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Timor-Leste and the Empowerment of Women: Access to Justice and the Future for Domestic, Family and Sexual Violence Survivors

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Women in Timor-Leste have long experienced discrimination in health, education, employment and access to justice (UN General Assembly 2008). The prevalence and severity of gender-based violence (GBV) is considered to be a key inhibitor of development in Timor-Leste, preventing women from 'contributing to, and benefiting from, development by restricting their choices and limiting their ability to act' (García-Moreno and Amin 2016; UN General Assembly 2006). This paper considers how Timor-Leste is managing access to justice for domestic, family and sexual violence survivors.

Tackling GBV not only requires legislation to create criminal offences, but also meaningful access to justice, including training police and professionals in investigative techniques, collection of evidence and victim support, and providing suitable courts and judicial training.

This paper examines how Timor-Leste has sought to tackle GBV, specifically 'domestic violence', and how well this has worked on the ground. To this end, we consider Timor-Leste's Law Against Domestic Violence (LADV), the hurdles to, and available evaluation of, its implementation, and the available evaluation of its implementation as well as the improved work on medical forensic protocols and rehabilitation of sexual offenders. Keen to see how Timor-Leste evaluates its own progress, we examine reports from the Judicial System Monitoring Programme for Timor-Leste (JSMP), the referral network necessary for the legislation's implementation, while considering other relevant data and the Psychosocial Recovery and Development in East Timor (PRADET) medical forensic protocol.

In addition to an overview of the background and history, this article will consider Timor-Leste's progress through public laws, its judicial independence and the role of customary law. We conclude that access to justice through effective investigation, charging, legal advice and judicial training is absolutely vital for the protection, health and positioning of women and girls in any future economic prosperity for Timor-Leste. Finally, some policy recommendations are made.

Timor-Leste

The Democratic Republic of Timor-Leste became an independent nation in 2002, after decades of political upheaval and conflict. The country had declared itself independent from Portugal (the colonial power since the sixteenth century) in 1975, but within nine days it was invaded and occupied by neighbouring Indonesia. Following a United Nations-sponsored referendum on independence in 1999, which saw an overwhelming vote in favour of independence, the country descended into a brief but bloody conflict that displaced an estimated 75 per cent of the population and destroyed 70 per cent of the Timor-Leste's infrastructure (World Bank 2015).

The transition to a multi-party parliamentary democracy occurred despite further violent clashes during internal power struggles in the mid-2000s. The 2012 elections led to a coalition government and a peaceful transition to a new prime minister in 2015. State institutions are young and at times weak. Timor-Leste remains a strongly traditional society with an entrenched system of customary law (*adat*) overlaid by Portuguese and Indonesian law during the lengthy period of colonial rule. Against this background, traditional discriminatory attitudes towards women

and girls — particularly relating to domestic violence — remain strong within parts of the Timorese society (Asia Foundation 2004:3).

Timor-Leste's population of approximately 1,185,000 is expected to rise to 2,960,000 by 2050 (United Nations Department for Economic and Social Affairs 2017). The share of women in the formal labour force is 48 per cent compared to 69 per cent for men. In the non-agricultural sector, the female participation rate drops to 35 per cent (International Labour Organisation 2009). Gross national income increased from 2005 to 2010 but reduced slightly between 2010 and 2015. As might be expected, the Human Development Index¹ followed a similar trajectory, putting Timor-Leste in the medium human development category (United Nations Development Programme 2016).

The need to tackle violence against women and girls

Violence against women is not just physical — while it can involve the direct application of force, it can also take the form of emotional/psychological, sexual or financial abuse, or exploitation. The linking factor is the gender-based nature of the abuse. Women in Timor-Leste suffered rape and sexual violence during the pre-independence conflict. In the lead-up to independence, international bodies reported the need for action to improve the situation of female victims.² In addition to dealing with the physical aftermath of the conflict, there were societal issues: women were often deemed to have a lesser status than men.

The persistence of domestic violence in post-conflict countries has been linked to the inevitable fallout from violent conduct learned during engagement in warfare by men and as a result of increased alcohol abuse due to choice, tradition or post-traumatic stress disorder (Palmary 2006:51–54). Domestic violence has also been directly linked to the increased status of women in societies where men perceive a loss of power and authority (Kiawu 2012). This is a significant issue in Timor-Leste where increased alcohol and some drug abuse is linked to poverty and unemployment among young men in particular (World Health Organisation 2009).

It is now internationally accepted that violence against women is a human rights issue. Health consequences from violence and sexual abuse are well

known and evidenced (World Bank 2015), but the impact goes beyond these factors. Sexual violence in general, and domestic violence in particular, is also linked to female employment and education (World Health Organisation 2002). Of itself, work status does not eliminate risk (Dalal 2011:35–44). Sexual violence need not be from an intimate partner to corrode a woman's ability to be economically active in the way she wishes (*ibid.*). Poverty can force women into highrisk, poorly paid occupations³, although progress to better work can mean the risks decrease (Jewkes 2002). It is important to note the effect may be geographical: fear of attack may mean a woman will choose not to seek employment outside her immediate locality. Women and girls are inhibited by the lack of empowerment this brings in reaching their full potential: violence against women is a societal bar to female, and national, advancement (Gerry et al. 2015).

Sexual and domestic violence was a major concern raised at the first National Women's Conference in Dili in 2000 (Allén 2007:1–23). Since then, efforts have been made through legislation and public awareness to combat the structural gender inequalities underlying the disproportionately high level of violence against women and children. A 2009 report prepared by 87 non-governmental organisations (NGOs) on the real life of women in Timor-Leste identified a lack of access to justice for women, a situation compounded by impunity for perpetrators of violence against women. The problem was deemed to be endemic because of the failure to promote human rights and equal recognition and representation for women (NGOs Working Group on CEDAW 2009).

The Demographic and Health Survey 2009–10 in Timor-Leste (National Statistics Directorate, Ministry of Finance, Democratic Republic of Timor-Leste et al. 2010:203–47), which questioned over 13,000 women and 4077 men between the ages of 15 and 49, found that:

- approximately a third of women had experienced physical violence from the age of 15
- 29 per cent had experienced physical violence 'often or sometimes' in the previous 12 months
- women aged between 25 and 29 were the most likely (39 per cent) to report having experienced physical violence
- for married women, the abusive person was their current partner in 74 per cent of cases

- 86 per cent of women and 81 per cent of men thought that domestic violence was in some circumstances justifiable.

Macdonald (2012:7–9) notes a number of factors contribute to the high prevalence of violence in Timor-Leste, but draws particular attention to the issue of bride price (a payment by the groom to the bride's family, unless she is already pregnant) and its propensity to link violence towards women and girls to economic considerations.

Within the traditional customary law system, a woman or girl's bride price was central to the village council's decision-making on restitutive actions. As a result, matters involving violence and sexual abuse are now negotiated in the same ways as theft or misdemeanour-type matters, where reciprocal arrangements are made for the exchange of goods by the male-dominated village councils (Macdonald 2012:7–9). Bride price continues to be a problem, related by Rees et al. (2017:66) directly to intimate partner violence. The National Action Plan on Gender-Based Violence 2017–2021 (NAPGBV) specifically notes bride price-related violence as a form of GBV (Secretariat of State for the Support and Socio-Economic Promotion of Women 2016).

The sexual exploitation of women and girls — whether through direct violence, debt bondage, use of fear or coercion, or from financial motivation — has a uniquely traumatic effect (World Health Organisation 2002). Violence against females can be domestic, intimate or as a result of the actions of strangers. The health consequences are the same. The effect on the availability of healthy women for work for current and future generations is the same.

Rashida Manjoo, while United Nations (UN) Special Rapporteur on Violence against Women, made the need for an internationally binding scheme on violence against women and girls a central focus of her tenure.⁴ As new laws are drafted, it is intended they will incorporate international norms. Our focus in this paper is the LADV because of its comprehensive nature in attempting to tackle one form (albeit broadly drawn) of GBV.

Timor-Leste and the LADV

Timor-Leste has been a member of the UN since independence in 2002. It is now a party to most of the international human rights systems and in particular

has ratified the Treaty for International Covenant on Civil and Political Rights (UN OHCHR 1966a:171); the International Covenant on Economic, Social and Cultural Rights (UN OHCHR 1966b:3); the Convention on the Elimination of All Forms of Discrimination Against Women (UN OHCHR 1979:13); and the Convention on the Rights of the Child (UN OHCHR 1989:3). The Constitution of the Democratic Republic of Timor-Leste came into being in the same year as its independence: 2002. Article 17 of the constitution provides:

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

The GBV challenges Timor-Leste faced were daunting and required a new and holistic approach encompassing prevention, protection, prosecution and monitoring, as highlighted in the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention).⁵

In 2009, Timor-Leste enacted a penal code that provides both offences and penalties. In 2010, the Law Against Domestic Violence came into force as part of a package of reforms that created an expectation in Timor-Leste that the new legislative framework would not just enable the courts to deal with perpetrators but would also improve awareness and quality of life for women and children. The scope and intention behind the LADV was broad and ambitious, especially for a traditional nation emerging from violent conflict. The LADV provides a broad definition of domestic violence as:

physical, sexual, psychological and economic violence committed within a family context where there is some form of relationship of dependence between the victim and the defendant (LADV 2010).

It includes threats such as intimidating acts, bodily offences, aggression, coercion, harassment or deprivation of freedom. The context is 'the family' with or without cohabitation (ibid.). The benefit of defining the scope of domestic violence so broadly is that it outlaws a broad range of behaviours that can cause harm to women.

The LADV contains 42 articles, many of which are designed to interact with Penal Code provisions

covering the same conduct, including homicide and physical and sexual assault. If these crimes occur within the context of a domestic or family relationship as defined in Article 2 of the LADV⁶, they are considered public crimes.

The LADV goes beyond criminalising conduct: it establishes a legal regime that applies to the prevention of domestic violence and provides protection and assistance to victims. It requires the Timor-Leste government to coordinate and develop a system of free services to victims, including support centres, shelters, medical services, support and advice from police and lawyers, counselling, protection, rights to maintenance and provision of basic needs where necessary as well as development of the NAP-GBV.

The NAP-GBV for 2012 to 2015 identified short- and long-term goals as well as how the Timor-Leste government would work in conjunction with education, social services, justice, security and health sectors to achieve these goals. In Timor-Leste most of these services are currently provided by NGOs (Asian Development Bank 2014).

Beyond assistance to immediate victims, the LADV requires measures to raise awareness, provide education, support study and research and create and allow integrated policy, coordination and monitoring. The LADV also provides support and measures for offender reintegration.

The LADV coming into force was followed by a training programme for lawyers and health professionals (Belton 2012). However, over a decade after the formal end of the conflict in Timor-Leste, domestic violence and sexual abuse remain systemic.

The Program of the Sixth Constitutional Government for 2015 to 2017 recognised the need for continuing collaboration between ‘the organs of sovereignty, civil society, religious organisations, NGOs and the community’ (Presidency of the Council of Ministers, Timor-Leste 2015:23-25) and set out further recommendations, promising ‘the Government will continue enhancing its commitment to gender equality between men and women in all spheres of life’ (ibid.). There was a continuing declaration regarding gender equality in 2016 (Ministers Responsible for Gender Equality in the Community of Portuguese-Speaking Countries). In addition, the NAP-GBV for 2017 to 2021 repeated the need for coordination mechanisms and provided a plan with outcomes and funded actions

with collaborating parties (Krug et al. 2002:Chapters 4 and 6).

Tackling the challenges

Support services for victims

State institutions and civil society organisations have come together under the banner ‘Rede Referál’ to coordinate the referral pathway for domestic violence cases. It has not been wholly successful partly because of limited geographical coverage and lack of consistent operating procedures (Office of the Provedor for Human Rights and Justice (PDHJ), Timor-Leste 2015).

In 2002, the Fatin Hakmatek (Safe Place) scheme was established in the National Hospital in Dili (Kendall 2014). Managed by PRADET, it provides:

[a] unique context-sensitive, multidisciplinary service, co-located in the grounds of referral hospitals that respond to the needs of women, children and men experiencing domestic, physical and sexual violence, human trafficking and abandonment in Timor-Leste (United Nations Population Fund 2012).

Other Fatin Hakmatek facilities have been established in referral hospitals in Oecusse (2011), Suai (2012), Maliana (2013) and Baucau (2015), enabling better access to services for victims. The Suai Fatin Hakmatek covers the Covalima, Manufahi and Ainaro districts, with the Suai court dealing with legal cases from all three districts. Oecusse Fatin Hakmatek covers only the district of Oecusse — a largely self-sufficient enclave with its own court and other services. The same difficulties occur in Maliana, except it does not have its own court and instead is serviced by a mobile court from Suai. The referral rate in Suai is extremely low; there are few accredited staff, and limited capacity to store evidence safely and transport clients to the service. The problems in Suai are not apparent in Oecusse or Maliana, although there are ongoing issues with training and staff retention.

Beyond the obvious

Sexual violence within marriage

The JSMP recommended the inclusion of sexual violence in Article 2.2(b) of the LADV as a distinct form of physical violence because it recognises that sexual violence occurs within a marriage. For Timor-

Leste, this is an historic cultural change that gives women the opportunity to tell their complete stories in one set of proceedings. In interpreting the scope of sexual violence, JSMP found the inclusion of conduct that limits or nullifies the exercise of sexual and reproductive rights and other acts not commonly understood to amount to sexual violence (such as sexual harassment, verbal abuse, leering, threats, exposure, unwanted touching, incest, rape, mutilation and ritual abuse) contributes to the emphasis on cultural change (JSMP 2016).

Abuse of children

Violence against children in Timor-Leste has long been a problem and remains so (ibid.:27). In a 2014 report on children's access to formal justice in Timor-Leste, JSMP stated that tackling offending against children was hampered by:

a lack of understanding of the formal justice system, a widespread tolerance of violence against children and a preference for traditional justice resolution mechanisms. Issues such as insufficient and poorly qualified human resources, extensive gaps in legislation, unclear mandates in child protection and a poor understanding and flawed application of the law have been identified as some of the main factors impeding the realisation of children's right to access the formal justice system. The combination of such factors, among others, means that minimum international standards on child justice are not being met in Timor-Leste (Pinto 2014).

In its 2016 report, JSMP noted a particular improvement in sentencing those who offend against children according to the severity of their offending, although the improvement was not consistent across all cases (ibid.:29). In other aspects, justice for children remains elusive, with many instances of abuse not making it to court at all (ibid.:27). There remains no offence of incest with conduct prosecuted as rape or sexual assault; it is only caught by those provisions if the child is under 14 or actual force or serious threats are used (ibid.:30).

A draft law on child protection was considered in 2016 by the Timor-Leste Council of Ministers, but consultation with stakeholders was limited and progress slow.

Police and investigation

A 2013 UN Development Programme report found that investigations were not timely and reports were not being formally made. Although the report was unable to pinpoint why this was the case, the continuing use of *adat* rather than formal LADV systems was identified as one cause. The police do not operate in a vacuum: they are affected by societal attitudes. The LADV systems need to be trusted and respected to be accepted and used. An idea of the problem is given in the 2014 JSMP report:

JSMP is concerned that the police have failed to protect victims of sexual abuse from the public who are watching the trial, as members of the public have been taking photos, laughing and clapping (JSMP 2014a).

In 2004, PRADET produced the first version of its Medical Forensic Protocol (MFP), which provides the capacity to document injuries for crimes of domestic violence, sexual assault and child abuse for adults and children, males and females, enabling early and consistent documentation of evidence for subsequent court proceedings.⁷ The MFP was not used, however, until 2010 because it was originally produced in Spanish (not a Timorese language) and no doctors were trained to implement it. In 2010, the MFP was made available in Tetum (an indigenous Timorese language), English and Portuguese, and selected Timorese health workers, midwives and doctors were trained as accredited medical forensic examiners. This means some provision for effective collection of evidence in the field is now available. The first workers graduated from the PRADET training programme in 2012. There is an ongoing requirement for police training, particularly for prosecutorial ability to detect and respond to escalating behaviours.

The evolution of the PRADET protocol is moving the routine provision of other supporting evidence (such as documented injuries) and taking the role of finding such evidence from the police, making it harder for police to allow *adat* to take over from the formal criminal justice response.

The position of *adat*

Adat is customary law administered historically by community leaders through traditional systems rather than a formal court process. Timor-Leste figures

indicate 79 per cent of violent crimes were ‘resolved by the community’. Macdonald (2012:7–9) found the formal system was markedly underutilised, largely because the repercussions of engaging LADV processes could be ‘catastrophic, including loss of income, lack of access to employment and social stigma for women, their children and extended families’. There appeared to be no formal social security system, no formal system for tracking cases, low priority given to domestic and family violence cases, court delays and a general lack of faith in the formal justice system compared with the customary law system. Overall, there was persistent use of community mediation rather than formal justice measures such as the steps outlined in the Istanbul Convention, which include prevention, protection, prosecution or monitoring.

A common observation in the legal systems of postcolonial states, like the former Portuguese- and Indonesian-controlled Timor-Leste, is the uncertainty of where traditional customary law and religious edicts operate within a new legal system. Consequently, this can create confusion around the effectiveness and application of a new law within a formal legal system⁸, especially when the new law is implemented and socialised without consultation with traditional leaders and integration with existing customary law.

Over two years, the International Development Law Organization (IDLO) undertook research on the various entry points for engaging with customary legal systems (Harper 2011). The report expresses the view that customary law continues to be used because the formal system is inaccessible, dysfunctional or unable to respond to the justice imperatives of customary users. In addition to analysing the characteristics of customary justice systems, the report looked at unsound evidentiary practices in Timor-Leste and considered how customary laws might be integrated into state court jurisdiction or through other mechanisms to create a more holistic approach to rule of law programming. The key message is that:

approaches need to be grounded on a broad and deep understanding of the customary system and adapted to the goal of heightening access to justice’ (ibid.).

Constitutional protection for *adat*⁹ means that ‘norms and customs’ must be recognised and valued unless ‘contrary to the Constitution or any legislation dealing specifically with customary law’ so that it will

still have a place within the legal framework of Timor-Leste.

The Asia Foundation has gathered female survivors’ experiences. The interviewed women viewed *adat* and the formal system not as two distinct options, but as a continuum of options within the two systems. The outcome was their focus, not the means by which it was reached. The desired outcomes differed, ranging in the group interviewed from stopping recurrence of a ‘one-off’ incident to full separation from the violent partner (Asia Foundation 2015:91). It is necessary to consider these desired outcomes in the context in which the women live — prosecution is easy to demand from outside, but may be harder for a woman to live with in her immediate social network. Forcing women towards formal systems alone is thus likely to be counterproductive for the women themselves.

Prosecutorial conduct

Problems exist with domestic violence complaints being dealt with inappropriately by police at each stage. JSMP reports in 2013 (JSMP 2013b) and 2016 (JSMP 2016:17), together with the review of the LADV specifically (JSMP 2013a), found undercharging undermines the LADV’s message that domestic violence is unacceptable and should be dealt with by formal courts. Applying LADV principles of support, assistance, maintenance and rehabilitation, the end goal of justice is to punish perpetrators and provide systemic and systematic support to the victim, including safe shelters for women and children separated from the family, counselling for perpetrators to deal with their behaviour and upskilling for women so they are economically independent and able to choose whether to return to their spouse or family. These benefits elude women who are unable to engage in a formal justice system undermined by a police force that continues to prioritise traditional practices.

The JSMP has focused on the LADV and its implementation at every level. Neither lawyers nor health workers have received comprehensive training on the content or implications of these two laws for their professions. The JSMP was well placed to conduct the training needed by health and legal professionals (Belton 2012) and to monitor access to justice. Its 2014 annual report took on board the difficulties with removing judges that we have set out below. Its 2015

training programme included ‘Access to Justice and Women’s Rights’, intended:

... to educate key community leaders—about access to justice and women’s rights under the Constitution of Timor-Leste and associated laws and the ways in which local leaders can assist members of the community to access formal and traditional justice (JSMP 2015).

The JSMP’s role is key in strengthening understanding about legal issues and increasing access to justice. For example, ineffective cooperation between police and prosecutorial authorities was raised in the 2013 UNDP report relating to police. The 2014 JSMP report noted some improvements in this respect, but problems remained with lack of police knowledge, with prosecutors having to send cases back to the police because information is missing, particularly in cases involving women and children.

Legal advice

In 2013, the UNDP reported there were only four Public Defender Offices (PDOs) in district capitals, causing insufficient access to legal advice outside these areas and a poor understanding of the role of PDOs.¹⁰ The UNDP report 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. It also urged that 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 (United Nations Development Programme 2013). This, however, requires a significant increase in resources.

The Institute for Policy Analysis of Conflict (IPAC) 2015 report, *Justice at the Crossroads in Timor-Leste* (Cohen et al. 2015), raised existential concerns about the legal profession, without which there would be no legal advice for any parties (JSMP 2006:20). The problem is exacerbated by the limited number of slots available for trainees, delays in implementing legislation and access to legal aid being ‘seriously curtailed’. The IPAC report found the Timorese wanted to ‘fight for justice’ because of their history but were disillusioned because of the limited access to registration and government control of the profession. Only six per cent of the membership of the Association of Lawyers

in Timor-Leste was registered in Timor-Leste (Asia Foundation 2013).

Proposals suggest training exchanges with Portuguese-speaking countries and significant legal reform, but in the meantime access to suitably trained lawyers and funded assistance is a significant problem for the people of Timor-Leste. These structural issues, together with the observations of civil society that progress on evidence collection is not well understood, are one reason few cases actually reach the formal system (Cohen et al. 2015). The IPAC report particularly highlights the problem of lawyers understanding the need to separate victims and perpetrators and then putting that separation into effect (ibid.). The 2016 JSMP report refers to the ‘lack of a proper legal aid system’ (JSMP 2016), echoing the UN Committee on the Elimination of all Forms of Discrimination Against Women 2015 report’s urgent recommendation that Timor-Leste provide an effective legal aid system (UN CEDAW 2015).

Court actors

Before the LADV, there were concerns about the legal competency of the Timor-Leste judiciary because of lack of training and experience. In one domestic violence case, an all-male panel of judges stated that ‘the cultural situation in Timor-Leste allows a man to control the actions of his wife’ (Harris-Rimmer 2009:5). In 2008, a Baucau court sentenced a father to five months suspended imprisonment for beating and strangling his child. For four rapes of his daughter (aged under 18), another father received a sentence of four years (East Timor Law and Justice Bulletin 2013).

Following a sentencing analysis of the Bacau District Court by JSMP in 2008 (prior to LADV) (JSMP 2008:17), JSMP found sentences were not in proportion to the crimes committed. Article 62 of the Penal Code requires that if there is a sentence that does not involve deprivation of liberty and would ‘adequately and sufficiently [fulfil] the purpose of the penalty’, that should be preferred. Sentences of up to three years may be suspended for between one and five years.

While the report acknowledged the decisions as positively recognising criminal acts of violence against women as criminal violence, the majority of the decisions imposed suspended sentences, which suggested the judiciary was using its power to choose a suspended sentence while giving insufficient weight

to the need for sentences to fulfil the purpose of the penalty. In most cases, this was because the offences were treated as light maltreatment and it was believed that the victim and perpetrator would reconcile.

This attitude of the courts leads to undesirable consequences. Women feel intimidated by an ineffective legal process that provides no convincing alternative to customary law where men would also go unpunished. The concern was that increased application of suspended sentences would not be an effective outcome to deal with the problems of the traditional justice system — that is, reconciliation of the victim and perpetrator without any significant deterrent to the perpetrator and no assistance to the victim for the trauma endured.

While suspended sentences may have merit in maintaining a functional family unit, they are only really useful where the violence ceases through a combined threat of prison and rehabilitative intervention. When the new legislation was created, it was recognised that suspending sentences should not become the norm for domestic violence cases and that effective training and monitoring of the judiciary was vital.

In October 2014, government resolutions effectively removed eight international judges in the context of a corruption investigation against politicians and others (Wyvill 2014). Contracts of international advisors at the Legal Training Centre were not extended and they left in 2014. The loss of an experienced and trained judiciary together with trainers was a blow to the judicial system, judicial independence and public confidence in the formal legal system (JSMP 2014b). It was inevitable domestic violence cases would be affected, and JSMP noted immediate negative impacts on cases already in the system (East Timor Law and Justice Bulletin 2014): cases that had been before international judges have now been indefinitely adjourned. Training has also been delayed for magistrates, judges and lawyers (JSMP 2016:8).

The number of judges, lawyers and other court staff increased until 2015, although the JSMP considered the number was still insufficient to ‘provide and administer justice properly and effectively’ (JSMP 2014a). The 2015 IPAC report *Justice at the Crossroads in Timor-Leste* (Cohen et al. 2015) detailed the need for professional training, access to justice and meeting basic fair trial standards to end dependence on international judicial personnel. Following the expulsion of international judges and trainers, the

budget for the justice sector was cut by nearly a quarter in 2016 and court support staff roles were also cut. A lack of legal training in 2016 resulted in no increase in lawyers and judges that year. The 2016 JSMP report also repeatedly raises concerns about lawyer independence and training.

A positive initiative to deal with the lack of resources is the mobile court programme (supported by the UNDP) that began in 2010 and takes courts into rural areas. However, the scheme has not worked as well as envisaged. JSMP found the courts hear a huge number of cases in a short time (in one sample, 53 cases, including two rapes, in five days), suggesting that serious cases are not being given the time or the attention they need (JSMP 2016:15). There has been little improvement in the venues used for the court sittings, which often do not have the facilities to hear sensitive cases appropriately. This failure to implement basic protections for victims has led to public humiliation rather than public justice (ibid.).

One improvement is in court actor behaviour and the general treatment of women in court. Following recommendations from the Committee on the Elimination of Discrimination against Women (CEDAW) in 2015, JSMP noted that judges and other court actors were applying CEDAW principles and being sensitive in their language and approach to women (JSMP 2016:25).

As noted earlier, a problem prior to the LADV was the inadequate and inappropriately lenient sentencing of domestic violence perpetrators. In the first three years of the LADV’s implementation¹¹, suspended sentences were used for 52 per cent of cases, while in 2016 (JSMP 2016) 66 per cent of defendants in monitored cases received a suspended sentence; in a further 9 per cent of cases, defendants received suspended sentences with ‘rules of conduct’. Fines issued in 24 per cent of cases until 2013 declined to 11 per cent of monitored cases in 2016. These figures suggest a move from fines to suspended sentences and from simple suspended sentences to those with rules of conduct in 2016.

The JSMP has noted continuing problems with monitoring despite the increased use of rules of conduct. The revocation of orders for noncompliance JSMP noted in 2014 continued in 2016, but the lack of effective monitoring means delays for revocation which still undermine sentences (JSMP 2013b, 2016).

Compensation was applied to 1 per cent of cases in 2016, despite compensation for loss and damage resulting from a crime being obligatory under the Penal Code and despite inclusion in the medical forensic protocol of a section to be completed by the examiner describing the impact of the assault on the victim. Compensation can deal with the potential negative economic impact on a woman of reporting domestic violence (JSMP 2013b). The consequences of the failure to order compensation are exacerbated by the failure to make use of protection orders where it is appropriate to remove perpetrators from the family home. This forces the victim into temporary accommodation or to remain at home at risk. In 2013, JSMP recommended that civil compensation in all domestic violence cases be prioritised over a fine (*ibid.*). It is clear from the 2016 figures that this is not happening.

Policy recommendations

The need to tackle violence

After independence, the challenges in Timor-Leste became increasingly transnational through travelling abusers (often serial intimate partners), human trafficking and online sexual exploitation (which has a particular effect on the progress of children). Policy on the effective employment of women and economic prosperity in Timor-Leste cannot ignore violence and exploitation by intimate partners or the effect of such conduct within relationships upon children. To relegate the sexual element to what is known as ‘domestic’ violence is to misunderstand the power of sexual exploitation in all its forms — whether by direct or attempted acts, use of coercion or the imposition of fear perpetrated through physical or verbal behaviour, and threatened or actual use of private sexual images — to limit female autonomy.

On the LADV

The LADV and the NAP-GBV, particularly funded and planned, are welcome, but the question is whether, nearly eight years after the LADV came into force on 7 July 2010, it is making much difference to the lives of women and children in Timor-Leste.

Victims’ services in Suai

On the ground, it is likely the number of referrals to the Suai Fatin Hakmatek would increase if community attitudes changed, reporting was easier for victims,

police were better resourced and transportation was more available, which would ensure victims were given safety and treatment in a more timely way and would enhance the quality of recovery and evidence.

Children

Regarding the inclusion of sexual violence in Article 2.2(b) of the LADV, production of one overarching piece of legislation has limitations, particularly where it is meant to apply to both women and children. In Timor-Leste, consideration needs to be given to more specialist legislation for sexual violence and abuse, and for offending against children.

Police

Effective training of police is vital and can itself affect societal views. If the police take domestic violence seriously and offer protection and support to victims, it becomes harder for the rest of the community to treat it as a matter for community mediation without consideration for the victim’s rights, feelings or wishes. At a practical level, the 2013 UNDP report also found that the victim was often relied upon as providing the sole evidence in the case, leaving her open to pressure from family and the wider community. Effective evidence gathering is vital to provide other evidential support for prosecutions. Without safe and effective collection, particularly of intimate evidence in sexual cases, progress towards access to justice will be extremely slow and outcomes unjust.

Adat

The LADV’s effort to incorporate some alternative dispute resolution processes is a step in this direction, but it is important it is not used as a mechanism for a return to traditional exclusive and discriminatory practices. It is open to consider movement towards restorative processes, but in practical terms this is safe for women and girls only once analysis is able to demonstrate that the public nature of LADV has fully bedded in. Greater societal change is necessary to make the outcomes sought and the likelihood of their achievement better.

It is all the harder for such change to be achieved within the *adat* system, which is entrenched in patriarchal traditions. Customary law is not just part of the formal legal framework of Timor-Leste, but also the societal framework for both men and women.¹²

Formal structures need to provide the desired outcomes for women, but women also need to have a true choice of outcomes. This choice comes not from the law, but from society itself — prosecution and separation will not be desired if it is the woman who suffers as a result. Although negative financial results for women who separated from abusive partners were not found in The Asia Foundation's small sample, it cannot be ruled out that fear of negative financial results prevented the other women in the sample from separating. The negative effect may, in any event, be social rather than financial.

A balanced relationship between the formal and customary must be achieved with sufficient respect for the customary system and the desires and position of women to enable it to have a place while moving away from the traditional patriarchal approach and outcomes. The LADV allows initial steps to be made in this direction through the sentencing process instead of the current practice of 'resolving' cases without charge.

Prosecutorial conduct

In 2013, JSMP raised the lack of adequate funding and The Asia Foundation noted no clear legal guidance for prosecutors. In its 2016 report, JSMP continued to cite the problem of prosecutors still not considering all the facts of a case and the medical evidence of the victim's injuries before charge (JSMP 2016:20) — the medical protocol is of little use if prosecutors do not use the evidence. There is still no guidance for prosecutors (ibid.). This must be addressed and is key to improving the use of evidence gathered once a woman has taken the rare step of reporting to the police.

Ineffective cooperation between the police and prosecutorial authorities

This is a matter of training and, with sufficient resources, this can be effectively addressed, particularly with use of evidence obtained under the PRADET protocol.

Legal advice

The PDO is the main body tasked with providing victims of domestic violence with legal advice.¹³ Although at first blush this is an odd role for defence lawyers to take, it makes sense to use resources that already exist, as long as sufficient training and resources are put into enabling the PDO to provide this extra legal advice to a different client group. The PDO should be capable of providing legal advice

to victims and also defending accused persons, but issues of conflict arise along with the risk that one role may be prioritised at the cost of the other. Inauspiciously, training lawyers did not even begin until 2010 (JSMP 2006).

Court actors

For domestic and sexual violence laws to have any credibility, they cannot be undermined by the judicial process. There is no point in evidence being gathered, police submitting files to the prosecution and the correct charges being pursued if cases are not dealt with appropriately at both the trial and sentencing stages. It is vital that judges undergo training to be able to recognise domestic violence as a public crime and punish it accordingly. This is important both for judicial instructions provided during trial and sentencing purposes. The 2014 expulsion of eight international judges, together with budget restraints, arguably did not just stall, but set back the rise of the formal legal system. How can women have confidence in a system that fails to provide enough lawyers and judges? Loss of confidence in a relatively new system risks a return to traditional discriminatory practices. A justice protocol was signed between Timor-Leste and Portugal in 2016, but progress is currently unclear (Government of Timor-Leste 2016).

Sentencing

While in many circumstances a non-custodial sentence may be preferable to a custodial penalty, a sufficiently robust mechanism must exist to monitor and enforce compliance with the court's order, otherwise the penalty will have no real effect on the defendant. The strength of a suspended sentence is the possibility of reintegration of the offender at the end of the sentence, but that must not be sought at the expense of protecting the victim and marking the offender's conduct as unacceptable and deserving of state-enforced punishment.

There is a clear need for sentencing guidelines to assist judges in determining the appropriate penalty in cases of domestic, family and sexual violence and to achieve consistency and transparency as well as publicly assist in changing behaviour through apology, reparation and attendance at intervention or supervision. Sentences must then be monitored to ensure compliance and speedy court proceedings, with revocation where appropriate when court

orders are breached. Following sentencing, there is a lack of perpetrator programmes in Timor-Leste. Perpetrators' beliefs and behaviour are not formally challenged and they are not reintegrated in any formal way, despite this being recommended by the JSMP in 2013 (JSMP 2013b).

Finally

If women are to be economically active individuals, they must have effectively protected rights against domestic and sexual violence. Equality, non-violent conflict resolution in interpersonal relationships, the eradication of gender stereotypes and the promotion of mutual respect will provide a solid foundation for the future and prosperity of the people of Timor-Leste. Achieving this will require professionals in close contact with victims to be trained, awareness-raising social campaigns to be undertaken and support and treatment programmes to be integrated in the sentencing system.

Timor-Leste might well have been in a position to consider integration of restorative principles through sentencing, but the removal of international judges and the effect that will have on knowledge, experience and practical application makes this a long-term issue rather than a current imperative. It is clear there has been some progress, but the future for domestic, family and sexual violence survivors in Timor-Leste is currently less predictable, particularly for children, and the struggle for access to justice and just outcomes continues. The prevalence of aggressive behaviours by men, seen so often in post-conflict societies, demonstrates that making laws to combat such conduct is not enough: such laws need to be implemented properly for women and girls to have any hope of empowerment and for Timor-Leste's legislative progress not to become a failed experiment.

Conclusion

It is axiomatic that the LADV's purpose was providing access to justice when dealing with domestic and sexual violence victims, perpetrators and stakeholders. Given the contents of the Constitution of Timor-Leste, the LADV cannot oust the application of traditional law, but applying traditional practices must not be prioritised over constitutional requirements for gender equality. Principles at work in the combination of the Timor-Leste Constitution, its Penal Code and the LADV are capable of working effectively, provided that this

combination is properly applied and the judiciary is able to have regard for all the legislative measures without fear of removal from office or deportation. In the 14 years since independence, Timor-Leste has made significant progress from a conflict-ridden society to one with some structural stability. In the context of domestic violence, the legal frameworks that now include the LADV provide some of the elements necessary to address both the ending of impunity for perpetrators and societal attitudinal change. The implementation of this in just over a decade has been far from smooth, and progress can largely be attributed to the work of organisations like JSMP that provide the monitoring that enables evidence-based conclusions about the effectiveness of constitutional guarantees for gender equality. The current fear, engendered by systemic challenges, is that progress is too slow, engagement with formal systems is too limited and the formal system itself has such significant challenges that access to justice for the most vulnerable in Timor-Leste is endangered.

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Endnotes

- Using the Human Development Index which bases the measure on life expectancy at birth, average number of years of education and gross national income.
- For example, United Nations Commission on Human Rights (2006). See also Human Rights Watch (2001).
- The links between sex work and violence are well known and thoroughly documented. See, for example, Church et al. (2001:322–524). In this paper, the authors found that half of all prostitutes working in the outdoors had been subjected to violence by clients in the preceding 12 months (ignoring violence from pimps and/or intimate partners).
- For example, UN OHCHR (2014).
- Timor-Leste is not a signatory to the Istanbul Convention, but the pillars of the convention are used here as a useful guide.
- Article 2 of the LADV defines domestic violence as physical, sexual, psychological and economic violence committed within a family context where there is some form of relationship of dependence between the victim and the defendant.
- While Timor-Leste has some matrilineal areas, patrilineal areas are more common – see Niner (2015).
- The formal legal system includes the [United Nations Transitional Administration of East Timor](#) (UNTAET) Regulations (2000), [Constitution of Democratic Republic of Timor-Leste](#) (2002), the [Penal Code](#) (2009), the [Civil Code](#) (2011), and international and East Timorese law.
- In section 2(4) of the [Constitution of Timor-Leste](#).
- There are some civil society organisations providing legal advice, but this is on a very small scale.
- All figures for this period: JSMP (2013a).
- For more on the centrality of *adat*, see Niner (2015).
- Some civil society organisations are providing legal advice, but this is on a very small scale.

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