

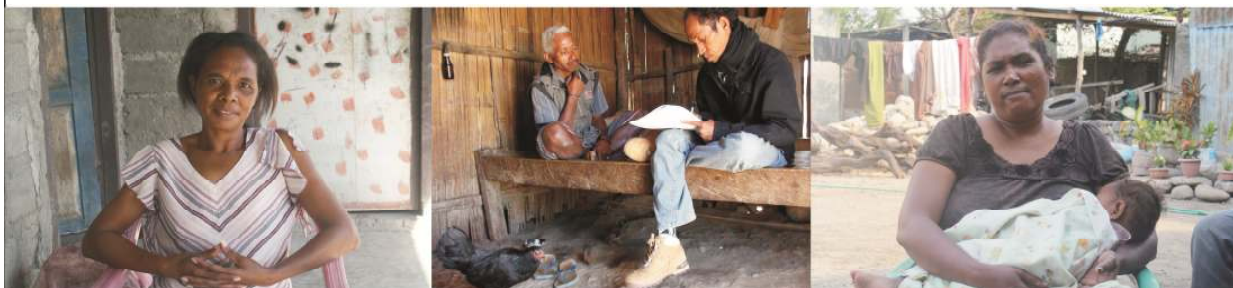


*Empowered lives.  
Resilient nations.*



## BREAKING THE CYCLE OF DOMESTIC VIOLENCE IN TIMOR-LESTE

ACCESS TO JUSTICE OPTIONS, BARRIERS, AND DECISION MAKING  
PROCESSES IN THE CONTEXT OF LEGAL PLURALISM



# **BREAKING THE CYCLE OF DOMESTIC VIOLENCE IN TIMOR- LESTE**

**ACCESS TO JUSTICE OPTIONS, BARRIERS AND DECISION  
MAKING PROCESSES IN THE CONTEXT OF LEGAL PLURALISM**

**October 2013  
Justice System Programme  
UNDP Timor-Leste**

## TABLE OF CONTENTS

<b>ACRONYMS</b> .....	<b>V</b>
<b>ACKNOWLEDGEMENTS</b> .....	<b>VI</b>
<b>EXECUTIVE SUMMARY</b> .....	<b>VII</b>
<b>I. INTRODUCTION</b> .....	<b>1</b>
<b>II. METHODOLOGY</b> .....	<b>3</b>
<b>III. BACKGROUND</b> .....	<b>5</b>
DOMESTIC VIOLENCE IN TIMOR-LESTE .....	5
LEGAL FRAMEWORK .....	5
<i>Public and Semi-Public Crimes</i> .....	8
<i>Sentencing for domestic violence</i> .....	10
<i>Accessibility of the Justice System</i> .....	11
CUSTOMARY FRAMEWORKS .....	12
THE RELATIONSHIP BETWEEN FORMAL AND CUSTOMARY JUSTICE SYSTEMS.....	14
<b>IV. RESEARCH FINDINGS</b> .....	<b>16</b>
SOCIAL CONTEXT OF DOMESTIC VIOLENCE .....	16
<i>Conceptualization of Domestic Violence</i> .....	16
<i>Perceived causes of domestic violence</i> .....	18
<i>Spiritual Beliefs</i> .....	21
CUSTOMARY LAW IN TIMOR-LESTE.....	23
<i>The Escada</i> .....	24
<i>Customary Concepts of Justice</i> .....	28
<i>Traditional responses to cases of domestic violence</i> .....	29
<i>Cost of Local Case Resolution</i> .....	32
TRADITIONAL AUTHORITIES AND LOCAL LAWS .....	34
TRAINING AND SOCIALIZATION OF LADV .....	37
<b>V. FORMAL JUSTICE AND DOMESTIC VIOLENCE</b> .....	<b>39</b>

FEAR OF FORMAL JUSTICE.....	39
SOCIAL BARRIERS.....	41
ATTITUDE OF INVESTIGATORS .....	43
LACK OF INFORMATION ABOUT THE FORMAL SYSTEM.....	46
<b>VI. CONCLUSIONS .....</b>	<b>47</b>
<b>VII. RECOMMENDATIONS .....</b>	<b>49</b>
<b>REFERENCES .....</b>	<b>57</b>
<b>TERMINOLOGY .....</b>	<b>60</b>
<b>ANNEX I: SELECT FIELD RESEARCH STATISTICS .....</b>	<b>63</b>

## ACRONYMS

CPC	Criminal Procedure Code
FFSO	Fundasaun Fatu Sinai Oecussi
JSMP	Justice System Monitoring Program
JSP	Justice System Programme
LADV	Law Against Domestic Violence
NGO	Non-Governmental Organization
OPG	Office of the Prosecutor General
PNTL	National Police of Timor-Leste
RPRK	Rede Prevensaun no Resolve Konflikto
SOP	Standard Operating Procedures
UN	United Nations
UNDP	United Nations Development Programme
UNMIT	United Nations Integrated Mission in Timor-Leste
UNTAET	United Nations Transitional Administration in East Timor
VPU	Vulnerable Persons Unit

## **AUTHORS**

Annika Kovar (Access to Justice Adviser, Justice System Program, UNDP Timor-Leste)

Andrew Harrington (Access to Justice Policy Specialist, Justice System Program, UNDP Timor-Leste)

## **EDITOR**

Nasrin Khan (Chief Technical Adviser, Justice System Program, UNDP Timor-Leste)

## **ACKNOWLEDGEMENTS**

We would like to thank UNDP's Regional Bureau for Asia and the Pacific for recognizing the importance of gender equality and of this action-research project and awarding UNDP-JSP with a grant from the Gender Equality Fund for the implementation of field research on domestic violence and customary law and the implementation of an economic empowerment pilot scheme.

We are grateful to Belun, Fundasaun Fatu Sinai Oecussi (FFSO), and Asosiasaun Mane Kontra Violensia (AMKV) for their support with logistics, identification of interviewees, facilitation of access to communities, and translation services. The local knowledge and networks of Belun monitors, FFSO paralegals and AMKV focal points across Timor-Leste were crucial in realizing this research project.

This study was conducted with the support of the entire UNDP Access to Justice team, namely Casimiro dos Reis, Carmelindo Caetano, Olinda Cardoso, Isabel Struve, Gil dos Santos, Afonso Baptista, Jose Afoan, Gabriela de Luca, Viacheslav Mysak, Stephanie Cox, Colin Cameron-Vendrig, James Billingsley, and Martha Chertkow. Thank you all for your hard work.

Finally, the authors would like to give a special thanks to Dr. Tanja Chopra, Kerry Brogan, Kathryn Robertson, and Sofi Ospina for taking the time to thoroughly review and to provide constructive commentary on an earlier version of this paper.

## EXECUTIVE SUMMARY

The Government of Timor-Leste promulgated the Law Against Domestic Violence (LADV) in 2010.<sup>1</sup> This law defined domestic violence as a public crime and included physical, psychological, sexual and economic violence as prohibited forms of violence. By doing so, the government of Timor-Leste has taken a strong position: justifying domestic violence as a 'normal' and 'private' matter is no longer acceptable. The public status of the crime requires the state to respond to domestic violence whether a victim files a criminal complaint or not.

This field research investigates the local context of female victims of domestic violence and the local and institutional factors which form the backdrop to women's choices on whether, how and where to seek justice. This research concludes that concerns over the preservation of the extended family network as well as economic dependence on the perpetrator, combined with spiritual considerations are key factors influencing women's decisions. The findings suggest women who do not enjoy the support of their families are unlikely to pursue their case through the formal system fearing a rupture of socio-economic support systems and potentially serious repercussions from local authorities and the community. Without adequate systems of protection and support in place, there is a risk female victims of domestic violence will be alienated from the formal justice system. Meanwhile, traditional justice mechanisms, while accessible and timely and perhaps cheaper, may not service female victims' needs. Traditional practices represent and reflect the underpinning male-dominated culture, meaning the values upheld and choice of justice mechanisms may necessarily be undermined, women's voices may be lost, and redress for individual women unavailable. This research investigates the contextual pressures which most influence the choices women make as to how to respond to domestic violence with a view to providing recommendations to national and international actors on how to better ensure women's access to justice, and protection from domestic violence.

This research concludes that strengthening implementation of the current law, together with a formalization of the role of the customary justice systems of Timor-Leste would significantly enhance the ability of victims of domestic violence to access justice.

The formal justice system needs to be capacitated to deal effectively and adequately with crimes of domestic violence. Currently, there is an emphasis on prosecution without equal attention to providing effective protection mechanisms. This research suggests that a holistic

---

<sup>1</sup> Law no. 7/2010, Law Against Domestic Violence.

implementation of the LADV is crucial, otherwise the law risks re-victimizing survivors of domestic violence.

The current law prohibits customary justice processes from supplanting state justice in resolving domestic violence cases; however, given its prominence in Timorese society, it is a necessary component of a strategy to combat domestic violence. Thus, it is crucial to establish and regulate links between state justice and customary justice systems. While customary justice has weaknesses in the area of domestic violence, it has a role to play if appropriate mechanisms are put into place. A clear and legally established link between the customary justice and formal justice systems would serve to reduce confusion and increase the legitimacy of formal decisions while respecting and reflecting important elements of the Timorese cultural identity. When users of the law see that it responds to their needs and priorities, it strengthens the legitimacy of the formal system. When decisions appropriately reflect and resonate with the local context, meaningful social change and a reduction in the incidence of domestic violence is easier to achieve.

As the report describes in detail, informal justice systems conceptualize crimes of domestic violence as a problem between two extended families rather than the individuals directly involved, prioritizing the protection of collective relationships in tight-knit communities, or “peace”, over “justice” for, and protection of the individual victim via enforcement of their individual rights. As a result, customary justice systems do not always respect the victim’s interests and rights, frequently blame female victims for violence committed against them, and impose social pressure to accept a solution which provides no redress for the violence.

Communities are also fearful of the consequences of approaching the formal justice system, which is associated with jail and divorce – both of which entail significant negative consequences for female victims in close-knit family/community structures. Women who might wish to approach the formal system may face significant resistance from their families and local communities. Those who do not enjoy family support are unlikely to pursue their case through the formal system given the potential to rupture socio-economic support systems and potentially serious repercussions from local authorities and the community. Evidence suggests that around the world, people living in situations of legal pluralism face similar types of pressures which impact on decisions to utilize customary justice, including differential power relations, social pressure, cultural and religious beliefs, and economic concerns.<sup>2</sup>

---

<sup>2</sup> UNDP, UNICEF and UNWOMEN (2012): Informal Justice Systems. Charting a Course for Human Rights-Based Engagement.



The possibility of abandonment or divorce should they pursue a domestic violence case leaves many women fearful of being left in a desperate situation. Without adequate systems of protection and support in place, namely those foreseen in the Law Against Domestic Violence, there is a risk that female victims will be unwilling and unable to avail themselves of the protection offered by the law. The law was structured to provide support services to balance the obligatory nature of the processes surrounding the prosecution of domestic violence, but it appears that the emphasis and resources have not been forthcoming in terms of providing shelter and victim services. This research concludes that if women are not to be alienated from formal justice, adequate investment must be made in support services to complement the prosecution and punishment aspects of the LADV.

The research also demonstrates that in many, if not most, cases of domestic violence, by the time a case is presented in court, customary processes have already been undertaken and concluded. Often judges accept this and the outcome of lengthy judicial proceedings from investigation to final court decision results in a suspended sentence or fine.

While customary justice currently has no specific legally mandated role in domestic violence cases (or any other criminal cases), in reality it is used extensively in parallel with the formal system and the interaction between systems is ad hoc. As noted previously, a clear legally mandated connection between state and customary law systems should be established. This would serve to establish a clear legal basis for the consideration of customary law in courts, and to acknowledge the value of customary justice systems for women in terms of immediacy and accessibility. At the same time such legislation can integrate safeguards to ensure that the customary system provides sufficient protection and a role for women in the adjudication of disputes.<sup>3</sup>

These findings suggest that a greater focus on the holistic implementation of the LADV is crucial since prosecution without effective protection mechanisms risks re-victimizing survivors of domestic violence. Ignoring grassroots social and cultural phenomena undercuts the law's acceptance and effectiveness. The formal justice system needs to be analyzed from a female victim's point of view to tailor responses – in terms of sentencing, protection and information provisions – to the needs of these women.

---

<sup>3</sup> A finding similar to recommendations from The World Bank (2011): "World Development Report. Conflict, Security, and Development." Washington, D.C.

## RECOMMENDATIONS

### 1. IMPROVING THE CAPACITY OF THE FORMAL JUSTICE SECTOR TO RESPOND TO DOMESTIC VIOLENCE CASES

- 1.1. The law requires all domestic violence cases reported to the police to be investigated and referred to the prosecution within 15 days. This research found that this is not happening and that cases are still wrongly being sent to the informal system for resolution. In the absence of any internal monitoring, it will be impossible to assess where, how and why this is happening. **It is recommended that the PNTL institute a mechanism for monitoring and evaluating how officers respond to domestic violence reports, with any corrective actions implemented to ensure that police officers comply with the Law.**
  
- 1.2. The current reliance on the victim's testimony as (usually) the sole evidence of the crime places the entire burden of a prosecution on the victim. It can effectively re-victimize the victim if they choose, or are coerced into, withdrawing their evidence. **It is recommended that police and prosecutors have early and on-going training on ways to improve investigation techniques to increase the types of evidence gathered specifically related to domestic violence cases.** Such evidence includes: physical evidence from hospital/medical clinic reports, photographic evidence of injuries, forensic evidence once the necessary national infrastructure is established, secondary witnesses, and other sources of evidence permissible under the Criminal Procedure Code. Such training should be supplemented with Standard Operating Procedures (SOPs) for all PNTL officers (not just VPUs) who may deal with domestic violence cases, specifically stating the requisite steps in responding to cases and conducting investigations.
  
- 1.3. Effective coordination between the PNTL and the Prosecution is essential to ensuring effective investigations and prosecutions. To date, the Justice System Programme has supported a number of *ad hoc* coordination/training sessions, between the PNTL and the Prosecution, led and administered by district prosecutors. These activities enable prosecutors to directly communicate areas of concern, improve investigative skills of police and in turn provide a safe forum in which PNTL officers can pose questions to prosecutors. **It is recommended that training and coordination between the Prosecution and PNTL officers in all district offices should be institutionalized and expanded.**

- 1.4. Women's choices to use the legal system are constrained by lack of access to free and accurate legal advice and assistance in many parts of Timor-Leste. While the Public Defender's Office is tasked with providing such advice to victims, their role is poorly understood and the four offices are located only in the four judicial district capitals of Baucau, Suai, Dili, and Pante Makassar. A stronger focus by the Public Defender's Office both on socializing its role and systematically reaching out to potential victims would help increase women's ability to make well-founded choices and ensure they have access to sound legal advice. **It is recommended that the Public Defender's Office establish and implement a national communication strategy, one element of which specifically focuses on domestic violence, with sufficient budget and resources allocated.** The Public Defender's Office should expand its geographic presence with new offices in new districts as qualified staff become available in order to widen its scope of activities.
- 1.5. Judges can play a strong role in sending a message to perpetrators. If it is not understood both by perpetrators and their victims that a suspended sentence constitutes punishment, and that any re-offence can lead to immediate incarceration – there is a danger that the formal justice system will be seen as ineffectual. **It is recommended that judges always clearly and simply explain the implications of a suspended sentence to convicted perpetrators and their victims.**
- 1.6. The formal justice system should increasingly focus on restorative sentencing options where possible rather than relying on purely punitive measures. This serves the joint function of ensuring broader discretion for judges to select appropriate sentencing measures on a case-by-case basis, and better reflecting the restorative values typical of traditional justice systems throughout Timor-Leste. Useful sentencing measures include education sessions and anger management therapy for the perpetrator. These measures are foreseen in both the Penal Code (such as Articles 69, 70 and 71 regarding conditional suspended sentencing, limitations on conduct and suspended sentencing with monitoring options) and LADV (Articles 37 and 38 on measures of restraint and selection and determination of penalties respectively), but are not yet available. It is expected that the Law on Sentence Executions (currently still in draft form) will make new rehabilitative measures available in the future. **It is recommended that the Ministry of Justice, Prosecution, Public Defender, Prison Services, the courts and international donors support a policy which mandates and realizes broader non-custodial sentencing options for perpetrators.**

1.7. There is a common misperception that bringing a case to the formal system automatically leads to imprisonment for the abusive spouse, which is not an outcome most victims necessarily welcome, and may lead them to avoid reporting cases. **It is recommended that socialization activities directly challenge this misperception by clearly demonstrating that courts have a variety of sentencing options which do not include prison; once alternative sentences are in place, socialization campaigns should emphasize the new alternative sentencing options available to judges.**

## **2. ECONOMIC AND SOCIAL SUPPORT SERVICES**

2.1. There are currently few safe houses operating across the country, the majority of which are run by civil society organizations and are contingent upon donor funding. The network needs to be expanded and consistent funding secured, so women who seek to escape violence are able to access safe, alternative accommodation. **It is recommended that the government makes implementation of its commitments under LADV to provide sufficient emergency and residential domestic violence shelters a priority, and that a budget and timeframe is allocated to achieve this.**

2.2. This research found that women risk being rejected by their family and social networks for choosing to approach the justice system. Considering many victims' economic dependence on perpetrators, there is a clear need for social and economic assistance for victims to support themselves in such cases. The pilot project associated with this field research examining social business as a mechanism for economic empowerment of women suggests this approach may be successful, but must be implemented as an internal activity within shelters partly to overcome difficulties of outsiders gaining access, but also in order to ensure ownership and sustainability. **It is recommended that the government explores approaches to income generation for women victims in collaboration with the providers of shelters and services for women victims of domestic violence.**

2.3. Domestic violence is a crime with specific features: the victim and perpetrator may continue to live together; their families are interlinked; punishment of the perpetrator may also punish the victim and any children. These special features have challenged justice systems around the world to respond effectively to the social problem. It is therefore important to help legal actors perceive this, and to understand the special needs and circumstances of victims. Serving justice actors in Timor-Leste already demonstrate mastery of the applicable legal framework, however, increased specialization for domestic violence and sexual and gender-based violence cases is

highly desirable. Such training should include advanced and detailed technical training on the relevant legislative framework – including relevant portions of the LADV, Penal Code and Criminal Procedure Code, as recommended by the Ministry of Justice’s Gender Justice Policy document. This approach has been reported to be effective in other jurisdictions. **It is recommended that the Ministry of Justice, in cooperation with the Secretary of State for Equality (SEPI) and donors, should implement specialized training on domestic violence and other sexual and gender based violence (SGBV) cases as described in its Gender Justice Policy.** Training for both serving justice officials and those undergoing training should include a focus on relevant crimes, the types of evidence needed to prove them/disprove them, recognition of the effect of stereotypes and assumptions which diminish the importance of domestic violence, as well as victim-sensitive questioning techniques, and the identification and consideration of any special needs victims might have – such as witness protection or referral to a safe house.

### **3. OUTREACH AND TRAINING**

3.1. Outreach, training and socialization activities should be designed around the needs of the recipients. Public outreach and training must not only enhance the very basic knowledge about the justice system in the public, but also ensure officials and the public understand the meaning of key terms such as “public crime” or “domestic violence”. They also need to directly address common misunderstandings, for example that domestic violence is only criminal when it is “serious” i.e. involves the use of weapons, or serious bodily harm; that police cannot be accessed directly without reporting to a local authority first, or that perpetrators of domestic violence will always go to jail. **It is recommended that socialization of the LADV is built around the needs of the audience, and always addresses the common misunderstandings about domestic violence identified in this research.**

3.2. Related to the need to build around the needs of the audience, it is important that socialization, outreach and training activities use simple language and avoid using overly legal and/or formal terminologies. These are more likely to be misinterpreted and lead to the perception that domestic violence and related phenomenon are foreign, complicated and abstract concepts. This process may mean abandoning explicit references to human rights language altogether or reframing ideas while still working to challenge any local inequalities. **It is recommended that simple and accessible language should be used, avoiding legal terms and employing locally understood**

**terms and concepts wherever possible to increase resonance with the local audience and ensure locally contextualized understanding of legal concepts.**

- 3.3. This research confirms that some local authorities, after having received training on the LADV, intentionally or unintentionally misinterpret the law. **It is recommended that all socialization, outreach and training sessions should be evaluated regularly and adjusted to guarantee effectiveness.** Regular monitoring and evaluation of training and outreach activities should be included to determine impact and alter programming, content and/or approach as necessary to ensure positive results. This will require the implementation of pre-and-post assessment of participants' knowledge and understandings as a minimum.
- 3.4. Many outreach efforts focus on disseminating the contents of the LADV, rather than working with audiences to understand what the law means to them in practice or identifying negative attitudes and behavior which need to be targeted for change. While transmitting information on the law is important, the ultimate aim is to change negative attitudes and behavior. **It is recommended that socialization activities aim to change attitudes and behaviours as well as to increase public awareness.**
- 3.5. Tetum and Portuguese, the national languages stipulated by the Constitution, are not the most spoken or best understood languages in many parts of Timor-Leste. Where presenters and the audience are most comfortable in a language other than Tetum, that language should be used, whether Fataluku, Baikeno or Bahasa Indonesia. **It is recommended that socialization, outreach and training sessions be conducted in local languages and/or whichever language recipients understand best.** The Ministry of Justice's National Directorate of Citizenship and Human Rights provides a good example of this approach, holding outreach/socialization sessions in Bahasa Indonesia (legally designated a working language in Article 159 of the Constitution) in Oecusse, where Tetum is spoken by few citizens and using Fataluku in Tutuala in Lautém district, which most participants understand better than Tetum.

#### **4. EFFECTING SOCIALLY-EMBEDDED CHANGE**

- 4.1. Human rights and gender equality must be linked as much as possible to local concepts and practices which are protective of women. Working against or despite local cultures means social reform efforts not only challenge domestic violence as a social behaviour, but also local culture as a whole. This research identifies a number of values protective of women within local cultural systems. Working with communities to invoke similar

ancestral rules and spiritual beliefs which stress respect and love between husband and wife and show a perpetrator (rather than victim) is responsible for upsetting extended family relations, may provide socially-embedded points of entry in efforts to establish domestic violence as unacceptable social behavior. **It is recommended that activities challenging domestic violence employ and engage local cultural concepts and beliefs, where possible, to reinforce the prohibition on violence.**

4.2. The Government and other service providers need to directly address the onus placed on women to change behavior to avoid ‘triggering’ violence, and reflect male responsibilities to respond to conflict peacefully, working through local cultural systems to show a violent perpetrator, rather than a victim who reports it, is responsible for putting crucial family bonds at risk. This helps shift social pressure away from victims onto perpetrators to alter or stop violent behaviour. Working through and with local systems to promote recognition of a perpetrator’s behavior as harmful to the victim, children, and the entire family system will be most effective as a socially embedded means of effecting change. **It is recommended that targeted activities with men are part of socialization of the LADV, focusing on their responsibility in reducing and preventing domestic violence.**

4.3. Community Authorities must be co-opted into processes in view of their status as *de facto* gatekeepers. Dismissing traditional myths and “customary excuses” for domestic violence – such as abusive husbands using *Barlake* to justify abuse whereas community leaders often disagree strongly – may best be taken head-on by traditional leaders themselves, rejecting attempts to hijack custom and de-legitimize such self-serving cultural excuses for abusive behavior. International examples indicate this approach can work.<sup>4</sup> **It is recommended that community authorities and traditional leaders are involved in efforts to challenge domestic violence and negative customary beliefs regarding women’s role in provoking violence.**

4.4. Training and outreach must target traditional leaders at the local level in addition to community authorities. Public outreach campaigns and training for local authorities needs to recognize the diversity of local actors. This research shows that *Suco* (village) authorities may not always be the most important local actors involved in the resolution

---

<sup>4</sup> For example see: “From Despair to Hope: Women’s Right to Own and Inherit Property” Futures Group International & Kenya National Commission on Human Rights (2005); T Chopra, Promoting Women’s Rights by Indigenous Means: An Innovative Project in Kenya, Briefing Note 1.2, World Bank, Justice for the Poor (2007); A Harrington and T Chopra, Arguing Traditions: Denying Kenya’s Women Access to Land Rights, Research Report No. 2, World Bank, Justice for the Poor (2010)

of domestic violence cases (and disputes in general). **It is recommended that key actors in local communities should be identified and included in outreach and training activities, especially family and spiritual authorities, particularly *Ferik* (the older women in the community).**

## **5. DEVELOPING THE LEGAL AND POLICY FRAMEWORK**

- 5.1. Currently, the Vulnerable Persons Units of the PNTL are formed under SOPs established by UNMIT in 2006. They have never been formalized within the law. A strong and effective VPU is crucial to ensuring victims receive appropriate assistance, and this requires well-trained and experienced officers who are not rotated out of the VPU too quickly. **It is recommended that the Secretary of State for Security establish the VPUs in law and implement regulations regarding officers' function, recruitment, training, transfers, and career development. This should be prioritized and budgeted for accordingly.** This, in particular, should include a rationalization of the VPU's rotation schedule to make sure VPU officers who have received training are not rotated out of their position, as foreseen in the National Action Plan on Gender Based Violence.
- 5.2. A law creating a clear interface/connection between the formal and informal justice systems is needed. Creating a clearly defined and formalized link between the state and informal justice systems will increase the state system's legitimacy while making it easier to monitor what is occurring in local systems and ensure compliance with national and international human rights standards. **It is recommended that the Government enact a law which sets out when and how agreements under customary justice procedures can be accepted by the formal justice system, as a priority.**
- 5.3. **It is recommended that the Government ensures that local communities stop drafting 'local laws' and/or supporting such activities.** Such laws have no legal basis and undermine the rule of law. They often contravene the existing national legal framework and directly negatively impact on citizen's access to justice – in particular for women since some purport to regulate domestic violence and limit access to formal justice. These local laws may be incorrectly accepted by rural citizens as official state law, significantly undercutting national efforts to socialize the LADV and other laws.
- 5.4. A clear and consistent system of data collection on cases involving domestic violence is needed. As the literature review preceding this field work demonstrated, data on domestic violence in Timor-Leste is available inconsistently, and is not reliable. This



makes it impossible to accurately map the incidence of domestic violence and understand it, and therefore impossible to properly plan policy, strategies and any subsequent legislation to better combat it. **It is recommended that the Government and justice institutions establish a standardized and reliable method for collecting dependable data on domestic violence – including incident reporting as well as actual cases filed with the formal justice system – which is made publicly available on a regular basis.**

## I. INTRODUCTION

Domestic violence<sup>5</sup> against women is a pressing social problem in Timor-Leste. In 2010 the government of Timor-Leste passed the Law Against Domestic Violence (LADV) strengthening the legal framework and sending a strong message regarding the need to prevent and punish domestic violence: domestic violence is unacceptable and is not a ‘normal’ and ‘private’ matter.

The LADV has increased prosecution of domestic violence. Although reliable statistics remain elusive,<sup>6</sup> an increased number of domestic violence cases are reaching the courts. However, as with many social conflicts in Timor-Leste, the majority of cases are resolved at the family or community level through customary mechanisms,<sup>7</sup> and never reach the formal system. This mirrors the global reality; as the recent Progress of the World’s Women report<sup>8</sup> finds, even in countries with well-functioning formal systems, women only take a small fraction of grievances to a formal court, meaning the overwhelming majority of women access justice through non-state systems.

To investigate the underlying reasons for this, a major research project was started in 2011. This field research is a single component of a broader action-research project which includes a review and critique of the literature on domestic violence and customary law in Timor-Leste<sup>9</sup> and an ‘action’ portion consisting of an economic empowerment pilot scheme for female survivors of domestic violence.<sup>10</sup> The literature review provided a baseline for the field research project identifying gaps in understanding, which in turn shaped the field research component.

---

<sup>5</sup> Article 2 of the 2010 Law Against Domestic Violence defines domestic violence broadly as “any act or sequence of acts committed within a family context, with or without cohabitation, by a family member against any other member of that family, where there is a situation of ascendancy, notably physical or economic, in the family relationship, or by a person with regard to another person with whom the former has had an intimate relationship which resulted, or may result, in physical, sexual or psychological injuries or suffering, economic abuse, including threats such as intimidating acts, bodily harm, aggression, coercion, harassment, or deprivation of freedom” (Law no. 7/2010).

<sup>6</sup> There are a number of statistics available, yet these are based on different definitions and legal purposes, either counting cases reported to the PNTL (at which stage it is still to be determined whether the reported case constitutes domestic violence), cases filed with the Prosecution, pending cases which are being investigated, or resolved cases.

<sup>7</sup> The terms ‘traditional’ and ‘customary’ law as used in this paper recognize the flexible and evolving nature of custom and tradition and the influence colonial and post-colonial occupation has had on customary systems of rule across Timor-Leste and are not meant to invoke a timeless notion of tradition.

<sup>8</sup> UNWOMEN (2011): Progress of the World’s Women. In Pursuit of Justice.

<sup>9</sup> The literature review “Approaches to Domestic Violence in Timor-Leste: A Review and Critique” was published in 2011 and can be found online at [www.tl.undp.org/justice/](http://www.tl.undp.org/justice/).

<sup>10</sup> The ‘action’ portion of the project refers to the UNDP supported pilot project ‘*Futuro Di’ak*’ (‘Good Future’). The pilot was implemented tested the economic empowerment of women domestic violence victims using a social business model to assist them escape cyclical violence. Results and lessons learnt are available upon request.

The literature review describes the extent to which domestic violence has been conceptualized as a normal part of relationships, to be resolved by the parties, and not for outsiders to concern themselves with. The research investigates the context which women who suffer from domestic violence find themselves in as a part of an effort to understand the choices women make; the implications of those choices; and draws conclusions on how policy interventions should be developed in the future in the area of domestic violence. The research identifies the key local and institutional factors influencing women's choices on whether, how and where to seek justice by focusing on the local context in which female victims find themselves – such as local concepts of justice and violence, social pressures, local systems of dispute resolution, and spiritual beliefs. The purpose of this research is to assist in refining national and international interventions to increase women's access to justice in cases of domestic violence.

This research shows that women who choose to approach formal systems without the support of decision-makers within the family (usually older males) risk losing this family network and social isolation. Combined with women's economic dependence on the perpetrator, this creates coercive pressures which may leave women unable to freely choose whether to seek help for domestic violence from outside authorities, whether this entails the formal or the informal justice system. International best practices incorporated into the LADV should be better adapted to the local context to provide realistic and effective solutions for victims of domestic violence.<sup>11</sup>

---

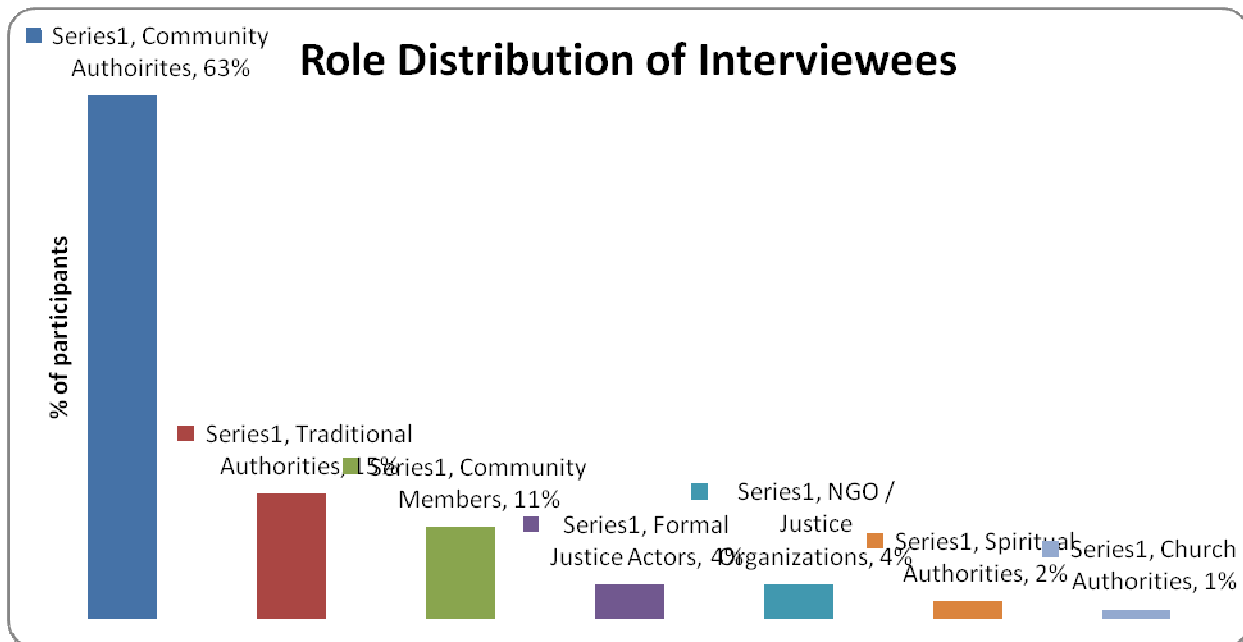
<sup>11</sup> Similar recommendations are made by The World Bank in their report "World Development Report. Conflict, Security, and Development." (2011), Washington, D.C.

## II. METHODOLOGY

The field research project began in 2011 and was implemented by the UNDP Justice System Program’s Access to Justice Team. Implementation involved cooperation with three Timorese NGOs: Belun, Asosiasaun Mane Kontra Violencia (AMKV), and Fundasaun Fatu Sinai Oecussi (FFSO). These partner NGO’s provided logistical support, assisted in the identification of interviewees, facilitated access to communities and interviewees, and provided minor translation services from Tetun into local languages.

Field researchers employed a semi-structured interview format, including interview questions to guide the research team and improve consistency<sup>12</sup> which were field tested on four occasions and refined accordingly.

Target sub-districts for the research were carefully selected on the basis of ethno-linguistic characteristics, including two matrilineal sub-districts as well as Tetun, Tetun Terik, Becais, Bunak, Oe’ mua, Galole, Baikeno, Mambae, Kemak, Tokodede, Raimean, and Midiki speaking groups, with a focus on rural areas.



Research targets included Community Authorities, traditional and spiritual authorities, women’s representatives, members of local NGOs, and community members. Six justice-related

<sup>12</sup> The questions are available upon request.

organizations in Dili and representatives of all formal justice institutions in the four judicial districts (Dili, Baucau, Oecussi, Covalima), including judges, prosecutors, public defenders, and PNTL's Vulnerable Persons Unit were interviewed. The research teams visited 13 sub-districts in 10 districts, completing a total of 320 qualitative, semi-structured interviews at the *Suco* (village) and *Aldeia* (hamlet) level, involving 369 interviewees, 90 (24%) of which were women.

This research focuses exclusively on domestic violence against women and does not investigate domestic violence against other groups (e.g. children, elderly, men etceteras) or other forms of gender-based violence. While the research team did encounter a number of victims of domestic violence, they were not specifically targeted; field teams did not receive prior specialized training on interacting with potentially traumatized victims, and though the research was careful to avoid raising unfair expectations among victims, without follow up assistance for victims available, the impact could have been negative.

This research departed from the LADV's broad definition of domestic violence to focus on physical violence between husband and wife only, since this is the most common interpretation of what constitutes domestic violence.<sup>13</sup> Based on this, the research investigates the context within which victims of domestic violence make decisions regarding whether, and from whom, to seek redress. This context is defined to a large degree by local, traditional and spiritual authorities who administer justice and shape people's perceptions and local concepts of domestic violence and justice. The majority of these administrators of justice are male which is reflected accordingly in the high number of male interviewees.

---

<sup>13</sup> The most common definition of domestic violence given by interviewees refers to physical violence between family members. In order to identify local terms used for physical domestic violence, field researchers employed the following question: "If one partner beats, kicks, or insults the other partner, what would do you call this behaviour?"

### III. BACKGROUND

#### DOMESTIC VIOLENCE IN TIMOR-LESTE

In 2009, 679 incident reports involving gender-based violence were recorded by PNTL, of which 462 cases were categorized as domestic violence.<sup>14</sup> The UNDP-JSP literature review on domestic violence and customary law confirmed domestic violence may be prevalent, but data remains inexact due to the inconsistent data collection methods and definitions used. Data must also be interpreted with the caveat that women are reluctant to approach the formal system in the first place, where such data would be captured. According to the Demographic and Health Survey 2009-2010, 36% of married women have experienced physical, sexual, or emotional violence by a husband or partner,<sup>15</sup> and only 24% of women who had experienced violence from their partner reported it to anyone. Women most often sought help from their own family (82%), in-laws (27%), and friends or neighbors (14%). Only 4% of women sought help from the police, and 1% from social service organizations.<sup>16</sup>

#### LEGAL FRAMEWORK

Timor-Leste continues to build and consolidate its formal justice system. Since the country gained full independence in 2002, considerable progress has been achieved: key national legislation, such as the Penal Code and Civil Code, have been drafted and enacted; judges, prosecutors and public defenders are permanently based in the judicial districts of Dili, Baucau, Covalima and Oecussi; initiatives such as mobile justice hearings are bringing the formal system closer to the people. Yet, a number of challenges remain: the courts are burdened with a large backlog of cases, some crucial pieces of legislation have yet to be enacted, law enforcement officials and judicial actors receive ongoing training and capacity building, the formal justice system and legal framework are neither known nor understood yet by the majority of the population; the formal justice system remains largely inaccessible due to geographical, financial and other barriers.

---

<sup>14</sup> UNHCHR and UNMIT (2010): Facing the Future: Periodic Report on Human Rights Developments in Timor-Leste: 1 July 2009 – 30 June 2010

<sup>15</sup> National Statistics Directorate (NSD) et al. (2010): Timor-Leste Demographic and Health Survey 2009-2010.

<sup>16</sup> National Statistics Directorate (NSD) et al. (2010): Timor-Leste Demographic and Health Survey 2009-2010.

Prior to the passing of the Penal Code in 2009, Indonesian law was the main source of criminal law.<sup>17</sup> This included portions relating to domestic violence, insofar as it did not contradict international human rights principles.

The 2009 Penal Code of Timor-Leste established the crime of “Mistreatment of a Spouse”<sup>18</sup> in Article 154 which criminalizes inflicting “... *physical or mental mistreatment or cruel treatment upon a spouse or person cohabiting with the perpetrator in a situation analogous to that of spouse...*”. Mistreatment of a spouse carries a penalty of 2 – 6 years imprisonment and is a “public crime”. This permitted various interpretations, including the treatment of minor physical offences between spouses as “simple offences against physical integrity”, a semi-public crime dependent on the filing of a complaint under Article 145 of the Penal Code. There is evidence that some serious cases were tried as simple offences and that the ability to withdraw such cases contributed to the high rate of attrition of domestic violence cases.

In June 2010, the Law Against Domestic Violence (LADV)<sup>19</sup> was enacted. The LADV expands the definition of domestic violence well beyond that conceived in Article 154.<sup>20</sup> The LADV defines domestic violence as:

any act or sequence of acts committed within a family context, with or without cohabitation, by a family member against any other member of that family ... which resulted, or may result, in physical, sexual or psychological injuries or suffering, economic abuse, including threats such as intimidating acts, bodily harm, aggression, coercion, harassment, or deprivation of freedom.<sup>21</sup>

“Suffering”, “threats”, “intimidating acts”, “aggression”, “coercion”, “harassment” or “deprivation of liberty” are not defined in the LADV, although some terms are defined

---

<sup>17</sup> Prior to enactment of the Penal Code, the Indonesian Penal Code, as it stood before 25 October 2009, remained in force insofar as it did not conflict with various international human rights principles. See: UNTAET Regulation 1/1999, continued by Section 165 of Democratic Republic of Timor-Leste Constitution, and Law 2/2002 On the Interpretation of Applicable Law, which reads: “Section 1 Applicable law: Legislation applicable in East Timor on 19 May 2002 shall remain in force *mutatis mutandis* for everything not contrary to the Constitution and principles enshrined therein.” An analysis of previously applicable Indonesian Law (namely Chapter XX of the Indonesian Penal Code, amended 1999) is beyond the scope of this paper, however positive additions to the Indonesian legal framework subsequent to 25 October 2009, such as Indonesian Law No. 23/2004 on the Elimination of Violence in the Household, were never applicable in Timor-Leste.

<sup>18</sup> Decree Law 19/2009 Approving the Penal Code (“2009 Penal Code”).

<sup>19</sup> Law no. 7/2010, Law on Domestic Violence.

<sup>20</sup> For the purposes of this research, the most important portions of the law are those pertaining to the conceptualization, criminalization and related active legal portions of the LADV; thus a more detailed analysis on the extremely important portions of the LADV dealing with rehabilitative and support services is omitted.

<sup>21</sup> Article 2, subsection 1, LADV.

elsewhere in the Penal Code. Four forms of domestic violence are established, namely physical, sexual, psychological, and economic violence,<sup>22</sup> although these terms are also not fully defined.

The LADV enumerates a number of crimes in the Penal Code<sup>23</sup> which, if committed within the context described in Article 2(1) LADV, become crimes of domestic violence.<sup>24</sup> All such crimes are categorized as public crimes, irrespective of whether the injuries are serious or not, such as common assault under Article 145.

The LADV establishes “family” as a key component for domestic violence; if one of the enumerated crimes is committed outside the family context, it is not considered domestic violence. The definition of “family” is broad and includes: spouses or ex-spouses; persons who live or have lived under conditions analogous to spouses, even though without cohabitation (e.g. mistresses *feen ki’ik / cama rua* – or ‘little wife’ / ‘second bed’) and couples who have not been legally married. It includes relatives in the ascending and descending line of one or both spouses or of anyone in the situation referred to in the preceding paragraph, as long as they are in the same relationship of dependency and part of the household economy (children, cousins, aunts and uncles, and any grandparents). It additionally includes 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 (e.g. housekeepers, servants, maids, and workers).<sup>25</sup>

The crime of domestic violence is not restricted to those acts committed within the family residence. It can be committed anywhere, although it is a common misapprehension that an act must be in a public place, or be witnessed by members of the public to constitute domestic violence.

In addition to the criminal provisions, the LADV provides for various services for victims of domestic violence. Articles 15 and 16 state that victims of domestic violence are eligible to

---

<sup>22</sup> Article 2, subsection 2, LADV.

<sup>23</sup> They are listed in article 35 of LADV; Penal Code articles: 153 (Mistreatment of a disabled person), 154 (Mistreatment of a spouse), 155 (Mistreatment of a minor) and 156 (Aggravation due to results) of the Criminal Code; and articles 138 (Homicide), 139 (Aggravated homicide), 141 (Termination of pregnancy {Abortion}), 145 (Simple offences against physical integrity [Assault], Harm to body or health of person), 146 (Serious offences against physical integrity), 167 (Torture or other cruel, degrading or inhuman treatment), 171 (Sexual coercion), 172 (Rape), 175 (Child prostitution), 177 (Sexual abuse of a minor), 178 (Sexual acts with an adolescent) and 179 (Sexual abuse of a person incapable of resistance).

<sup>24</sup> The specific labeling of these pre-existing crimes may be unnecessary since most are already listed as crimes in the Penal Code. Articles 153, 154, 155 and 156 already include specific reference to the involvement of family members or the crimes by definition include family members. Most of the other crimes listed already stipulate family relations (e.g. a domestic situation) as an aggravating factor, resulting in an increased minimum and maximum sentence.

<sup>25</sup> Article 3, LADV.



receive rehabilitative services, including shelter access, legal representation, medical and psychological assistance, and in justifiable cases, training on personal, professional and social skills in order to “contribute to their successful social reintegration”. Article 24 obliges police officers, when necessary, to refer victims to a shelter or legal and medical services and inform victims of their rights and the status of their cases. They must file a report with the Office of the Public Prosecutor within five days of receiving information about the case and must likewise inform the Office of the Public Defender should the victim lack financial means to hire their own lawyer.<sup>26</sup> Victims of domestic violence must be accompanied to the court by a lawyer or Public Defender, who is in turn obliged to provide the victim and their family with essential legal advice and information regarding the criminal process.<sup>27</sup>

### ***PUBLIC AND SEMI-PUBLIC CRIMES***

The difference between a semi-public and public crime is important, and is not necessarily well understood. A public crime is one which can be reported by any person, not only the victim. It does not mean, as noted by numerous interviewees and recounted later in this paper, that an action is only a crime when it happens in ‘public’, or when many people become aware of the case. As with semi-public crimes, a victim can report a crime to the Prosecution directly or to any PNTL officer who is then obliged to convey it to the Prosecution.<sup>28</sup> Additionally, where a prosecutor or police officer is aware of a potential public crime having been committed, they have an obligation to investigate.<sup>29</sup>

Once a complaint is filed regarding a public crime, it can neither be withdrawn by the person who reported it nor can the case be dismissed upon request of the parties, unlike semi-public crimes which can be withdrawn at any point by a complainant until a verdict or sentence has been issued by the Court, resulting in a dismissal. In the case of a public crime, a case can only

---

<sup>26</sup> Article 24, subsection 2, (e) & (f), LADV.

<sup>27</sup> The obligations for lawyers and Public Defenders include: legal counseling for victims of domestic violence; advice for victims, witnesses and family members on the progress being made in the judicial proceedings; monitor the way the cases of domestic violence are dealt with by authorities and judicial actors; maintain contact with relevant entities, bodies and community groups for the purpose of dealing with cases of domestic violence; advise victims on their access to other services that may be necessary, and to facilitate access to information relating to specific cases under the LADV. See Article 25, LADV.

<sup>28</sup> Article 211, subsection 1, CPC. Likewise, the PNTL and “any civil servant, public manager or any other public agent or authority who, in the exercise of their function learns a crime has been committed” must immediately prepare a notification of that crime for the Prosecution; Article 211, 1 & 2. *Chefes de Suco* and *Aldeia* are not required to do so since they are not “included in the Public Administration and their decisions are not binding upon the State.”; Article 2 “Definition of community leadership”, Law 3/2009, of 8 July 2009 Community Leadership and Their Election. *Chefes de Suco*, however, are required to request the intervention of security forces whenever a crime is committed in the *Suco*; Article 11, 2 (e), Law 3/2009, of 8 July 2009 Community Leaderships and Their Election.

<sup>29</sup> Article 210, subsection 1 (a), CPC.

be dismissed by the Prosecution after the enquiry has been complete and only upon three specific grounds, namely: if there is insufficient evidence indicating that a crime has been committed; if the perpetrator of that crime is unknown; or if the criminal proceeding itself is legally inadmissible.<sup>30</sup> Outside these situations, the Prosecution must file an indictment within 15 days of receiving the results of the investigation.<sup>31</sup>

The principal difference between a public and semi-public crime is that in the case of a semi-public crime, prosecution can *only be initiated after a complaint* (defined as a victim's expressed intent/desire to initiate criminal proceedings<sup>32</sup>) is filed with the prosecution or police<sup>33</sup> by the aggrieved party.<sup>34</sup> In contrast to a public crime, if a victim does not file a complaint, prosecution cannot be initiated. Victims who file complaints for a semi-public crime can waive or withdraw their right to complaint at any point before the District Court (or court of first instance) issues a sentence for the complaint and related crime.<sup>35</sup> A legally valid withdrawal results in acquittal and precludes any subsequent complaint by the same aggrieved party on the matter.<sup>36</sup> Otherwise, just as with public crimes, once a complaint has been received and is not withdrawn, the case can only be ended by the prosecution as described above.<sup>37</sup> This means that in semi-public crimes, the victim's wishes inform the criminal process through their right to initiate proceedings through a complaint, and their power to withdraw that complaint.

Prior to the LADV, the poor record of prosecuting and punishing domestic violence cases was attributed both to police failing to file charges in response to complaints, and victims and families withdrawing at various stages of the criminal proceedings.<sup>38</sup> Those cases which were prosecuted showed a pattern of serious offences being tried as minor offences.<sup>39</sup> The re-

---

<sup>30</sup> Article 235, CPC.

<sup>31</sup> Article 236, CPC.

<sup>32</sup> Article 106, Penal Code.

<sup>33</sup> Article 49 & 160 Penal Code; and per Article 211, subsection (1) "Any police officer who learns that a crime has been committed must immediately prepare a notification." And Subsection 3: "In the event of a crime of a semi-public nature, the initiation of the criminal proceeding depends on the exercise of the right to complain, and the proceeding is dismissed if such a right is not exercised within fifteen days following the preparation of the written notice."

<sup>34</sup> Article 71, subsection (b), CPC.

<sup>35</sup> Article 216, subsection 2 CPC.

<sup>36</sup> Article 216, subsection 1 and 6, CPC.

<sup>37</sup> Article 235, CPC.

<sup>38</sup> The most cited factor was withdrawal by the victim. JSMP "Women In The Formal Justice Sector: Report On The Dili District Court Dili" East Timor 7 April 2004; JSMP "Statistics On Cases Of Violence Against Women In Timor Leste" Dili, Timor Leste February 2005

<sup>39</sup> Discussion with former Prosecutor and Prosecutor Lecturer, Dili, 2011.

categorization of domestic violence as a public crime removed the flexibility inherent in semi-public crimes as a tool to strengthen the justice system’s response to these cases.

This study shows that victims are still subject to pressure to withdraw cases, whether explicitly or through latent social pressures from their spouses, family, or local authorities. Legally required prosecution (as well as legally required victim testimony) may take pressure and responsibility off the victim, giving perpetrators and other involved parties less incentive to intimidate the victim. However, there is also a danger that the system has become too rigid and that women are further disempowered. Given that many women wish to remain within their relationships, there is a danger that they may be reluctant to access the police in the first place – whether to file a complaint and/or seek immediate protection – if they believe that they will have no opportunity to withdraw or resolve the matter through other means. In this respect, victims of domestic violence were observed exercising their right to refuse to testify as a witness under Article 125<sup>40</sup> of the Criminal Procedure Code (CPC). With no other evidence or witnesses available, a victim refusing to testify often required cases to be dropped, achieving the same effect as attrition described above. This issue predated the LADV and was raised publicly in 2009.<sup>41</sup> A Court of Appeal decision in October 2011 addressed this issue and ruled that victims, as opposed to witnesses, do not have a right to refuse testimony against a family member and can be compelled to do so under oath, under threat of criminal sanction if they refuse or do not testify truthfully. This decision is not technically binding on District Courts and reliable statistics on the application of this decision by District Courts are unavailable, judges in a number of Court cases monitored by JSMP between October 2011 and March 2012 indicated mixed results, with some explicitly applying the Court of Appeal decision while not applying it in others.

### ***SENTENCING FOR DOMESTIC VIOLENCE***

The Penal Code establishes a preference for non-custodial sentencing options where applicable.<sup>42</sup> Anecdotal evidence and observation of court cases indicates judges are frequently applying suspended sentences<sup>43</sup> in domestic violence cases when the law allows.<sup>44</sup> Non-

---

<sup>40</sup> It is unclear whether victims were being treated as “witnesses” as defined in the CPC or as an “aggrieved” likewise defined in the CPC, with differing legal consequences.

<sup>41</sup> This is not a new issue; in 2009, before the LADV was promulgated, the Justice System Monitoring Programme (JSMP) produced a report raising the alarm on the issue and it was discussed within the United Nations Country Team.

<sup>42</sup> See Article 62 of the 2009 Penal Code on Determination of penalties and security measures: 1. Whenever a sentence of deprivation of liberty and another penalty that does not involve deprivation of liberty are alternatively applicable, the court shall give preference to the latter, whenever the latter adequately and sufficiently fulfils the purpose of the penalty.

<sup>43</sup> See Article 68 of the 2009 Penal Code on Suspension of execution of a prison sentence: 1. Whenever the prison sentence applied does not exceed three years, the court may suspend execution thereof for a period to be set between one and five

custodial sentences have the advantage of enabling the family to stay together, and potentially stronger chances of increasing awareness on the part of the perpetrator and the community regarding domestic violence. The Penal Code provides that suspended sentences may include conditions such as attendance at educational programmes, specific rules of conduct, or monitoring, but there is currently no capacity to effectively implement such conditions.<sup>45</sup> Similarly, the LADV (Art. 38) provides for treatment of the aggressor and follow-up by support services as part of a penalty, however, in practice these options are also not yet available.

Judges can also impose a fine in place of a prison sentence<sup>46</sup> provided: the court is convinced the sentence should not be suspended completely;<sup>47</sup> the security of the victim has been guaranteed; the perpetrator agrees to be subject to treatment or to follow-up by victim support services; and it is deemed advantageous for maintaining the unity of the family.<sup>48</sup> The fine can be between USD \$5.00 and USD \$72,000, depending on the economic and financial circumstances of a perpetrator, although there was not enough data available at the time of research to determine how judges are using this provision.<sup>49</sup> While fines may serve a retributive and denunciatory function without the detrimental effects of imprisonment, they are also problematic. With males often the sole breadwinner in a family, levying a fine could lead to additional family financial hardship and friction with the extended families who may be socially (though not legally) implicated in the payment of the fine.

### ***ACCESSIBILITY OF THE JUSTICE SYSTEM***

Timor-Leste's formal justice system remains under development. Although significant progress has been made and UNDP-JSP continues to provide technical assistance to the Courts, Prosecution and Public Defenders, a number of challenges remain. Currently, the only courts are the four District Courts and the Court of Appeal,<sup>50</sup> although courts were planned in more

---

years, to be counted from the time the final decision was rendered. 2. The decision must contain the grounds for the suspension, such as the personality of the perpetrator, the circumstances under which the crime was committed, previous behavior and living conditions, and most importantly the perpetrator's likely conduct in the future. 3. The court shall provide grounds for any decision when substitution is not performed when the law allows it to do so.

<sup>44</sup> When the prison sentence does not exceed three years, *ibid*.

<sup>45</sup> See Arts. 69, 70, 71, Penal Code 2009.

<sup>46</sup> Article 38 LADV.

<sup>47</sup> Article 67.1 Penal Code 2009.

<sup>48</sup> Article 38, LADV.

<sup>49</sup> The law provides a formula using the number 'days' (in the sentence) to calculate amount of a fine, ranging from a minimum of 10 days at USD\$0.50 up to 360 days at USD\$200.00, Article 75 Penal Code.

<sup>50</sup> District Courts are based in Dili, Baucau, Suai and Oecussi. The Court of Appeal is based in Dili. This institution is now established in the Constitution, with a Supreme Court foreseen in the future, but was originally established by UNTAET in: Regulation 2001/18 on the amendment of UNTAET Regulation No. 2000/11 on the organization of the Courts in East Timor UNTAET/REG/2001/18.

districts.<sup>51</sup> The Supreme Court, which would act as a Constitutional Court and as the final court of appeal, has yet to be established.<sup>52</sup> Geographical distance from courts and the lengthy nature of court processes, due to large case backlogs and repeated adjournments of hearings due to non-attendance of parties, negatively affect rural citizens' access to formal justice institutions. At the end of 2010, 871 criminal cases were pending in Dili District Court alone, compared to 512 cases two years earlier.<sup>53</sup>

## CUSTOMARY FRAMEWORKS

The approach taken in traditional justice to case resolution does not match that of the formal approach to justice – unsurprising given their different rationales. Although there are sometimes fines and punishments involved, traditional case resolution aims primarily at reconciliation between husband, wife, and their families, and/or communities, as well as preventing repetition of the offence, rather than punishment of a perpetrator.<sup>54</sup>

Customary law is a catch-all term, but it describes differing processes based on geography and the local context. It is essential to appreciate the nuances within and between informal systems to fully understand the problems of access to justice for women. The traditional justice authorities (who vary across communities), draw on at least three distinct, but overlapping, approaches, namely: 1. Case resolution according to the rules of *Fetosan-umane*; 2. Spiritual case resolution; and 3. Case resolution according to written or unwritten *Suco* laws. The three identified approaches are not completely separate categories but are intricately linked and may be mixed and/or applied to the same case.

The rules of *Fetosan-umane* – an intricate family system established through marriage and the *Barlake* system – are usually applied by family and community authorities to resolve problems and/or disputes between family members. Marriage in the Timorese world view does not link two individuals, but two families, or houses; *Fetosan-umane* is a complex set of rules, rights,

---

<sup>51</sup> Originally, District Courts were to be established in: Dili, with jurisdiction for the Districts of Dili and Aileu; Baucau, with jurisdiction for the District of Baucau, and the sub-districts of Laçlo, Manatuto, Laleia and Laclubar within the District of Manatuto; Los Palos, with jurisdiction for the District of Lautem; Viqueque, with jurisdiction for the District of Viqueque, the sub-districts of Soibada and Barique within the District of Manatuto; Same, with jurisdiction for the Districts of Manufahi and Ainaro; Maliana, with jurisdiction for the Districts of Bobonaro and Covalima; Ermera, with jurisdiction for the District of Ermera and Liquica; Oecussi, with jurisdiction for the District of Oecussi, see: Regulation no. 2000/11 on the organization of courts in east timor UNTAET/REG/2000/11.

<sup>52</sup> Established by Section 124 of the Constitution of the Democratic Republic of Timor-Leste.

<sup>53</sup> Data retrieved from UNDP Justice System Program Annual Reports 2008 and 2010.

<sup>54</sup> Additional goals of traditional case resolution as identified by interviewees included restoration of the family name, prevention of jail time, preventing revenge, appeasing the ancestors, educating the community, and “closing the eyes and ears of the community”, i.e. covering the feeling of shame experienced by the family.

and responsibilities defining the relationship between a groom's and a bride's family, a relationship between clans which may extend over generations. The definition of 'family' in this sense includes more distant family members and non-blood family members acquired through alliance with another clan. Family is perceived in terms of lineages, and can extend over large areas to include entire *Aldeias*.

Customary case resolution of family problems primarily focuses on restoring and maintaining these family bonds. Disruption of this system can have far reaching socio-economic consequences for the members of the group. This explains why it is often considered inappropriate for domestic violence cases and other cases occurring within the family context to be resolved by "outsiders", since only family authorities who know and apply the rules of *fetosan-umane* are seen as capable of restoring disrupted family relations. Based on this rationale, case resolution according to the rules of *fetosan-umane* does not focus primarily on the punishment of the individual perpetrator or on providing justice for the individual victim, but aims at reconciling the two extended families in an attempt to keep the relationship between them intact.

A second approach to case resolution, often intricately linked to the ideas and norms of *fetosan-umane*, applies spiritual beliefs to resolve disputes. According to Timorese cosmological beliefs, a family's ancestors and their spirits can influence the life and fortunes of their living descendants; ancestors can curse a certain family if their behavior disrespects the ancestors' rules and values. Thus, domestic violence can be understood to be 'caused' by a curse, provoked by the failure to fulfill a promise made to the ancestors. Leaving a family dispute unresolved can likewise provoke a curse. 'Ordinary' case resolution and community or family authorities cannot lift such a curse. Only spiritual authorities,<sup>55</sup> such as the *Matan Do'ok*,<sup>56</sup> the *Kuku*,<sup>57</sup> the *Gasse*,<sup>58</sup> or the *Uma Lulik Na'in*<sup>59</sup> are capable of communicating with the ancestors, lifting a curse and resolving such problems. These spiritual authorities resolve problems by performing certain ceremonies in order to appease the upset ancestor, often involving reading from plants or animal parts and providing offerings to the *Uma Lisan*.

---

<sup>55</sup> The listing of spiritual authorities here is indicative only and should not be considered an exhaustive list for Timor-Leste.

<sup>56</sup> Tetun word for 'farsight'. Traditional/spiritual healer who can see a person's past and future. He solves problems and cures diseases that are believed to be caused by a curse from the ancestors through the performance of a ritual or ceremony. May be the same or a separate person from the *Kuku/Gugu* or *Gasse*.

<sup>57</sup> Traditional/spiritual healer who solves problems and cures diseases believed to be caused by a curse from the ancestors through the performance of a ritual or ceremony. May be the same or a separate person from the *Matan Do'ok* or *Gasse*.

<sup>58</sup> Traditional/spiritual healer who solves problems and cures diseases believed to be caused by a curse from the ancestors through the performance of a ritual or ceremony. May be the same or a separate person from the *Matan Do'ok* or *Kuku/Gugu*.

<sup>59</sup> Customary authority who takes care of a family's *Uma Lulik* (the sacred house of a lineage) and the sacred objects kept inside the house. May be believed to be able to appease the spirits and lifting a curse.

A third evolving approach to case resolution involves written local laws. Some local authorities have produced their own written laws, often termed *Tarabandu* laws – discussed in greater detail below.

## **THE RELATIONSHIP BETWEEN FORMAL AND CUSTOMARY JUSTICE SYSTEMS**

*Chefe de Aldeia* (Hamlet Chief, the lowest administrative division of local government) and *Chefe de Suco* (Village Chief, the next administrative division which includes multiple *Aldeia*) are local government representatives, termed “Community Authorities”, who are charged with a variety of governance-related duties in their communities. The Law on Community Leaderships and their Election<sup>60</sup> (“the Community Leadership Law”) requires *Suco* leaders to promote the creation of mechanisms for preventing domestic violence and support initiatives aimed at monitoring and protecting victims of domestic violence and punishing the aggressor.<sup>61</sup>

In the absence of specific legislation governing the relationship between formal and customary law, the Constitution provides the only guidance as to the status of the informal justice system. Article 2(4) provides that “the State shall recognize and value the norms and customs of East Timor that are not contrary to the Constitution and to any legislation dealing specifically with customary law”.<sup>62</sup> There are no regulations as to how formal justice actors are to interact with customary justice. Article 2 of the Community Leadership Law states that the decisions of *Suco* chiefs and *Suco* councils are not binding on the state,<sup>63</sup> while domestic violence, as a public crime, is outside the jurisdiction of the local justice systems.

Although the law proscribes local justice systems from supplanting formal justice processes in cases of domestic violence, Article 55 of the Penal Code recognizes reconciliation between victim and perpetrator as a general mitigating circumstance, and allows courts to consider customary resolutions in domestic violence cases. There is some evidence that courts are making use of this provision; for instance in October 2010 a case in Same of simple physical assault was dismissed by the judge after the parties explained the case had already been resolved using informal justice. Although this was not a domestic violence case,<sup>64</sup> other judges

---

<sup>60</sup> Parliamentary Law 3/2009

<sup>61</sup> Article 3(d), Law 5/2004 on Community Authorities; Article 11 (d), Parliamentary Law 3/2009 Community Leadership and their Election.

<sup>62</sup> Section 2 (4), Constitution of the Democratic Republic of Timor-Leste.

<sup>63</sup> Article 2, Parliamentary Law 3/2009 Community Leadership and their Election.

<sup>64</sup> Mobile justice hearing in Same, 29 October 2010, monitored by a UNDP Access to Justice Officer. In this case of assault, a semi-public crime, the agreement was treated as the effective withdrawal of the criminal complaint. This approach was observed on a number of occasions.

are reported to recognize traditional agreements as a mitigating factor in domestic violence cases.<sup>65</sup>

This, and other forms of interaction between the formal and informal systems exist and are sometimes very far-reaching; this study uncovered many examples of police officers and district administrators working with *Suco* chiefs to develop 'local laws' (including laws which purport to regulate domestic violence) and to formalize resolutions of DV cases through the customary system. This demonstrates the extent to which the customary system is embedded in Timorese culture, and the dangers of failing to acknowledge its role. At the moment, the vacuum of regulation has allowed links between formal and informal systems to develop in an *ad hoc* and unregulated fashion, posing challenges to the rule of law.

---

<sup>65</sup> UNDP Access to Justice team reports from mobile justice sessions around the country.



## IV. RESEARCH FINDINGS

The research looked at the factors shaping the decisions women make on whether to approach an external authority, and which authority that should be. In effect, women have three choices: do nothing and try and resolve the issue without recourse to outside assistance; use the local conflict resolution mechanisms (which are referred to generally as ‘customary justice’) which include seeking help from senior members of the family, the *Chefe de Aldeia*, and/or the *Chefe de Suco*; and approaching the formal system whether through police or prosecutors. This chapter considers those issues which related most closely to resolution through local and informal processes, while the next chapter concentrates on issues which arise in relation to access to the formal justice system.

### SOCIAL CONTEXT OF DOMESTIC VIOLENCE

*Programming aimed at changing the perception of domestic violence is most effective when working through and with local frameworks and communal value systems as entry points toward establishing domestic violence as unacceptable and demonstrating that concepts such as gender equality are not necessarily contrary to local culture.*

Local level factors and barriers influencing women’s choices in cases of domestic violence are diverse, ranging from the conceptualization of domestic violence and justice, to economic considerations and the existence of social support networks. Since these factors are interrelated and often reinforce each other, attempts to improve women’s access to and demand for justice are most likely to succeed when taking into account the complexity of the local context and reality rather than focusing on single issues in isolation.

### CONCEPTUALIZATION OF DOMESTIC VIOLENCE

The local conceptualization of domestic violence does not match the definition in the LADV. This has a profound impact on which cases are considered crimes, which cases are reported to the police, and how cases of domestic violence are dealt with at the local level.

Considering the LADV has been in place for just over two years and the logistical and linguistic difficulties in conducting information campaigns in Timor-Leste, it is not surprising that a significant number of interviewees had never heard of the term ‘domestic violence’, while others were confused about its meaning. For instance in Laulara, not a single interviewee could provide an accurate basic definition of domestic violence. Among those who claim to have heard the term before, ideas about its meaning range from: physical violence between family

members, adultery, disturbing a neighbor by playing loud music, pre-marital sexual relationships, or violence if it becomes known to other people.<sup>66</sup>

Misunderstandings of the term 'public crime' include the erroneous belief that domestic violence is only a crime when other people hear about it or that a 'public crime' happens in a public place. In this vein, one interviewee concluded: "If you want to hit your wife, do it inside the bedroom, not on the street."<sup>67</sup>

Conversely, roughly equivalent local concepts are widely understood, namely '*violensia iha uma laran*' (violence inside the house), '*problema bikan ho kanuru*' (problem between a plate and spoon), or '*bikan ho kanuru mak tarutu*' (a plate and a spoon make noise) which usually include arguing and minor physical violence that does not cause an injury.<sup>68</sup>

Interviewees showed paradoxical attitudes toward violence in the family; some considered domestic violence 'bad behavior' or a bad example for children or the community while many interviewees stated that talking about a problem is a better solution than using force, referring to the rules of *fetosan-umane* which require husband and wife to respect each other. Yet, as one interviewee explained, "It is normal for a plate and a spoon to touch each other, but if plate or spoon break, it is a problem."<sup>69</sup> The majority of interviewees made a clear distinction between 'small' and 'big' cases of domestic violence;<sup>70</sup> only 'big' cases are considered unacceptable and potentially criminal, while 'small' cases (sometimes called 'civil cases' or '*violensia sivil*') are private matters.<sup>71</sup> The threshold for what constitutes a 'big' case varies, most frequently depending on whether blood is spilled, a weapon is used or the violence is frequently repeated

---

<sup>66</sup> Exceptions are Manatutu and Laleia subdistricts which show a relatively high level of understanding of the term and knowledge of the Law, generally including both minor and severe cases of physical abuse in their definition.

<sup>67</sup> File no: 19/24.08.2011/Manatuto Sub-District, Manatuto District/G.B.L., J.A.

<sup>68</sup> Additional terms include: '*Pico sono na noto*', in Baikeno; in Remexio '*Aitukan ho lalian baku malu*' is a frequently used phrase (firewood and cooking stones hit each other); in Lacluta '*funu hae maten*' is the Tetun Terik idiom (a bushfire that quickly passes); and the term '*toe malu*' is used in Fatumea.

<sup>69</sup> File no: 02/21.06.2011/Pante Makassar Sub-District, Oecussi District/G.B.L., J.A.

<sup>70</sup> This approach may or may not be linked to the payment of the bride price, *Barlake*. One interviewee in Atabae explains that when *Barlake* has been paid fully, not even a family authority can intervene in a domestic violence case, while in Ermera, communities report that after a payment of *Barlake*, the woman's relationship with her family is cut off, and she cannot seek help from them anymore. Other interviewees insist that *Barlake* is a sign of respect for the woman and its payment therefore does not preclude intervention by local authorities in a serious family problem.

<sup>71</sup> This view was shared, for instance, by all interviewees in Laleia, Pante Makassar and Maubara. The majority of interviewees in Laga describe domestic violence as a private matter regardless of severity, at least as long as it does not happen in public.

Compared to other issues, such as land problems or youth violence, domestic violence is considered a 'small' problem since it is private and kept within the family. As such, there is little chance the problem will escalate and threaten community life. A problem is recognized as serious when the extended family is involved, threatening family relations and risking harm to the socio-economic network. One interviewee in Laulara explained: "As soon as *fetosan-umane* gets involved, even small problems can escalate; the whole *Aldeia* may get involved because everybody is related."<sup>72</sup> Domestic violence threatens family networks if one side feels insulted, for instance by the gravity or frequency of the violence, if it occurs in public, or is committed without any 'legitimate' reason. As long as domestic violence is kept private, a disruption of crucial family systems is unlikely, meaning women may be burdened with responsibility for upsetting family networks if they report their case.

#### **PERCEIVED CAUSES OF DOMESTIC VIOLENCE**

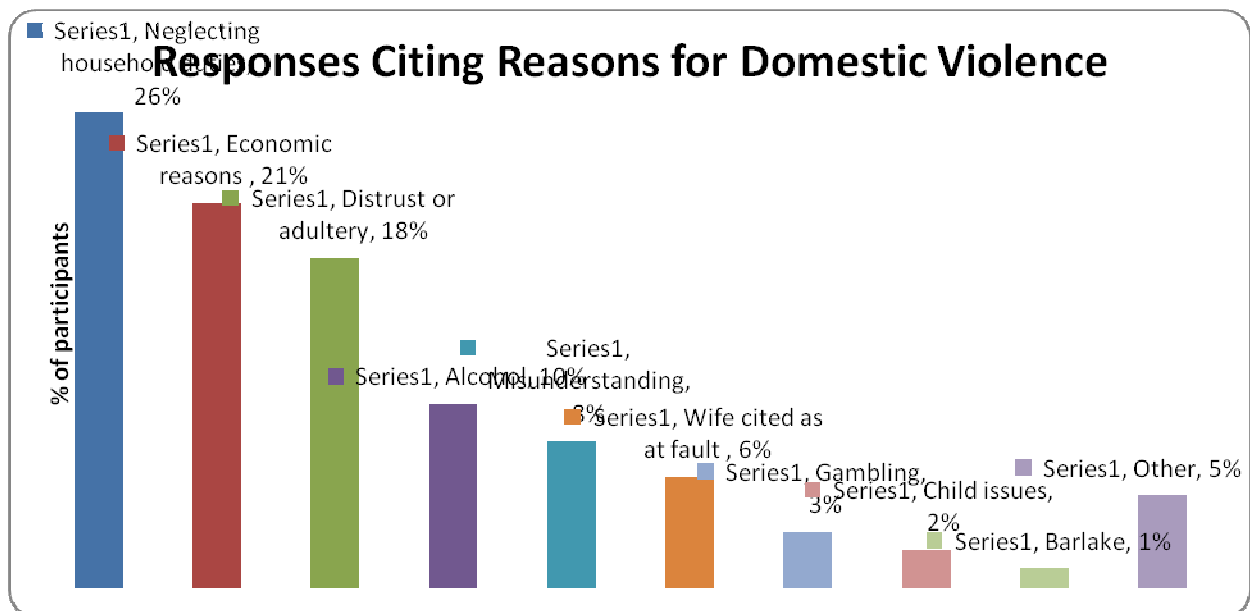
The research sought to identify local perceptions of "triggers" or "causes" for domestic violence in the community.<sup>73</sup> While unequal power relations and misuse of that power remain the underlying reasons for domestic violence as is the case anywhere in the world, perceived factors provoking incidents of domestic violence identified by interviewees often related to the victim's behavior prior to the violence. The most prominent perceived cause named by almost 50% of respondents<sup>74</sup> relates to the wife neglecting the housework, including behavior such as not cooking rice on time, or not looking after the children. For instance in Pante Makassar, 23 out of 29 respondents named failure to complete household tasks as triggering domestic violence in their community. 41% of respondents named lack of food and money or other economic problems, followed by jealousy related to adultery, named by 35%. Other commonly cited reasons include alcohol (19%), misunderstanding between husband and wife (16%), and gambling (5%).

---

<sup>72</sup> File no: 21/11.11.2011/*Suco* Tokometa, Subdistrict Laulara, District Aileu/AK, CdR

<sup>73</sup> See Annex for full list of perceived reasons for domestic violence.

<sup>74</sup> Not all interviewees named their perceived reasons for domestic violence; the numbers given here refer to a total of 264 interviewees who responded to the question for reasons for domestic violence. Respondents could give multiple answers.



\*Economic Reasons: e.g. lack of food or money

\*Wife cited as at fault: excluding neglecting household duties.

The frequent identification of the victims' behavior as 'causing' violence against them shows that the victim may be blamed for violence perpetrated against them. Understanding this, victims' decision-making on whether to seek help outside the family is necessarily affected. It also underlines the need for interventions to work seriously to find ways to engage deeply with people to promote a culture which rejects and condemns violence whatever the perceived cause.

Interviewees mentioned pressure to provide for cultural ceremonies as a reason for domestic violence, although much less frequently. Reciprocal debt obligations between wife-givers and wife-takers resulting from the marriage agreement are expected to be recognized in rituals and ceremonies and can represent a major economic burden for poor families.<sup>75</sup> One man recounted, "When I was younger, my parents not only hit me, but they injured me with a machete [...]. The reason for the violence against me and my brothers was because he [the father] felt inferior for giving a smaller contribution than other family members. He became jealous and full of anger."<sup>76</sup>

<sup>75</sup> See also Ospina (2009): "Cultural Attitudes and Practices in Timor-Leste under the Lens of Selected CEDAW Articles", unpublished.

<sup>76</sup> File no: 24/21.07.2011/Vatuvou, Maubara, Liquisa/AK, CdR, OC, CC

Only seven out of 264 interviewees named the payment of the bride price (*Barlake*) as a reason for domestic violence. One *Adat Na'in* openly admitted that “when I hit my wife and her parents complain, then I say that I have already paid *Barlake* and hitting my wife is like hitting my animals.”<sup>77</sup> Although the existence of *Barlake* has frequently been posited as a cause of domestic violence, most interviewees reject this. They were adamant: the bride price is a symbol of respect from one family to the other, joining them together through ritual and symbolic exchange, which they acknowledged is not always well understood. As one Public Defender explained, “They interpret [*Barlake*] as a transaction, showing ownership of the woman, when in reality it is a sign of respect for the woman and her family.”<sup>78</sup> Another interviewee noted that, “Our ancestors taught us ... to respect each other, but actually people have a different point of view, once the man pays the bride price he can do whatever he wants to the woman.”<sup>79</sup>

In many communities, men and women believe minor violence is justified if a wife does not complete her ‘wifely tasks’ such as cooking or taking care of the children or when she is suspected of adultery. As one interviewee in Laleia asks, “How do you educate without hitting?”<sup>80</sup> This perception may be linked to expectations related to the marriage agreement; failure to perform household duties means failure to fulfill the marriage agreement which (in patrilineal communities) gives the wife-taking clan certain rights over a bride, including her labor.<sup>81</sup> The perpetrator’s intention is crucial in judging the acceptability of violence. Violence to educate a partner can be acceptable; however, intentionally injuring the victim or using violence without ‘legitimate’ reason is usually unacceptable and may be described as a crime. One interviewee in Lacluta explained that in his opinion, a legitimate reason would include failing to cook; however a husband “must first find out why she does not cook. If he hits her without asking, it’s his fault. If he hits her even though there was a good reason why she could not cook, it’s his fault. Only if there is a legitimate reason ... it is ok if he gives her one slap.”<sup>82</sup> Few interviewees, including women, rejected the use of violence in all circumstances. A number of women, however, argued they felt treated unfairly by their husbands and local authorities who blamed them for not performing housework without recognizing women’s heavy workload. One female interviewee in Laulara declared: “It is not ok to hit your wife to educate. Women have to do a lot of work, they look after the children, work in the fields, cook food [...].

---

<sup>77</sup> File no: 31/04.07.2011/Hautoho, Remexio, Aileu/AK, CdR

<sup>78</sup> File no: 04/07/11/11/Dili/SC, CC, OC, CC

<sup>79</sup> File no: 20/16.08.2011/Cova, Balibo, Bobonaro/CC

<sup>80</sup> File no: 01/16.08.2011/Laleia Sub-District, Manatuto District/G.B.L., J.A.

<sup>81</sup> See also Ospina (2009): “Cultural Attitudes and Practices in Timor-Leste under the Lens of Selected CEDAW Articles”, unpublished.

<sup>82</sup> File no: 14/14.12.2011/Uma Tolu, Lacluta, Viqueque/AK, CdR

It is not justified to say women are lazy and therefore they need to be beaten. Rather, the work needs to be shared fairly between husband and wife, and men need to respect women's hard work. Why don't men learn how to cook? They should help their women do the housework and then there would be no problems."<sup>83</sup>

### **SPIRITUAL BELIEFS**

While the strength and nature of spiritual beliefs vary among and within communities in Timor-Leste, spiritual beliefs impact on the resolution of domestic violence cases in diverse ways. They may present an incentive to resolve cases locally, may be seen as a cause of domestic violence, or may be invoked to protect victims and prevent violence. Spiritual beliefs commonly inform communities' concepts of justice. As one *Lia Na'in* in Lacluta explains, "God, the spirits and the *uma lulik* are the three most important things for community life. Case resolution needs to consider all three to make sure the families concerned are protected and can live in peace."<sup>84</sup> The role of spiritual authorities in case resolution and cooperation between local and spiritual authorities varies greatly between communities, depending on the personalities involved. In some *Sucos* spiritual authorities are integrated into local justice procedures, advising *Aldeia* and *Suco* authorities or performing opening and closing ceremonies. In other, sometimes neighboring *Sucos*, a clear separation is drawn. One *Lia Na'in* explains: "We [local authorities] do not believe in what they [spiritual authorities] say, we do not believe in their powers. They are not allowed to attend case resolution in the *Aldeia* or *Suco*, and if they show up, the *Chefe* will send them away."<sup>85</sup>

*A young girl in Atabae sub-district experienced repeated serious physical abuse by her father. The victim's aunt and uncle, who are now taking care of the victim, are convinced a curse from the ancestors is the cause of the repeated violence. They believe the ancestors are upset because the perpetrator has not fulfilled his obligations under the marriage agreement; he had not fully paid the bride price to the victim's mother's family. The victim's aunt and uncle concluded the only way of ending the violence was to settle the *Barlake* issue in order to appease the ancestors and lift the curse.*

---

<sup>83</sup> File no: 22/11.11.2011/Suco Tokometa, Subdistrict Laulara, District Aileu/AK, CdR

<sup>84</sup> File no: 11/14.12.2011/Suco Laline, Lacluta, Viqueque/AK, CdR

<sup>85</sup> File no: 06/02.08.2011/Suco Talimoro, Ermera Subdistrict, Ermera District/AK, CdR, OC

Spiritual beliefs can present a strong incentive to resolve problems traditionally. One purpose of customary case resolution is to appease the ancestors upset by the behavior of the involved parties, cursing the family, bringing disease or other misfortunes. Some interviewees concluded “If cases are not resolved properly or if they are not resolved according to *adat*, the shame cannot be closed and it is passed to the next generation which may suffer bad things as a consequence.”<sup>86</sup> This rationale means even if a case is resolved by the formal system it must nevertheless be resolved traditionally, particularly for cases involving family members. In such a ‘parallel’ resolution process, communities may use ritual to assess formal decisions and ask the ancestors for forgiveness should the Court reach the ‘wrong’ decision. One *Chefe de Suco* in Maubara explains “[The *Lia Na’in*] will kill a chicken and look at the chicken’s liver. If the liver looks good and healthy, the Court’s decision was right, if the liver does not look good, the Court’s decision was wrong.”<sup>87</sup> The parallel application of ritual case resolution does not necessarily reflect a rejection of formal law. Rather, formal and informal law may be seen as separate but complementary categories. One *Matan Do’ok* explained that “It is ok that the formal system takes a different approach [...], but it means that when a decision is not correct according to *adat*, we must [...] make sure that the spirits are not upset by the decision.”<sup>88</sup>

Certain cases of domestic violence, particularly recurring and serious ones, may be believed to be caused by supernatural powers, namely a curse from the ancestors. The only way to resolve such problems is to lift the curse – something the formal justice system or local authorities cannot do. A *Kuku* in Ermera recounted the story of a woman suspected of adultery despite her denials, who was beaten by her husband. The *Kuku* identified the woman’s past as the source of the problem, advised her to pray and performed a ceremony intended to make the victim’s husband realize beating his wife was wrong and that he should not separate from her.

Spiritual beliefs are invoked to protect victims and prevent violence since ancestors can punish perpetrators of domestic violence. In one community in Balibo, a man who beats his wife is expected to ask his ancestors for forgiveness, because “If you do not recognize that you did something wrong the ancestors will be angry and if you repeat your action the ancestors will curse you [...]. The ancestors say you must respect your wife.”<sup>89</sup> Another interviewee explains “*Adat* says you can’t hit each other and you must respect each other’s ideas and opinions. If you break these rules, you may be cursed”.<sup>90</sup>

---

<sup>86</sup> File no: 03/18.07.2011/Suco Maubara, Maubara Subdistrict, Liquica District/AK, CdR, CC

<sup>87</sup> File no: 11/20.07.2011/Suco Maubara Lissa, Maubara Subdistrict, Liquica District/AK, CdR

<sup>88</sup> File no: 15/21.07.2011/Suco Vatuvo, Maubara Subdistrict, Liquica District/AK, CdR

<sup>89</sup> File no: 07/17.08.2011/Balibo Villa, Balibo, Bobonaro/AK, CdR

<sup>90</sup> File no: 15/15.12.2011/Dilor, Lacluta, Viqueque/AK, CdR

To prevent repetition of violence, traditional case resolution often requires the involved parties to speak an oath to God and the ancestors, promising the problem will not be repeated. Breaking such an agreement may attract the ancestors' wrath, on individuals and/or the whole extended family. Interviewees in Laga and Lacluta cited several cases in which couples who broke an agreement suffered an accident shortly after. A curse from the ancestors can affect generations to come, meaning a perpetrator is subject to social pressure not to break such an agreement since his behavior could provoke a curse. These examples demonstrate how Timorese culture can be contradictory or ambiguous, while both embracing values which are protective of women and opposing the use of violence, while simultaneously implying that 'fault' lies with the woman (as in the case described above which saw the woman's past as the source of violence). Attitudes which justify violence against women are best countered by showing that ideas such as gender equality and human rights are not *per se* contrary to Timorese culture, but are actually reflected in traditional beliefs and values. Programming which embraces and builds on these positive cultural values is likely to be more effective by resonating with those cultural values and creating a stronger sense of ownership than approaches couched in the 'foreign' language of individual human rights.

## **CUSTOMARY LAW IN TIMOR-LESTE**

There is no unified Timorese informal legal system, but a plurality of local practices and actors.<sup>91</sup> The norms and procedures of customary law are more or less formalized yet highly diverse and localized. The majority of interviewees confirmed that most domestic violence cases, if reported at all, are resolved within the family or community, often applying the customary processes. As a result, the ways in which victims of domestic violence access and experience local justice and the implications thereof vary from place to place, and case by case depending on the people involved, the nature and gravity of the case and overall context. Local justice is subject to, and shaped by, the different personalities involved and their own interpretations of how justice ought to be administered. While some generalizations can be made, generally differences within sub-districts are larger than differences between them. Traditional justice and customary law are often equated with *Suco* level dispute resolution, an association made by many interviewees from civil society and other justice-related organizations. However, this research makes clear that most domestic violence cases never reach the *Suco* level, but are resolved in the family, the *Aldeia*, or by a spiritual authority.

---

<sup>91</sup> The customs, practices, norms and beliefs described in this paper are not meant to present an exhaustive collection of customary rules and practices in Timor-Leste. In light of the diversity of customary systems across Timor-Leste the described findings *cannot* be generalized across all communities in Timor-Leste and necessarily can only represent a 'snap shot' of communities in the research areas.



The identity of customary authorities and their roles in case resolution are not uniform across Timor-Leste, and the importance of understanding this diversity cannot be understated. There is significant variety and diversity between *Sucos*, *Aldeias*, and even between families. While conforming to the same overall structure, local case resolution varies in a number of aspects from one community to the next.

### ***THE ESCADA***

Authorities involved in customary case resolution can roughly be divided into three categories: family authorities, Community Authorities, and spiritual authorities. While, in many communities, there is a high level of exchange and overlap between authorities from all three categories, some communities draw clear lines between the spheres of different actors. As shown in this section, the *Chefe de Aldeia* and *Chefe de Suco* are usually not the most important authorities in the resolution of domestic violence cases: most cases are resolved at the family level with little or no involvement by Community Authorities.

Case resolution follows a defined hierarchy of authority, often called the '*escada*' or 'stairs', starting at the family level and proceeding upwards - only if the original authority could not find a solution - to the *Aldeia*, the *Suco*, in some places the subdistrict administration,<sup>92</sup> and the police as last resort (though police may be involved in numerous ways at other stages). While some communities, e.g. in Remexio, apply the *escada* with some flexibility, other *Sucos*, for instance in Lacluta, follow a strict hierarchy which dictates that cases brought directly to Community Authorities will be sent back to the family, or may have codified the *escada* in a written *Suco* law.<sup>93</sup>

Other authorities who may be involved in the decision-making process are numerous, varying from community to community. These include church representatives, often called *Katekista* or *Jelador*,<sup>94</sup> experienced and trusted community members, such as teachers and nurses,<sup>95</sup> the Council of Elders,<sup>96</sup> the *Tobbe* and *Naijuf*, a type of lawmaker in Pante Makassar, martial arts groups representatives,<sup>97</sup> the *Liurai*,<sup>98</sup> spiritual authorities,<sup>99</sup> non-governmental

---

<sup>92</sup> Reported in Laulara and Lacluta.

<sup>93</sup> Reported in *Suco* Tokometa in Laulara

<sup>94</sup> Reported in Laleia, Laga, Fatumea, Remexio, Balibo, Vemasse, Pante Makassar, Ermera and Manatutu.

<sup>95</sup> Reported in Laleia, Laulara, Vemasse.

<sup>96</sup> "Conselho Katuas" reported in Laleia, Ermera, Maubara.

<sup>97</sup> Reported in Ermera, Balibo.

<sup>98</sup> Reported in Maubara, Balibo, Remexio.

<sup>99</sup> The *Matan Do'ok* may be involved in Maubara.

organizations,<sup>100</sup> community police,<sup>101</sup> the subdistrict administrator,<sup>102</sup> the *Cabo Roda*,<sup>103</sup> previously involved family authorities,<sup>104</sup> and the RPRK<sup>105</sup> and TRIPIKA<sup>106</sup> in Remexio.

#### **FAMILY AUTHORITIES**

In general, a first attempt to resolve domestic violence cases includes family authorities and elders from the husband's and wife's sides. Cases are passed to the next higher family authority if the original authority is unable to resolve it. The usual first step in a case involves the parents of victim and perpetrator.<sup>107</sup> As a next step, family authorities from both sides are involved, including *Katuas*<sup>108</sup> and *Ferik* (male and female elders). The majority of domestic violence cases are resolved at the family level. Most do not progress to the community level, and even fewer are brought to the formal justice system. Even in Manatutu, where interviewees show above-average knowledge of the LADV, the majority of cases remain at the family level. Family resolution of domestic violence cases is often limited to advising victim and perpetrator, such as "if you love each other, don't hit"<sup>109</sup> or "hitting will not solve your problems, you will not find more food."<sup>110</sup>

#### **COMMUNITY AUTHORITIES**

At *Aldeia* level, the *Aldeia Lia Na'in* usually plays a prominent role in case resolution, while the role of the *Chefe de Aldeia* varies considerably. In some communities, the *Chefe de Aldeia* is the principle authority; in others s/he may not even be involved in case resolution. Other authorities who may contribute to decision-making in case resolution include the *Aldeia* council,<sup>111</sup> the *Aldeia Anciao*,<sup>112</sup> the *Aldeia Amnasit*,<sup>113</sup> the *Suco* women's representative,<sup>114</sup>

---

<sup>100</sup> Reported to be involved are Fokupers in Maubara and FFSO in Pante Makassar.

<sup>101</sup> Reported in Balibo.

<sup>102</sup> Reported in Remexio, Fatumea.

<sup>103</sup> The keeper of the *Tarabandu* law, reported in Lulara.

<sup>104</sup> Reported in Ermera, Atabae, Balibo, Lacluta.

<sup>105</sup> The RPRK (*Rede Prevensaun no Responde Konfliktu*) in Remexio is the network for the prevention of and response to conflict, a network of martial art groups, political parties, *Lia Na'in*, *Katuas*, youth representatives and other local authorities. The network operates at sub-district level and has representatives in each *Suco* responsible for the mediation of conflict.

<sup>106</sup> The TRIPIKA in Remexio is a network consisting of the police commander, a church representative, and the sub-district administration, responsible for the resolution of serious problems, usually problems involving two or more villages.

<sup>107</sup> Exception is Pante Makassar where usually the victim's godparents are approached first.

<sup>108</sup> *Katuas* are also called '*Amnasit*' in Laleia.

<sup>109</sup> File no: 13/18.08.2011/Batukade, Balibo, Bobonaro/AK, CdR; File no: 31/19.08.2011/Batugade, Balibo, Bobonaro/CC; File no: 03/15.08.2011/Suco Leolima, Balibo Subdistrict, Bobonaro District/AK, CdR

<sup>110</sup> File no: 04/12.12.2011/Uma Tolu, Lacluta, Viqueque/AK, CdR

<sup>111</sup> The composition of the *Aldeia* Council varies; in Maubara, the *Aldeia* Council mirrors the *Suco* council; in Remexio, the *Aldeia* Council consists of *Aldeia Katuas* and the *Lia Na'in's* wife.

<sup>112</sup> Reported in Laleia, Manatutu, Lulara, Remexio.

<sup>113</sup> Reported in Pante Makassar.

<sup>114</sup> Reported in Laleia, Laga, Lulara.

FFSO paralegals in Pante Makassar, church representatives,<sup>115</sup> spiritual authorities,<sup>116</sup> the *Dame Na'in*,<sup>117</sup> or community police.<sup>118</sup> In many communities, in addition to *Aldeia* authorities, the respective family authorities are also involved. For instance, in some communities in Balibo up to 12 authorities may be involved in *Aldeia* case resolution. This is one reason why the involved parties may have to pay high fees for the resolution of their case, described below as one barrier to access to justice.

At the *Suco* level, the role and influence of individual members of the *Suco* council varies widely. Either the *Chefe de Suco* or the *Suco Lia Na'in* usually play a central role, leading efforts to resolve a case and making final decisions, while in other communities, the *Lia Na'in's* decision is strongly informed by input from other *Suco* council members.<sup>119</sup> In some cases, the whole *Suco* council conducts a form of pre-trial investigation<sup>120</sup> and decides together on a solution. In the majority of communities, the women's representatives on the Council cannot influence decision-making, and their role is often only to provide food and drinks.

#### **SPIRITUAL AUTHORITIES**

Besides family and community authorities, a third group, spiritual leaders, have a central role in the resolution of conflicts, including domestic violence.

The identity of traditional spiritual authorities, their role in local justice procedures, and their acceptance varies widely across Timor-Leste.<sup>121</sup> Spiritual authorities may take part in case resolution at the family, *Aldeia* or *Suco* level; or they may act separately from them. The research team identified traditional/spiritual healers known variously as the '*Kuku*'<sup>122</sup>, the '*Gasse*'<sup>123</sup>, the '*Matan Do'ok*'<sup>124</sup> ("Far sight"), and the '*Uma Lulik Na'in*'<sup>125</sup> in the researched

---

<sup>115</sup> Reported in Ermera, Balibo, Laulara.

<sup>116</sup> The *Kuku* in Ermera, the *Matan Do'ok* in Maubara.

<sup>117</sup> In one community in Remexio, the "*Dame Na'in*" (the holder of peace) is a trusted community member who is regularly involved in case resolution because he is seen as independent and impartial. The community gave him the title "*Dame Na'in*" because he came to the *Suco* 26 years earlier as an outsider and never had any trouble since.

<sup>118</sup> Reported in Laulara.

<sup>119</sup> Reported in Pante Makassar, Laga, Remexio and Vemassee.

<sup>120</sup> Found in Laleia, Manatutu, Pante Makassar, and Ermera.

<sup>121</sup> The following descriptions are based exclusively on observations made during field research. As such, they are meant to be indicative, rather than exhaustive and definitive.

<sup>122</sup> Found in Ermera and Laulara.

<sup>123</sup> Found in Ermera and Maubara.

<sup>124</sup> Found in Balibo, Ermera and Maubara.

<sup>125</sup> The *Uma Lulik Na'in* takes care of a family's *Uma Lulik* and the sacred objects kept inside the house. In some communities in Balibo and Lacluta they have additional powers, being able to appease spirits by offering gifts and performing a ceremony. First, the angry ancestor and the reason for their anger must be identified using a medium, such as a candle, betel nut-spit, or analyzing the position of a dead chicken's feet. One interviewee explained that the *Kuku* "puts an egg on the blade of a sword and then starts saying names of ancestors. The name which is spoken when the egg falls is the name of the angry ancestor."

areas. They solve problems caused by a curse from the ancestors, including physical and mental disease and societal problems such as domestic violence, through the performance of certain ceremonies.<sup>126</sup> Ceremonies performed to appease the angry ancestor often mix spiritual and Catholic beliefs, and the spirits as well as the Catholic God may be consulted.

The role of church representatives in the resolution of domestic violence cases varies. In some communities, the priest or catechist may assist in customary case resolution, or in drafting a 'peace agreement' to be signed by victim and perpetrator.<sup>127</sup> In others, church representatives are never involved in customary case resolution since they disagree with customary practices.<sup>128</sup> The content of information and advice given by church actors to their communities and to victims of domestic violence remains unclear. Anecdotal evidence suggests that some priests advise victims of domestic violence to improve their behavior and show respect to their husbands in an attempt to keep the extended family together.

It is unclear the extent to which spiritual considerations affect women's decisions regarding domestic violence, and this is an area upon which further research could elaborate, especially in order to investigate whether, if sufficiently influential, the spiritual authorities should be more deeply involved in interventions against domestic abuse.

#### THE ROLE OF FEMALE AUTHORITIES

The only women who regularly take part in case resolution – and to considerably varying degrees – are the *Suco* council's women's representatives. However in general few of those involved in case resolution are women, meaning that it is mostly a male perspective informing decision-making and the conceptualizations of domestic violence, justice, and fault. The research team encountered only one female *Chefe de Suco*, one female *Lia Na'in*, and one women's representative who receives cases in the *Lia Na'in's* stead should he be unavailable. One influential female community member explained that, "In *adat*, a man and a woman have the same rights, but a man has a larger step than a woman. The reality is that men are more powerful than women."<sup>129</sup>

Informally, women's representatives may provide crucial individual support to victims of domestic violence, providing shelter, actively intervening in domestic violence cases, advising families against the use of violence, reporting cases to Community Authorities and initiating

---

<sup>127</sup> File no 07/17.08.2011/Laleia Sub-District, Manatuto District/G.B.L., J.A, *inter alia*.

<sup>128</sup> 0055/07.07.2011/Acumau, Remexio, Aileu/AK, CdR, 0030/04.07.2011/Hautoho, Remexio, Aileu/AK, CdR, OC; 0043/06.07.2011/Maumeta, Remexio, Aileu/AK, CdR, *inter alia*.

<sup>129</sup> File no: 38/05.07.2011/Fadabloco, Remexio, Aileu/AK, CdR

proceedings. During case resolutions, some female authorities may be present to support the victim who may be questioned in a separate location so she is not forced to recount her version of events in front of the male authorities and perpetrator.<sup>130</sup>

*Programming should focus on effecting socially-embedded change and working with and through local culture to change the perception of domestic violence through the creation of spaces of contestation in which local women are empowered to challenge discriminatory concepts and practices.*

Elderly women (*'Ferik'*) may act as an authority at the family level. In some communities, women play an important role in shaping the content and application of customary law from “behind the scenes”. While the male *Lia Na'in* is the only authority to speak during a resolution process, the decision may be made in consultation with a number of authorities, including females who act as advisers to *Lia Na'in*. Other research has concluded that considering the authority older women may exercise over their daughter-in-laws, particularly in patrilineal communities, these *Ferik* should be a target group for sensitization.<sup>131</sup> The

important role these women play supporting victims must be acknowledged in socializing the LADV, meaning training programs on the law and functioning of the formal system should also include women’s representatives.<sup>132</sup>

### **CUSTOMARY CONCEPTS OF JUSTICE**

Local concepts of justice in the framework of customary law differ significantly from formal concepts of justice. One of the fundamental tenets of customary case resolution in Timor-Leste is the need to identify the source of a problem; to establish *why* violence was committed, means that the person who is thought to have provoked it is the guilty party. In this context, a victim may be blamed for violence perpetrated against her if she is seen to have provoked it, e.g. by not working hard enough, an attitude confirmed by interviewees’ responses when asked about causes of domestic violence. One *Lia Na'in* in Laga openly stated that domestic violence “is always considered the wife’s fault and a private matter.”<sup>133</sup> Some women may therefore choose not to complain about their case to a family or community authority as they could expect only blame, rather than remedy. One victim in Remexio noted her family’s *Adat Na'in*

---

<sup>130</sup> File no: 10/18.08.2011/Leoheto, Balibo, Bobonaro/AK, CdR; File no: 16/15.08.2011/Leolima, Balibo, Bobonaro/CC; File no: 26/18.08.2011/Leohetu, Balibo, Bobonaro/CC

<sup>131</sup> Ospina (2009): “Cultural Attitudes and Practices in Timor-Leste under the Lens of Selected CEDAW Articles”, unpublished.

<sup>132</sup> Also see: The Asia Foundation (2012): *Ami sei vitima beibeik*. Looking to the needs of domestic violence victims.

<sup>133</sup> File no: 13/08.06.11/Baucau District, Laga Subdistrict, *Suco Nunira/IS*, GDS

always blamed her for provoking violence against her, so she stopped complaining altogether, knowing she would only be blamed again even when injured.

Considering this, it is unacceptable for a woman who provoked her husband to approach the police if believed to be the guilty party. One female interviewee notes, “Particularly if it is the woman’s fault, e.g. if she does not work, it is not right if she goes to the police. She should correct her own fault instead of blaming her husband [...]. This is a travesty of human rights.”<sup>134</sup> As a result, many victims believe they do not have the right to seek help, as expressed by a female interviewee: “We know that if our husband comes home and we haven’t cooked the meal, there will be *bikan ho kanuru*, and that is our own fault.”<sup>135</sup>

In response, some local woman’s representatives advise women to be better housewives to avoid provoking their husbands, or to keep quiet when he comes home drunk. One female interviewee recalled advising her cousin not to go to the police after traditional case resolution had failed, because “the police cannot make him stop hitting her. The only way to avoid hitting in the future is not to talk to him when he is drunk. Of course it would be better if the husband changed his behavior instead of the woman adapting to his, but the only realistic way for the woman to avoid violence is to try not to provoke him.”<sup>136</sup> Such advice does not necessarily reflect acceptance of domestic violence; rather, many women see neither the formal nor informal system as capable of ending domestic violence, thus adjusting the wife’s behavior is seen as the only realistic means to avoid or reduce violence – while the issue of men taking responsibility for their actions is not even raised.

#### **TRADITIONAL RESPONSES TO CASES OF DOMESTIC VIOLENCE**

An often-criticized aspect of traditional concepts of justice is the general lack of punishment for perpetrators of domestic violence. In some cases, perpetrators have to pay a fine or perform community work, but many communities do not punish perpetrators, providing moral advice to the concerned couple instead. This lack of punishment stems from a conceptualization of justice which prioritizes communal values, focused on the re-establishment of good family relations, instead of retributive justice and punishment of the perpetrator. A good and just outcome of a case resolution is seen as one that reconciles the parties and their extended families. Since strong family ties form the basis of socio-economic networks across the country, repairing disrupted family relationships becomes the main priority for local authorities. Even if

---

<sup>134</sup> Italics added for emphasis. File no: 08/02.08.2011/*Suco* Talimoro, Ermera Subdistrict, Ermera District/AK, CdR, OC

<sup>135</sup> File no: 9/20.07.2011/*Suco* Maubara Lissa, Maubara Subdistrict, Liquica District/AK, CdR

<sup>136</sup> File no: 15/04.08.2011/*Suco* Ramerhei, Ermera Subdistrict, Ermera District/AK, CdR, OC

domestic violence is seen as wrong behavior, communal values and interests may be prioritized over the interests and rights of the individual.

When domestic violence is reported repeatedly, a more formal case resolution process is initiated, called “*nahe no lulun bit*” (“to open and close the mat”) or “*tula mesa leten*” (“to put on the table”) in Maubara and Ermera. During such a process, victim and suspect, and sometimes witnesses, will be questioned about what happened during and before the violence. Some authorities, e.g. in Laga and Maubara, take into account the involved families’ reputation and history. The authority in charge uses this information to determine who is at fault for causing the fight – and the victim can be found responsible if seen to have provoked the violence.

Conflict resolution in such a case often involves the payment of compensation<sup>137</sup> with practices varying widely. For instance, within the district of Manatutu, some *Sucos* do not administer compensation at all; others administer compensation of up to US\$300. The application of compensation and its amount may be related to the level of dispute resolution, the frequency/severity of the offence, the perpetrator’s economic situation, or the status of *Barlake* payments. For instance, one written *Tarabandu* law in Pante Makassar dictates the first time a husband injures his wife, he leaves with a warning; if repeated the perpetrator must pay US\$100 – \$200 to his wife’s family in compensation.

Compensation, depending on the locale, includes animals and/or money, traditional cloth (*tais*) or palm wine (*tua*), less frequently a traditional sword (*surik*),<sup>138</sup> and is usually given from the perpetrator’s family to the victim’s family; in Lacluta, Laleia and Manatutu, it may in whole or in part be given directly to the victim. The victim’s family is often expected to give a gift in return to symbolize acceptance and forgiveness. One interviewee explained: “Our culture says that there must be an exchange because it shows mutual respect and the intention that the problem will not happen again. If they do not return a gift, this means that the problem hasn’t really been resolved.”<sup>139</sup> Yet, if it is determined that the fight was provoked by the victim, her family may have to give *tua*, *tais*, or a pig to the husband’s family.

It is unclear whether obligations to pay compensation are usually fulfilled. Some communities say the perpetrator cannot refuse to pay compensation because otherwise the victim’s family will not let his wife return to him, or he could attract the wrath of the ancestors. In Lacluta and

---

<sup>137</sup> Exceptions are some communities in Manatutu, Maubara and Pante Makassar who do not apply compensation.

<sup>138</sup> Reported in Laga and Vemassee.

<sup>139</sup> File no: 01/15.08.2011/Balibo Villa, Balibo, Bobonaro/AK,CC, CdR; File no: 04/16.08.2011/Cova, Balibo, Bobonaro/AK, CdR

Laulara, on the other hand, interviewees report perpetrators are often unable or unwilling to pay high compensation and may approach a higher authority to review the amount.

The majority of interviewees, however, stressed the symbolic importance of compensation to reconcile the families and appease the ancestors. The exchange of goods is a sign of respect reinforcing the friendship between the families and symbolizing the intent to live together peacefully and avoid repetition of the problem. It signifies the closing of the case and “closing the shame” (*taka moe*), showing the entire community the problem is resolved.<sup>140</sup> While it is often criticized since most victims do not receive any compensation themselves,<sup>141</sup> this practice can be explained by customary law’s focus on communal rather than individual interests. Since family unity is paramount in tightly-knit rural settings, and must be protected to maintain socio-cultural and economic networks, the need to reconcile two families is the primary concern of traditional justice, rather than the need to compensate the individual victim. The threat of being forced to pay compensation could help to reduce or stop violence, thus serving a victim’s primary interest by halting violence against them; however, since compensation inevitably comes from the family’s joint resources, this may negatively impact family members other than the perpetrator, not least the complainant herself, effectively acting as a deterrent for women from seeking to access informal justice.

Above this, the payment of compensation has spiritual implications. For instance in Maubara, a part of the compensation is symbolically given to the ancestors who were upset by the behavior of the perpetrator. Items given from the husband’s to the wife’s side represent masculinity (e.g. buffalo, sword, money) and items returned by the wife’s family represent femininity (e.g. cloth, pig). The exchange of these carefully selected items aims to re-establish a cosmic balance by correcting the flow of values between the Wife-Giver and Wife-Taker clans.<sup>142</sup> Failure to reunite Wife-Taker and Wife-Giver units through the exchange of goods and values risks serious cosmological imbalances and ancestral punishment.<sup>143</sup>

---

<sup>140</sup> This process is also called “*loke no taka odamatan*” (opening and closing the door) in Vemasse, or “*hamorin isin*” (perfuming the body) in Fatumea.

<sup>141</sup> See for instance Grenfell (2006), “Legal Pluralism and the Rule of Law in Timor-Leste”. Similar criticism voiced by interviewees from civil society and other justice-related organizations.

<sup>142</sup> Regardless, in practice if compensation is to be paid by a husband, it would be paid using the joint family finances, meaning it may not make sense (e.g. potentially punishing the family through joint finances or perhaps recycled back into the jointly held finances). If paid by the husband’s family, given then explanation of symbolism and value exchanges, it may not be accepted by either family that it would go directly to an abused women since this would fail to restore socio-cosmic balance – the entire point of these compensatory payments at the community level.

<sup>143</sup> See also Hohe and Nixon (2003): Reconciling Justice. ‘Traditional’ Law and State Judiciary in East Timor.



A similar purpose is fulfilled by a ceremony held after successful case resolution, called “*Lulun Biti*”, which is performed to demonstrate to the ancestors that the problem has been resolved. A meal is shared by both families and the involved authorities, requiring either both parties or only the guilty party to contribute animals for the meal. An oath may be undertaken by husband and wife who swear to refrain from another disagreement or repeating the violence. In some cases the couple is required to drink from the same glass of wine, share a goat’s heart, or kiss each other. In Fatumea, both parties drink from a glass of water signifying that their problem disappears like the water in the glass.

*Working with communities to invoke ancestral rules and spiritual beliefs which stress respect and love between husband and wife can prove an effective approach to effect socially-embedded and locally-owned change.*

In all sub-districts visited, at least some communities make written agreements at the *Suco* and/or *Aldeia* level following a case resolution, sometimes called “*Deklarasaun Dame*” (Peace Declaration). The written agreements usually contain the statements of both parties, the details of the event, the solution found and the amount of compensation, and are used as a reference for local authorities should the case be repeated.

Some communities implement protection mechanisms for victims during traditional hearings. For instance, the victim need not speak in front of the authorities and the perpetrator, but may be questioned in a different place by a woman’s representative “so that the victim does not have to speak in front of everybody and will feel shame”.<sup>144</sup> In other communities, however, a traditional resolution process may prove a disempowering experience for the victim, where they are pressured into accepting agreements against their will, customary authorities suffer bias in favor of the male perpetrator, or women are blamed for the violence against them.

### ***COST OF LOCAL CASE RESOLUTION***

The cost of accessing the formal system is a deterrent. While public defenders provide free advice, other costs including transport costs to the often far-away justice institutions, food, accommodation, and the opportunity costs of the time required to engage with formal justice are significant.<sup>145</sup>

---

<sup>144</sup> File no: 10/18.08.2011/Leoheto, Balibo, Bobonaro/AK, CdR; File no: 16/15.08.2011/Leolima, Balibo, Bobonaro/CC; File no: 26/18.08.2011/Leohetu, Balibo, Bobonaro/CC

<sup>145</sup> Anecdotal observations by the Justice System Programme’s Access to Justice Unit indicate very low knowledge that Public Defenders are supposed to provide their services free of charge, creating another perceived barrier even if geographic access to such assistance were not an issue.

Despite this, traditional justice is not necessarily cheaper to access than the courts; in most sub-districts visited, local authorities charge fees for case resolution, at least from the *Aldeia* level upwards and in processes involving '*nahe biti*'. This research found that the cost of customary conflict resolution could also deter women from approaching local authorities.

Fees may either to be paid by both victim and perpetrator or only by the person found guilty. Fees usually increase corresponding to the 'level' of conflict resolution. Some *Sucos* base the amount on the financial means of the parties<sup>146</sup> or on the gravity of the case.<sup>147</sup> Others have produced written local laws determining standardized fees and fines, ranging from a pack of cigarettes, a small amount of money, up to hundreds of dollars. In some *Sucos* in Balibo, even *Aldeia* resolution can cost up to \$100. Generally, the fee increases if the parties bring a case regarding the same issue more than once. For instance, in all visited *Sucos* in Ermera, fees of up to \$300 for recurring cases apply. In addition to a fee, the person found guilty may be required to pay a fine and perform community service – for example, a sub-district agreement in Remexio establishes a fine of \$50, a goat, and two months of community work as punishment for cases of domestic violence.<sup>148</sup>

Local authorities usually give two reasons for high fees; first, to deter crimes, and second, to encourage community members to resolve problems at the lowest level possible (i.e. in the family). One *Chefe de Suco* in Remexio explains "Everyone who comes to the *Suco* has to pay the fee, even if they don't have the money and have to ask their families for help. This reminds people to go to the *Chefe de Aldeia* first and not to make problems."<sup>149</sup> Local authorities in Ermera sometimes send domestic violence cases back to the family when victims directly approach the *Suco* level, arguing "people should save their money; they should not spend all their money on the resolution of a family problem."<sup>150</sup> Yet, fees may also have a symbolic or spiritual meaning. In some communities in Ermera and Maubara, part of the fee (*osan mutin* - symbolizing 'silver') is symbolically given to the ancestors by the *Uma Lulik Na'in* to ask for their permission and support for the case resolution. The second part of the fee (*osan mean* – symbolizing 'gold') is given directly to the authorities.

High fees present a clear deterrent to approaching local authorities or appealing a case to a higher authority. Many communities report the introduction of fees and fines has led to fewer cases being brought to local authorities, and more cases being resolved in the family.

---

<sup>146</sup> Reported in Balibo, Remexio and Ermera

<sup>147</sup> Reported in Remexio, Laulara and Atabae

<sup>148</sup> It is unclear from research data what the money generated through fees and fines is being used for.

<sup>149</sup> File no: 33/04.07.2011/Hautoho, Remexio, Aileu/AK, CdR

<sup>150</sup> File no: 02/01.08.2011/Suco Mertutu, Ermera Subdistrict, Ermera District/AK, CdR

Unaffordable local case resolution on the other hand could make the formal system more attractive with some people arguing that high local fees are making it ‘easier’<sup>151</sup> to take cases to the police, albeit subject to various social barriers described below. One group of women in Maubara concluded that, “It is better to go directly to the police, so they don’t have to pay and the police mediate a case for free.”<sup>152</sup>

## TRADITIONAL AUTHORITIES AND LOCAL LAWS

As noted above, some local authorities (including Community Authorities and local traditional authorities) are producing their own written laws. In 10 out of 13 visited sub-districts, written

*Activities aimed at initiating attitude and behavior change should regularly be evaluated and re-adjusted to guarantee effectiveness.*

local laws had been produced by at least one *Suco*. These so-called *Tarabandu* laws represent a significant expansion (or evolution) of the ‘traditional’ meaning of *Tarabandu* from rules concerning the environment to include rules on the regulation of social life.<sup>153</sup> The content of local laws varies greatly, including the regulation of environmental issues, codification of the traditional law processes, frequency and conduct of traditional ceremonies, land issues, establishing various offences such as domestic violence or theft, and the respective punishments for each offence.

While local authorities insist their local laws aim to “support state law”,<sup>154</sup> and are “based on formal law”,<sup>155</sup> provisions on domestic violence often do not conform to state law. According to one such law in Laulara, hitting one’s wife incurs a fine of a chicken or pig, depending on the

---

<sup>151</sup> File no: 07/25.10.2011/ Suco Talitu, Laulara Subdistrict, Aileu District/MC, CdR

<sup>152</sup> File no: 08/20.07.2011/Suco Maubara Lissa, Maubara Subdistrict, Liquica District/AK, CdR

<sup>153</sup> *Tara Bandu* “prohibitions usually apply to the harvest of agricultural produce, the cutting of trees or collecting of forest products and hunting or fishing. A *tara bandu* (literally “hanging law”) requires a large public ceremony, usually following a public meeting that determines particular sanctions or fines for particular activities. These prohibited activities may include theft of produce or livestock as well as sexual misconduct. There is a wide range of application of *tara bandu*. The usage of the term varies across Timor Leste, but the concept holds. The idea of *tara bandu* is that the announcement of sanctions for cutting trees, or harvesting fruits or fish from a forbidden zone or someone else’s land is made in a public ceremony. Subsequently, the sanction is advertised by hanging the forbidden item. If an individual enters the forbidden zone and violates a prohibition, then he or she should be prepared to pay the consequences according to the fines determined by the community and public announcements. *Tara bandu* fines or sanctions can also be hung as an advertisement.” “The Customary Use of Natural Resources in Timor Leste” Oxfam, November 2003, P 8. This definition and traditional conceptualization of *tara bandu* seems to have been evolving since being used in the context of peace building and dispute resolution between communities in the wake of 2006 violence in Timor-Leste.

<sup>154</sup> File no: 01/24.10.2011/ Laulara Subdistrict, Aileu District/AK, CdR, MC

<sup>155</sup> File no: 56/07.07.2011/Acumau, Remexio, Aileu/AK, CdR

case. The sub-district law for Remexio punishes violence between husband and wife with two months community work, and there are no provisions regarding forwarding such cases to the police. Other local laws, e.g. in Balibo, prescribe that cases of domestic violence and sexual violence must be resolved within the family in accordance with the rules of *fetosan-umane*. One *Suco* in Laleia on the other hand removed all sections on domestic violence from its *Suco* law after the LADV became effective, recognizing that the law requires domestic violence cases to be dealt with by the formal system.

These local laws, while recognizing domestic violence as an offence and an act to be punished, may have a positive effect in terms of awareness-raising, at least in areas where the LADV is still unknown. Yet, local laws purporting to regulate community behaviour lack any legal basis and challenge the rule of law in Timor-Leste, potentially establishing an additional third layer between formal and traditional justice, contradicting formal law, and presenting a new barrier to access to justice for women (and everyone else). In at least some local laws, they incorrectly state that cases of domestic violence must be resolved in the community. This represents a challenge to the state's exclusive authority to pass and enforce laws, and the enforcement of their provisions (e.g. payment of fines) may constitute or involve a crime.<sup>156</sup> Any activities in support of *Tarabandu*, whether by government Ministries/Secretariats or other organizations, should be limited to supporting peace agreements between parties involved in a conflict, such as martial arts groups, and should not include codification of local laws.

The purpose of codifying local rules remains unclear. The codification could signify an attempt to fill a vacuum caused by lack of effective state governance and law enforcement, and a revival of customary law since the end of the Indonesian occupation which had undermined people's ability to keep up cultural and traditional practices. However, the opposite is also possible. With formal legislation now covering a number of issues previously dealt with by local authorities, such as domestic violence, formal law may be seen as encroaching on their sphere of authority.

Customary law is continuously shaped by changing socio-economic conditions, such as urbanization, education, increased wealth, and by fading respect for customary rules and beliefs among some groups, particularly in a heterogeneous urban setting. The codification of so-called local laws may thus represent an attempt to re-assert their authority and legitimacy. As one local leader explains, "The younger generation is starting to forget traditional law due to

---

<sup>156</sup> For example, depending on the circumstances, compelling a citizen to pay a local "fine" without a legal basis could constitute the crime of Extortion (Article 270 of the Penal Code). Likewise, if any state officials are involved collecting and receiving fines, and use them personally, this could constitute the crime of Embezzlement (Article 295 of the Penal Code) and/or the crime of Abuse of Power (Article 297 of the Penal Code).

state law. [...] Formal law comes from the top and will make *Tarabandu* disappear, that is why we wrote down the *Tarabandu* rules. *Tarabandu* must be the first point of entry of justice from the bottom up”<sup>157</sup>. Other authorities expressed a need for standardization of local rulings, arguing that, “it is better to write down the rules of the community because it is easier to consult the law. Before, decisions were more arbitrary, now they are standardized. It is better to have a strict law which comes from the community instead of flexible laws that depend on the respective authority.”<sup>158</sup>

These issues illustrate the importance of local leaders both in shaping community attitudes, and in implementing case resolution and suggest a legal framework to clearly establish the interaction between formal and customary justice systems is needed. A clear connection between the formal justice system and customary law, namely how and when customary justice can be considered by formal justice actors, is essential. Such formalization should aim at creating complementary processes which recognize the strengths of the local system. This requires careful consideration of the inherently patriarchal elements of the customary system and to ensure that the LADV continues to be applied.

However, this research shows that simply ignoring the existence and role of the local system has not had the intended effect. Customary justice case resolution in Timor-Leste fulfils a purpose which cannot be replaced by the formal justice system – the maintenance of complex family networks in the context of spiritual belief systems. International examples indicate that connections between customary systems and culture should not be ignored when developing laws, and that exclusion of those systems does not necessarily increase substantive access to justice.<sup>159</sup> In Liberia, South Sudan, Kenya, and Sierra Leone, for example, harmful practices simply moved underground when outlawed. In these cases, their validity was not undermined by being banned in the mind of the community, but instead applied more secretly.<sup>160</sup> This leads to a dangerous disjunction between local practice and the law, which in turn undermines the legitimacy of the state and arguably makes changing attitudes harder. If parties cannot have their preferred customary laws and practices applied in a state-sanctioned forum, or do not see

---

<sup>157</sup> File no: 05/24.10.2011/Suco Cotalau, Laulara Subdistrict, Aileu District/AK, CdR, MC

<sup>158</sup> File no: 60/08.07.2011/Tulatakele, Remexio, Aileu/AK, CdR

<sup>159</sup> Deborah H. Isser, Stephen C. Lubkemann, Saah N’Tow. “Looking for Justice: Liberian Experiences with and Perceptions of Local Justice Options.” United States Institute of Peace, Peaceworks Series, No. 63, Dec. 2009.

<sup>160</sup> Kane et al., “Reassessing Customary Law Systems as a Vehicle for Providing Equitable Access to Justice for the Poor,” Conference Paper, “New Frontiers of Social Policy” (Arusha, December 2005); Deborah H. Isser, Stephen C. Lubkemann, Saah N’Tow. “Looking for Justice: Liberian Experiences with and Perceptions of Local Justice Options.” United States Institute of Peace, Peaceworks Series, No. 63, Dec. 2009; Baker, Bruce and Scheye, Eric (2009). “Access to Justice in a Post-conflict State: Donor-supported Multidimensional Peacekeeping in Southern Sudan,” *International Peacekeeping*, 16:2, 171 — 185.

their values represented, they may abandon that forum entirely and seek remedy using systems outside the state's purview.<sup>161</sup> The underlying spiritual and cultural rationalization for the offending customary laws and behaviours, needs to be understood and policies developed in response.

## **TRAINING AND SOCIALIZATION OF LADV**

To address the misunderstanding of the LADV and related concepts, a number of international, non-governmental and government actors are implementing outreach programs for communities and Community Authorities on the LADV and formal justice procedures. Some of the misconceptions mentioned above were shared by local authorities who confirmed they had received training on the LADV and who are apparently passing incorrect information to their communities.<sup>162</sup>

By way of concrete example, one *Chefe de Suco* in Remexio who received training on the LADV believes domestic violence includes behavior such as adultery and disturbing other people at night. He has passed this incorrect information on to his community and declared he will impose a fine on anyone breaking these rules. A women's representative in Maubara who received training was adamant that perpetrators are legally obliged to pay \$1800.00 (the exact amount) in compensation to the victim. The most common misunderstanding concerns access to formal justice. Some local authorities believe the law requires an attempt to resolve disputes locally before formal institutions can be accessed. A number of local authorities state the police informed them of this legal requirement. After attending a legal outreach session, one interviewee in Pante Makassar believed only serious domestic violence cases can be brought to the police. This misinformation has led some to believe they do not have the right to bring

---

<sup>161</sup> For example: Research conducted in 2007-08 by the World Bank's Justice for the Poor Programme in Kenya among communities who have traditionally practiced female genital mutilation indicates that the law had not served to extinguish the culturally-linked practice. Instead, it had pushed it underground, leading to potentially serious health problems for girls undergoing the procedure without access to medical supervision. (Ayuko, B, and T. Chopra (December 2008) "The Illusion of Inclusion – Women's Access to Rights in Northern Kenya" Justice for the Poor/Kenya and the Legal Resource Foundation, Nairobi.) Likewise, 2009 research conducted by the World Bank's Kenya Judicial Sector Assessment project found the criminalization of early marriages and their consecration as "defilement" has done little to address the issues. Because the laws do not mesh with local cultural practices, they persist. Should a prosecutor pursue such a criminal case, parties may file a formal request with the Magistrate to request the case be withdrawn. If the request is denied and the case carried forward, witnesses often fail to appear and refuse to cooperate since the marriage is seen as genuine under local culture. Andrew Harrington, Winnifred Kamau. "Social Context: Considerations and Challenges facing Magistrates in Kenya." Kenya Judicial Sector Assessment, produced for the World Bank, October 2009 (On file with author).

<sup>162</sup> This study was not geared towards the evaluation of training and outreach activities and is not in a position to judge the effectiveness of individual training programs. This study merely identifies an apparent gap in the knowledge base of Community Authorities after having received training.

cases directly to the police, suggesting a need to directly address this misconception in training and outreach.

It is unclear from this research whether local authorities are intentionally or unintentionally misinterpreting the law and misinforming their communities. Local authorities may have an interest in intentionally passing on wrong information for fear of losing power, legitimacy or income from case resolution fees.

Authorities may feel that the LADV encroaches on their traditional competencies, as one authority in Pante Makassar admits: “If we call the police every time a husband hits his wife, it means we don’t have the power to deal with it in our own community and that would be embarrassing.”<sup>163</sup>

Considering local authorities’ position as *de facto* gatekeepers to the formal justice system (in

*As important gatekeepers, Community Authorities need to be co-opted rather than alienated from formal justice.*

the case of Community Authorities, *de jure* gatekeepers to some degree), garnering support from local authorities for the formal justice system is crucial. The formal justice system will not gain legitimacy and acceptance among rural citizens if respected local leaders work against it. To bring local authorities on board, training and socialization campaigns need to show how the formal justice system can empower

them and their communities, rather than threaten their relative position, relevance and legitimacy in local society. This finding is supported by a recent Asia Foundation study which demonstrates local leaders are potentially a vital resource and could become involved in prevention and education activities, providing support to victims, and could play a role in monitoring certain civil law elements such as the implementation of child maintenance orders.<sup>164</sup>

---

<sup>163</sup> File no: 05/21.06.2011/Pante Makassar Sub-District, Oecussi District/G.B.L., J.A

<sup>164</sup> The Asia Foundation (2012): “*Ami sei vitima beibeik*. Looking to the needs of domestic violence victims.”

## V. FORMAL JUSTICE AND DOMESTIC VIOLENCE

### FEAR OF FORMAL JUSTICE

Women who may consider approaching the formal justice system will inevitably consider the impact on their relationship and the consequences for their socio-economic situation. Women approaching the formal system often fear divorce or abandonment by their husbands. While it is possible that similar threats are used when women seek to use informal systems, this was not reported by any of our interviewees. This may be due to the greater degree of legitimacy of local justice, and/or the sense that the formal system is a fiercer weapon against perpetrators. This latter concern is linked to the widespread association of the formal justice system with imprisonment; many women believe men will automatically be sentenced to a prison term, resulting in divorce and the loss of the main breadwinner in the family.

The limited social security systems in place are unable to fully meet the needs of families and victims in need, thus the extended family is a crucial economic and social safety net for vulnerable persons in rural areas. Timorese extended families play this role; for instance, children are often looked after or brought up by relatives other than their parents. Yet, support from the family network may be withdrawn if the victim's decision to use the formal justice system is rejected, a strong implicit social pressure on victims. One female interviewee argues that, "It is the wrong decision to bring back cases to the family system; cases should stay with the police. But [...] it can be better to bring a husband back even if he has committed a crime and to resolve the case in the family if there is nobody else to take care of the woman and children."<sup>165</sup>

Divorce and/or a prison sentence not only break up the nuclear family, but also jeopardize the complex bonds between families established by the *fetosan-umane* system. As explained by an Asia Foundation study, "leaving a violent husband also means leaving the protection that is provided, however imperfectly, due to their place in the family unit".<sup>166</sup> Even if formal proceedings do not lead to a jail sentence or divorce, disruption to family relations is likely. A 'victory' in court can cost victims vital socio-economic support from family networks, leaving them in a desperate situation; the Asia Foundation's research reported one woman explaining that the grinding poverty she had experienced since bringing her case to the police and subsequently being abandoned by her husband were just as destructive as physical beatings.

---

<sup>165</sup> File no: 17/22.06.2011/Atabae, Atabae, Bobonaro/AK, CdR

<sup>166</sup> The Asia Foundation: *Ami sei vitima beibeik*. Looking to the needs of domestic violence victims. P. 9.



These considerations have a strong deterrent effect on women victims who find themselves in the situation of having to 'choose' between seeking redress from the formal system or maintaining family relations.

The association between jail and prosecution for domestic violence was reflected by a number of interviewees. In one community in Remexio, not a single case of domestic violence has been brought to the *Aldeia* or *Suco* level since 2009 "*because the police told us that domestic violence means jail.*"<sup>167</sup> Interestingly, this was at least one year before the LADV was passed. This statement is based on the interviewee's personal impressions rather than statistics or records of domestic violence cases.

*Victims need to be enabled to access formal justice without risking their livelihoods. A focus on protection and support mechanisms is crucial as well as exploring of creating alternative income generation mechanisms for female victims.*

Some interviewees stated that the LADV led to a decline in reported cases of domestic violence for this reason (but not necessarily actual instances of domestic violence), but there is no data against which to test this suggestion. An interviewee complains that, "The domestic violence law has changed everything and it only makes women more afraid to seek traditional justice so they keep the problem to themselves."<sup>168</sup> Whether there may be a local reduction of cases is hard to gauge, but there appears to be a clear consensus that nationally cases entering the formal system have increased since the LADV was promulgated. Whether this is due to an increase in cases reported is not clear: it could be explained by the fact these are now public crimes, requiring prosecution of cases previously archived, or withdrawn.

While the LADV provides for treatment for the aggressor and/or follow-up by support services as part of a penalty, in practice these options are not (yet) available. In line with provisions of the Penal Code - which indicates that non-custodial sentencing is preferred where applicable<sup>169</sup> - judges appear to be applying suspended sentences<sup>170</sup> in domestic violence cases where the

---

<sup>167</sup> Italics added for emphasis. File no: 47/06.07.2011/Fahisui, Remexio, Aileu/AK, CdR;.

<sup>168</sup> File no: 07/17.08.2011/Laleia Sub-District, Manatuto District/G.B.L., J.A.

<sup>169</sup> See Article 62 of the 2009 Penal Code on Determination of penalties and security measures: 1. Whenever a sentence of deprivation of liberty and another penalty that does not involve deprivation of liberty are alternatively applicable, the court shall give preference to the latter, whenever the latter adequately and sufficiently fulfils the purpose of the penalty.

<sup>170</sup> See Article 68 of the 2009 Penal Code on Suspension of execution of a prison sentence: 1. Whenever the prison sentence applied does not exceed three years, the court may suspend execution thereof for a period to be set between one and five years, to be counted from the time the final decision was rendered. 2. The decision must contain the grounds for the suspension, such as the personality of the perpetrator, the circumstances under which the crime was committed, previous

prison sentence does not exceed three years. In law, this is a more serious penalty than a fine, representing a custodial sentence, albeit suspended as an exceptional measure. However, according to one international prosecutor, some perpetrators do not perceive a suspended sentence as a punishment at all since it does not entail immediate punitive measures.<sup>171</sup> Thus, the ‘educational’ or rehabilitative element of sentencing may be lost.

From a victim’s perspective, a suspended sentence may be preferable to a fine since a fine would negatively affect the shared family budget while likewise giving a woman leverage to prevent further violence, the ability to ‘scare’ a husband with the consequences of any repeat offence. Suspended sentences, however, will only be effective if they actually lead to follow-up proceedings in case of re-offence (e.g. a complaint being filed by victim or witness, and the state system responding), and if it is made clear by the judge that a suspended sentence constitutes a punishment. Ultimately, however, the options for applying more flexible sentences which focus on education and prevention should be developed.

## **SOCIAL BARRIERS**

According to customary norms, resolution of family problems aims to reconcile husband and wife and the wider *fetosan-umane* kin-group to avoid disruption of socio-cultural and economic networks. Seeking help outside family structures and directly approaching Community Authorities may be seen as disrespecting the rules of *fetosan-umane*. Stepping outside the realm of customary resolution and approaching the police may be seen as disregarding family unity and bringing shame to the family name, with major negative implications in the family and enormous social pressure. As customary case resolution often focuses on interests of the community rather than punishment of the perpetrator, approaching the formal system – associated with jail, divorce and focus on the individual – may be seen as jeopardizing family/community reconciliation. As one interviewee explains, “Marriage links two families, not two individuals. Separation is not an individual’s decision; the family makes the final decision.”<sup>172</sup> Bearing the weight of responsibility for maintaining family bonds and crucial socio-economic networks, many women seek to balance this responsibility with their desire to make the violence stop; for example, they approach police for immediate protection and to ‘scare’ their husband with no intention of pursuing the case in Court. A recent study of domestic

---

behavior and living conditions, and most importantly the perpetrator’s likely conduct in the future. 3. The court shall provide grounds for any decision when substitution is not performed when the law allows it to do so.

<sup>171</sup> Interview with international prosecutor in Suai, March 2012

<sup>172</sup> File no: 19/15.12.2011/Viqueque Villa, Viqueque/AK, CdR

violence victims found that all interviewed women who had reported to the police only did so when they were in fear for their lives, and often in the heat of the moment.<sup>173</sup>

Against this background, many Timorese believe that even in serious cases of domestic violence it is acceptable only to involve the police after traditional case resolution has failed. As one interviewee explains, “*Adat* says we must give the family the opportunity to resolve cases themselves. We can’t force the involvement of people from outside the family. We must follow the *escada*, no matter how serious the case is.”<sup>174</sup> Following this rationale, local authorities can block the advancement of cases to the formal system by refusing to take ‘small’ cases to the police, asking police to release the perpetrator from detention, establishing such rules in written local laws, and actively warning the community not to take domestic violence cases directly to police. Families likewise exercise social pressure on victims by withdrawing their support (or threatening to do so) or requesting police send the case back to the family. One

*To decrease social pressures on women, the legitimacy of the formal justice system needs to be increased. Creating a clearly defined link between formal and customary justice systems can be an effective step towards this end.*

interviewee in Vemasse explains that, “even if the victim wants to keep the case in the formal system, the family will probably convince her to settle the case traditionally.”<sup>175</sup> In certain cases, family pressure to keep cases from the formal system is linked to the payment of the bride price which may have to be returned to the perpetrator’s family if the marriage is ended. Yet, similar social pressures were identified among matrilineal communities where no bride price is levied, suggesting *Barlake* and the bride price is not the root cause, but rather concern over maintaining family bonds and networks.

Consequences for women not following the hierarchy of the *escada* can be harsh, including social isolation, payment of a fine or compensation, or performance of community work. As one female *Chefe de Suco* explains, “Women choose the traditional way because they are afraid of the consequences if they go to the formal justice system [...]”<sup>176</sup> For instance in Laga, all interviewees claimed that a woman who directly approaches the police would suffer social consequences ranging from social disapproval of her actions to complete social isolation. As one interviewee summarized it: “[The community] would hate her and not speak with her.”<sup>177</sup> Numerous communities apply fines for directly approaching *Suco* authorities rather than family

---

<sup>173</sup> The Asia Foundation (2012): *Ami sei vitima beibeik*. Looking to the needs of domestic violence victims.

<sup>174</sup> File no: 13/14.12.2011/Suco Laline, Lacluta, Viqueque/AK, CdR

<sup>175</sup> File no: 26/14.06.11/Baucau District, Vemasse Subdistrict, Suco Caikua/IS, GDS

<sup>176</sup> File no: 17/08.06.11/Baucau District, Laga Subdistrict, Suco Soba/IS, GDS

<sup>177</sup> File no: 8/07.06.11/Baucau District, Laga Subdistrict, Suco Samalari/IS, GDS

authorities, while one *Suco* in Laulara enacted a fine of \$25 in their written *Suco* law for anyone who directly approaches the police. Should a man be sent to jail, the wife's family may have to pay compensation to his family to repair the family relationship,<sup>178</sup> and avoid potentially serious crimes of revenge. Thus, should a woman choose to pursue a domestic violence case through formal prosecution, success in that prosecution may prove Pyrrhic, costing the woman all family and community support and fines for skipping the local traditional systems. Should this process lead to separation, she could become an outcast, as a recent Asia Foundation report notes.<sup>179</sup>

Many communities apply the distinction between 'small' and 'big' cases in this context. It is unacceptable in most communities to take what is considered a 'small' case directly to the police; however, seeking help from the formal system is often acceptable for serious or repeated cases. In these cases, the community may be supportive of a victim and marginalize the perpetrator. Exclusively focusing on social pressure exerted on women is therefore a mistake – a perpetrator may be subject to social pressure particularly if breaking a traditional agreement, disrespecting the elders and *Lisan*. Community members in Balibo explain, "Once a case is resolved and a solution agreed-upon you promise you will not commit the same offence again. But if you do it again, you disrespect the rules of *fetosan-umane* and *adat*. In such a case, it's ok for the woman to go to the police because the man is disrespecting *adat*. The community will marginalize the man, and it would be ok if he went to jail."<sup>180</sup> This attitude is closely linked to spiritual beliefs – particularly that ancestors can curse someone who breaks a traditional agreement. A perpetrator who ignores a traditional agreement is seen as a potential threat to the community for tempting the ancestors' wrath.

## ATTITUDE OF INVESTIGATORS

Some formal justice actors interviewed were confident that since the passing of the LADV, PNTL no longer send cases of domestic violence back to be resolved at community level. The VPU officers interviewed were adamant that all cases of domestic violence are investigated and they report all crimes of domestic violence to the prosecution as necessitated by the public status of the crime. Data from the field, however, suggests the practice of sending victims back to their communities continues.<sup>181</sup> Interviewees in all sub-districts visited, except Laleia, stated that police regularly send cases of domestic violence back to the community or family level, particularly those not deemed serious, often applying the same small/big classification

---

<sup>178</sup> Reported in Pante Makassar and Atabae.

<sup>179</sup> The Asia Foundation (2012): *Ami sei vitima beibeik*. Looking to the needs of domestic violence victims.

<sup>180</sup> File no: 06/16.08.2011/Cova, Balibo, Bobonaro District/AK, CdR

<sup>181</sup> It is unclear from this research whether this practice extends to PNTL's Vulnerable Persons Unit (VPU) and no conclusions regarding conduct of the VPU can be made.

described earlier.<sup>182</sup> A smaller number of interviewees stated that cases of serious injuries or attempted murder were sent back to the community by PNTL.<sup>183</sup> One *Chefe de Suco* complains that even after a medical report confirming the victim sustained serious injuries, cases had been sent back to him by PNTL, notifying him of his ‘duty’ to resolve the case.<sup>184</sup>

Some police officers apparently actively promote the informal resolution of domestic violence

*It is crucial to improve the investigation capacity of PNTL and to establish and implement Standard Operating Procedures for all PNTL officers dealing with domestic violence cases.*

cases. Interviewees frequently note that before cases are sent back to the community, police place suspects in detention for up to 72 hours,<sup>185</sup> often upon the request of the victim. While the suspect is in detention, police seek informal ways to resolve the case instead of investigating. In some communities, police send all cases back that were not previously processed by the local system,<sup>186</sup> or only accept cases forwarded by the *Chefe de Suco*. Some interviewees report PNTL misinforming communities about their right to access to formal justice: “The police say people *must* go to the *Suco* first before coming to the police.”<sup>187</sup> Some

communities have ‘formally’ established this hierarchy in local written laws – in the case of subdistrict Remexio, this was done in cooperation with PNTL. This agreement between subdistrict administration, PNTL, and the church stipulates that ‘small’ crimes must be resolved at the local level, not only denying women access to justice, but also representing a serious challenge to the formal justice system and rule of law.

Police may facilitate or participate in local case resolution. Police in Remexio are reported to resolve cases of domestic violence with local authorities, applying compensation and community work as punishment for perpetrators. In Balibo and Maubara, police apparently mediate domestic violence cases, establishing fault and compensation using parameters similar to those customary authorities use. In one community in Atabae, PNTL are reported to detain

---

<sup>182</sup> In some parts of the country, the practice of actively sending cases back has been replaced with inertia in accepting and formally lodging cases. For instance, the victim would be told to go home and wait for the police to come and take her statement and collect evidence, but the police would never follow up. In other cases, police would make the woman wait, humiliated, for unreasonable lengths of time in the police station while badly injured and with her children, so that when it became clear that the police would not help her, the victim had no choice but to simply return home. The Asia Foundation (2012): *Ami sei vitima beibeik*. Looking to the needs of domestic violence victims.

<sup>183</sup> Reported in Atabae, Balibo and Ermera

<sup>184</sup> PNTL are reported to send back not only domestic violence cases but any cases in which the disputing parties have a *fetosan-umane* relationship, including land disputes or problems between martial arts groups.

<sup>185</sup> Suspected perpetrators can be detained for up to 72 hours, after which they must either be brought before a judge (Article 217) or released (Article 223 1 (b)); Decree-Law No. 13/2005, “Approving the Criminal Procedure Code.”

<sup>186</sup> Reported in Manatutu and Pante Makassar

<sup>187</sup> File no: 12/21.07.2011/Suco Vatuvu, Maubara Subdistrict, Liquica District/AK, CdR

female victims believed to have provoked the violence against them. This practice is unsurprising considering police are frequently originally from the area in which they work, potentially resulting in personal interests and interference. As one interviewee explains, “Police officers are also Timorese. They believe in the same things as other Timorese and apply the same principles; they do not separate their work from their private beliefs. [...] Often, police officers have a family relation with the victim or the perpetrator, so they have an interest in resolving the case in the family.”<sup>188</sup>

PNTL are not currently able to effectively investigate crimes of domestic violence. Confusion remains among some VPU officers over their investigative versus support role. This situation is compounded by the lack of a clear legal framework establishing the VPU as an actual unit in the PNTL and SOPs regulating the VPUs function, recruitment, training, transfers and career development. Currently, the VPU is regulated only by rough SOPs drafted by UNMIT.<sup>189</sup>

*The capacity and approach of formal justice actors dealing with cases and victims of domestic violence needs to be strengthened, particularly on investigations.*

As recognized by the National Action Plan on Gender-Based Violence, improved coordination between the PNTL and prosecution is crucial to guarantee quality of investigation. The longer it takes for OPG to give PNTL specific guidance and instructions to carry out an investigation, the harder it becomes to collect evidence since without such instruction, PNTL do not collect specific types of physical evidence germane to cases of domestic violence – though this is of course contingent upon PNTL filing a case with the OPG which may not happen in every case. Without such evidence the conviction of a perpetrator depends on the victim’s statement, burdening the victim with the responsibility of potentially provoking a sentence against her husband, and the potentially disempowering experience of recounting the abuse without psychological assistance available, undergoing questioning by justice actors who have not received special training on treating traumatized victims. Both issues are currently undergoing improvements. Prosecutors in the Legal Training Centre are being taught that there is almost always other evidence such as medical reports and statements previously made by parties, and how to obtain such evidence and identify other witnesses. The UNDP Justice System Programme has facilitated a number of training and coordination sessions between the Prosecution and PNTL,

---

<sup>188</sup> File no: 19/15.12.2011/Viqueque Villa, Viqueque/AK, CdR

<sup>189</sup> Standar Prosedimentu Operasional Ba Unidade Pessoa/Ema Vulneravel Distritu - Aprova iha Agostu 2007 iha Obrigado Barrack, Dili (available only in Tetum). A detailed search only turned up these rough SOPs from 2007, as well as two complimentary documents from Suai in Bahasa Indonesia.

specifically focused on the investigation of domestic violence crimes as part of its access to justice activities.

### **LACK OF INFORMATION ABOUT THE FORMAL SYSTEM**

Since a large part of the legal framework has only recently been enacted and a number of justice institutions have only recently been established outside Dili, there is a general lack of familiarity with and information about applicable laws and the formal legal system. For example, with little knowledge of free legal assistance available from Public Defenders, many Timorese associate formal processes with high costs. This research shows community members and local authorities are unsure or confused about which cases they should or can bring to the PNTL, how the formal system works, and what the content of legal provisions regarding domestic violence are. One community authority in Remexio complains, “I have heard from the police that our work in the community must be in accordance with national laws; but I am not sure what the laws are.”<sup>190</sup> There is a strong demand and need for increased outreach efforts which effectively address this lack of understanding by tailoring new information to identified target groups, making use of local concepts, addressing common misunderstandings and providing concrete, relevant and actionable information to communities.

A recent study by the Asia Foundation finds “the obstacles encountered by women when attempting to take their case forward are creating a chronic distrust in the formal justice system, as many women feel that there is little to gain in bringing their case to the courts, and much to lose.”<sup>191</sup> This distrust must be addressed and the services and support envisaged under the LADV must be fully implemented before that distrust grows. One part of this is ensuring that the services and support envisaged under the LADV are actually implemented. The current situation risks alienating those women who lack family support from the formal justice system. To avoid this, women need to be able to access justice without fear of losing their livelihoods and risking family bonds.

---

<sup>190</sup> File no: 48/06.07.2011/Fahisui, Remexio, Aileu/AK, CdR

<sup>191</sup> The Asia Foundation: *Ami sei vitima beibeik*. Looking to the needs of domestic violence victims. P. 4.

## VI. CONCLUSIONS

For many women victims of domestic violence in Timor-Leste, neither formal justice nor customary systems currently offer effective and desirable solutions. Local justice systems may be desirable for their familiarity, speed and local acceptability. These systems provide solutions which resonate with local socio-cultural and spiritual beliefs, and emphasize keeping the family together. Local resolution can ensure peace in the community, between families and with the ancestors, and keep socio-economic networks intact. Yet these advantages may come at the expense of the individual rights of the victim. Local authorities may blame female victims for violence committed against them and provide little opportunity for voices of the victims to be heard. Potentially high fees, strict local hierarchies, and intense social pressure to resolve cases in the family mean a victim can be left without protection. Without the means to enforce local decisions, women may be subject to repeated abuse even if a case is decided in their favor.

Formal prosecution of crimes of domestic violence can be a crucial tool in terms of education, making a strong statement that violence in the family is unacceptable and promoting women's rights. The formal justice system needs to be capacitated to effectively deal with crimes of domestic violence – addressing the large backlog of cases and improving access to protection and support mechanisms – to make sure approaching the formal system does not prove as disempowering for women as traditional justice mechanisms can be.

Unless more protection and support is made available and accessible to victims of domestic violence, formal justice will not supplant customary processes. Most women depend on strong family relationships for their livelihoods and risking these may leave them destitute and without social support. Efforts to change the widespread perception of domestic violence as a 'normal' and 'private' matter should continue. Punishment of domestic violence is a necessary component of that response, but underlying social pressures identified by this research and elsewhere also need to be seriously considered and addressed, otherwise women who succeed in having a perpetrator prosecuted and are "'victorious' from a rights perspective may end up as losers in their daily lives."<sup>192</sup>

The formal justice system can provide an effective and desirable route for female victims (and other potential users) if this reality and local dynamics are taken into account. Laws and policies should be shaped accordingly, working as much as possible through and with traditional systems and actors, recognizing that Timor-Leste is a situation of legal pluralism and

---

<sup>192</sup> Tanja Chopra and Deborah Isser, "Women's Access to Justice, Legal Pluralism and Fragile States" in Albrecht et. al. eds. *Perspectives on Involving Non-State and Customary Actors in Justice and Security Reform* (IDLO: Rome 2011) 28.



will remain so regardless of the formal justice system's continuing development. In the words of the latest Progress of the World's Women report:

“an effective approach towards justice sector reform in the context of legal pluralism requires rethinking some of the basic assumptions international policymakers have perpetuated. It is important [...] to avoid discussing legal pluralism in terms of binary oppositions, such as formal and informal justice. The lines are blurred in reality and some of the most successful initiatives illustrate a fine-tuned ability to negotiate the spaces between state and non-state orders to the advantage of the excluded.”<sup>193</sup>

Both customary and state justice systems fulfill important social needs and purposes which neither can provide on their own; both systems must be integral if domestic violence in Timor-Leste is to be effectively addressed.

---

<sup>193</sup> UN Women (2011): Progress of the World's Women. In Pursuit of Justice.

## VII. RECOMMENDATIONS

Solutions to this complex reality need to focus on two broad approaches: first, making both the formal justice system and traditional justice system 'work' for women, and secondly, creating clear and predictable forms of interaction between customary and state justice, approximating them and increasing the legitimacy of the latter to ensure women are protected in both.

### 1. IMPROVING THE CAPACITY OF THE FORMAL JUSTICE SECTOR TO RESPOND TO DOMESTIC VIOLENCE CASES

- 1.1. The law requires all domestic violence cases reported to the police to be investigated and referred to the prosecution within 15 days. This research found that this is not happening and that cases are still wrongly being sent to the informal system for resolution. In the absence of any internal monitoring, it will be impossible to assess where, how and why this is happening. **It is recommended that the PNTL institute a mechanism for monitoring and evaluating how officers respond to domestic violence reports, with any corrective actions implemented to ensure that police officers comply with the Law.**
  
- 1.2. The current reliance on the victim's testimony as (usually) the sole evidence of the crime places the entire burden of a prosecution on the victim. It can effectively re-victimize the victim if they choose, or are coerced into, withdrawing their evidence. **It is recommended that police and prosecutors have early and on-going training on ways to improve investigation techniques to increase the types of evidence gathered specifically related to domestic violence cases.** Such evidence includes: physical evidence from hospital/medical clinic reports, photographic evidence of injuries, forensic evidence once the necessary national infrastructure is established, secondary witnesses, and other sources of evidence permissible under the Criminal Procedure Code. Such training should be supplemented with Standard Operating Procedures (SOPs) for all PNTL officers (not just VPUs) who may deal with domestic violence cases, specifically stating the requisite steps in responding to cases and conducting investigations.
  
- 1.3. Effective coordination between the PNTL and the Prosecution is essential to ensuring effective investigations and prosecutions. To date, the Justice System Programme has supported a number of *ad hoc* coordination/training sessions, between the PNTL and the Prosecution, led and administered by district prosecutors. These activities enable prosecutors to directly communicate areas of concern, improve investigative skills of

police and in turn provide a safe forum in which PNTL officers can pose questions to prosecutors. **It is recommended that training and coordination between the Prosecution and PNTL officers in all district offices should be institutionalized and expanded.**

- 1.4. Women's choices to use the legal system are constrained by lack of access to free and accurate legal advice and assistance in many parts of Timor-Leste. While the Public Defender's Office is tasked with providing such advice to victims, their role is poorly understood and the four offices are located only in the four judicial district capitals of Baucau, Suai, Dili, and Pante Makassar. A stronger focus by the Public Defender's Office both on socializing its role and systematically reaching out to potential victims would help increase women's ability to make well-founded choices and ensure they have access to sound legal advice. **It is recommended that the Public Defender's Office establish and implement a national communication strategy, one element of which specifically focuses on domestic violence, with sufficient budget and resources allocated.** The Public Defender's Office should expand its geographic presence with new offices in new districts as qualified staff become available in order to widen its scope of activities.
- 1.5. Judges can play a strong role in sending a message to perpetrators. If it is not understood both by perpetrators and their victims that a suspended sentence constitutes punishment, and that any re-offence can lead to immediate incarceration – there is a danger that the formal justice system will be seen as ineffectual. **It is recommended that judges always clearly and simply explain the implications of a suspended sentence to convicted perpetrators and their victims.**
- 1.6. The formal justice system should increasingly focus on restorative sentencing options where possible rather than relying on purely punitive measures. This serves the joint function of ensuring broader discretion for judges to select appropriate sentencing measures on a case-by-case basis, and better reflecting the restorative values typical of traditional justice systems throughout Timor-Leste. Useful sentencing measures include education sessions and anger management therapy for the perpetrator. These measures are foreseen in both the Penal Code (such as Articles 69, 70 and 71 regarding conditional suspended sentencing, limitations on conduct and suspended sentencing with monitoring options) and LADV (Articles 37 and 38 on measures of restraint and selection and determination of penalties respectively), but are not yet available. It is expected that the Law on Sentence Executions (currently still in draft form) will make new rehabilitative measures available in the future. **It is recommended that the**

Ministry of Justice, Prosecution, Public Defender, Prison Services, the courts and international donors support a policy which mandates and realizes broader non-custodial sentencing options for perpetrators.

- 1.7. There is a common misperception that bringing a case to the formal system automatically leads to imprisonment for the abusive spouse, which is not an outcome most victims necessarily welcome, and may lead them to avoid reporting cases. **It is recommended that socialization activities directly challenge this misperception by clearly demonstrating that courts have a variety of sentencing options which do not include prison; once alternative sentences are in place, socialization campaigns should emphasize the new alternative sentencing options available to judges.**

## 2. ECONOMIC AND SOCIAL SUPPORT SERVICES

- 2.1. There are currently few safe houses operating across the country, the majority of which are run by civil society organizations and are contingent upon donor funding. The network needs to be expanded and consistent funding secured, so women who seek to escape violence are able to access safe, alternative accommodation. **It is recommended that the government makes implementation of its commitments under LADV to provide sufficient emergency and residential domestic violence shelters a priority, and that a budget and timeframe is allocated to achieve this.**
- 2.2. This research found that women risk being rejected by their family and social networks for choosing to approach the justice system. Considering many victims' economic dependence on perpetrators, there is a clear need for social and economic assistance for victims to support themselves in such cases. The pilot project associated with this field research examining social business as a mechanism for economic empowerment of women suggests this approach may be successful, but must be implemented as an internal activity within shelters partly to overcome difficulties of outsiders gaining access, but also in order to ensure ownership and sustainability. **It is recommended that the government explores approaches to income generation for women victims in collaboration with the providers of shelters and services for women victims of domestic violence.**
- 2.3. Domestic violence is a crime with specific features: the victim and perpetrator may continue to live together; their families are interlinked; punishment of the perpetrator may also punish the victim and any children. These special features have challenged justice systems around the world to respond effectively to the social problem. It is

therefore important to help legal actors perceive this, and to understand the special needs and circumstances of victims. Serving justice actors in Timor-Leste already demonstrate mastery of the applicable legal framework, however, increased specialization for domestic violence and sexual and gender-based violence cases is highly desirable. Such training should include advanced and detailed technical training on the relevant legislative framework – including relevant portions of the LADV, Penal Code and Criminal Procedure Code, as recommended by the Ministry of Justice’s Gender Justice Policy document. This approach has been reported to be effective in other jurisdictions. **It is recommended that the Ministry of Justice, in cooperation with the Secretary of State for Equality (SEPI) and donors, should implement specialized training on domestic violence and other sexual and gender based violence (SGBV) cases as described in its Gender Justice Policy.** Training for both serving justice officials and those undergoing training should include a focus on relevant crimes, the types of evidence needed to prove them/disprove them, recognition of the effect of stereotypes and assumptions which diminish the importance of domestic violence, as well as victim-sensitive questioning techniques, and the identification and consideration of any special needs victims might have – such as witness protection or referral to a safe house.

### **3. OUTREACH AND TRAINING**

3.1. Outreach, training and socialization activities should be designed around the needs of the recipients. Public outreach and training must not only enhance the very basic knowledge about the justice system in the public, but also ensure officials and the public understand the meaning of key terms such as “public crime” or “domestic violence”. They also need to directly address common misunderstandings, for example that domestic violence is only criminal when it is “serious” i.e. involves the use of weapons, or serious bodily harm; that police cannot be accessed directly without reporting to a local authority first, or that perpetrators of domestic violence will always go to jail. **It is recommended that socialization of the LADV is built around the needs of the audience, and always addresses the common misunderstandings about domestic violence identified in this research.**

3.2. Related to the need to build around the needs of the audience, it is important that socialization, outreach and training activities use simple language and avoid using overly legal and/or formal terminologies. These are more likely to be misinterpreted and lead to the perception that domestic violence and related phenomenon are foreign, complicated and abstract concepts. This process may mean abandoning explicit

references to human rights language altogether or reframing ideas while still working to challenge any local inequalities. **It is recommended that simple and accessible language should be used, avoiding legal terms and employing locally understood terms and concepts wherever possible to increase resonance with the local audience and ensure locally contextualized understanding of legal concepts.**

- 3.3. This research confirms that some local authorities, after having received training on the LADV, intentionally or unintentionally misinterpret the law. **It is recommended that all socialization, outreach and training sessions should be evaluated regularly and adjusted to guarantee effectiveness.** Regular monitoring and evaluation of training and outreach activities should be included to determine impact and alter programming, content and/or approach as necessary to ensure positive results. This will require the implementation of pre-and-post assessment of participants' knowledge and understandings as a minimum.
- 3.4. Many outreach efforts focus on disseminating the contents of the LADV, rather than working with audiences to understand what the law means to them in practice or identifying negative attitudes and behavior which need to be targeted for change. While transmitting information on the law is important, the ultimate aim is to change negative attitudes and behavior. **It is recommended that socialization activities aim to change attitudes and behaviours as well as to increase public awareness.**
- 3.5. Tetum and Portuguese, the national languages stipulated by the Constitution, are not the most spoken or best understood languages in many parts of Timor-Leste. Where presenters and the audience are most comfortable in a language other than Tetum, that language should be used, whether Fataluku, Baikeno or Bahasa Indonesia. **It is recommended that socialization, outreach and training sessions be conducted in local languages and/or whichever language recipients understand best.** The Ministry of Justice's National Directorate of Citizenship and Human Rights provides a good example of this approach, holding outreach/socialization sessions in Bahasa Indonesia (legally designated a working language in Article 159 of the Constitution) in Oecusse, where Tetum is spoken by few citizens and using Fataluku in Tutuala in Lautém district, which most participants understand better than Tetum.

#### 4. EFFECTING SOCIALLY-EMBEDDED CHANGE

- 4.1. Human rights and gender equality must be linked as much as possible to local concepts and practices which are protective of women. Working against or despite local cultures means social reform efforts not only challenge domestic violence as a social behaviour, but also local culture as a whole. This research identifies a number of values protective of women within local cultural systems. Working with communities to invoke similar ancestral rules and spiritual beliefs which stress respect and love between husband and wife and show a perpetrator (rather than victim) is responsible for upsetting extended family relations, may provide socially-embedded points of entry in efforts to establish domestic violence as unacceptable social behavior. **It is recommended that activities challenging domestic violence employ and engage local cultural concepts and beliefs, where possible, to reinforce the prohibition on violence.**
- 4.2. The Government and other service providers need to directly address the onus placed on women to change behavior to avoid ‘triggering’ violence, and reflect male responsibilities to respond to conflict peacefully, working through local cultural systems to show a violent perpetrator, rather than a victim who reports it, is responsible for putting crucial family bonds at risk. This helps shift social pressure away from victims onto perpetrators to alter or stop violent behaviour. Working through and with local systems to promote recognition of a perpetrator’s behavior as harmful to the victim, children, and the entire family system will be most effective as a socially embedded means of effecting change. **It is recommended that targeted activities with men are part of socialization of the LADV, focusing on their responsibility in reducing and preventing domestic violence.**
- 4.3. Community Authorities must be co-opted into processes in view of their status as *de facto* gatekeepers. Dismissing traditional myths and “customary excuses” for domestic violence – such as abusive husbands using *Barlake* to justify abuse whereas community leaders often disagree strongly – may best be taken head-on by traditional leaders themselves, rejecting attempts to hijack custom and de-legitimize such self-serving cultural excuses for abusive behavior. International examples indicate this approach can work.<sup>194</sup> **It is recommended that community authorities and traditional leaders are**

---

<sup>194</sup> For example see: “From Despair to Hope: Women’s Right to Own and Inherit Property” Futures Group International & Kenya National Commission on Human Rights (2005); T Chopra, Promoting Women’s Rights by Indigenous Means: An Innovative Project in Kenya, Briefing Note 1.2, World Bank, Justice for the Poor (2007); A Harrington and T Chopra, Arguing Traditions: Denying Kenya’s Women Access to Land Rights, Research Report No. 2, World Bank, Justice for the Poor (2010)

involved in efforts to challenge domestic violence and negative customary beliefs regarding women's role in provoking violence.

- 4.4. Training and outreach must target traditional leaders at the local level in addition to community authorities. Public outreach campaigns and training for local authorities needs to recognize the diversity of local actors. This research shows that *Suco* (village) authorities may not always be the most important local actors involved in the resolution of domestic violence cases (and disputes in general). **It is recommended that key actors in local communities should be identified and included in outreach and training activities, especially family and spiritual authorities, particularly *Ferik* (the older women in the community).**

## **5. DEVELOPING THE LEGAL AND POLICY FRAMEWORK**

- 5.1. Currently, the Vulnerable Persons Units of the PNTL are formed under SOPs established by UNMIT in 2006. They have never been formalized within the law. A strong and effective VPU is crucial to ensuring victims receive appropriate assistance, and this requires well-trained and experienced officers who are not rotated out of the VPU too quickly. **It is recommended that the Secretary of State for Security establish the VPUs in law and implement regulations regarding officers' function, recruitment, training, transfers, and career development. This should be prioritized and budgeted for accordingly.** This, in particular, should include a rationalization of the VPU's rotation schedule to make sure VPU officers who have received training are not rotated out of their position, as foreseen in the National Action Plan on Gender Based Violence.
- 5.2. A law creating a clear interface/connection between the formal and informal justice systems is needed. Creating a clearly defined and formalized link between the state and informal justice systems will increase the state system's legitimacy while making it easier to monitor what is occurring in local systems and ensure compliance with national and international human rights standards. **It is recommended that the Government enact a law which sets out when and how agreements under customary justice procedures can be accepted by the formal justice system, as a priority.**
- 5.3. **It is recommended that the Government ensures that local communities stop drafting 'local laws' and/or supporting such activities.** Such laws have no legal basis and undermine the rule of law. They often contravene the existing national legal framework and directly negatively impact on citizen's access to justice – in particular for women



since some purport to regulate domestic violence and limit access to formal justice. These local laws may be incorrectly accepted by rural citizens as official state law, significantly undercutting national efforts to socialize the LADV and other laws.

5.4. A clear and consistent system of data collection on cases involving domestic violence is needed. As the literature review preceding this field work demonstrated, data on domestic violence in Timor-Leste is available inconsistently, and is not reliable. This makes it impossible to accurately map the incidence of domestic violence and understand it, and therefore impossible to properly plan policy, strategies and any subsequent legislation to better combat it. **It is recommended that the Government and justice institutions establish a standardized and reliable method for collecting dependable data on domestic violence – including incident reporting as well as actual cases filed with the formal justice system – which is made publicly available on a regular basis.**

## REFERENCES

Ayuko, Bonita, and Chopra, Tanja (2008). "The Illusion of Inclusion – Women's Access to Rights in Northern Kenya." Justice for the Poor/Kenya and the Legal Resource Foundation, Nairobi.

Baker, Bruce and Scheye, Eric (2009). "Access to Justice in a Post-conflict State: Donor-supported Multidimensional Peacekeeping in Southern Sudan." *International Peacekeeping*, 16:2, 171–185.

Chopra, Tanja (2007). "Promoting Women's Rights by Indigenous Means: an Innovative Project in Kenya." Briefing Note 1.2, World Bank, Justice for the Poor.

Chopra, Tanja and Isser, Deborah H. (2011). "Women's Access to Justice, Legal Pluralism and Fragile States." In Albrecht et al. (eds.) "Perspectives on Involving Non-State and Customary Actors in Justice and Security Reform", pp. 23-38. International Development Law Organization, Rome.

D'Andrea, Claudia (2003). "The Customary Use of Natural Resources in Timor Leste." Discussion paper prepared for a regional workshop on "Land Policy Administration for pro-Poor Rural Growth," Dili, December 2003, Oxfam.

"From Despair to Hope: Women's Right to Own and Inherit Property" Futures Group International & Kenya National Commission on Human Rights (2005)

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

Harrington, Andrew and Chopra, Tanja (2010). "Arguing Traditions: Denying Kenya's Women Access to Land Rights" Research Report No. 2, World Bank, Justice for the Poor.

Harrington, Andrew and Kamau, Winnifred (2009). "Social Context: Considerations and Challenges facing Magistrates in Kenya." Kenya Judicial Sector Assessment, produced for the World Bank (On file with author).

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

Isser, Deborah H. and Lubkemann, Stephen C. and N'Tow, Saah. "Looking for Justice: Liberian Experiences with and Perceptions of Local Justice Options." United States Institute of Peace, Peaceworks Series, No. 63, Dec. 2009.

JSMP (2010). "Sorumutu Rede Advogada Feto ho Autoridade Judisiariu Feto". *Komunikadu Imprensa*, Dezembro 2010. Retrieved online on 10/09/2012 at

[www.jsmp.minihub.org/English/webpage/publica/2010/PrTAFOrganizaSoromutuRedenoJurista\\_t.pdf](http://www.jsmp.minihub.org/English/webpage/publica/2010/PrTAFOrganizaSoromutuRedenoJurista_t.pdf).

JSMP (2005). "Statistics on Cases of Violence Against Women in Timor-Leste." Retrieved online on 27/09/2012 at [www.jsmp.minihub.org/Language\\_English/reports\\_english.htm](http://www.jsmp.minihub.org/Language_English/reports_english.htm).

JSMP (2004). "Women in The Formal Justice Sector: Report on The Dili District Court Dili." Retrieved online on 27/09/2012 at [www.jsmp.minihub.org/Language\\_English/reports\\_english.htm](http://www.jsmp.minihub.org/Language_English/reports_english.htm).

Justice System Program (2011). "Customary Law and Domestic Violence in Timor-Leste. Approaches to Domestic Violence in Timor-Leste: A Review and Critique." UNDP Justice System Program, Dili.

Justice System Program (2010). "Strengthening the Justice System in Timor-Leste. Annual Progress Report 2010." Available online at [www.tl.undp.org/justice/](http://www.tl.undp.org/justice/)

Justice System Program (2008). "Strengthening the Justice System in Timor-Leste. Annual Progress Report 2008." Available online at [www.tl.undp.org/justice/](http://www.tl.undp.org/justice/)

Kane, Minneh et al. (2005). "Reassessing Customary Law Systems as a Vehicle for Providing Equitable Access to Justice for the Poor." Conference Paper, "New Frontiers of Social Policy" (Arusha, December 2005).

Khan, Nasrin and Hyati, Selma (2012): "Bride-Price and Domestic Violence in Timor-Leste. A Comparative Study of Married-in and Married-out Cultures in Four Districts." Fokupers, Dili, Timor-Leste.

Levitt, Peggy and Merry, Sally (2009): "Vernacularization on the Ground: Local Uses of Global Women's Rights in Peru, China, India and the United States." In: *Global Networks* 9, 4. 441-461.

Lubkemann, Stephen, Isser, Deborah and Banks III, Philip A. Z. (2010). "Justice in a Vacuum: The Unintended Consequences of the Constraint of Customary Justice in Post-Conflict Liberia." In D. H. Isser (ed), *Customary Justice and the Rule of Law in War Torn Societies*, United States Institute of Peace (USIP).

National Statistics Directorate, Ministry of Finance, ICF Macro (2010). "Timor-Leste Demographic and Health Survey 2009-2010." Available online at <http://dne.mof.gov.tl/published/TLDHS%202009-10/Final%20Report%20TLDHS%202010.pdf>

Ospina, Sofi (2009): "Cultural Attitudes and Practices in Timor-Leste under the Lens of Selected CEDAW Articles", unpublished.

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

The Asia Foundation (2012): “Ami sei vitima beibeik. Looking to the needs of domestic violence victims.” Dili, Timor-Leste.

The World Bank (2011): “World Development Report. Conflict, Security, and Development.” Washington, D.C.

UNDP, UNICEF and UN Women (2012): “Informal Justice Systems. Charting a Course for Human Rights-Based Engagement.” New York.

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

UN Women (2011): Progress of the World’s Women. In Pursuit of Justice.

### **Legal Documents**

Court of Appeal Decision Proc. No. 80/CO/2011/TR.

Democratic Republic of Timor-Leste: Constitution of the Democratic Republic of Timor-Leste.

Democratic Republic of Timor-Leste: Decree Law no. 5/2004, Community Authorities.

Democratic Republic of Timor-Leste: Decree Law no. 19/2009, Approving the Penal Code.

Democratic Republic of Timor-Leste: Decree Law no. 13/2005, Approving the Criminal Procedure Code.

Democratic Republic of Timor-Leste: Law no. 3/2009, Community Leadership and Their Election.

Democratic Republic of Timor-Leste: Law no. 7/2010, Law Against Domestic Violence.

UNTAET Regulation no. 2001/18 on the Amendment of UNTAET Regulation No. 2000/11 on the Organization of the Courts in East Timor, UNTAET/REG/2001/18.

UNTAET Regulation no. 2000/11 on the Organization of Courts in East Timor, UNTAET/REG/2000/11.

UNTAET Regulation no. 1999/1 on the Authority of the Transitional Administration in East Timor.

## TERMINOLOGY<sup>195</sup>

<i>Adat</i>	Indonesian word for the sacred laws and belief systems on which local justice is based, commonly used in Timor-Leste.
<i>Adat Na'in/Ketua Adat</i>	Customary elder and moral authority dealing for instance with conflict resolution and usually found at the family level. May be a person separate from or the same as the <i>Lia Na'in</i> .
<i>Aldeia</i>	Hamlet; smallest administrative unit in Timor-Leste.
<i>Barlake / Barlaque</i>	Traditional system of exchange of symbolic items, animals and money between the bride's family ('wife-giver') and the groom's family ('wife-taker') as part of the traditional marriage agreement, resulting in mutual obligations, rights, and responsibilities between the groups.
<i>Chefe de Aldeia</i> (Pt), <i>Xefi Aldeia</i> (T)	Elected head of the <i>Aldeia</i> .
<i>Chefe de Suco</i> (Pt), <i>Xefi Suku</i> (T)	Elected head of the <i>Suco</i> .
Community Authorities	Elected local authorities including the <i>Chefe de Suco</i> , <i>Chefe de Aldeia</i> and <i>Conselho de Suco</i> who are governed by Law 3/2009 on Community Leadership and their Election.
<i>Conselho de Suco</i> (Pt), <i>Konselhu Suku</i> (T)	Council made up of a small cross-section of the community including youth and women, which assists the <i>Chefe de Suco</i> .
Customary Law	Set of rules, norms and processes applied by local authorities to resolve disputes at the family and community level. Rules may be written down in local laws but are usually not codified. While customary law is usually described as reflecting long-standing traditions and processes may be quite formalized, customary law tends to be in constant flux and of a flexible nature.
<i>Dame Na'in</i>	Tetun word for the "holder of peace", a customary authority found in a community in Remexio subdistrict, who is a central actor in community conflict resolution.
<i>Dato</i>	Second highest social class assisting the Liurai in tasks such as conflict resolution. Before the establishment of elected

---

<sup>195</sup> Pt = Portuguese term; T = Tetun term

	Community Authorities the <i>dato's</i> role corresponded roughly to the role of the <i>Chefe de Aldeia</i> today.
District Administrator	Appointed head of the district administration. There are 13 districts in Timor-Leste.
<i>Ferik</i>	Female elder of a family or community who may be involved in family level case resolution.
<i>Fetosan-umane</i>	Timorese family system established through marriage and the <i>Barlake</i> system encompassing a complex set of rules, rights, and responsibilities defining the relationship between a groom's and a bride's family. The term is commonly translated as referring to the 'Wife-giver' and 'Wife-taker' clans.
<i>Gasse</i>	Traditional/spiritual healer who solves problems and cures diseases believed to be caused by a curse from the ancestors through the performance of a ritual or ceremony. May be the same or a separate person from the <i>Matan Do'ok</i> or <i>Kuku/Gugu</i> .
<i>Gugu/Kuku</i>	Traditional/spiritual healer who solves problems and cures diseases that are believed to be caused by a curse from the ancestors through the performance of a ritual or ceremony. May be the same or a separate person from the <i>Matan Do'ok</i> or <i>Gasse</i> .
<i>Katuas</i>	Male elders of a family or community, often involved in traditional case resolution. When used to refer to family or local authorities, the term can include male and female elders.
<i>Lia Na'in / Lian Na'in</i>	Tetun term for the "owner/holder of words", a customary and moral authority dealing e.g. with conflict resolution based on customary rules and norms. In most communities, there are <i>Lia Na'in</i> at the family, <i>Aldeia</i> and <i>Suco</i> level.
<i>Lisan</i>	Broad term encompassing local law, social norms and morality, art and rituals, and a system of community leadership and governance.
<i>Liurai</i>	Tetun word for 'king'. Highest social class and hereditary local authority. Before the establishment of elected Community Authorities, the <i>liurai's</i> role corresponded roughly to the role of the <i>Chefe de Suco</i> today.
<i>Matan Do'ok</i>	Tetun word for 'farsight'. Traditional/spiritual healer who can see a person's past and future. He solves problems and cures diseases that are believed to be caused by a curse from the ancestors through the performance of a ritual or ceremony. May be the same or a separate person from the <i>Kuku/Gugu</i> or <i>Gasse</i> .
Sub-District Administrator	Appointed head of the sub-district administration.

<i>Suco</i> (Pt), <i>Suku</i> (T)	Village consisting of a number of hamlets; second smallest administrative unit in Timor-Leste.
<i>Tarabandu</i>	Traditional prohibitions, usually concerning the use of natural resources, agriculture, and sacred natural objects, announced in a public ceremony. Particularly since the 2006 crisis, the term has evolved and is now often applied to written community peace agreements and local laws, often extending the above mentioned prohibitions to include the regulation of social issues such as theft, violence, or the performance of cultural ceremonies.
Tetum / Tetun	One of the two official languages of Timor-Leste.
<i>Uma Lisan</i>	Ritual house in which the ritual items of a clan/lineage are kept commemorating the history of the lineage.
<i>Uma Lulik</i>	Sacred house in which the sacred items of a clan/lineage are kept.
<i>Uma Lulik Na'in</i>	Customary authority who takes care of a family's <i>Uma Lulik</i> (the sacred house of a lineage) and the sacred objects kept inside. May be believed to be able to appease the spirits and lifting a curse.

## ANNEX I: SELECT FIELD RESEARCH STATISTICS

### Interviewee Identity Distribution - Interviews at *Suco* and *Aldeia* level<sup>196</sup>

Sub-District	# of Interviews	# of persons Interviewed	Community Authorities <sup>197</sup>	Traditional Authorities <sup>198</sup>	Spiritual Authorities <sup>199</sup>	Community Members	Church Authorities	Local NGOs <sup>200</sup>
Atabae ( <i>Bobonaro</i> )	24	<b>32</b>	16	7	0	7	0	2
Balibo ( <i>Bobonaro</i> )	31	<b>34</b>	19	7	0	7	0	1
Ermera ( <i>Ermera</i> )	25	<b>39</b>	28	6	3	4	1	1
Fatumean ( <i>Covalima</i> )	20	<b>20</b>	10	3	0	5	1	1
Lacluta ( <i>Viqueque</i> )	20	<b>25</b>	19	5	0	1	0	0
Laga ( <i>Baucau</i> )	22	<b>24</b>	15	3	2	2	1	1
Laleia ( <i>Manatuto</i> )	18	<b>18</b>	16	1	0	0	0	1
Laulara ( <i>Aileu</i> )	23	<b>24</b>	21	2	1	2	0	2
Maubara ( <i>Liquiçá</i> )	29	<b>35</b>	20	3	1	8	0	3
Manatuto ( <i>Manatuto</i> )	27	<b>28</b>	26	1	0	0	0	1
Pante Makassar ( <i>Oecussi</i> )	30	<b>30</b>	15	8	0	1	0	1
Remexio ( <i>Aileu</i> )	33	<b>42</b>	29	10	0	2	0	1
Vemasse ( <i>Baucau</i> )	18	<b>18</b>	13	4	0	0	0	1
<b>Total</b>	<b>320</b>	<b>69</b>	<b>247</b>	<b>61</b>	<b>7</b>	<b>39</b>	<b>3</b>	<b>16</b>

<sup>196</sup> Note that some individuals share several roles, so the number of roles for each sub-district may not equal the number of interviewees if this is the case.

<sup>197</sup> Includes the categories of *Chefe de Suco*, *Chefe de Aldeia*, *Suco* Secretary, Youth Representative, Women's Representative, Sub-district Administrator, Conselho *Aldeia* Representative, Sub-District Administration Coordinator, former *Chefe de Suco*, former *Chefe de Aldeia*, District Development Officer, and *Anciao*.

<sup>198</sup> Includes the categories of *Suco Lia Na'in*, *Aldeia Lia Nain*, *Lia Na'in*, *Ketua Adat*, *Adat Na'in*, *Lia Na'in Barrio*, *Dame Na'in*, *Feto Bo'ot*, *Liurai*, *Chefe de Barrio*, *Xefi Uma Fukun*, *Xefi Uma Kain*, and *Katua*. While the *Suco Lia Na'in* is part of the formal *Suco* structure, they are considered traditional authorities for the purposes of this research.

<sup>199</sup> Includes the categories of *Kuku*, *Matan Do'ok*, and *Amnasi*.

<sup>200</sup> Includes the categories of *Belun* Monitors, FFSO paralegals, and AMKV Focal Points.



**Interviews with formal justice actors and national-level NGOs**

Judicial District	# of Interviews	# of Persons Interviewed	Formal Justice Actors <sup>201</sup>	NGOs / Justice Organizations <sup>202</sup>
Dili	10	<b>11</b>	4	7
Covalima	4	<b>4</b>	4	0
Baucau	4	<b>4</b>	4	0
Oecussi	4	<b>4</b>	4	0
<b>Total</b>	22	<b>23</b>	16	7

	# of Interviews	# of Persons Interviewed
<i>Suco and Aldeia</i> level	320	<b>369</b>
Formal Justice Actors	16	<b>16</b>
NGOs / Justice Organizations	6	<b>7</b>
<b>Total</b>	342	<b>392</b>

---

<sup>201</sup> Includes the categories of Public Prosecutor, Public Defender, Prosecutor General, VPU Police Chief, VPU Police, Judge, and Head Judge.

<sup>202</sup> Includes the Asia Foundation, PRADET, SEPI, JSMP, FOKUPERS, UNMIT (2), and UNMIT-HRTJS.

### Responses to Questions Related to Causes/Reasons for Domestic Violence<sup>203</sup>

Sub-District	# Resp.	# Resp. DV cause	Neglect Duties	Econ. \$ / food	Distrust/ Adultery	Alcohol	Misunderstanding	Wife Doing x <sup>204</sup>	Gambling	Child Issues	<i>Barlake</i>	Other
Atabae	24	<b>17</b>	8	8	9	4	5	1	0	0	2	0
Balibo	31	<b>25</b>	12	10	11	7	3	3	3	0	1	3
Ermera	25	<b>22</b>	2	13	10	2	8	1	2	3	4	2
Fatumean	20	<b>16</b>	8	9	6	1	5	1	2	0	0	1
Lacluta	20	<b>15</b>	9	10	8	6	4	0	1	1	0	3
Laga	22	<b>20</b>	13	1	7	1	0	10	1	0	0	1
Laleia	18	<b>18</b>	13	4	5	5	0	3	0	1	0	2
Laulera	23	<b>22</b>	9	11	6	9	4	3	0	2	1	4
Maubera	29	<b>16</b>	4	11	7	1	4	0	2	0	0	1
Manatuto	27	<b>27</b>	10	13	4	3	4	1	0	2	0	1
Pante Makassar	30	<b>29</b>	23	3	2	1	0	4	0	0	0	3
Remixio	33	<b>19</b>	6	9	10	5	6	1	0	2	1	0
Vemasse	18	<b>18</b>	14	6	7	5	0	4	3	0	0	0
<b>Total</b>	320	<b>264</b>	<b>131</b> 49.6%	<b>108</b> 40.9%	<b>92</b> 34.8%	<b>50</b> 18.9%	<b>43</b> 16.3%	<b>32</b> 12.1%	<b>14</b> 5.3%	<b>11</b> 4.2%	<b>7</b> 2.7%	<b>24</b> 9.1%

<sup>203</sup> Dataset refers to those who provided direct answers to question regarding causes or reasons for domestic violence.

<sup>204</sup> Category includes responses insinuating fault on behalf of the wife, such as wife always asking for things, talking too much, not listening to her husband, not satisfying her husband, demanding money, spending money improperly, leaving the house without telling, beating her children, and disrespecting her husband.