in notarization and civil registration. Further information is needed on its implementation and capacity to effectively address the requirements of the country.

Finally, Article 1517(e) of the Civil Code determines that when contracted by two persons of the same sex, a marriage is not recognized. This negatively impacts the rights of same-sex couples in areas that include, but are not limited to, succession, parental authority, and guardianship.

The UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity has stated that in addition to laws that criminalize same-sex relationships, laws and policies that have the potential to negatively harm certain groups and persons in relation to sexual orientation and gender identity should be withdrawn. These laws are often based on antiquated notions of public decency, public health and security, and at times are reaffirmed in local criminal laws and regulations. Therefore, legally recognizing same-sex relationships is an important first step in fostering social acceptance and the inclusion of persons with diverse sexual orientations.

**Divorce**

Chapter XII of the Civil Code regulates divorce and judicial separation of persons and assets. Article 1650 enshrines the equal capacity of spouses to request divorce, regardless of gender. It also establishes modalities of divorce, namely divorce by mutual agreement and through litigation:

**Article 1650: Modalities**

A divorce may be petitioned in court by both spouses, by mutual agreement, or by one against the other, on any of the grounds provided for in Articles 1656 and 1658; in the former case, this is called divorce by mutual consent, and in the second, litigious divorce.

Litigious divorce requires specific proceedings with potentially discriminatory effects on women:

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90 Democratic Republic of Timor-Leste 2013. Timor-Leste already has Notaries and Civil Registrars. 09 of December of 2013.

Article 1656: Culpable violation of conjugal obligations

1. Either spouse may sue for divorce if the other culpably violates conjugal obligations, when the violation, due to the gravity or reiteration thereof, compromises the possibility of communal life.

2. When appraising the gravity of the facts invoked, the court shall take into account, namely, the culpability that may be imputed to the petitioner and the level of education and moral sensitivity of the spouses.

Despite its gender-neutral phrasing, Article 1656 uses concepts such as morality and educational status of the parties to determine culpability, which may have gendered consequences. The vague and value-laden content of the provision may be interpreted by police, prosecutors and judges along antiquated notions of morality, public decency and honor. This perpetuates gender stereotypes, which are known causes of discrimination against women, a contributing factor to violations of their rights, and an obstacle to achieving effective gender justice.

This is particularly concerning, given that the party found culpable in a litigious divorce is affected in the following regards:

- **Alimony (Article 1884)**—if found culpable for a litigious divorce, the culpable spouse is not entitled to receive alimony.

- **Partitioning (Article 1666)**—if found culpable for a litigious divorce, the culpable spouse may not receive more from the partitioning than she/he would have received under the community of property regime regardless of her/his participation in building the family’s wealth throughout the marriage.

- **Benefits received, or to be received, by spouses (Article 1667)**—if found culpable for a litigious divorce, the culpable spouse may forfeit all benefits received or to be received from the other spouse or from a third party as a result of the marriage.

- **Reparation of non-patrimonial damage (Article 1668)**—if found culpable for a litigious divorce, the culpable spouse shall make reparation for non-patrimonial damage caused to the other spouse.

Therefore, a decision based on gender stereotypes could have serious economic implications for a woman found culpable. Fault-based legal frameworks that recognize
only economic aspects of family affairs frequently operate to the detriment of the wife, who is often financially dependent on her spouse\textsuperscript{92}.

In sum, the fault-based divorce system enshrined in the Civil Code potentially places women, including victims of domestic violence, at a disadvantage\textsuperscript{93}. In order to comply with international standards on equality in family affairs, provisions linking grounds for divorce and financial consequences should be revised. Such revision should take into account the potential exploitation of the law that would enable a husband to avoid financial obligations to his former wife; consider all contributions made to the family during the marriage, including nonremunerated forms of caregiving and domestic labor; and ensure that different moral standards of culpability are not applied to women.

D. Civil Partnership

No provisions on civil partnership were identified in Timor-Leste’s legal system. Article 1466 of the 2011 Civil Code limits family relationships to only four categories: marriage, consanguinity, affinity, and adoption.

On the other hand, the Law against Domestic Violence broadens the legal notion of family. Article 3 includes the following as family members:

\begin{itemize}
\item Spouses or ex-spouses;
\item Persons who live or have lived under conditions analogous to spouses, including without cohabitation;
\item Relatives in the ascending and descending line of one or both spouses, as long as they are the same relationship of dependency and part of the household economy;
\item 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.
\end{itemize}

\textsuperscript{92} In most Timorese communities, women do only domestic work. Thus, frequently women do not have education and training that would enable them to work outside the home. In: Aparicio, J. 2017. A participação das mulheres em desenvolvimento em Timor-Leste depois da independência (2002-2016). Faculdade de Letras. Universidade de Lisboa. Faculdade de Letras. P. 80.

Concerns about the lack of recognition of civil partnerships go beyond domestic violence. Inheritance, partitioning of property, and child custody in the event of a separation/divorce are areas in which individuals can be discriminated against on the basis of gender in the absence of the legal regulation of civil partnerships.

In 2008, the government reported that due to lengthy negotiations between families on the appropriate sum of barlake to be paid, young people often found themselves in de facto partnerships or customary unions for many years before obtaining legal recognition of the marriage. It is possible for a young girl to be engaged at 15, married in a traditional ceremony at 17, and then register the marriage only in her twenties or thirties, often after having several children. Therefore, the gap regarding the legal effects of de facto unions creates uncertainty for a significant proportion of the population.

According to the CEDAW Committee, States should ensure the protection of the economic rights of women, which includes considering the economic risks to a woman when a cohabiting relationship ends. State measures must in this regard acknowledge the contribution made by women to maintaining the household and in acquiring other assets. Thus, for the economic protection of women and in the interests of legal certainty in contracts, divorce and inheritance, de facto unions should be recognized on the basis of equality with official marriages enshrined in Article 147.

Such an adjustment would serve as a means to ensure that property accumulated during a de facto relationship is treated on the same basis as property acquired during an officially recognized marriage. Such an adjustment should acknowledge women’s contribution to shared property and assets, which must be divided fairly in the case of separation and with particular consideration of women’s unpaid labor throughout the relationship that contributed to the family’s wealth.

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E. Parental authority

Articles 1757 to 1805 of the Civil Code regulate parental authority. The general rule applicable to child custody is that the exercise of parental responsibility belongs to both parents (Article 1782(1)).

In cases of divorce or absence of marriage, Article 1793 establishes that custody is granted to the parent who has de facto guardianship of the child. In the absence of an agreement, when parents are not married, the court is in charge of defining the guardianship arrangement based on the best interests of the child.

Despite the legal gap on the regulation of civil partnerships, under Article 1791 of the Civil Code, the regime of child custody is applicable to parents separating from a cohabiting partnership akin to the one applied to married couples.

Consequently, even if unmarried, both parents have duties towards the child. According to Article 1764 of the Civil Code, any father whose paternity has been established but who is not married to the mother of the child must provide the mother with alimony beginning from the period of pregnancy throughout the child’s first year of life.

Although the current legislation ensures the right to alimony based on the principle of the best interests of the child, the 2010 Draft Code of the Child—not in force—predicates the provision of alimony upon the demonstrated need of the child. Article 55 of this bill establishes that parents shall pay alimony to their children who are minors when the other parent/guardian does not have the means to afford the child’s cost of living. However, this provision implicitly places the burden of proof on the individual claiming alimony.

Generally, alimony is claimed before courts by single mothers. In practice, this process may cause mothers or other caregivers secondary victimization, as they would need to show evidence of necessity and prove the paternity of the separated spouse. However, the mechanisms for proving paternity, namely forensic/DNA tests, are subject to multiple practical limitations, such as lack of financial resources for their acquisition and unavailability in remote areas.

Therefore, any provision imposing conditions on the provision of alimony, assistance, care, or any other basic need of the child should be revoked in compliance with the principle of the child’s best interests.
Parental authority in marriage

According to Article 1782 of the Civil Code, if the couple is married, both parties have parental authority over their children. When one parent acts, it is assumed that both parents agree except when the law explicitly requires the consent of both parents. If they cannot agree on how to exercise their authority, either spouse can approach the court for guidance. If they still cannot agree, the court can approach the child if he or she is older than 14 years and it is justified by the circumstances.

This provision thus recognizes the principle that both parents share common responsibilities for the upbringing and development of the child, in line with the CRC, Article 18.

Additionally, children’s participation in administrative hearings should follow the principles established in the CRC, including the right to be heard either directly, or through a representative or appropriate body. The provision in Timor-Leste’s Civil Code, however, limits children’s participation according to a fixed age, and not according to their evolving capacities, thereby negating the experiences of children who are capable of forming and expressing their own views earlier than at 14.

Parental authority in divorce

Circumstances in which the judiciary may intervene in parental authority are listed in Article 1787, namely divorce, judicial separation, declaration of nullity or annulment of marriage:

1. In the cases of divorce, judicial separation of persons and assets, declaration of nullity or annulment of marriage, the fate of the child, the alimony and the manner in which it shall be provided to the latter are regulated by agreement of the parents, subject to the endorsement of the court; the approval is denied if the agreement does not correspond to the interests of the minor child, including the interest in maintaining a relationship of close proximity with that parent to whom he or she is not entrusted.

2. In the absence of an agreement, the court shall decide, in harmony with the interests of the minor child, including the desire to maintain a relationship of close proximity with the parent to whom he or she is not entrusted, and the guardianship of the minor child may fall on either parents, in the case of any of the circumstances foreseen in article 1800, to a third party or child re-education or welfare establishment.
The Civil Code provides that in cases of parental separation, the child is entrusted to one of the parents or guardians. The provision does not guarantee co-responsibility in raising the child and hence does not provide adequate protection to women, who are generally responsible for the domestic work of raising children.

Article 1791 establishes that if a child born to unmarried parents has only one established parent, that parent shall have parental authority. Article 1792 provides that if the unmarried parents cannot agree on a decision regarding their child, the court can make a decision in line with the child’s best interests.

Despite enshrining the best interests of the child as a guiding principle, the Code contains discriminatory clauses distinguishing between children born to non-married couples and those born to married couples, which risks jeopardizing the child’s best interests.

Further, Article 1763 determines that where a couple is married, a child conceived with another party may not be introduced to the conjugal household without the consent of the other spouse. In practice, this clause could prevent children from maintaining personal relations and direct contact with one of the parents on a regular basis, in breach of the CRC.

For full compliance with the CRC, this provision should be revoked, eliminating any differentiation between children born from married and non-married couples, prioritizing the best interests of the child over parents’ marital or relationship status, and ensuring equal rights and responsibilities for the children.

Furthermore, judicial decisions that use social or marital status to determine parental authority may be biased against mothers, who are commonly subjected to stricter standards of appropriate social behavior by religious and cultural standards. Additionally, poverty and economic hardship, the lack of birth registration and discrimination are causes of illegal adoption, abandonment and relinquishment, which disproportionally affects the parental rights of mothers.

Nevertheless, poverty alone cannot be the sole justification for placing or receiving a child in alternative care. Thus, measures to regulate and control adoption are needed with the aim of preventing and addressing illegal and illicit practices, in line with the obligations of the 1993 Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption96.

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Inhibition of the exercise of parental authority

Article 1796 outlines conditions leading to the inhibition of the exercise of parental authority, including:

→ Conviction for specific crimes that prescribe this restriction;
→ Interdiction or declaration of incapacity due to a mental disorder;
→ Absence when the temporary trustee was appointed.

Article 1800 establishes broader criteria for the loss of parental authority:

**Article 1800: Dangers for the safety, health, moral formation and education of the child**

When the safety, health, moral formation or education of a minor child are in danger and it is not a case of inhibition of the exercise of parental authority, the court may, upon request from the Office of the Public Prosecutor or any other person indicated in paragraph 1 of article 1796, order appropriate measures, namely entrust him or her to the third person or to an educational or welfare establishment.

Undeniably, the best interests of the child as well as her/his safety, health and education must be a priority, however the language of this provision should be amended to prevent the reproduction of gender stereotypes and potential misuse in this regard.

Women and men need to have the same rights and responsibilities in matters of guardianship, custody and adoption of children. It would therefore be useful to provide more detailed guidance and concrete examples of scenarios that could constitute dangers to children’s lives either by amending the law or issuing supplementary guidelines, rather than leaving this solely to the judicial authorities' discretion.
F. Inheritance and property rights

The Timorese legal framework presents no formal discriminatory provisions in inheritance and property rights and allows women to inherit on an equal basis as other family members. However, traditional practices have historically prevented women from owning land.

In 2010, the International Finance Corporation estimated that four fifths of the land in Timor-Leste was acquired by inheritance under customary law, a process which largely excludes women\textsuperscript{97}. The most common property system in Timor-Leste is patrilineal, where children are members of their father’s kinship group.

Under this system, land is inherited and passed on through the father’s lineage, benefiting the eldest male child\textsuperscript{98}. In contrast, in matrilineal systems, kin membership is traced through the maternal line, where children are deemed to belong to their mother’s kinship group and women pass their kin identity on to their descendants\textsuperscript{99}.

Two elements are central to how the Timorese patrilineal system leads to women’s restricted access to land and property. First, upon marriage, women typically move to their husbands’ homestead, leaving their families’ property permanently. This impacts their chances of reclaiming their inheritance, particularly when the property has been occupied by a male family member. Second, married women living on their husbands’ land are considered to play a supporting role to the family and are perceived as outsiders rather than core family members. They are hence not able to claim ownership over the property on which they live.

The lack of a nation-wide property registering system has intensified the obstacles faced by women in land disputes. Likewise, the lack of research on the prevalence and nature of land disputes prevents an adequate assessment of the gaps and setbacks in legislation and law enforcement. However, a recent assessment of the UNDP Access to Justice Clinics found that among mediations carried out in two judicial districts—Suai and Baucau—land disputes represented an average of 86% of all 312 cases served from 2017 to 2019\textsuperscript{100}.

\textsuperscript{97} International Financial Corporation (IFC) 2010. Gender and Investment Climate Reform Assessment Timor-Leste. Sonali Hedditch & Clare Manuel IFC Advisory Services in East Asia and the Pacific. World Bank Group in Partnership with AusAID.

\textsuperscript{98} According to Henriques & Tilman 2012, two different kinship/social systems coexist in Timor-Leste, one patrilineal, which is in force in the majority of the country, and one matrilineal found in regions associated with Bunaque, TetumTerik and Galoli ethno-linguistic groups. In Henriques, PDS.; Tilman, M. 2012. Land and Gender in Matrilineal Timor-Leste. Universidade de Évora; Universidade Nacional Timor Lorosa.

\textsuperscript{99} Henriques & Tilman. Ibid.

Succession in the Timorese legal system

Article 54 of the Constitution enshrines the right to property to citizens without discrimination based on gender. Article 1897 of the Civil Code establishes equality between heirs, establishing that “all persons born or conceived at the time of opening of succession, [who] are not excluded by law” are entitled to succession without discrimination based on gender or any other nature.

Article 2000 of the Civil Code, regulating inheritance, establishes that the surviving spouse is among the first class of persons entitled to inherit, unless the deceased died without leaving descendants but has ascendants, in which case the surviving spouse is included in the second class.

Additionally, Article 2023 of the Civil Code stipulates that children, in the case of competition, are entitled to two thirds of the inheritance, and that in the absence of a surviving spouse, the child is entitled to half or two thirds of the inheritance, depending on whether there is only one child or two or more children. This applies to sons and daughters without discrimination.

The Asia Foundation in 2015 observed that in the event of divorce or death of the husband/father within a patrilineal community, often the mother and her children are not able to remain on or access her husband’s land. Moreover, the children may not have the right to inherit that land, particularly if the divorce was initiated by the mother, although in practice there are multiple scenarios where this may be
approached more flexibly\textsuperscript{101}.

Ultimately, customary practices that do not follow legal directives on gender equality combined with widespread shortage of technical and financial resources—particularly in rural areas—perpetuate gender inequality and prevent women and girls from improving their livelihoods\textsuperscript{102}.

States should thus monitor legal or customary provisions regarding inheritance laws to the extent that such provisions affect the status of women, as provided for in the Convention and in Resolution 884D (XXXIV) of the Economic and Social Council, in which the Council recommends that States ensure that men and women who are equally related to the deceased have the right to receive equivalent parts of the inheritance and have the same order of preference in succession\textsuperscript{103}.  

\textsuperscript{102} According to United Nations Population Fund (UNFPA), “there are more males than females attending every level of education, except for those in non-formal education (a tiny proportion of all students) of which there are more females than males”. In UNFPA 2018. Timor-Leste Population and Housing Census 2015. Analytical Report on Gender.  
Women’s access to land

A 2010 World Bank report found that land ownership disputes are most commonly resolved by local or traditional authorities using customary norms, especially outside of urban areas. Likewise, an assessment of cases brought to the UNDP Access to Justice Clinics in Timor-Leste showed that 77% of the cases submitted for mediation related to land conflicts.

Cultural factors limiting women’s access to land are particularly concerning in circumstances of intimate partner violence followed by separation/divorce. As previously noted, the fault-based divorce system under Article 1656 of the Civil Code often denies women access to matrimonial property and benefits related to the family’s wealth.

The Maubisse Declaration Phase Two 2018-2023 responded to the call for positive measures by establishing quotas and priority access for rural women to credit, education and professional training, as well as by developing an institutional framework for the progressive transfer of land to such women.

In Timor-Leste, land laws have been drafted so as to entitle both women and men to land, excluding previous discriminatory inheritance provisions. However, the Special Regime for the Definition of Ownership of Immovable Property is still pending approval following its rejection in 2012. On the other hand, the Government released two new draft laws to determine land ownership and clarify the State’s power to expropriate land in the public interest, showing that while incomplete, the State is taking steps to improve land regulation, which ultimately will provide a better framework for addressing inequality.

The creation of specialized bodies focusing on issues such as property settlement, land rights, inheritance, dissolution of marriage, and child custody is a crucial step in improving access to justice for women. Likewise, these institutions should be sensitive to the traditional and customary practices of the country. Courts should

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therefore review the decisions taken by all traditional and customary bodies to ensure compliance with national directives on gender equality.\footnote{108 United Nations, Committee on the Elimination of Discrimination against Women 2017. General recommendation No. 33 on women’s access to justice. CEDAW/C/GC/33. Para. 39.}
CHAPTER 3
LABOR LAWS
AND POLICIES
CHAPTER 3

LABOR LAWS AND POLICIES

As a predominantly rural country, with approximately 70.5% of the population living in rural areas, women have traditionally played a central role in domestic settings, particularly carrying out the unpaid labor of domestic work and family care \(^{109}\).

Still, throughout the last decade, the participation of women in the labor market has grown significantly. The participation rate of women in the labor force increased from 14.5% in 2010 to 40.6% in 2016. This growth brought women’s rate of participation significantly closer to men’s (40.63% and 53% respectively). Nonetheless, unemployment rates among women are almost double that of men (14.3% vs 7.5%) \(^{110}\).

Further, women earn on average 28% less than men on a monthly basis. A significant cause of this is lack of access to education and vocational training. According to the 2013 National Labor Survey, men are twice as likely as women to have been awarded university degrees \(^{111}\).

Despite the country’s significant progress in the expansion of its social protection net, challenges persist, particularly concerning workers in the informal economy. Figures from 2016 indicate that 70.6% of the workforce is found in the informal sector, which disproportionately comprises women \(^{112}\).

The Labor Code No. 4/12 enacted in 2012 constituted a milestone in the regulatory framework of the country. The law is based on the principles of equality (Article 6), fair pay (Article 38), and healthy, safe and hygienic work conditions (Article 34). The Labor Code provides a broad protective framework, including provisions on maternity and paternity protection; work conditions for persons with disabilities; and labor and sexual harassment sanctioning measures.

Aligned with the 1998 ILO Declaration on Fundamental Principles and Rights at Work, the Labor Code incorporates core international principles, including freedom of association;

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\(^{111}\) Ibid. P. 12.

\(^{112}\) Ibid. P. 62.
recognition of the right to collective bargaining; the elimination of discrimination in the workplace; and the elimination of all forms of forced or compulsory labor.

Several ILO instruments, including the Equal Remuneration Convention, 1951 (Convention No. 100) and its corresponding Recommendation (Recommendation No. 90), lay down labor rights and protections to foster the advancement of women in the workplace and to ensure the fundamental human right of equality and non-discrimination at work.

The 1951 Convention obliges ratifying States to adopt laws, regulations and other means aimed at enforcing and promoting the principle of equal remuneration between men and women workers for work of equal value. It was recognized, however, that equal remuneration between men and women could not be achieved without the elimination of discrimination in all areas of employment, and that other grounds of discrimination should also be the subject of prohibition.

Therefore, seven years after the adoption of Convention No. 100, the International Labor Conference of the ILO adopted the 1958 Discrimination (Employment and Occupation), Convention No. 111, and its respective Recommendation No. 111 as the first comprehensive instruments dealing specifically with equality and non-discrimination with respect to employment and occupation.

Conventions No. 100 and 111 are mutually reinforcing. While Convention No. 100 addresses equality specifically between men and women regarding remuneration, Convention No. 111 addresses a wider range of issues, and all aspects of employment and occupation through the development of equality of opportunity and treatment.

Throughout the years, in line with the ILO 1999 Worst Forms of Child Labor Convention, Convention No 182, Timor-Leste has also made advances in the elimination of child labor. Since 2015, the State has improved its capacity to carry out inspections for this purpose. Likewise, it published the first National Child Labor Survey in 2016.

The 2017-2030 National Employment Strategy addresses affirmative measures aimed at increasing the participation of women in both private and public sectors. Additionally, it focuses on the development of training and the reduction of unemployment of women in the country.

This was preceded by the 2014-2017 National Strategy and Action Plan for Gender and the Private Sector, which focused on developing an enabling business environment for women by providing measures in order to eliminate legal, regulatory and socio-cultural barriers that prevent women from entering the corporate sector. This plan particularly focuses on the expansion of credit and financial services to women, taking into account the challenges caused by occupation in the informal economy, and lack of experience, among others.

With the support of the ILO, in 2017 Timor-Leste started to implement a contributory social security system focusing on increasing the coverage and protection levels of workers and their families. However, this coverage is mostly linked to formal employment, which provides the minority of jobs in Timor-Leste. In addition, as any contributory scheme without subsidies, it is expected to take decades for the system to reach maturity\(^\text{115}\). Employment in the informal sector affects women and children on multiple accounts, primarily through economic instability and exposure to violence and discrimination. This has strongly contributed to the feminization of poverty.

Domestic work, for instance, is not included in the main labor law in the country. While the Labor Code establishes that domestic work shall be regulated by a specific law, this a law is not yet in force. The absence of regulation disproportionately affects women, who form the majority of domestic workers. The ILO estimates that domestic workers make up 4-10% of the labor force in developing countries and about 2% of the workforce in developed countries. However, such figures are based on formal employment, whereas in practice 75% of domestic workers are hired on an informal or temporary basis\(^\text{116}\).

Consequently, the ILO urged States to undertake measures to extend unemployment benefits to all domestic workers, providing assistance to households that act as employers; as well as providing domestic workers with protective equipment and adequate information regarding their labor rights\(^\text{117}\).

Moreover, national laws should establish a minimum threshold in the national budget, focusing on a progressive extension of both labor guarantees for domestic workers as well as a social protection net. A significant imbalance in the allocation of resources also prevents the full protection of this group, thereby increasing gender disparity in the

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country. Despite the 15.5% budget allocation of the non-oil GDP in 2015 for social protection, 50% of total investments in Timor-Leste was directed to veterans’ programs.

On the other hand, the Labor Code formally addresses special protections for young people performing labor, in particularly safeguarding their safety; health; physical, mental and moral development; education; and training (Article 67). Further, it fixes 15 years as the minimum age to be allowed to work. Light labor activities are allowed for children between 13 and 15 years old (Article 68).

The law recognizes the potential risks for children of this age engaging in labor, but ascribes the responsibility of risk assessment to the employer (Article 66). In this regard, there should be a more coordinated protective framework that includes efforts of both the State and the private sector to reinforce the protection against child exploitation, particularly for girls.

Gender and social inequalities remain a persistent challenge in many spheres, and particularly in the labor market. Groups in vulnerability often perform the most precarious jobs in the country with inadequate or no labor protection. Challenges include contract intermittence; low wages, non-payment or delayed payment of wages; long hours of work; no break periods or rest days; restrictions on freedom of movement and association; no access to collective bargaining; inadequate food and accommodation; lack of privacy; and sexual and gender-based violence.

Therefore, there is need for a comprehensive analysis of gender-based violence and discrimination in the workplace, with particular consideration of the role of gender compounded with other factors causing vulnerability, such as rural origin or having a disability.

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A. Right to equality and non-discrimination, including equal pay for equal work

In line with the Constitution, Article 6(2) of the Labor Code prohibits discrimination in the workplace on the grounds of color, race, marital status, gender, nationality, ethnic, ancestry or origins, social or economic status, political or ideological beliefs, religion, education, physical or mental condition, age, or state of health. More specifically, it requires the development of special measures and/or affirmative actions for disadvantaged groups “so that they may fully enjoy, as equals, the rights enshrined in this Code on an equal footing” (Article 6(4)).

Finally, Article 6(6) places the burden of proof for discriminatory labor practices on the employer, therefore acknowledging the uneven power relations between employees and employers and fostering protection against victimization or retaliation of complainants as set in Article 10(b) (iv) of the International Labor Organization (ILO) 2019 Violence and Harassment Convention No. 190.

Despite recognizing potential gender disparities with regards to remuneration and working conditions, Timor-Leste’s Labor Code establishes neither the necessary measures to reduce the pay gap nor a plan or official body tasked with addressing these issues. Likewise, the National Strategy and Action Plan for Gender and Private Sector 2014-2017 does not provide measures to mitigate gender-based disparities in payment for equal work.

Conventions No. 111 and Recommendation No 111 establish that States should adopt measures to promote equality at work, such as providing female workers with vocational guidance, training and employment counselling, as well as welfare and social services which meet the needs of women workers.

In this regard, Article 6 of the Labor Code, on equality, guarantees that every citizen has the right to vocational training and professional development, as well as the right to access the labor market. However, Recommendation No. 111 further stipulates that government agencies apply non-discriminatory employment policies in all their activities, as well as special measures designed to meet the particular requirements of persons who require special protection or assistance. In this regard, Timor-Leste falls short of international best practice.

The adoption of a law on affirmative measures in the public sector would thus be a crucial tool to both promote effective representation of women and other groups in

vulnerability, and to encourage the private sector to adopt similar measures.

By way of analogy, in the National Action Plan on the United Nations Security Council Resolution 1325, the Timorese State prescribed quotas to promote recruitment and representation of women in defense and security institutions. Similar actions in other public-sector areas would thus favor both the admission of women in the labor market, as well as encourage other employers to adopt similar measures.

B. Dismissal for pregnancy

Article 65 of the Labor Code expressly prohibits the dismissal of pregnant woman, as well as those going through nursing periods.

**Article 65: Protection against unfair dismissal**

1. At the end of maternity leave the worker shall be entitled to reinstatement to her position or to an equivalent position with the same pay.

2. It is prohibited to dismiss a woman worker by reason of pregnancy, or breast or bottle feeding.

3. An employer who dismisses a worker who is pregnant or breastfeeding or bottle feeding her child shall have to prove the dismissal was not motivated by any of these facts.

In line with Article 6 of the Labor Code, this provision reverses the burden of proof so that the employer must prove that an employee’s dismissal was not motivated by...
any of the conditions related to maternity detailed in Article 65(3).

Moreover, Article 65(1) prohibits the dismissal of a female employer who returns to work from maternity leave. This provision provides a protective framework that covers potential discriminatory practices on grounds related to pregnancy/maternity and guarantees the right to return to the same position with the same renumeration.

These guarantees are also enshrined in the ILO’s 2000 Convention on Maternity Protection Convention No. 183—not ratified by Timor-Leste—that provides minimum standards for the protection of pregnant or breastfeeding women. According to Article 8 of the Convention, it is unlawful for an employer to terminate the employment of a woman during her pregnancy or leave of absence. Additionally, women are entitled to return to the same or equivalent position and receive the same payment at the end of maternity leave.

C. Paid maternity leave

Section I of the Labor Code regulates maternity and paternity leave and places responsibility on the employer to guarantee that such leave is granted until the social security system is established. It also prescribes time off for childcare and protects employees against unfair dismissal.

Article 59: Maternity leave

A woman worker shall be entitled to a minimum period of 12 weeks paid maternity leave, 10 weeks of which shall, necessarily, be taken after childbirth, without any loss of remuneration or length of service rights.

This provision follows the standards established in Article 4 of Convention No. 183 on Maternity Protection Convention—not ratified by Timor-Leste. However, ILO Recommendation No. 191 encourages States to extend the period of maternity leave referred to in Article 4 of the Convention to at least 18 weeks, six weeks longer than the current period of Timor-Leste.\textsuperscript{120}

A concerning provision contained in the same section of Timor-Leste’s Labor Code

relates to the financial burden of maternity leave remuneration. Article 61 establishes that “the payment of remuneration to workers who are on maternity or paternity leave shall be the responsibility of the employer, until the social security system has been established”.

Considering that the Labor Code was promulgated in 2012, updates to the legal text would promote a better alignment with the recently developed national social protection system. At the same time, incentives to the private sector should be designed and enshrined in law in order to foster compliance with the Labor Code and encourage the extension of the maternity leave period.

Worldwide assessments show that when paid maternity leave is not funded by social insurance or public funds, and instead employers have to bear the full cost of maternity protection benefits, this can create a disincentive to hiring, retaining and promoting women workers\textsuperscript{121}.

**Paternity leave**

Article 60 of the Labor Code provides a 5-day paid paternity leave. Additionally, Article 60 (3) extends paternity leave to the same length of time as maternity leave if the mother died during childbirth. Despite not currently being an international obligation under UN international instruments, over the past 20 years paternity leave provisions have become more common, as they have proven to be an effective tool for promoting an equal share of family care and domestic work, thereby fostering gender equality.

According to the ILO, a statutory right to paternity leave is found in 78 countries. This leave is paid in 70 countries, underlining the trend of greater involvement of fathers in child raising\textsuperscript{122}. Additionally, the Commission on the Status of Women in 2004 concluded that paternity leave is a means to overcome gender-based work inequalities in that both male and female employees or prospective employees can request (and be entitled to) time off to care for children. At the same time, this benefit is aimed at encouraging men’s greater participation in caregiving activities and must not be construed as intending to reduce maternity leave\textsuperscript{123}.

D. Labor and sexual harassment

Article 7 of Timor-Leste’s Labor Code prohibits harassment and obliges the employer to prevent such acts in the workplace. Article 7(3) defines harassment and Article 7(4) defines sexual harassment.

Harassment is considered to be any unwanted conduct that affects the dignity of women and men, or conduct that is considered verbally, non-verbally or physically offensive, or which creates a work environment that is intimidating, hostile, humiliating and destabilizing for the victim.

Sexual harassment is any unwanted conduct of a sexual nature authority that affects the dignity of women and men, or conduct that is considered verbally, non-verbally or physically offensive, such as touching or suggestive remarks, comments of a sexual nature, displaying pornography, requesting sexual favors, or other conduct which creates a work environment that is intimidating, hostile, humiliating for the victim.

Despite prohibiting the above conduct, these provisions do not establish legal procedures for handling such acts. ILO Recommendation No. 206 from 2019, in line with ILO Convention on Violence and Harassment No. 190, establishes that laws and regulations related to harassment in the workplace must provide information on complaint and investigation procedures, as well as specify the right to privacy and confidentiality of complainants.

Failure to clarify elements such as proceedings, sanctions and reparations could potentially prevent survivors and employers from reporting and taking adequate measures against sexual harassment. Likewise, protective measures for complainants, survivors, witnesses and whistle-blowers would prevent retaliation and secondary victimization of those who stand up against sexual abuse in the workplace.

Additionally, Section V of the Civil Code covers civil liability.

Article 417: General principle

1. Any person who, with intent or merely through fault, unlawfully breaches the rights of another or any legal provision intended to protect the interests of others shall be obliged to compensate the injured party for the damage resulting from the breach.

2. An obligation to pay compensation when there is no fault shall arise only in cases specified by law.

In this section, civil liability concerns both actions and omissions (Article 420); and affects perpetrators, instigators; and those who aid and abet them (Article 424). This section also includes reparation measures for damage (Article 419). The Civil Code also addresses non-material damage, which is to be fixed equitably by the Court (Article 430). This category is highly relevant in cases of psychological harm caused by harassment.

More recently, the Civil Service Commission of Timor-Leste issued the Guidelines in Addressing Sexual Harassment in the Civil Service. The Guidelines reaffirm the obligation of public authorities to ensure effective protection against any abuse in line with LADV. The implementation of this policy is also complementary to the applicable criminal laws. The Guidelines, however, apply to a broader range of practices than criminal acts, and also include civil offenses. They further establish disciplinary proceedings for the perpetrators of such acts.

The Guidelines, unlike the Penal Code, eliminate the distinction between sexual crimes based on whether penetrative sexual intercourse has occurred. Rather, they
provide an enumerated list of acts of sexual violence\textsuperscript{125}, which has as core elements: the conduct being unwanted; the sexual nature of the acts; and the effects on the dignity of the victim/survivor.

The scope of the Guidelines is expansive, and includes acts committed in both an implicit or explicit manner; verbal and physical acts; as well as factors that are often difficult to prove, such as an intimidating, hostile or offensive environments. Finally, the Guidelines establish criteria for classifying such practices as mild, less serious and serious in order to provide guidance for disciplinary proceedings.

In sum, the Guidelines generally comply with international standards on sanctioning for sexual violence by using unequivocal and voluntary agreement as a standard for identifying whether sexual harassment has taken place; recognizing coercive circumstances; as well as totally eliminating force-based provisions for defining sexual crimes.

However, both the Labor Code and the Guidelines lack provisions for adequate remedies for survivors/complainants once perpetrators have been reported. Further adjustments or additions to these instruments should include remedies that are cognizant of the physical, psychological and economic consequences of both the abuse and the resulting exposure that comes from reporting abuse.

At the international level, the ILO Convention on Violence and Harassment No. 190 establishes positive measures that States should adopt to ensure that relevant policies address violence and harassment. In the same line, ILO Recommendation No. 206 establishes that laws and regulations on harassment should include remedies for such acts\textsuperscript{126}.

\textsuperscript{125} Article 3.8 of The Guidelines in Addressing Sexual Harassment in the Civil Service establishes: “the following are examples of acts that may constitute sexual harassment under this Protocol: (a) engaging in sexual intercourse with another person; (b) engaging in any kind of sexual intimacy with another person; (c) hugging or kissing another person, or stroking another person’s hair or body; (d) rubbing one’s body against another person’s body; (e) forcing another person to touch one’s body; (f) exposing one’s genitals to another person or a group of persons; (g) making sexual gestures with the hands or through body movements; (h) requesting for or demanding any sexual act or sexual favor; (i) asking for a date; (j) making kissing sounds or smacking one’s lips; (k) telling lies or spreading rumors about a person’s sex life; (l) asking questions about a person’s sex life; (m) discussing a person’s sex life with another; (n) asking about another person’s sexual fantasies, sexual preferences, or sexual history; (o) discussing sexual topics; (p) making sexual comments about a person’s clothing, anatomy or looks; (q) sexual teasing or cracking sexual jokes; (r) making sexual comments or sexual innuendos or using language with sexual undertones; (s) sending letters or written messages with sexual undertones or of a sexual nature; (t) displaying sexually suggestive materials or visuals; (u) whistling at or cat calling another person.”

Remedies should include

A. the right to resign with compensation;

B. reinstatement;

C. appropriate compensation for damages;

D. orders requiring measures with immediate executory force to be taken to ensure that certain conduct is stopped or that policies or practices are changed; and

E. covering legal fees and costs. Such remedies are crucial to guaranteeing that survivors are able to access economic, medical and psychological support in order to maintain their lawsuits and pursue justice.
CONCLUSION AND RECOMMENDATIONS
CONCLUSION AND RECOMMENDATIONS

The Timorese framework on gender-based violence and discrimination has significantly improved throughout the last decade. As a relatively young country, Timor-Leste has managed to enshrine in its main statutes crucial principles provided in international instruments: equality between men and women; due diligence of the State in addressing gender-based violence; and the best interest of the child. Nevertheless, challenges persist in transforming formal equality into de facto improvement, particularly by adopting an effective gender and child-sensitive approach to the law.

Three crucial obstacles have been identified in this report that may prevent effective gender-based violence law enforcement and policy implementation. First, different laws and policies enacted throughout the years are often disconnected. This has implications on the effective accountability of State officials in charge of implementing the law and contributes to citizens being unaware or unsure of which State sector is in charge of various responses. This is particularly apparent in policies related to children and persons with disabilities.

Second, social norms and practices, particularly those entrenched in religious and moral principles, often conflict with the current legal framework. This ultimately prevents women and girls from seeking and accessing justice and increases tolerance of family and intimate partner violence. This may be addressed through participatory and adequately resourced interventions, including intersectoral strategies, action plans and policies, particularly targeting sectors such as health, welfare, justice, security and education.

A related challenge is that family bonds and traditional conflict resolution systems continue to run in parallel with the State, often replacing the role of police officers, prosecutors and judges in the response to gender-based violence.

Third, minority age and its relation to civil and criminal liability is not aligned with international standards, ultimately preventing the comprehensive protection of children in the country.

Special measures and affirmative actions should be adopted in order to overcome historical sources of discrimination and subjugation of women and girls, particularly women in greater vulnerability, such as those with disabilities, rural women and girls, and those living in poverty. These measures and affirmative actions are recommended in different sectors, such as education and labor.

Some concerning legal provisions were identified pertaining to sexual and reproductive
rights, in which vague content could lead to acts of discrimination/violence against
women and girls, while allowing perpetrators impunity.

The adoption of comprehensive sexuality education strategy is envisioned as a means
to increase women and girls’ bodily autonomy and capacity to make informed decisions
regarding their sexual and reproductive wellbeing. Likewise, the adoption of legal
provisions and State policies addressing sexual orientation and gender identity can foster
tolerance and a welcoming environment for human rights.

As a low-income country with an evolving social protection system, it is urgent that laws
and policies designed to secure citizens’ rights apply a gender and child protection lens at
every stage, including in its design, implementation, monitoring and evaluation. For this
purpose, the diversity of society should be reflected in working groups and committees,
and civil society organizations should be invited to participate and contribute to this work
based on principles of transparency and public accountability.

Finally, the Timorese State should ratify and implement the 2006 Convention on the
Rights of Persons with Disabilities and Optional Protocol thereto as well as the 1973 ILO
Minimum Age Convention in order to strengthen its protection framework according to
international standards.

**Recommendations for legislative gaps**

→ Enact a comprehensive Land Act that includes positive measures aimed
at reversing the historical processes that have prevented women from land
ownership.

→ Enact a comprehensive law addressing the rights of informal economy
workers as well as domestic workers, taking into account the particular needs and
circumstances of women and young workers, and ensuring that all protections
of workers are extended to children in the labor market.

→ Enact a comprehensive law on internet use, including the rights and duties
of users, as well as a protection framework for cyber violence, focusing on the
particular ways in which the latter is used against women and children.

→ Review the draft Child Protection Law and related draft laws, including the
Child Code and Juvenile Justice Law, to ensure a comprehensive and coherent
child protection legal framework in harmony with the Child and Family Welfare
Policy.
Review the draft Traditional Justice Law to ensure the adoption of a child protection and gender lens.

**Recommendations for the comprehensive revision of existing laws and policies**

- Undertake a comprehensive revision of domestic laws, including the Constitution, the Civil Code and the Penal Code, in order to ensure that age of majority and of any kind of legal liability starts at 18 years.

- Undertake a comprehensive revision of the Law against Domestic Violence in order to adopt an intersectional response to gender-based violence, particularly regarding providing adequate services to women and girls with disabilities, rural women and girls, and children.

- Undertake a comprehensive revision of the Criminal Procedure Code, adopting a survivor-centered and child-sensitive approach, particularly by reforming evidentiary rules in cases of sexual and gender-based violence, as well as the participation of children in contact with the law in administrative and judicial hearings.

- Adopt measures to strengthen the implementation of the Child and Family Welfare System Policy, particularly regarding violence prevention and response mechanisms, including the social welfare workforce, information system, and psychosocial support services, among others.
Recommendations for specific legal provisions

2009 Penal Code

Article 141: Amend this provision by:

Adding the following minimum standards as exemptions for the termination of pregnancy: (1) threat to the pregnant person’s physical or mental health; (2) rape and incest; (3) severe fetal impairment, including fatal fetal abnormality.

Eliminating the possibility that the consent of the pregnant person is replaceable by that of her spouse in deciding to terminate a pregnancy; and ensuring women's reproductive autonomy, privacy and confidentiality.

Establishing clear criteria on the termination of pregnancy using a women-centered approach, where the informed consent of the pregnant person is a central requirement.

Articles 171 and Article 172: Amend these provisions by:

Eliminating the requirement of the demonstration of force, violence or threat, and adding a new provision requiring unequivocal and voluntary agreement to be the standard for defining what constitutes a coercive act.

Eliminating the hierarchy whereby acts involving penetrative sexual intercourse is prima facie considered more serious than other acts of sexual violence.

Developing a non-exhaustive list of punishable acts to serve as a guide for police officers, prosecutors and judges to define the seriousness of a sexual crime and to determine proportional penalties.

Directly stating that the rape provision applies irrespective of the nature of the relationship between the perpetrator and survivor, thereby criminalizing marital rape.

Article 173: Amend this provision by:

Establishing the applicability of these aggravating circumstances to cases of rape and sexual coercion of children prescribed in Article 177.

Classifying sexual violence graded on harm, including, but not limited to: (a) the age of the survivor; (b) the relationship of the perpetrator and survivor; (c) the use or threat of violence; (d) the presence of multiple perpetrators; (e) and physical or mental consequences of the attack on the survivor.

Article 175: Changing the title of this crime to:
Name it “child sexual exploitation” rather than “child prostitution”, thereby shifting the focus of the illicit act to the perpetrator.

**Article 176:** Changing the title of this crime to:

Name it “materials of child sexual abuse” rather than “child pornography”, therefore shifting the focus to the illicit acts to the perpetrator.

**Article 178:** Amend this provision by

Replacing “inexperience” as criteria for establishing the seriousness of sexual acts with adolescents by instead recognizing adolescents’ evolving capacities. This should be complemented with a comprehensive assessment undertaken with the support of medical, social and justice professionals.

Adopting an age range where sexual activity between an adult and a minor is permissible, for example if the adult is only 2 or 3 years older than the adolescent.

**2010 Law Against Domestic Violence**

**Articles 5:** Amend this provision by

Directly stating that the principle of consent is applicable to services of all nature, including medical and social. The principle of consent must also apply to provisional or definitive stays in shelters, and interventions throughout the investigation and proceedings of domestic violence reports.

Establishing the applicability of the principle of consent to children indirectly affected by violence, for instance in cases where children witness or are in proximity to violence in their household or surroundings.

**Articles 22 and 23:** Amend these provisions by establishing the duty of medical and social services staff to notify a child’s legal guardian when dealing with a case of domestic violence against a child or violence against an individual that indirectly affects a child.

**Article 35:** Amend this provision by adding to the current list of crimes covered by LADV the following crimes from the Penal Code: threats (Article 157); coercion (Article 158); aggravated coercion (Article 159); property damage (Article 258); and aggravated property damage (Article 259).

**Article 38:** Amend this provision by
Establishing that the imposition of fines and suspension of sentences in cases of domestic violence shall be combined with a period of probation, as well as an assessment of the effects of such alternative measures on the survivors and her/his family.

Establishing specific urgent procedural guarantees to reduce secondary victimization of domestic violence victims, including expedited time frames for each phase of the process.

Establishing disciplinary proceedings for civil servants who do not comply with their due diligence obligations in cases of domestic violence, particularly police officers; prosecutors; and medical, educational, and social service professionals.

Reinforcing the role of the National Human Rights Institution and the Public Defender’s Office in the response to gender-based violence, including coordination measures and budget allocations.

Requiring the State to provide specialization of and training to all professionals who interact with victims of domestic violence, including Ministry of Social Solidarity staff; staff of shelters and hospitals; police; prosecutors; defense lawyers; and judges.

2011 Civil Code

**Article 1475:** Amend this provision by:

Establishing that de facto unions/civil partnerships are valid in effect to the current recognized marriage categories and that their regime shall be regulated by a special law.

**Article 1494:** Amend this provision by:

Establishing the same remarriage period for both women and men, that is 180 days after the divorce.

**Article 1500:** Amend this provision by

Making the authorization of marriage of a minor conditional to the principle of the best interests of the child.

Adding a new clause establishing that a minor’s free and informed consent is needed to marry, in addition to drawing on the support of medical, social and justice professionals whose actions are to be based on the principles of the best interest of the child; consent; and the evolving capacity of the child.

**Article 1536:** Amend this provision by
Adding an additional clause establishing that minors getting married shall be able to enjoy the rights to education, health, and freedom from violence.

**Article 1568:** Amend this provision by

Removing the prohibition that the use of the spouse’s surname upon divorce is based on moral interests of the other spouse and her/his family.

Establishing clear criteria for when the use of the former spouse’s name is unfair, unreasonable, done in bad faith, or causes financial or psychological harm to the other spouse.

**Article 1656:** Revoke this provision by:

Eliminating any fault-based divorce clause and related consequences for partitioning (Article 1666); benefits received, or to be received, by spouses (Article 1667); reparation of non-patrimonial damage (Article 1668); and entitlement to alimony (Article 1884).

**Article 1651:** Amend this provision by:

Adding a clause establishing that in cases of litigious divorce where one party committed intimate-partner violence against the other, there will be no mandatory attempt at reconciliation.

**Article 1763:** Revoke this provision by:

Eliminating any differentiation between children born to married or non-married parents in accordance with the best interests of the child.

**Article 1782:** Amend this provision by:

Eliminating the age limit for hearing the opinion of the child, establishing that the participation of the child will be based on her/his evolving capacities and maturity.

**Article 1800:** Amend this provision by:

Eliminating morality as grounds for inhibiting the exercise of parental authority.
2012 Labor Code

Article 7: Amend this provision by:

Establishing proceedings, sanctions and reparations for survivors of sexual and labor harassment in the workplace; and specify the application of a gender lens when processing such cases.

Article 59: Amend this provision by:

Establishing that the State offer maternity leave schemes to informal economy workers on the same grounds as those employed in the formal economy.

Article 60: Amend this provision by:

Establishing a joint State-employer scheme in order to encourage employers to extend the length of paid paternity leave.

Article 61: Amend this provision by

Establishing that the remuneration of workers who are on maternity or paternity leave shall be the responsibility of the employer with financial support from the State.

Enacting a comprehensive twofold affirmative action program. In the public sector: establish gender quotas for admission in the civil service, with a particular focus on including women with disabilities and women living in poverty. In the private sector: create incentives to businesses to increase the number of women in decision-making positions and leadership in each industry sector.

Recommendations on further studies with the aim to regulate, enact or improve existing laws

A comprehensive analysis of the Criminal and Civil Procedure Codes, applying a gender and child sensitive lens to identify additional procedural protections that can be strengthened.

A comprehensive analysis of the 2009 Law on Protection of Witnesses and the 2017 Law on the Prevention and Fight Against Human Trafficking, applying a gender and child sensitive lens to identify additional procedural protections that can be strengthened.

A comprehensive analysis of sentencing structures and schemes in the Penal Code, including an analysis of the range of sentences available for each related crime and what sentences are actually being applied in practice, particularly regarding suspended and substituted sentences in cases of sexual violence.
Additional analysis, which should include public consultations, on the intersections between gender-based violence and the following topics:

→ Age of consent for sex;

→ Children, particularly girls, in alternative care, including orphanages, boarding houses, etc.;

→ The impact on women and girls of emergencies, particularly natural disasters and sanitary emergencies.

→ New technology and social media and its use as a platform for violence, particularly against women and children, particularly girls.


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**International treaties**


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------. 2013. General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24).

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------. 2017. Report of the Special Rapporteur on the sale of children, child prostitution and child pornography. Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. Thirty-fourth session.

The Spotlight Initiative is a global, multi-year partnership between the European Union and the United Nations to eliminate all forms of violence against women and girls by 2030. It is the world’s largest targeted effort to end all forms of violence against women and girls. Launched with a seed funding commitment of €500 million from the European Union, the Spotlight Initiative represents an unprecedented global effort to invest in gender equality as a precondition and driver for the achievement of the Sustainable Development Goals. As a demonstration fund for action on the Sustainable Development Goals, the Spotlight Initiative has been demonstrating that a significant, concerted and comprehensive investment in gender equality and ending violence can make a transformative difference in the lives of women and girls.