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"Ami Sei Vítima Beibeik": Looking to the needs of domestic violence victims

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Foreword

This report was produced under the Access to Justice Program, funded by the United States Agency for International Development (USAID) and implemented by The Asia Foundation in Timor-Leste since 2002. The report arose out of the need for greater understanding of the legal needs of women to assist with service delivery for women. The research was designed to provide particular support to the Victim Support Service (VSS) of the national NGO Judicial Systems Monitoring Program (JSMP), which provides free legal assistance to women and children victims of domestic and sexual violence. While the report focuses mainly on legal issues arising out of the resolution of domestic violence cases, its findings are of broader use to all those agencies working to end violence against women in Timor-Leste.

The research team [see below] comprised an Asia Foundation consultant and a staff member from Fundasaun Alola. The Asia Foundation appreciates having had the opportunity to collaborate with Fundasaun Alola on this research. The author of the report is Deborah Cummins. Asia Foundation consultant Ruth Hugo conducted the legal review of the report.

The research team

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A. Introduction

Addressing the high rates of domestic violence in Timorese communities has been an important policy issue for the Timor-Leste Government over the last few years. Following dedicated lobbying by civil society and strong support in parliament, particularly through the women's caucus, the Law Against Domestic Violence was passed in 2010.[1] There are many important changes in the new legislation, including defining specific criminal acts as public crimes of domestic violence[2] with attendant procedural and reporting obligations[3], and clarifying the rights of victims to access various support mechanisms including women's shelters, legal representation, medical and psychological assistance, counseling, and maintenance[4].

In May 2012, the Timor-Leste government adopted the National Action Plan on Gender-Based Violence, which outlines the responsibilities of different sectors of the government and the role of civil society in addressing gender-based violence through prevention, provision of services, prosecution and coordination. As two years have now passed since the Law Against Domestic Violence was adopted, it is timely to consider the impact that the legislation is having on the lives of women who have experienced domestic violence, and what more needs to be done to improve their situation. This research has been undertaken to assess the various enabling and constraining factors for effective implementation on the ground from the perspective of women who have experienced domestic violence. The research is also an attempt to analyse some of the supporting mechanisms that are needed to translate victims' legal rights into practical outcomes that are responsive to their social, economic and cultural needs.

Consistent data on the prevalence of domestic violence is difficult to obtain, partly due to the different methodologies and definitions of domestic violence from the various studies that have been conducted over the past ten years, and partly due to the fact that it is not yet possible to get such data from the police, prosecutors' office or the courts[5].

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[1] The Law Against Domestic Violence, Law 7/2010, was approved by the Timor-Leste Parliament on 3 May 2010, promulgated into law on 21 June 2010, published on 7 July 2010 and entered into force one day later, on 8 July 2010.

[2] Prior to the adoption of the Law Against Domestic Violence (hereafter LADV) relevant criminal provisions were available in the RDTL Penal Code (Decree-Law 19/2009 (hereafter PC)) - and to a certain extent in the Indonesian Penal Code. However, while some criminal offences are public crimes - for example murder, serious offence against physical integrity and mistreatment of a spouse (Articles 138, 146, 154 PC) – prosecutors tended to charge under other crimes that can only be prosecuted upon complaint of the victim (semi-public crimes). The LADV therefore changed the status of the 'simple offense against physical integrity' (Article 145 PC) - normally a semi-public crime - to a public crime <u>if</u> committed within circumstances defined in Article 2 LADV (family context). See TAF/JSMP *Addressing Gender-based Violence in Timor-Leste. A Manual for Legal Aid Lawyers,* Volume I, p.45 and JSMP (2011) *Legal Protection for Victims of GBV: Laws Do Not Yet Deliver Justice*, Dili, Timor-Leste, March 2011, p. 5 & 9.

[3] Criminal acts falling under Articles 153, 154, 155 & 156 PC (mistreatment of a disabled person, a spouse or a minor) are automatically considered domestic violence crimes resulting in the corresponding procedural and reporting obligations (Article 35 (a) LADV) whereas other criminal acts are domestic violence crimes (with corresponding procedural & reporting obligations) <u>only if</u> circumstances described in Article 2 LADV (family context) exist (Article 35 (b) LADV). The latter crimes include murder & aggravated murder, termination of pregnancy, simple & serious offence against integrity, torture, sexual coercion, rape, child prostitution, sexual abuse of a minor, sexual acts with an adolescent and sexual abuse of a person incapable of resistance (Articles 138, 139, 141, 145, 146, 167, 171, 172, 175, 177, 178 &179 PC). See TAF/JSMP *Addressing Gender-based Violence in Timor-Leste. A Manual for Legal Aid Lawyers,* Volume I, p.24.

[4] RDTL, Law Against Domestic Violence (Law 7/2010), Articles 15-18 (shelters), 20 (emergency assistance), 22 (hospital services), 23 (social assistance services), 25 (legal assistance) and 29-34 (maintenance).

[5] This is currently being addressed by the 'Integrated Information Management Systems Project', a project of The Justice Facility, which is intended to capture data from the police, prosecutor's office, courts and prisons. Statistics were not yet available at the time of writing this report.

In 2002 and 2003, the International Rescue Committee (IRC) published two separate reports on the prevalence of gender-based violence in Timor-Leste and on the use of local justice mechanisms to respond to gender-based violence crimes. IRC's work was ground breaking in that the research was the first attempt to understand the prevalence of gender-based violence in Timor-Leste. Their research on local justice mechanism was also unique in post 1999 Timor-Leste in that it was based on interviews with women who had experienced domestic violence and been through a local justice process.

The Timor-Leste Demographic and Health Survey conducted in 2009-2010 gives some indication of the prevalence of domestic violence in Timorese communities. According to this survey, 38 percent of women reported having experienced violence since the age of 15—the majority of perpetrators being either partners or husbands[6]. In addition, a survey conducted in 2008 reported 45 percent of police officers pointed to domestic violence as the most serious security problem in their community.[7] Under-reporting of domestic violence is a global phenomenon[8] and many people continue to see domestic violence as something that is 'normal' yet highly private[9], thus it is likely that the actual rates are significantly higher.

Previous research has identified attitudinal shifts that still need to be made if the rates of violence are to be reduced. The Demographic and Health Survey revealed that 86 percent of women and 80 percent of men believe that a husband is justified in beating his wife for neglecting her duties such as burning the food, refusing to have intercourse with him, or neglecting the children. Similar results were also found in a study conducted in Ermera, Atauro, Venilale and Manatutu.[10] As discussed throughout this report, this acceptance of violence in certain circumstances can also close off modes of support and recourse, as victims' families may not support them, and may in fact blame them for the behaviour that led to the violence.

There are also important areas for improvement in implementing different aspects of the legislation. While most stakeholders were happy with the content of the legislation, the major challenges that were identified were issues of implementation. In particular, a central finding that was repeated by every research participant is that while some women are able to access appropriate assistance, many women are trapped by economic dependency and a lack of social support, rendering them unable to access their legal rights. As one woman from Baucau explained,

> We in Timor, we have law. While we cannot lose our culture, it must always be strong - our culture must walk together with the law. But I see the reality, it is not like that. There is no justice for women. It is only there for people who have money… The people in Dili need to see that the law is not being applied. Now, women are suffering; men have all the power. They can sleep with whoever they want, get a new wife if they want. But because they give children to us, this makes it really hard for women. I think a lot about this. If I had only one or two children, I could take them to my family. But so many children, my family can't look after them all.[11]

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[6] National Statistics Directorate, *Timor-Leste Demographic and Health Survey 2009-2010*, Ministry of Finance, December 2010

[7] Chinn, L. and Silas Everett (2008), *A Survey of Community-Police Perceptions: Timor-Leste in 2008*, The Asia Foundation, Dili, Timor-Leste

[8] See for example Frieze, I.H., Browne, A. (1989) Violence in Marriage' in L.E. Ohlin & M. H. Tonry (eds.) *Family Violence.* Chicago, IL: University of Chicago Press.

[9] See for example RHRC, CDC, IRC (July 2003), *A Determination of the Prevalence of Gender-based Violence among Conflict-Affected Populations in East Timor*, Michelle Hynes, CDC, Jeanne Ward, RHRC, Kathryn Robertson, IRC, Victor Balaban, CDC, Mary Koss, University of Arizona, Chadd Crouse, CDC, Mary Kay Larson, CDC and International Rescue Committee, *Prevalence of Gender-Based Violence in East Timor*, submitted by Vijaya Joshi and Maggie Haertsch (Dili, IRC, July 2003)

[10] National Statistics Directorate, *Timor-Leste Demographic and Health Survey 2009-2010*, Ministry of Finance, December 2010; Trembath, Anna and Damian Grenfell and Carmenesa Moniz Noronha (2010), *Impaktu hosi ONG Nasionál sira-nia Programa ba Jenéru iha Komunidade Lokál sira iha Timor-Leste,* RMIT University, Melbourne, p.45

[11] Woman interviewee 11, 15 May, 2012

As well as economic dependency and the impact of a gendered division of labour that prevails throughout Timorese village life, other issues that were identified by participants in this research included a lack of responsiveness of some local authorities and the police, the length of time it takes to hear a case through the courts, insufficient support mechanisms for women waiting for their case to be heard, insufficient civic education (particularly relevant for more remote communities), and the inability to access important rights within civil law if the situation results in separation or divorce. There were also a number of ways forward that research participants identified as effective in dealing with some of these obstacles.

As many of the stakeholders interviewed emphasised, 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 (including the potential for inciting further violence, without having sufficient protection). In this context, it is clear that while the creation of a strong legal regime that enumerates and supports the rights of domestic violence victims is an important first step, more is needed to ensure effective implementation of the law. These issues are outlined throughout the remainder of this report.

B. Research Methodology

This project focuses on the contextual needs of domestic violence victims by considering two interlocking questions:

(i) what are the legal assistance paths that are currently used in dealing with domestic violence situations, and what practical constraints do domestic violence victims face in accessing formal and informal assistance that is appropriate to their needs?

(ii) what are domestic violence victims' unaddressed civil law needs, which may constrain her ability to make free, informed choices and impede her ability to access her legal rights?

While the first question relates to the many factors that determine a woman's ability to access the informal and formal justice system, the second question draws attention to other areas of law and potential support which can allow a domestic violence victim to better meet her and her children's needs. Considering the multi-layered obstacles that are faced by domestic violence victims, these two areas are key to transforming a victim's formal legal rights into practical outcomes that are responsive to her social, cultural and economic needs.

Interviews were conducted with 24 women who had experienced domestic violence (referred to in this report as 'women interviewees'). The women ranged from 22 to 70 years of age, and came from a variety of educational and professional backgrounds. Some were from urban centres, but the majority were from rural areas. Income ranged from no fixed source of income, in which the woman was dependent on credit in order to buy food, to $500 per month.

Of the 24 women interviewed:

- **Twenty-one (21) women** had separated or divorced from their partner or husband.
- **Twenty-two (22) women** had gone through local processes in an attempt to have her case resolved.

- **Twenty-two (22)** women had gone to the police in an attempt to have her case resolved.

The stories that the women interviewees shared of their experiences when attempting to access assistance, and of their needs going forward, forms the centerpiece of this research. The results from these interviews are supplemented by interviews and one focus group discussion (FGD) that were held with 37 local legal and non-legal stakeholders, including local NGOs, police, local leaders and others, to obtain an understanding of the enabling and constraining factors of the local governance environment in dealing with issues of domestic violence. A full list of stakeholder interviewees is included in Appendix A of this report.

The research team used purposive sampling to identify potential interviewees, which included former clients of the program's legal aid partners, former clients of women's shelters, and recommendations from other local women's organisations. Access to these women would not have been possible without the able assistance of local stakeholders and the program's legal aid partners. The research team comprised one Timorese researcher from Dili and one Australian researcher. Nearly all interviews were conducted in Tetun, with a small minority of interviews being conducted in Makassae, the lingua franca of Baucau.

Fieldwork was conducted in Dili, Baucau and Suai from March to August 2012. These case study sites were chosen to reflect a range of different communities, including urban and rural, east and west, those areas that are closer to Dili and those that are further away. Importantly, also, it included a mixture of cultures that use patrilineal and matrilineal marriage and governance systems.

Scope for Research

An initial decision that needed to be made before undertaking this research concerned the scope of the investigation. This research focuses on a narrow subset of victims of domestic violence to consider **the experiences of women victims of physical violence, perpetrated by an intimate partner or husband**. It does not include cases of domestic violence that were inflicted by other family members (for example, against the daughter-in-law), or by parents against children, or cases where the victim was male. Nor does it specifically include women who had experienced other types of violence as defined in the Law Against Domestic Violence, including sexual, psychological or financial violence[12] (although in practice, every interviewee had also experienced one or more of these other types of violence).

There were three main reasons for focussing on a narrow subset of domestic violence victims. First, it was important that this research not add to existing confusion around the use of the term 'domestic violence'. There are many pieces of research that have been conducted over the past twelve years, using varying definitions of domestic violence.[13] This inconsistency in the definition of domestic violence carries implications for the ability to build up a body of evidence and expertise in Timor-Leste—which is a particular issue for quantitative data collection, but is also important for the integrity of qualitative research results. As such, it was decided that the best approach was to focus on a specific subset of domestic violence victims that were more clearly defined. Second, because the contextual needs of women victims of spousal violence varies significantly from the needs of other domestic violence victims (such as children), it was important that these details be captured in a specific piece of research and not be lost in broader generalities about needs of domestic violence victims. And finally, as previous research indicates that

[12] RDTL, Law Against Domestic Violence, (Law 7/2010) in Article 2 (b) defines four forms of domestic violence: Physical, sexual, psychological and economic.
[13] The promulgation of the LADV which defined domestic violence under the law was only promulgated in 2010.

women victims of physical violence perpetrated by an intimate partner or husband form a significant section of the population,[14] it was decided that this cohort warranted more detailed attention.

There is a final sampling issue to be raised, as 23 of the 24 women interviewees were accessed through local stakeholders. While this was necessary to fulfil the ethics requirements of this project (see following section), it also narrowed the spectrum of women to those who had had some experience beyond their individual communities. This meant that the research tended to pick up more severe cases, and cannot claim to represent the experiences of women who for whatever reason did not take her case to the police or external stakeholder.[15] To mitigate this, the research team went to significant effort to interview women who came from remote communities, to capture some of the limitations for women who normally do not have access to NGOs or government services. Nonetheless, the results from this research must be understood in this context, and cannot claim to reflect the full spectrum of domestic violence that is experienced across Timor-Leste.

Research Approach and Ethical Considerations

While interviewing victims of domestic violence is a particularly sensitive undertaking, the value of speaking directly with victims cannot be over-stated. It is worth noting that in many cases, women interviewees provided quite different information from local stakeholders. In particular, they were able to provide significantly more nuance regarding the reasons for not leaving a violent situation, the structural impediments that they encountered when asking for help, and their experience of local and formal justice systems.

However, interviewing women about such sensitive issues requires a different approach. The potential impact that the research might have on interviewees was considered carefully before commencing the research, and different approaches and methods were discussed with NGOs and various individuals with expertise in the field. The Victims Support Service (VSS)[16] and Pradet both provided extensive input on methods to use in ensuring free, informed consent was given, minimising the risk of retraumatisation, and ensuring that adequate support facilities were available to any interviewees who wanted psychological or legal assistance. The research framework, including risk assessment, is attached (Appendix B).

Given these requirements, the research team used purposive sampling to identify potential interviewees who would not be put at further risk through participating in the research, and 23 of the 24 women interviewees were identified through local stakeholders who had intimate knowledge of their situation. These stakeholders were each given a copy of the research framework in Tetun, and informed of the requirements for risk assessment in an initial meeting before they contacted potential respondents. They were also asked to explain clearly to the women that the research had no connection with their individual case, and this was also emphasised by the researcher before beginning the interview. One woman was identified through personal connections, also following the same risk assessment.

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[14] See for example National Statistics Directorate, *Timor-Leste Demographic and Health Survey 2009-2010*, Ministry of Finance, December 2010

[15] In 2003, the International Rescue Committee (IRC) conducted extensive research into the experiences of women whose cases were resolved locally, providing important insights into the strengths and weaknesses of local justice processes from the women's perspective. This research is available at Swaine, Aisling (2003), *Traditional Justice and Gender Based Violence,* International Rescue Committee, Dili, Timor-Leste. As it is almost a decade since this research was conducted and many things have now changed, this is a potential area for further research.

[16] Since publication of this report, VSS has become an independent legal aid NGO, *Asistensia Legal ba Feto no Labarik (ALFeLa),* Legal Assistance for Women and Children.

Prior to interview, a 'consent form' (Appendix C) was used as a tool for explaining the purpose of the research, and the use to which the information would be put. As confidentiality over such sensitive issues is a serious concern for many women who have experienced domestic violence, the team also explained that each research team member had signed a confidentiality agreement prior to fieldwork commencing. In addition, interviews were coded so that following the interview, the respondent could not be identified by name. The respondents' sub-village or *aldeia* was not identified, for the same reasons.

Interviews were held in neutral spaces, generally in the office of the stakeholder who had contacted the woman. This was for two reasons: first, it was felt that the woman would feel safer in these places to talk about these issues, and where necessary the stakeholders could also sit in on the interview to provide support to the interviewee. And second, it was less unusual for the woman to go to the offices of local stakeholders, so this minimised the potential for gossip, and for the interview causing unintentional harm. Interestingly, one participant stated that she thought the research should have been more open, also involving the men, not just the women.

In order to approach the interview with respect and give the interviewee space to 'tell her story', the research team took an open-ended approach to interviewing, while also encouraging women to comment critically on formal and informal processes that they may otherwise consider normal and not worth commenting on. This approach allowed women to tell their stories in their own way—which was then followed up with specific questions if key areas of information were not covered. This method ensured some level of consistency between interviews, which was key to facilitating comparative analysis and allowing the emergence of broader themes. Most interviews were recorded on dictaphone and transcribed as soon as possible after the interview. Permission was always sought to use the dictaphone before the interview, and the purpose of the recording and the interview clearly explained.

Sometimes, issues of concern arose during an interview which required follow up. Where it was appropriate, some interviewees were referred to support agencies to follow up, wherever possible referring her back to the same stakeholder who had recommended her as a potential interviewee, in order to capitalise on existing trust relationships, in line with the wishes of the woman. One case was also brought to the attention of the referral network in Dili, for further monitoring.

C. The Economic and Social Context

For all of the women who participated in this research, economic pressures played a fundamental role in the decisions that they made, including whether or not they decided to leave their violent spouse. While women from all classes, backgrounds and educational levels may be subject to domestic violence, their relative 'bargaining' capacity in dealing with family pressures and local authorities, and their ability to leave a violent situation if they choose to do so, is heavily influenced by their economic capacity. This issue of livelihoods provides a clear point of focus for policy-makers and service providers.

As the majority of Timorese are subsistence farmers in the rural areas, the situation of women victims of domestic violence also needs to be contextualised in the economic structures of village and family life. Historically in Timor-Leste, there were strong gender roles in which men were responsible for some areas of village life and women were responsible for others. These gender roles were also cross-cut by a local governance system which divided people into classes, according to their sacred house, *uma lisan,* and place within that family structure, with different

individuals carrying particular roles in the village.[17] This gendered and class-based division of labour was necessary for the community as a whole to survive. However, as other influences have since entered, including the monetary economy and a greater openness to opportunities outside the village, this fine balance also has other implications. Across Timor-Leste, it is common for girls to receive less education than boys,[18] and for women to be confined to working in the home and raising the children, without an independent income of their own.[19] For many women, this system still works to provide for their needs. However, for women who are vulnerable, including domestic violence victims, this economic dependence means that they have no power over their situation. For such women, the experience of being able to earn an income of their own has proved transformative. As one woman interviewee related:

> Now, it is much better. In the past, I had to do everything according to what he wanted. I had to look after the house, look after the animals, crop the vegetables, sell them at the market. When I went to the market I would sell the vegetables. Then he would ask me to account for all of the money I got. So I would give it all to him. If I needed money, I needed to ask permission from him. But now, no. Now, I can earn my own money, I can look after my own life. I can look after myself and there is no-one to tell me that I can't do things, there is no-one to stop me from doing things or getting value from my work.[20]

In addition to the issues surrounding the gendered division of labour and economic dependence of women, village structures also tend to bind women into existing relationships (including their marriage) as they relate to the broader family unit. According to the village economy, every individual is bound into networks of mutual exchange, in which family patrons are responsible for looking after those lower down the family hierarchy, providing land for crops and housing—often in exchange for labour or a portion of the crop's yield. For more vulnerable members of the family, such as women who have been abandoned by their husbands, the broader family unit may choose to take on some level of responsibility for their upkeep—for example, by requiring the husband to pay for the upkeep of his family, or through providing for them directly.[21] For women who are bound into these social structures, leaving a violent husband also means leaving the protection that is provided, however imperfectly, due to their place in the family unit. As a result, these women are faced with the choice of either protecting themselves from violence, or of ensuring that they can provide for their children—but often not both.

In this context, divorce not only means divorcing the violent husband; it means divorcing the entire family, and potentially alienating her own family because divorce is not an option that is considered acceptable. Of the 24 women interviewed for this research, 21 had separated from their spouse, whether through formal divorce or separation. A common theme throughout these interviews came back to problems that arose because the community viewed her lack of a husband with suspicion, leading her to be stigmatised as a prostitute or a slut. Particularly for those women who were dependent on finding casual manual labour, this limited their ability to find work or to find other economic support in the community. For one woman, her inability to earn money of her own meant that she continues to live with her violent husband against her will. As she explained, "I would like to leave,

[17] Corcoran-Nantes, Yvonne (2009), 'The politics of culture and the culture of politics—a case study of gender and politics in Lospalos, Timor-Leste', *Conflict, Security and Development* 9(2)
[18] National Directorate of Statistics (2010), *Household and Population Census Volume 4: Suku Report*, Table 3, p. 195
[19] MDG Spanish development fund programme for Timor-Leste (2008), *Revised Standard Joint Programme Document*, November 2008, p.4.
[20] Woman interviewee 18, , 25 April, 2012
[21] Cummins, Deborah (2010), *Local Governance in Timor-Leste: The Politics of Mutual Recognition*, PhD thesis, University of NSW, Australia, p. 142

but I have small children—who would look after them? It is no problem for me to leave the house, but I must think about my children."[22]

These attitudes also have an impact on the ability of stakeholders to support victims. The coordinators of a women's shelter in Baucau are often accused of supporting divorce and ripping families apart, encountering many problems in the community as a result[23]. Similarly, as the head nun responsible for the women's shelter in Suai recounted, "when we began the shelter, people thought we were gathering 'bad' women, prostitutes, because they could see that they did not have a husband".[24] However, possibly because of their moral authority as leaders in the Catholic church, the nuns were able to turn this around: "we slowly taught them that this was not the case, that our program was to make women strong. Now they understand. In the past, teachers would not allow girls who had been sexually abused into their class because their names had been dirtied, but now they understand the situation and receive the girls"[25].

While village life is commonly thought to provide mutual support for community members due to high levels of social capital, that support can be denied to those who are somehow marginalised or already vulnerable. For one woman who was mentally unstable from 1999 until 2006 due to the physical and sexual violence inflicted on her by pro-Indonesia militias, no-one in the community supported her when she told of her husband's violent behaviour because she was stigmatised as *ema bulak* (crazy)[26]. Another woman, who had been the forced to marry an Indonesian official during the occupation, was regarded in the community as *feto manas* (slut) and was therefore unable to receive community support[27]. For a third, because she is of a smaller ethnic group (Tetun Terik) in an area that was predominantly Bunak (her husband and his family were also Bunak), she could not get any help from family, local authorities, or the police[28]. In addition, many women spoke of the difficulties that arose in their case being heard locally because they did not have an effective advocate from their family—a brother, or father or uncle—because these family members were dead, or their family not important enough, or because their family believed that a wife should simply accept the violence for the sake of family unity.

In addition to lack of community support, women may also be vulnerable to local authorities who make their lives difficult in other ways. This was the case for one woman interviewee who is not currently registered in her *suku*. As she explained it, when she separated from her husband and moved back to her mother's village or *suku*, the village chief, or *xefe suku,* refused to register her, saying that she needed to get paperwork from her husband. However, when she returned to her husband's *suku*, the *xefe suku* said that as she was no longer living there he could not help her[29]. This has many flow-on implications for her ability to access various rights, including her practical access to government benefits, and her ability to vote in the most recent elections.

To date, the formal system does not take into account these local realities. As one woman explained of her situation, "some people are educated, some people are rich, but some are illiterate and really really poor. So I say, we all have rights to take it to court. But I have so many children. I have no money. I don't think the law is really there for me."[30]

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[22] Woman interviewee 7, Baucau, 3 April 2012
[23] Domingas Tilman, Coordinator Uma PAS, Baucau, 3 April 2012
[24] Madre Mafalda dos Santos, Dili, 20 April 2012
[25] Madre Mafalda dos Santos, Dili, 20 April 2012
[26] Woman interviewee 10, 15 May 2012
[27] Woman interviewee 2, 3 April 2012
[28] Angela Gusmao Pereira, Coordinator Uma Mahon Salele, Suai, 23 April 2012
[29] Woman interviewee 13, 15 May 2012
[30] Woman interviewee 10, 15 May 2012

As well as the problems in accessing their rights through local leaders, the police, prosecutor's office and the courts, this economic reality of women needs to be recognised as a fundamental obstacle for accessing formal rights.

D. The Criminal Process

Local Justice Processes

Most research on local justice processes in Timor-Leste indicates that as with other matters that are considered less significant, many people prefer to have cases of domestic violence resolved by customary authorities, and only brought into the formal system when local methods have failed.[31] While the law against domestic violence defines it as a public crime, it is still commonly viewed as a 'normal' but highly private matter, to be resolved in the home either informally or through a customary process.[32] In 2008, respondents to ATJ's survey reported that the most common authorities to be approached in situations of domestic violence were: *xefe aldeia* (26 percent), family (22 percent), *xefe suku* 22 percent, and elders 16 percent. Only 7 percent said they first contacted the police.[33] This is the case in rural areas[34], and is also the case in Dili[35]. As the *xefe suku* of Caicoli explained, he believes it is best to have cases resolved in the *suku*:

> *Tarabandu* is recognised by the state[36]. And my population trusts *adat* and culture from their ancestors more than the law. Because of this, it is better if they just resolve through the *suku* processes… If it is a grave case involving blood or other injuries, they will kill a cow. If it is a small case where they are arguing, they can buy rice and other food, and then bring this to the *suku* and we will resolve the problem. This makes people scared to do it again. When they do this, the problem doesn't come up again.[37]

While this may be interpreted as revealing a generally high preference for domestic violence cases to be resolved locally, interviews with victims revealed a more complicated story. Of the 24 women interviewed for this research, 22 went through local justice processes.[38] Only one of these 22 woman reported that she was ultimately satisfied with the process and outcome. As this woman had independent economic means as a teacher, it was also clear that she had a greater degree of bargaining power than many other interviewees who participated in this research.[39] However as discussed in the methodology section, because women interviewers were accessed through local stakeholders this by definition does not include women who chose not to take their matter into the formal sphere. The experience of women in these 'silent' cases would need to be the subject of another research project.

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[31] Mearns, David (2002) *Looking Both Ways: Models for Justice in East Timor,* Sydney, Australian Legal Resources International. November 2002; Hohe, Tanya. & Rod Nixon (2003) *Reconciling Justice: "Traditional" Law and State Judiciary in East Timor.* United States Institute of Peace Project on Peacekeeping and the Administration of Justice, January 2003

[32] Maria Carvalho Freitas, women's representative *Konsellu Suku* Bidau, 11 August 2012

[33] Report published by The Asia Foundation (with support from USAID and the Justice Facility - a bilateral cooperation between the governments of Timor-Leste and Australia) (2008), *Law and Justice in Timor-Leste: A Survey of Citizen Awareness and Attitudes Regarding Law and Justice*, Dili, Timor-Leste, p. 52

[34] Domingas Tilman, Coordinator Uma PAS, Baucau, 3 April 2012

[35] Maria Carvalho Freitas, women's representative *Konsellu Suku* Bidau, 11 August 2012

[36] Such comments are based on RDTL Constitution Article 2 (4) 'State shall recognise and value the norms and customs of Timor-Leste that are not contrary to the Constitution and to any legislation dealing specifically with customary law'.

[37] Hipolito Sarmento, *Xefe Suku* Caicoli, Dili, 20 April 2012

[38] Note that some also went through additional processes through formal mechanisms.

[39] Woman interviewee 9, 3 April 2012

For many other women, while the case was heard and peace was made, it was not effective in making the violence stop. For example, one woman interviewee explained that she had a pile of documents from various local processes over the years, in which she and her husband had come to an 'agreement'. However, despite these interventions, the violence never stopped.[40] In addition, there were many cases in which the women were unable to have their case heard or taken seriously by local leaders—indicating the important point that local processes are not equally available for everyone in the community. This was the case for one woman, whose local leaders did not consider the severe violence her husband and his family had inflicted on her, but instead adjudicated the purported 'cause' of the violence, the husband's complaint that an animal under her care had died due to her negligence. In this interview, many years later, she emotionally insisted that she was not responsible for the animal's death.[41] These stories indicate a general theme in which to satisfy other family or communal priorities, the needs of the victim were not dealt with.

An important factor in gaining some measure of justice through *adat* for domestic violence situations is the ability and willingness of the victim's family to stand up for the victim's rights. The importance of family support has also been noted in previous research.[42] Here, gender and class intersect. For those women who are more vulnerable, whose family members are dead or for other reasons unable or unwilling to advocate for her interests, local processes are often unavailable. In one case, the victim's father, mother, brothers and sisters were all dead; as there was no-one to advocate for her interests, she could not convince local authority figures to take her issue seriously[43]. In a second case, because the woman had been a forced to marry an Indonesian military officer during occupation, she was dismissed as '*feto aat'* (bad woman), abandoned by her family and her community.[44] In a third case, the suspect was in fact the *xefe suku* and respected by traditional elders in his community; as such, local processes were not available to the woman.[45]

A second common theme is that while the perpetrators and/or victims' families may support them to have their case heard through *adat*, they will rarely encourage them to take the matter through the formal judicial system. The vast majority of women interviewed for this research stated that if they finally did get their family to recognise the violence, they were under intense pressure from both families to not separate from the husband. Sometimes, this was because of family members' self-interest. As one woman explained, "I did not like when they resolved through the family, because this only gave benefit to the family. They could sit together, eat together and have a party. But there was no benefit to me."[46] In this case, her family simply blamed her for separating from her violent husband, because they believed it was a 'normal' household problem—in colloquial terms a case of a plate and spoon or '*bikan* and *kanuru* banging together'.[47]

The lack of support received by the victim from their family is not always because of selfishness on the part of the family. This reluctance to support formal processes may also be reflective of local realities, particularly for those who live in the rural areas. Very often, the families of women who are being abused believe that if she takes it through the formal process, her husband will leave her and that this will put her in an even more difficult situation. The logic

[40] Woman interviewee 23, 11 August 2012
[41] Woman interviewee 18, 25 April 2012
[42] See for example Swaine, Aisling (2003), *Traditional Justice and Gender Based Violence,* International Rescue Committee, Dili, Timor-Leste, p. 14
[43] Woman interviewee 7, 3 April 2012
[44] Woman interviewee 2, 3 April 2012
[45] Woman interviewee 16, 23 April 2012
[46] Woman interviewee 21, 7 May 2012
[47] *'Bikan* and *kanuru'*: the plate and spoon. Domestic violence is often referred to as the plate and spoon banging together, signifying its normality and triviality for many people

is that if her husband leaves her (or she leaves him) she will lose her social standing and effectively become an outcast, losing her place in the community and her means of economic support through the family network. As one woman in Suai explained, while her family were angry that she had been abused, they also encouraged her to reconcile with her husband because without her place as a married woman she would have no real life[48]. Eventually, following a number of years of violence, she chose to go against this advice and as a result her family has disowned her.[49] As the coordinator of Fokupers in Suai commented, while the family may honestly believe that they are advocating for her interests, "the family hasn't been the victim of violence; it is the victim who is on the receiving end."[50]

Similar sentiments were made by a woman from Baucau, whose husband was beating her and threatening to kill her because she would not accept a second wife and traditionally welcome her into the family. When she ran for protection from the violence, her children were traumatised and neglected by both the husband and the second wife. As she explained,

> My own family said I should just go through *adat*, bring the families together again. But they are not thinking about my children's future, what about that? So I have been going to get different people's ideas, gone to [legal aid service provider] ECM, to World Vision, to the women's shelter, to find out my options.[51]

As she explained, she is in the best position to make an informed decision, however the lack of support that was available to her has made life very difficult. Her current focus is on considering all of the different resources and modes of recourse that will be available to her, enabling her to make a set of choices that will work for herself and her children.

As well as family pressure, the emphasis on domestic violence as an essentially private matter means that victims who do choose to take their situation to the police may be blamed for not respecting local processes.[52] This has implications for women who then seek support from their local leaders. As the *xefe suku* of Caicoli explained,

> ...when a problem arises in the *suku*, the people must respect local leaders, they are not allowed to take the problem first to the police. If a victim takes the case directly to the police they embarrass us. So when the problem comes back to the *suku*, they must pay a fine.[53]

There is clearly more work to be done with local leaders regarding their responsibilities under the new legislation. For some, there is an ongoing need for further socialisation as they are still unaware of what the new legislation means for them—particularly those in more remote areas.[54] For others who have already received training, there is a need to encourage, support and monitor how they are interpreting their role in relation to domestic violence.

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[48] Woman interviewee 18, 25 April 2012
[49] Woman interviewee 18, 25 April 2012
[50] Fatima Sara dos Reis, Coordinator Fokupers, Suai, 22, April 2012
[51] Woman interviewee 11, 15 May 2012
[52] See for example, Hayati, Selma (2010) *Baseline Study on Gender-Based Violence in Covalima and* Oecusse, Oxfam, Dili Timor-Leste, November-December 2010, p. 7; Cummins, Deborah (2010), *Local Governance in Timor-Leste: The Politics of Mutual Recognition*, PhD thesis, University of NSW, Australia, p. 148-49
[53] Hipolito Sarmento, *Xefe Suku* Caicoli, Dili, 20 April 2012
[54] Zelia Trinidade, Prosecutor Suai District, Suai, 24 April 2012

Other Roles for Local Authorities

Moving beyond dispute resolution, there are many roles that the *xefe suku* in particular can play in fulfilling their legal obligation to assist in preventing domestic violence in their community.[55] One very important role for them to play is referral to police and other support agencies. Interviews with women victims and local stakeholders, including members of the referral networks at the district level, indicated that local leaders were often very effective when they took on this role.

The referral network in Suai reported that one of the major 'wins' for them has been the impact of socialisation with local leaders, through a coordinated effort with the prosecutor and Vulnerable Persons Unit (VPU) within the police, the nuns who run the women's shelter, and local NGOs[56]. According to most members of the network, *xefe suku* now understand that their role is to refer complaints to the VPU, and some *xefe suku* also sit on the referral network at the District level. As a VPU officer reported, they now have a general understanding that when they hear of a case, the *xefe suku* will contact the VPU and they will talk with the victim together. This was also supported by a *xefe suku* who is part of the referral network in Suai. As he explained it, making domestic violence a public crime should not be seen as undermining their role in the community, but rather as changing their responsibilities under the law from dispute resolution to referral[57]. They still have important protective roles to play, as they are 'closest' to their community so are best placed to know when a domestic violence situation occurs. In addition, he argued, there is a strong role for local leaders in prevention, particularly in the socialisation of men. As he explained it, "I am available to work with NGOs to combat domestic violence in my *suku*. But it is even better if training is not just given to women, but also given to men who can then learn to change their understanding and behaviour."[58]

The importance of local leaders in referring women to other support agencies was also underlined by an interviewee in Baucau, who explained that her *xefe suku* had played a pivotal role in advising her to seek other support:

> I give credit to the *xefe suku*, he is a good person. He explained that he had done some mediation for us in the past, but our problem has been going on for a very long time. And because women now have rights, he said I had the right to go to the legal aid service, because he didn't think my husband would listen to him [the *xefe suku*]. The *xefe suku* said to me, 'I think you should go directly to them. Because if we try to resolve it here, there will be a lot of manipulation from the family. It is better for you to go outside for help'."[59]

As all stakeholders who were interviewed in this project commented, however, there is still much more work that needs to be done in socialising local leaders on their new role. While experiences with local leaders ranged from extremely positive to extremely negative, the stories of women who participated in this research underline the central role that they play in shaping important aspects of women's lives. This is particularly the case for women in more remote, rural areas, as alternative support mechanisms are unavailable. But it is also important in urban locales. For example, when the economic situation of a domestic violence victim forces her to continue living with her husband while waiting for her case to be heard, the VPU in Dili always coordinate with her *xefe suku* and *xefe aldeia*, to ensure that they can give her protection.[60] A similar approach is also taken in Suai, if the woman prefers to return to her community rather than take shelter in the women's shelter[61]. It should be noted, however, that in

[55] RDTL, 'Law on Community Leadership and their Election (Law 3/2009), Article 11
[56] Herculano Granadeiro, The Justice Facility Suai, 19 March 2012
[57] Agustinho da Silva, *Xefe Suku* Debos, Suai, 25 April, 2012
[58] Agustinho da Silva, X*efe Suku* Debos, Suai, 25 April, 2012
[59] Woman interviewee 11, Baucau, 15 May 2012
[60] Daria da Costa Ximenes, National VPU Commander, Dili, 17 April 2012
[61] Madre Mafalda dos Santos, Dili, 20 April 2012

situations where the woman returns to live with the perpetrator, their ability to protect her is limited and there is an unsurprisingly high rate of recidivism[62]. Before the woman returns to live with her husband, the VPU counsel her in being compliant and avoiding arguments with her husband to avoid the possibility of future violence.[63]

The mixed experiences of research participants with their local leaders indicate the importance of continuing to engage positively with them, while also educating and monitoring them on how they provide support to domestic violence victims in their community. They are potentially a vital resource. As local leaders often command a high degree of legitimacy in their community, they could become involved in prevention and education activities, working to change community attitudes of domestic violence that are inclined towards blaming the victim. They can assist by supporting women directly and referring cases to other support agencies. They could potentially have a strong role to play in monitoring certain civil law elements—such as the implementation of child maintenance orders. And finally, they have an important role to play in supporting and protecting domestic violence victims who are reintegrated back into the community. In most cases, these roles can only be effectively fulfilled in coordination with other stakeholders, including the police, local civil society and other groups. At a recent seminar of the national NGO Judicial Systems Monitoring Program on the LADV, many village chiefs stated that they understood that domestic violence is now a public crime, but were disappointed at lack of support they received from the state, including the PNTL, to ensure proper follow up of cases they reported to the police. Thus coordination and support is critical.

The Police: Asking for Help

Of the 24 women interviewed for this research, 22 had gone to the police for help. All of these women had experienced violence many times in the past, and it was only when they were in fear for their lives that they ultimately decided to go to the police—and often in the heat of the moment. In nearly all of these cases, they had also attempted to address the violence through local processes—either before or after going to the police. However, in all but one of the cases this had proved unsuccessful in stopping the beatings.

As one woman explained, she had been beaten and abused by her husband for over a decade before she ultimately decided to take the matter to the police. In the most recent violent incident, he put a machete through her head, splitting her skull. The reason that she had not gone to the police before then was because she was frightened of what her husband would do when he found out. Her economic situation combined with her isolation meant that she had to walk many kilometres to the police station, and her absence would be noticed by her husband. As he controlled her movements closely, she was afraid he would kill her if he suspected she was talking to the authorities.[64]

Significantly, the reluctance of women to go immediately to the police when their husband first became violent was not because they were unaware of their formal right to go to the police. Every interviewee— even those from more remote *suku*—explained that they were always aware that they could go to the police for help. Rather, as with the case described above, there were other, more practical reasons that the women interviewees raised when explaining why they did not bring the violence to the attention of the police or other authorities. These included fear of repercussions from her violent partner, lack of trust in the police, concern over how to manage financially (particularly if she had children to care for), pressures from her family or community to 'make her marriage work', a lack of confidence and taking the blame for the violence upon herself, as well as many other reasons. Among these

[62] Daria da Costa Ximenes, National VPU Commander, Dili, 17 April 2012
[63] Madaleina Ximenes Freitas, VPU Subsection chief, Baucau, 9 August 2012
[64] Woman interviewee 10, 15 May 2012

often interrelated reasons, economic pressures were the issues that were most frequently raised. The importance of economic issues was echoed repeatedly by many different stakeholders, including women's shelters, legal aid organisations, the Ministry for Social Solidarity (MSS), the police and the prosecutors[65]. In addition, the distance from the subdistrict police station and the intimate nature of village life was another common theme, raised repeatedly by women interviewees from rural *suku*. While women from Dili said they could potentially disguise a visit to the police station, the stakes were much higher for women in rural *suku*—and the danger that much greater if the police did not respond properly to her complaint.

As the legal regime no longer allows victims to withdraw their domestic violence complaint, statistical data is not available on the number of victims who wish to withdraw a complaint, and the reasons for withdrawal. However, previous studies can give some insight. In a study of sexual and domestic violence offences registered with the Dili police in 2005, almost 50 percent of cases were withdrawn on the woman's initiative[66]. In a separate study conducted in 2006 conducted by the Judicial Services Monitoring Programme (JSMP), respondents who had withdrawn their case stated their primary reason was economic pressures. Other important factors included family pressure, fear of the court process, and fear of separation or divorce. Only 8 percent listed their primary reason as pressure from the perpetrator.[67] This last finding, however, does not necessarily indicate a lack of pressure from the perpetrator. It may equally be indicative of the severity of the violence that prompts the woman to go to the police. For those who feel that their lives are in danger if they stay with their husband, pressure from the perpetrator may only serve to reinforce their initial decision to leave. Similar insights were given by a VPU official in the Baucau police. As she explained, most domestic violence victims ask to withdraw their cases, and it is often a difficult task to explain to the woman that they are unable to do this. The most frequent reasons that have been raised when they request withdrawal also revolve around economic concerns: fear that her husband will want to divorce her, and what that will mean for her; and her lack of a home and economic capacity to care for her children[68]. There are also some women who go to the police in order not to press charges, but to scare their husbands into stopping the violence—as was the case with one elderly woman interviewee who, in her own words, was "too old to leave my husband".[69]

Police Responsiveness

The Vulnerable Persons' Unit (VPU) of the PNTL has the main responsibility for responding to and investigating domestic violence. The VPU is under the Criminal Investigation Service at the national level and the Criminal Investigation Section at the district level. [70] At the district level, the VPU officers – including the VPU Commander – are under the District PNTL Commander. Based on the stories of the women interviewed, it appears that district community police are also frequently the first point of contact in responding to domestic violence cases. Community police are district based and report to the district commander.

Despite the LADV being in place just two years, based on interviews with the women and other stakeholders, the PNTL has been extremely successful in disseminating information through the institution that domestic violence is

[65] Joao Sancho Pires, Baucau District Second Commander PNTL, Baucau, 9 August 2012
[66] De Sousa, Rosa (2005), 'Women of Timor-Leste: Seeking Freedom in a Free Nation', *Development Bulletin* 68, pp. 34-35, p. 34
[67] JSMP (2006), *Victim Support Service Mid-Year Report 1 January – 30 June 2006,* Dili, Timor-Leste, p. 13
[68] Madaleina Ximenes Freitas, VPU Subsection chief, Baucau, 9 August 2012
[69] Woman interviewee 4, 3 April 2012
[70] VPU as such is not listed in the Organic Law of Timor-Leste's PNTL (Decree-Law 9/2009), only its overarching Criminal Investigation Service (national) and Criminal Investigation Section (district) - Articles 25 (e), 35 & 37 (1)(d).

now a public crime. The fact that PNTL officers across units and districts understand that the law has changed and that domestic violence is no longer a semi-public crime is not an insignificant gain for PNTL.

The women's stories however indicate that, despite this, there remain critical challenges with the responsiveness of the police. Once a woman has made the decision to report to the police, the inability of the police to respond adequately was an issue that was raised repeatedly by women and local stakeholders who participated in this research. The stories that these women recounted in their dealings with the police were particularly concerning given the history of their cases, in which most women had commonly endured many years' of violence and only gone to the police once in fear for their lives. The responsiveness of the police was often very individual, varying significantly from one case to the next. Some women reported that they were successful in having their cases lodged with the police, and that they were largely happy with the support that the police gave them. However, other women experienced significant difficulties with how the police had dealt with their case. Problems with the police were severely exacerbated when there was a conflict of interest—in particular, when a member of the police force was himself a suspect.

Prior to the introduction of the domestic violence legislation in 2010, it was a common complaint that victims would go to the police station to make a formal complaint, only to be sent back by the receiving officer to traditional authorities to have their cases heard through *adat*[71]. This was also a common theme that was raised by the women who participated in this research, many of whom had been sent back by the police to traditional authorities in the past. However, with the new legal regime the responsibilities of the police have been more clearly defined, and they are now required to always treat domestic violence as a public crime. Police now also have to ensure victims receive support through referral to relevant services (medical, counselling, shelter and legal assistance)[72]. In all case study sites, local stakeholders confirmed that this has resulted in a marked change in police behaviour. It was commented many times that the training that has been given to the police on their new responsibilities has meant that they now know their responsibilities and will not send a victim back to local authorities. This was also confirmed in interviews with the women. As one woman from Baucau explained,

> This was not the first time I went to the police, I had been to the police many times before now, always coming and going. Other times, they sent me back so we made peace through *adat*. The family tried to resolve it, killed a pig, a goat, bought palm wine and cigarettes. We kept making peace, but the violence didn't stop. But this time, it is a crime." [73]

For this woman, while she was very critical of the length of time she waited for her case to be heard, she considered the fact that the police were required to treat her case as a crime a major win. Several times during the interview, she stressed that domestic violence "is now a crime".

This and other stories that were recounted by the women interviewees give a positive indication that socialisation of responsibilities under the new legislation is reaching the police. However, there were also many issues that were raised. These varied across the different case study sites. In Baucau, while there were some allegations that the police continue to discourage women in making a complaint[74], most interviewees stated that the police were doing

[71] See for example, Swaine, Aisling (2003), *Traditional Justice and Gender Based Violence,* International Rescue Committee, Dili, Timor-Leste, 18; Cummins, Deborah (2010), *Local Governance in Timor-Leste: The Politics of Mutual Recognition*, PhD thesis, University of NSW, Australia, p. 149

[72] RDTL, Law Against Domestic Violence (Law 7/2010), Article 24.

[73] Woman interviewee 12, 15 May 2012

[74] FGD Baucau Referral Network, Baucau, 4 April 2012, Woman interviewee 11, Baucau, 15 May 2012

a good job in the context of limited resources. In Dili, responses were more mixed, with some claiming that the police were unresponsive, treating it as '*bikan* and *kanuru*', and others stating that they had received good support. Interviews with stakeholders and victims in Suai were most concerning, with complaints that the police did not register many domestic violence cases, and of conflict of interest arising in two cases in which a police officer was himself a suspect.

None of the women interviewed reported the police actively sending them back to traditional authorities since the new legislation has been in place. However, according to stakeholder interviewees in Baucau and Suai, the police have simply replaced this practice with inertia in accepting and formally lodging cases. In many cases, 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 not then follow up[75]. When the woman returned to the police station to ask about the progress of her case, she would be told to return home, that it was 'in progress' and they would deal with it 'tomorrow'.[76] Alternatively, the researchers were told that the police would make the woman wait, humiliated, for unreasonable lengths of time in the police station.[77] Often, the woman was badly injured and had brought her children with her, so as it became clear that the police would not help her, she had no choice but to simply return home.[78]

Women often have a lot to lose in going to the police. If it is discovered that a woman went to the police but she was unable to secure protection, it is likely that she will be beaten again. As one woman from Suai recounted:

> There was one man in the police station who received me, he told me come back another time. I came back again, injured, and they said: tomorrow, we will go to speak to your husband. But they never went. Then I came back the next morning, and told him I had been beaten again. So he said, tomorrow we will go, but they never went. So we just did the *nahe biti*.[79] Now I don't trust community police. Maybe others I might trust, but not them. Because of them, I can't take my case forward. What if I had died, who would look after the children properly? I feel that the police are especially lazy in helping with violence in the home. If a man was to beat his wife to death, then abandon the children, they would not see that as a crime.[80]

According to the coordinator of the women's shelter in Suai, this is a very common scenario. As she explained, while the VPU have generally worked very well with victims, other sections of the police have not been so responsive.[81] When she did a monitoring exercise of cases that were brought to the community police, she found that domestic violence cases were very rarely registered, and the VPU were rarely informed. As she explained, when she went herself to register a case on a client's behalf, the community police took the chronology but did not register it, instead promising to do so in the morning. It was never formally registered. As she went on to explain, these issues are further compounded if the victim is from a different language group; it is a common theme in Suai that if the victim is from one of the minority groups, such as Tetun Terik, the predominantly Bunak police are even less likely to

[75] A general provision in the RDTL Criminal Procedure Code (Decree-Law 13/2005 hereafter CPC) requires police to report crimes to the prosecutor but doesn't provide a time-frame. Under Article 24 (2) (e) LADV on the other hand, police are required to provide a summary report of the domestic violence case to the prosecutor within 5 days of 'having learned of the facts' (see original and authoritative version of the law in Portuguese: '*após ter tomado conhecimento dos factos*').
[76] Woman interviewee 18, 25 April 2012
[77] Angela Gusmao Pereira, Coordinator Uma Mahon Salele, Suai, 23 April 2012
[78] Angela Gusmao Pereira, Coordinator Uma Mahon Salele, Suai, 23 April 2012
[79] *Nahe biti*: 'spreading the mat': Local dispute resolution process, in which people sit together on a mat to discuss and resolve issues in the community.
[80] Woman interviewee 18, Suai, 25 April 2012
[81] Angela Gusmao Pereira, Coordinator Uma Mahon Salele, Suai, 23 April 2012

be helpful[82]. Now, the staff of the women's shelter go directly to the prosecutor's office to register a case if a woman needs assistance.[83]

Going directly to the prosecutor's office to register a case is a legal option that is open to everyone. However, as the prosecutor in Suai noted, while they will certainly be received with respect, very few community members use this option.[84] This can be for a variety of reasons: many people are still unaware that they have this right, so if the police are unresponsive they may feel they have no other recourse. In addition, for those living outside the District capital, it is often difficult for people to get to the prosecutor's office.[85] Finally, as it is a very official environment, it is likely that many community members may feel intimidated to go directly to the prosecutor's office.

It is also clear the PNTL has insufficient institutional mechanisms to prevent conflicts of interest arising in their handling of domestic violence cases. Two cases of conflict of interest – one identified through stakeholder interviews and one woman interviewee - were raised in which the police assisted the suspect rather than the victim. In one case, when the woman fled to the police asking for protection, they made a show of attempting to arrest her husband, but sabotaged it by playing music loudly on the car stereo when they arrived to 'capture' him. As she explained, this was because her husband is an ex-policeman and still has many friends in the police force. Since that time, he has often followed her or gone to her house late at night, threatening to kill her if she does not withdraw her case. However, when she goes to the police they say they cannot do anything.[86] He has not yet been arrested. The behaviour of the police in this case has also impacted on the prosecutor's ability to follow through in the courts. Even though the case has been registered with the prosecutor's office for over a year, they do not have sufficient evidence to take the case to court. As a result, she must wait, without protection from her husband's threats, and without any guarantee that her case will at some point be resolved.

In a second case in which the woman had fled from her husband to stay in a district women's shelter, the suspect who is himself a police officer was allegedly helped by the VPU Commander of that district to visit his wife in the shelter and have her released into his care. This was done without the knowledge of the staff in the women's shelter. As the coordinator of the shelter explained, they never allow a suspect to enter the women's shelter but are accustomed to VPU officers visiting to talk with the victims. However, because the VPU Commander deliberately took the suspect to the shelter together with his gun and his uniform, the staff simply presumed that they were there on official business. This case was reported to the referral network in both the district and in Dili. ATJ understands that a verbal warning has been issued to the District VPU Commander but they remain in their post[87]. A verbal warning is clearly not commensurate with disciplinary policy.

The fact that the VPU National Commander was unable to impose a greater penalty comes back to structural issues within the police, wherein the National VPU Commander cannot institute disciplinary proceedings because that is the duty of the District Commander as the direct supervisor.[88] In addition, while the VPU clearly fills a very important

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[82] Angela Gusmao Pereira, Coordinator Uma Mahon Salele, Suai, 23 April 2012
[83] Angela Gusmao Pereira, Coordinator Uma Mahon Salele, Suai, 23 April 2012
[84] Zelia Trinidade, Prosecutor Suai District, Suai, 24 April 2012
[85] Zelia Trinidade, Prosecutor Suai District, Suai, 24 April 2012
[86] Woman interviewee 19, 25 April 2012
[87] The Disciplinary Regulation of PNTL (Decree-Law 13/2004) stipulates that a verbal reprimand shall apply *'in case of offences that do not bring damage to the service or the public'* (Article 42) whereas suspension shall apply '*where the committed acts gravely affect the dignity or personal prestige of the police member concerned, or his/her function'* (Article 44).
[88] The powers of District Commanders include '*to exercise disciplinary powers pursuant to the Disciplinary regulation*' (Organic Law of Timor-Leste's PNTL (Decree-Law 9/2009) Article 38 (1) (d)). The Disciplinary Regulation of PNTL (Decree-Law 13/2004) in Article 65 stipulates that '*A superior performing command, supervisory or managerial functions is empowered to initiate or have a disciplinary*

role, they are often not well-respected by other sections of the police force which are responsible for crucial staffing or resourcing decisions. For example, it is often very difficult for the VPU to get access to common police resources. Each VPU district command has been given a car for their sole use but it is common behaviour for other sections of the police to commandeer these cars.[89] This difficulty in accessing resources is perhaps a more extreme version of the under-resourcing that is faced by all sections of the police, in which petrol for cars or motorbikes, computers, printers, and toner for printers cannot simply be taken for granted.[90]

In addition, there is a broader policy issue to be explored, as it appears that the VPU's specific responsibility for vulnerable persons has diverted NGO and government attention away from the practices of other sections of the police in dealing with domestic violence cases. Certainly, when the research team asked to speak with the community police or the broader district command, this request was met with surprise, with the officer asking if we didn't mean the VPU.[91] As the community police are the 'face' of the formal justice system for many community members, one way forward may be to take a broader mainstreamed approach across the various sections of the police when they come to deal with domestic violence cases[92]. Similarly, the community police's role in facilitating community mediation may require greater attention, as many domestic violence cases also link with civil cases such as abandonment, which are commonly dealt with by the community police. The specific issues surrounding local mediation are considered in more detail later in this report.

Prosecution and the Courts

While it was possible to confirm that 23 of the 24 women interviewed had had their cases to the police, it was not clear from the interviews how many of the women had had their cases referred by the police, or directly by other agencies, to the Prosecutor's Office.

It is well-known that domestic violence and sexual assault cases comprise a significant portion of the caseload, including the backlog, at the courts.[93] While statistics are not yet available on the prosecution and adjudication of domestic violence cases in Timor, anecdotal accounts can give some indication of the efficiency of the courts in

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proceedings initiated against any of their respective subordinates'. Furthermore, Human Rights Watch also drew attention to the following: '*Unfortunately, the PEDU (*Professional Ethics and Deontology Unit*) lacks institutional authority over the various branches of the police. One then-PEO (*Professional Ethics Office- PEO changed name into PEDU around time of HRW report*) officer in Dili told Human Rights Watch that although in theory PEO officers could investigate police officers of superior rank to themselves, in practice it was the district commanders who ultimately decided which cases would be investigated in the district, which ones would be sent to Dili, and which ones would be set aside* (see HRW (2006) *Tortured beginnings. Police Violence and the Beginnings of Impunity in East Timor*, April 2006, p.46.)

[89] See JSMP (2011), *Protesaun Legál ba Vítima Sira Violénsia Bazeia ba Jéneru: Lei Seidauk Fó Justisa,* Dili, Timor-Leste, Marsu 2011, p. 18

[90] The lack of technical resources is also highlighted in a 2008 UNICEF assessment of VPU recommending that '*A five year strategic plan to gradually increase the capacity and facilities of the VPU should be developed and implemented. The strategic plan should consider the feasibility of the VPU operating as a standalone department'* (UNICEF (2008), *The Vulnerable Persons Unit in Timor-Leste: An Independent Assessment of its Role and Function*, p.15-17).

[91] Interview with the Baucau District Second Commander PNTL, Baucau, 9 August 2012; , Baucau District Community Police Commander, 9 August 2012

[92] Note that this approach is in line with recommendations made in a 2008 UNICEF assessment of VPU. The report regretted the rather passive approach of VPU remaining in the office vs. community police being more visibly present in the community, and thus more likely being contacted by victims. The assessment recommended training on dealing with vulnerable victims for community police and *'regular liaison meetings between VPU and PNTL community police at local level to share information and identify where resources could be deployed most effectively'* (See UNICEF (2008), *The Vulnerable Persons Unit in Timor-Leste: An Independent Assessment of its Role and Function*, p. 14-15).

[93] See for example, Oliveira, Venidora, 'JSMP: Domestic and Sexual Violence cases clog Timorese courts.' *The Dili Weekly*, Monday, 2 April, 2012.

dealing with domestic violence cases. According to the coordinator of the women's shelter in Baucau, of the approximately fifty women that they have helped in the five years that they have been functioning, only five have had their case decided in court.[94] The length of time that it takes for a case to be heard has a particularly negative impact on women who, because of their economic situation, must stay in a women's shelter or otherwise return to live with their husband. As the coordinators of various women's shelters explained, for many women staying for a long period of time in a shelter is like an imprisonment: for security reasons, they are unable to come and go as they please and must confine themselves to activities within the shelter. They cannot work outside the shelter, and their children's schooling also suffers[95]. And because of inefficiencies in the formal system, they never know when they will be able to resume a normal life again. So many choose not to stay in the shelter. As the coordinator of national NGO Pradet explained,

> The cases take too long, during this time a crime can occur, and then recur again, and come back to us again. Sometimes victims lose their faith in the process, and in Pradet, because when the victims ask about the process, they don't understand that we have no power in this. All we can say is that we must wait. We have interviewed victims who have given very personal, sensitive information, because they believe the process will go ahead efficiently, but the suspect is free and she sees him walking about in the community. Because of the long process, some victims die before the case is resolved, because of the stress, medical problems, they get sick and die. Some victims also influence other victims to not go to the police, because they have not had a good experience in waiting for the courts and police.[96]

These issues are further compounded in the case of shelters which have a limit for how long a woman can stay with them—for example in Baucau, where a woman can only stay with them for six months. In the likely case that a client's case drags on beyond that time, her choices are to return to live in the marital home, find her own accommodation, or be transferred to Suai in the west of Timor[97]. For many women who have rarely left their community, this is a frightening prospect. However, the alternatives of returning to live with her husband or becoming homeless are equally unattractive.

The main reason for court delays is a lack of human resources. Often, cases will wait for a long period of time in the prosecutor's office before they have a chance to investigate the case and lodge it with the courts because there are too many cases and too few prosecutors[98]. This was the case in all three case study sites—however the prosecutor in Suai explained that she had managed to turn around the delay in cases by delegating investigative powers to the VPU[99]. At the time of interview, she had only been in Suai for 10 months but stakeholders had noticed a significant

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[94] Domingas Tilman, Coordinator Uma PAS, Baucau, 3 April 2012

[95] Domingas Tilman, Coordinator Uma PAS, Baucau, 3 April 2012; Luisa dos Reis Marcal, Director, Pradet, Dili, 9 April 2012; Madre Mafalda dos Santos, Dili, 20 April 2012

[96] Luisa dos Reis Marcal, Director, Pradet, Dili, 9 April 2012

[97] Domingas Tilman, Coordinator Uma PAS, Baucau, 3 April 2012

[98] Amelia de Jesus Amaral, VPU police officer, Suai, 24 April 2012; Madaleina Ximenes Freitas, VPU Subsection chief, Baucau, 9 August 2012, Dili, Zelia Trinidade, Prosecutor Suai District, Suai, 24 April 2012

[99] Such delegation is allowed under Articles 48 (2) (b), 52 (2) & 57 (2) CPC: '*The Public Prosecution Service may grant police or court staff competence to carry out inquiries or perform any acts relating to an enquiry'*. It is however key that the prosecutor closely monitors police investigations: The Statute of the Public Prosecution Service (Law 14/2005 as amended by Law 11/2011 (hereafter Statute PPS)) also defines the prosecutor's competencies in general: Article 3 (1) (f) '*to lead criminal investigation, even when carried out by other entities'* , (i) '*to monitor proceedings by the criminal police agencies in the course of enquiries'* and Article 3 (4) '*In the exercise of its functions, the Public Prosecution Service shall be assisted by the criminal investigation police bodies'*. The specific competencies of the District Prosecutor include '*to coordinate and monitor the activity of the criminal police organs in the course of an enquiry'* (Article 23 (d) Statute PPS). See also TAF and Stanford Law School, *An introduction to Professional Responsibility in Timor-Leste*, p.74-76.

improvement in the work of the prosecutor's office[100]. As the prosecutor explained, such delegation of powers needs to be done in a strategic manner, providing guidance to individual VPU officers so that each new case builds on their understanding of the investigative process. This mode of operation, which builds on the individual capabilities of different officers, means that she can delegate powers without undermining the overall quality of the investigation.

The Victims Support Service (VSS) of JSMP – which provides legal assistance to women and children victims of domestic and sexual violence - has noted the tendency in the prosecutors' office to not prioritise domestic violence.[101] This was also a theme that emerged during this research. As one victim explained, the only way she managed to get her case finally heard by the courts was by going to the prosecutor's office daily to remind them and ask for progress reports on her case.[102] However, while it is laudible that she could force the authorities to take her case seriously, this case also highlights the discretionary powers in the prosecutor's office to prioritise particular cases. As this woman explained, if she had not gone daily to the office, it is likely that she would still be waiting for her case to be heard. It is unlikely that more vulnerable women, such as those who are illiterate, who live in remote areas and/or do not have the confidence to approach authority figures in such a way, could exercise a similar strategy.

For one woman from a remote area of Baucau, the lack of court responsiveness coupled with a lack of understanding of the court processes meant that she was also extremely vulnerable to her husband's manipulation. In this case, the police lodged a case with the prosecutor's office in 2006. Soon after, her husband went to Baucau and returned to the subdistrict police with an official document (purportedly from the court) stating that her case needed to be resolved through local processes. As his family was very important in the *suku*, the results of the *nahe biti* were clearly weighted in the husband's favour. While the *xefe suku* from her village was initially willing to assist, he also refused to help when he was shown the 'official' document. Finally, she ran to stay with her mother and has lived with her since; her husband continues to visit her mother's home, threatening her physically and sexually.[103] As the coordinator from the women's shelter in Baucau explained, they do not know the truth of this case but consider it likely that he forged the document. However, as they have not heard anything from the prosecutor's office since 2006, they do not know if the case is still pending or has been closed.[104] One of the preoccupations of this woman was whether her case could be re-opened if she requested it.[105]

As well as the length of time in having their cases heard, a second point which was raised by some interviewees concerned the inadequate sentences that were handed down by the judge. Across all of the case study sites, stakeholders reported that nearly all domestic violence cases result in suspended sentences. This is even the situation for cases where serious violence has been committed, and the suspect should have been charged with

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[100] Fatima Sara dos Reis, Coordinator Fokupers, Suai, 22, April 2012; Amelia de Jesus Amaral, VPU police officer, Suai, 24 April 2012; comments from Suai referral network meeting, 23 April 2012.

[101] JSMP (2011), *Protesaun Legál ba Vítima Sira Violénsia Bazeia ba Jéneru: Lei Seidauk Fó Justisa,* Dili, Timor-Leste, Marsu 2011, p. 22

[102] Woman interviewee 17, Suai, 23 April 2012

[103] Woman interviewee 13, 15 April 2012

[104] Felismina Belo, Assistant Coordinator Uma PAS, Baucau, 15 May 2012

[105] ATJ is not aware of the full details of the case. However, if the case was actually closed it can be re-opened: If the prosecutor dismissed the case at the time because of insufficient evidence for example, under Article 235 CPC an enquiry must be re-opened if new elements arise (such as the new threats against the victim). Even if the '*nahe biti'* document is genuine, it is doubtful that this would constitute a form of *'tried and convicted'* covered by the 'no double jeopardy rule' as per Article 31(4) of the RDTL Constitution because it appears the *nahe biti* did not address the criminal elements of the case nor imposed a prison sentence. Other analysts have however warned of the risk of double jeopardy with regard to compensation– perpetrator being simultaneously ordered to provide a form of compensation by formal and informal system - because of the high interdependence between the two systems (see relevant sections of research by Swaine (2003), Hohe&Nixon (2003), Mearns (2002), Hohe (2002) & Graydon (2005) being analysed in UNDP (2011), *Customary Law and Domestic Violence in Timor-Leste,* January 2011, p.17 & 32)

attempted murder.[106] As the coordinator of the women's shelter in Suai explained, she will often ask the judges afterwards what criteria they used in making that decision when she sees another suspended sentence being given, however she has not yet received an explanation, simply being told 'this decision is for the courts to make'.[107]

The reasons for court preferences of suspended sentences are unclear. While there is some evidence that points to the sentence being reduced because the victim and suspect have already made peace,[108] stakeholders interviewees for this research generally stated that it was not because an agreement - or *akorda malu* - had been signed.[109] Rather, they argued that it came back to economic considerations, as the judge will look to the victim's economic situation and not imprison the husband because they do not want to re-victimise the woman.[110] However, while this is an understandable reason at one level, it fails to engage with what women's NGOs say is the reality - that many men will abandon their families and refuse to pay maintenance following a negative court decision.[111] In addition, minimal sentences will also be given when the victim clearly wants him to go to prison, as was the case recently where the perpetrator had inflicted grave injuries on his wife, including serious physical and sexual violence, and stolen all of her money through forgery. While the initial court judgment sentenced him to three year's imprisonment, this was commuted to house arrest. His wife now commonly sees him outside the home, using her car to drive his new wife around town.[112] When the coordinator of the women's shelter asked the judges why they took this decision, they explained that they did this so that he could take responsibility for his children. However, as she explained, the reality is that he does not take any responsibility or pay any maintenance for his children[113].

Protective Issues

Another important issue that arose for some interviewees was the need for better protective mechanisms. For the women who participated in this research, protection was only granted when she initially ran to the police while longer-term protective issues were left unaddressed. This was also confirmed in an interview with the National Commander of the VPU, who explained that they had neither the capacity nor the power to provide adequate protection to women after the initial arrest had been made[114]. However, for four of the women interviewed for this research, the need for protection from the perpetrator was of primary importance.

For one woman, her husband often comes to her house late at night, threatening her, telling her that if she does not withdraw her case, he will kill her. As discussed in the previous section, because her husband is an ex-policeman, her case has also been tainted by a conflict of interest, and the police have been unwilling to arrest or to gather evidence against him. As a result, she is in a situation where her case cannot be pursued through the courts for lack

[106] Angela Gusmao Pereira, Coordinator Uma Mahon Salele, Suai, 23 April 2012
[107] Angela Gusmao Pereira, Coordinator Uma Mahon Salele, Suai, 23 April 2012
[108] See for example Kovar, Annika (2011), *Customary Law and Domestic Violence in Timor-Leste,* UNDP Timor-Leste, January 2011, p. 11
[109] Madaleina Ximenes Freitas, VPU Subsection chief, Baucau, 9 August 2012; Amelia de Jesus Amaral, VPU police officer, Suai, 24 April 2012; Zelia Trinidade, Prosecutor Suai District, Suai, 24 April 2012
[110] Madaleina Ximenes Freitas, VPU Subsection chief, Baucau, 9 August 2012; Amelia de Jesus Amaral, VPU police officer, Suai, 24 April 2012; Zelia Trinidade, Prosecutor Suai District, Suai, 24 April 2012
[111] Fatima Sara dos Reis, Coordinator Fokupers, Suai, 22, April 2012
[112] Angela Gusmao Pereira, Coordinator Uma Mahon Salele, Suai, 23 April 2012
[113] While ATJ doesn't have the full details of the case, the Court has the power to revoke the suspension of the sentence (Article 73 PC) on the grounds of the convicted person's failure to comply with the house arrest (Article 70 (1) (b) PC) and/or failure to provide maintenance (if the Court ordered this based on Article 34 LADV and made this duty a condition of the suspension along the lines of Article 69 PC).

[114] Daria da Costa Ximenes, National VPU Commander, Dili, 17 April 2012

of evidence, and she is equally unable to ask for police protection when he does come at night to threaten her. In a particularly disturbing incident, on one occasion in which her husband came threatening to kill her, the woman fled, leaving one of her children behind. Her husband has taken this child to his family in another town, telling her that he will only give the child back if she withdraws her case against him. She has since heard that the child is not properly looked after and cannot go to school. The child is seven years old. When she asked for help from the police to get the child back, they refused. As she stated,

> I am not happy with the police's work. I have been threatened; I am not safe in my home. Because of this I went to the police for them to protect me. But they are not serious in working on my case. I know this is because in the past, my husband was in the police and they are still friends.[115]

Protective issues were also important for one woman interviewee in Dili. Because of the length of time her case took, combined with her husband's threatening behaviour, she tried unsuccessfully to withdraw her case prior to trial. According to the judgement against him, in which he received a suspended sentence, her husband was not to threaten her anymore. However, he does not respect this judgement, commonly coming to her house late at night to insult and threaten her, and she has no practical mode of recourse[116]. This is exacerbated by the fact that she lives in what was their marital home, and he still refers to both her and the house as his 'property'. Because she has no protection from him she must let him in and attend to him. As she explained,

> It is good that criminal cases go to the court. Even if he does not go to prison, it is still good because he learns that violence is not okay. However, I am not happy because I did not receive anything like a document from the court that would protect me, so I am always unsafe. He keeps coming to my house in the night, threatening me, telling me that I will always be his wife, and because I am scared I must just listen and attend to him[117].

A similar story was recounted by another woman in Suai, who stated that her ex-husband commonly comes to her house at night demanding sex, and that she has no choice but to provide what he wants.[118] In a fourth case, in which the husband was sentenced to prison in 2002, he was released six months early and the woman was not informed of his impending release. Immediately upon his release, he went back to her village to spy on her. When her children told her they had heard his voice, she reassured them that they were safe—that he was still in prison. This went on for two days before she realised he was there, and quickly packed her bags and her children to take them to a safe place.[119] While the terms of their divorce included the provision that he not enter her property, he continued to do so for some time, threatening her and attempting to steal various assets from her small business. In this case, a better system to inform her before he was released from prison would have made a big difference.[120]

A final issue that was raised by local stakeholders was the need for better witness protection. As a number of stakeholders explained, many times neighbours or local leaders are aware of the violence, however they also are afraid of repercussions by the suspect or his family if they give evidence against him[121]. Every woman interviewee

[115] Woman interviewee 19, 25 April 2012
[116] While ATJ doesn't have full details of the case, legally, the Court could revoke the suspension – see footnote 109.
[117] Woman interviewee 21, 7 May 2012
[118] Woman interviewee 14, 23 April 2012
[119] Woman interviewee 23, 11 August 2012
[120] Legal or policy reform could be considered to address this vacuum: Under Articles 71 & 72 CPC a victim is an aggrieved party, merely an 'assistant' to prosecutor. Under Article 328 CPC a convicted person will be released from prison upon writ issued by trial judge. There appears to be no explicit requirement in current law to inform the victim prior to release of the prisoner.
[121] Lino Lopes, Director ECM, Baucau, 2 April 2012; Regina de Sousa, Baucau Subdistrict Administrator, Dili, 11 August 2012

also commented on the fact that neighbours commonly did not assist when the case was taken to the police. It is impossible to distinguish the various causes for this silence, as some can be attributed to ongoing attitudes of domestic violence being primarily a private affair, and others to fear of repercussions. In addition, in the context of a village community, it is difficult to imagine how the provision of evidence could be kept secret in practice. Nonetheless, it is clear that there are some cases that would benefit from better witness protection.

E. The Civil Process

Waiting for the Courts: Social and Economic Context

Particularly given the problems in implementation through the formal system, addressing the civil law needs of women who have experienced domestic violence can be complicated. As discussed earlier on in this report, many of the issues that women consider before deciding to go to the police and/or leaving their violent spouse come back to their economic capacity to care for themselves and their children without their husband's income or shared assets. Those women who bring their case to the formal system are in an economic hiatus, frequently homeless, unable to provide for themselves or their children, and dependent on the assistance provided by their own family members or women's support organisations.[122]

It is often presumed that family can take on the responsibility when the woman leaves. However, according to the Timor-Leste Demographic Health Survey in 2009-2010, only one in five women considered that their family would be able to support them if they needed to leave their husband.[123] This was also a frequent issue raised by the women interviewees; while a number of women had run to their family because they had no other choice, they also commented that there was not enough money in the house to feed them, or to send the children to school. This was exacerbated in cases where her parents were themselves vulnerable, for example if her mother is a widow who needs looking after herself, as was the case with a number of interviewees. As one woman explained, she earned a small amount of money by carrying rocks to sell, and selling firewood. Her family is unable to help her, and she cannot get better work because, having left her husband, her community has labelled her a 'slut'. Such existence is precarious, particularly given the lack of a social safety net. NGOs endeavour to fill the gap, however their resources are also limited.

While it is true that many families can act as a safety net, they do not replace social welfare. There are many whose families cannot or will not assist, which adds to existing vulnerabilities. This was the case for one woman in Dili, who ended up living on the streets for many years, in between short stints at the nun's clinic in Motael. As she had an acquired mental illness from enduring years of violence, she had been unable to hold down a job and had no other source of income or support. The years living on the streets only added to her stress, as she was constantly vulnerable to violence and rape. During those years, her family was uninterested in supporting her.[124] However, when the NGO supporting her provided her with practical material support, her family took advantage of that support for their own purposes. As the coordinator of the NGO recounted, despite her family benefiting from this assistance, she herself still does not have support from her family in attending to basic necessities or ensuring that she takes medication.[125] Because she does not have support in taking medication regularly and according to

[122] Agustinho Soares, VSS Lawyer, Suai, 23 April 2012
[123] National Statistics Directorate, *Timor-Leste Demographic and Health Survey 2009-2010*, Ministry of Finance, December 2010, p. 246
[124] Woman interviewee 22, Dili, 7 August 2012
[125] Luisa dos Reis Marcal, Director, Pradet, Dili, 7 August 2012

instructions, the doctors have refused to give her treatments which may otherwise have dealt with her psychotic episodes.[126]

Ideally, social transfers would be able to assist in bridging the gap; however, the categories that are currently available often do not cover these women's situations. As one woman interviewee ironically noted, while veterans can get assistance there was very little that was available to her: "what can I do about this? Because I am not a veteran to get benefits. I am just an ordinary woman, but I have many children and cannot feed them."[127] While some children are eligible for the *Bolsa da Mae* program (providing conditional assistance to economically and socially vulnerable households with children, such as those which are female-headed), and women who are mentally or physically disabled are eligible for disability assistance, this does not extend to all women. *Bolsa da mae* is limited to covering three children in any one family, leaving many children ineligible. Eligibility seems to be also dependent on the lists that are compiled by their *xefe suku*; in cases where the local leadership is not supportive, it is often difficult for women to access these entitlements[128].

The length of the court process coupled with their inability to force husbands to take financial responsibility for their children means that many women are stuck in this vulnerable situation. Every woman interviewee who was successful in moving beyond her economic dependence on her husband stated that this was because of the assistance she had been given by friends, family or NGOs. For example, one woman was given a job in the women's shelter where she initially stayed. Similarly, a woman in Dili recounted how she was given a loan by friends and encouraged to start her own restaurant. This was what ultimately gave her the courage and financial independence to leave her violent spouse. However, not everyone is so lucky. For those who do not have access to this assistance, their children also suffer dearly. As one woman noted, the impact on children and the implications for future generations should be of grave policy concern not only to service providers but also to the government:

> These children are the future of Timor. I am the mother, I am not as important. But what happens to these children? They might become wild. They need to go to school, and then get a job. This should be a big concern for the government. But the government now are only interested in themselves, in their own stomachs. They talk, they carry Timor's name to other countries, they carry ordinary people's name, and ask for help, but ordinary people do not receive any of this help. Maybe some receive 1 percent or 2 percent of the help that is coming into Timor, but many receive nothing. So other nations also need to think, how can they link with ordinary people's needs and not just the important people?[129]

Modes of Dispute Resolution

Some of the women interviewed had begun civil proceedings against their husbands in relation to divorce, custody of their children and maintenance. A common complaint that was raised by the women interviewees was that the courts were too slow to hear civil cases dealing with maintenance, child custody and/or property settlement—even slower than in dealing with domestic violence cases. This is to some extent understandable, as in the context of

[126] Luisa dos Reis Marcal, Director, Pradet, Dili, 7 August 2012

[127] Woman interviewee 11, Baucau, 15 May 2012ó

[128] The role of the Xefe Suku in this program is enshrined in relevant legislation: Applicants for example have to submit documents issued by local leadership certifying their residence and the fact that the household is female-headed (Article 19 (1) (e)&(f) Decree-Law 8/2012 on the Subsidies for the Conditional '*Bolsa da Mãe'* assistance). Note that the UN Special Rapporteur on Extreme Poverty also expressed concerns over *Xefe Suku's role* in this program because of its '*potential to reinforce power structures, patron-client relations and local gender norms, creating tensions and further stigmatizing some groups in the community'* (UN General Assembly (2012) *Report of the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona* , A/HRC/20/25/Add.1, par.72)

[129] Woman interviewee 11, Baucau, 15 May 2012

limited resources, the prosecutor's office tends to give lower priority to civil cases than to criminal cases.[130] However, many women interviewees also stated that the problem comes back to their husbands not attending the scheduled court hearing. This was a source of deep frustration for the women and other stakeholders, as there was no recourse available that would force the husband to attend, or to have the case decided *in absentia*. It was even more difficult for women who needed to travel long distances in order to attend court, arranging child-care and paying for transport.[131] As the lawyer for Victims Support Services in Suai commented,

> In civil cases, the husband never attends the court case. So the women need to wait, and many are waiting until the present day. The judges say that they just need to wait, but the husband should give a reason for not attending. The judges need to study better the cases that they are hearing.[132]

Alternatively, in cases in which the court does take a decision, there is no recourse when he chooses to ignore the finding. This lack of enforceability was a serious issue that was raised across all three case study sites, with one woman asking if the authorities could send her husband to prison to teach him a lesson, as there did not appear to be any other way of forcing her husband to pay attention to the court's decision.[133] As the coordinator of Fokupers in Suai noted, even in a case where the spouse is a public servant, a situation in which the government could conceivably quarantine part of his wage according to the court's decision, they had been unable to convince the relevant authorities to take such measures.[134] The best they can do is keep going back to the courts, asking for another decision, which also makes things difficult as it reignites the conflict between the families.[135]

Given these weaknesses of the formal system, many cases are resolved via local processes, or via mediation facilitated by legal aid providers and/or the community police. However, while many of the women who were interviewed for this project had gone through one or more of these processes, they reported that their basic needs were still unmet and they were largely unhappy with the outcome. This was for a variety of reasons, some of which came back to the process of decision making itself, and others to their inability to enforce the decision once it had been made.

A full survey of the utility of local processes for different civil law needs was beyond the scope of this research. Results from ATJ's *Law and Justice Survey* conducted in 2008 showed that the *xefe aldeia* was the most common authority to be approached in issues of land, theft, and domestic violence[136], and it is certainly the case that there is a continuing preference for resolving many issues locally. However, as the practical application of local processes is also driven by factors relating to class as well as gender, there is great potential for those who are already vulnerable to be re-victimised.[137] This was the case for one woman who was traditionally divorced, following many

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[130] Zelia Trinidade, Prosecutor Suai District, Suai, 24 April 2012; Agustinho Soares, VSS Lawyer, Suai, 23 April 2012. This priority is perhaps understandable given that prosecutors in Timor-Leste only have a limited role in civil cases: The Statute of the Public Prosecution Service (Law 14/2005 as amended by Law 11/2011) stipulates that '*The Public Prosecution Service shall mainly intervene in proceedings when representing the State or minors, absentees and legally incompetent persons*' (Article 5). Similarly the Civil Procedure Code (Decree-Law 1/2006) provides that in civil cases prosecutors can under certain circumstances act on behalf of a minor (Article 17), represent absentees, incapacitated and unknown parties (Articles 20-22) and represent the interests of the State (Article 23).

[131] Fatima Sara dos Reis, Coordinator Fokupers, Suai, 22, April 2012

[132] Agustinho Soares, VSS Lawyer, Suai, 23 April 2012

[133] Woman interviewee 15, Suai, 23 April 2012

[134] Fatima Sara dos Reis, Coordinator Fokupers, Suai, 22, April 2012. The Asia Foundation is aware that the Dili District Court has raised this issue with the Ministry of Finance but there is as yet no such procedure in place.

[135] Fatima Sara dos Reis, Coordinator Fokupers, Suai, 22, April 2012

[136] *Law and Justice Survey 2008*, Dili, Timor-Leste, p. 49-50

[137] Carolyn Graydon, "Local Justice Systems in Timor-Leste: Washed up, or watch this space?", *Development Bulletin*, no. 68, 2005, pp. 67 - 68

years of severe beatings. In this case, the local leaders refused to hear about the violence, instead adjudicating the purported 'cause' of the most recent violent incident, the husband's complaint that an animal under her care had died due to her negligence. Two weeks after this incident, they went through a local justice process, however she had been unable to get anyone to advocate for her interests. Ultimately, it was decided that she was at fault because an animal had died, and her husband traditionally divorced her through a process known as *tesi ai*[138]. The agreement required that she leave the family, with no rights to property or to maintenance for her children. In addition, the bride price (*barlake)* did not need to be returned. She and her children were consequently thrown out of the house, and were only able to survive because they received shelter at the women's shelter. As she described it, throughout the years of her marriage she had been "treated like a slave… the family were happy because they didn't have to give anything."[139] While legally this does not cut off her right to seek remedies through the courts, in her mind the decision was made and she is stuck with it: "I feel very sad, because many women take their cases forward but my case has never been heard. I cannot take my case forward now. At the time, I knew I had the right to go to court, but because my family didn't support me I didn't do it."[140]

Tied in with *adat*, another path for local dispute resolution is to involve the community police and/or a legal aid service provider in local mediation. While these actors are obliged to report domestic violence cases to the VPU, they commonly facilitate mediation of civil cases, including those that are linked to domestic violence.
There are also times when domestic violence victims come to the community police asking for assistance, either hoping that the police presence will at least temporarily stop the violence[141], or asking for assistance in mediation.[142]This is apparently a common scenario, and is further confused by the role of the community police in assisting with mediation for other offences in the community, as part of their mandate to promote peace and stability in the community. As the District Second Commander for Police in Baucau explained, there is a need for better socialisation with community members as many people continue to come to the community police wanting them to assist with mediating a domestic violence case.[143] As he explained, while there has been a strong focus in Baucau on educating local authorities of their rights and responsibilities under the new legislation, most community members are still unclear on what the community police can and cannot do for them.

Another common scenario is to go through a local justice process using a legal aid service provider. There were mixed reports from women who had received assistance in this way. Most women reported the legal aid provider worked well, but every woman reported problems with enforcement, where the decision was ultimately ignored by her husband and they had no way of forcing him to pay. This was also an issue when a decision was made through the courts.

But there were some women who also expressed dissatisfaction with the local justice process, despite having legal assistance, stating that they had tried to bring up the instances of violence only to be told, "that is in the past, we are here to talk about other issues". In part this comes back to structural issues, in which the criminal process needs to be taken through the courts but takes a long time to be heard, but the civil elements can be decided relatively quickly through local mediation. However, it also highlights the difficulty in separating civil and criminal elements of a case. As the Subdistrict Administrator of Baucau noted, very often issues that fall under civil law may prompt

[138] *Tesi ai*: a stick is brought to the *nahe biti* and symbolically cut in two to signify a divorce.
[139] Woman interviewee 18, 25 April 2012
[140] Woman interviewee 18, 25 April 2012
[141] Woman interviewee 4, 3 April 2012
[142] Woman interviewee 18, 25 April 2012
[143] Joao Sancho Pires, Baucau District Second Commander PNTL, Baucau, 9 August 2012

another violent incident.[144] A common example raised by interviewees was when the husband attempted to bring a second wife into the house, or he refused to give money to pay household and children's expenses.

This messy intertwining of civil and criminal elements can result in unjust outcomes, as was the case for one woman who had recently gone through a local justice process in. The woman's lack of understanding of the different elements of her case and appropriate processes, created greater vulnerability. The woman claims that , her husband commonly refused to give money for food, leaving her and their children hungry. However, when she protested, or did not do her work properly in the home, he would beat her. Following a particularly severe beating in 2011, she ran to the police and they took photos of her injuries, but she has not since heard anything about her case. It is possible that her case is still under investigation in the Prosecutor's office, but as no one can confirm this for her, her perception is that nothing has happened with her case. This has resulted in her losing faith in the police. When she felt that the police were doing nothing, she went to the *xefe suku* and the customary leader who is responsible for resolving local disputes - *lia-na'in* - but she claims they did not help. Finally, she went to the legal aid service provider, but was equally unhappy with them:

> I went to the legal aid organisation and told them about last year when he beat me, but they said that is in the past, I should not speak about that now. Just recently, they sat with the *xefe suku* and other local leaders, but when I tried to speak they told me to be quiet so I don't trust them [the legal aid organisation] now. I am very sad because people are just ignoring the problem; they are not honest with me… The solution should be simple, monthly payments. He says he is the head of the household but is not responsible.[145]

The result from the most recent mediation was that her husband should give her money regularly to care for their children, however he has simply ignored this ruling. As in the past, she is frightened that if she protests, he will simply beat her again. Such issues that arise in the messy intertwining of civil and criminal elements are not limited to mediation provided by legal aid service providers, but are equally applicable to cases that are facilitated through the community police—and potentially even more confusing when the community police are the facilitators, as for many people they are also the 'face' of the formal justice system.

While actors that assist in local mediation, such as legal aid service providers and the community police, can assist in easing the backlog of cases that are currently pending in the courts, the intertwining of civil and criminal elements in such cases means that there is real potential for confusion. One of the recognised strengths of community mediation is that issues can be resolved relatively quickly. However, the current incapacity of the formal system to deal with the criminal case and the focus of community police and legal aid service providers on civil cases may give the impression that the violence is of no consequence. This is why, as the District Second Commander of police in Baucau noted, it is important that community members have a better understanding of what the community police can and cannot do to avoid these misunderstandings.[146]

In addition, there is real potential that community mediation may have a negative impact on the criminal case. According to Article 55 of the Timor-Leste Penal Code (Decree-Law 19/2009), if the court is informed that the victim and perpetrator have made peace, this can then be taken into account as a mitigating circumstance at the sentencing stage. However, as with the case above, the 'peace' which is found may not reflect the woman's interests or needs and it is very difficult for the courts to tell the difference when presented with a formal document

[144] Regina de Sousa, Baucau Subdistrict Administrator, Dili, 11 August 2012
[145] Woman interviewee 7, 3 April 2012
[146] Joao Sancho Pires, Baucau District Second Commander PNTL, Baucau, 9 August 2012

stating that the parties have made peace—particularly if the woman has been pressured to stay quiet. Finally, given the lack of attention that has been put on the community police in dealing with domestic violence situations, it is worth investigating the criteria through which they decide to refer a case to the VPU for criminal proceedings, as there are indications that many cases are not lodged in the formal process[147]. While there is certainly a place for community mediation, it is also clear that it needs to be approached in a nuanced manner where it links with domestic violence cases.

Separation and Divorce

As a general rule, the women interviewees who chose to file for a divorce were those who had independent assets to protect from their husbands, for example a restaurant or small business. As one woman from Dili explained, when she began to earn money in 2000 and then opened a small restaurant, her husband always took the proceeds. Along with stopping the violence, her second priority was to become economically independent. This required divorcing him, so she could "stop him stealing from me and my children". As she explained it, this was highly important to her, as with a divorce they could be clear about each person's rights and obligations.[148]

By contrast, other women who were economically dependent on their husband often did not bother to file for a divorce because they did not feel that it would make a difference to their circumstances, explaining that they had separated and that was enough. Or, alternatively, they did not want to close the possibility that he may decide to take his responsibilities to his family seriously by formally cutting ties. This was the case with one woman in Baucau, whose husband had taken on a second wife and who was pressuring her to accept the wife into the family. When asked if she would like to divorce him, she replied, "whether or not we divorce, that is up to him."[149] As she went on to explain, she commonly could not find the money to feed her children herself, so she wanted to wait and assess if he preferred to stay with his second wife or if he would come back to her.

For these women, who either have no recourse through other means and/or have not been able to enforce their rights to property and maintenance for their children, there is a clear need to support them in a civil process. Without such support, they are extremely vulnerable and often unable to go against the husband's preferences. As one VSS lawyer in Suai explained, they also assist some clients in their civil cases—but as an extra activity as it is outside their current mandate.[150] There is also a need for greater education on civil law rights, as a woman's ignorance of her rights may be deliberately played upon. This was the situation in one case that was reported to the research team, in which a lawyer deliberately gave misleading advice to his client, telling her that if she pursued her case in court she would have no rights to land or house or other property.[151] The lawyer who reported this case speculated that it may have been because the husband paid her lawyer to give misleading advice.[152]

The most pressing areas of civil law in which women could benefit from greater support and education that were identified in this research were: child maintenance, child custody arrangements, and property settlement.

[147] Angela Gusmao Pereira, Coordinator Uma Mahon Salele, Suai, 23 April 2012
[148] Dili, Bidau
[149] Woman interviewee 11, 15 May 2012
[150] Agustinho Soares, VSS Lawyer, Suai, 23 April 2012
[151] Legal aid lawyer, Baucau, April 2012
[152] Legal aid lawyer, Baucau, April 2012

Children

The most frequently raised civil law issue was that the father did not pay maintenance. However, there were also three cases in which custody was a major issue. None of these custody arrangements had been decided formally through the courts. The first custody case involved the father taking the youngest of three children in order to convince his wife to withdraw her case against him. In this situation, he has engaged in ongoing harassment and threats against her, and this was simply another tactic to convince her to withdraw her case. He took the child to live with his family in another town, and she has since heard that the child does not have enough to eat and does not go to school.[153] This is both a custody issue and a protective issue, as she and her children have continued to suffer because of her husband's threatening behaviour.

In a second case in Dili, the father took their only child to live with his parents in the mountains because he wanted him to grow up outside his wife's influence. However, his parents have not cared well for him and he does not go to school. The father has since told her that she can go to his parents' *suku* to collect their son; however, she does not trust him because he will not go to collect the child himself. She is frightened that if she went to their *suku*, his family would not agree, and would be violent and abuse her.[154]

In a third case in Dili, the mother had acquired a mental illness so the father's family took in all of the children. As she explained, when she used to go to the house to try and visit her children, she would be physically stopped by the family and beaten. This went on for many years. Nonetheless, she continued visiting, at times taking small gifts that she hoped would be passed onto them.[155] Now that the children are older, she is allowed to visit them occasionally, however they often do not want to see her as they are embarrassed at her behaviour during a psychotic episode.[156]

In every other case of separation or divorce, the mother was the primary custodian.[157] In these cases, the predominating issues were of maintenance and abandonment. During interviews, the research team found only one case in which the ex-husband was paying maintenance for his children. He had also given the marital home to the mother and children to live in because, as she described it, "he knew he had made a mistake".[158] The majority of the women who participated in this research did not share a similar experience; despite decisions being made in their favour either through mediation or the courts, the primary problem was that there were no mechanisms to enforce the decision. As a result, the husband will often simply claim that he cannot afford to pay and there is little the woman can do about it, even if she has proof that he does have financial capacity. The issue of lack of enforceability has also been recognised by the Judicial Services Monitoring Program, which has recommended that the Ministry for Social Solidarity expand on their present legal obligation under article 32(3) of the Law Against Domestic Violence (Law 7/2010) to provide maintenance where the offender cannot to include oversight of maintenance agreements "to ensure the victim receives the correct amount of maintenance from the offender".[159]

Given the current inability to enforce maintenance agreements, it appears that the husband often withholds payment as a way of punishing his wife. As a lawyer with Victims Support Services in Suai commented, "if the

[153] Woman interviewee 19, 25 April 2012
[154] Woman interviewee 21, 7 May 2012
[155] Woman interviewee 22, 7 August 2012
[156] Luisa dos Reis Marcal, Director, Pradet, Dili, 7 August 2012
[157] Interestingly, the predominance of women having primary responsibility for the children appeared to apply in both patrilineal and matrilineal cultures
[158] Woman interviewee 17, Suai, 23 April 2012
[159] JSMP (2011), *Facing the Challenge of Domestic Violence in Timor-Leste: Can the New Law Deliver?*, Dili, Timor-Leste, July 2011, p.11.

domestic violence goes to court, it is common that he will leave her, get a new wife, and not pay maintenance."[160] This tendency to abandon the wife and children following domestic violence proceedings was also confirmed by many other stakeholders.[161] While a thorough investigation of the extent to which this is true falls outside the scope of this research, this is an important issue for further research as it also relates to the issuing of suspended sentences. If there is evidence indicating that it is common for perpetrators to abandon their families following court proceedings against them, this renders specious the argument that granting a suspended sentence allows him to continue looking after his family.

Property

While most interviewees stated that their primary concern was how to look after their children, property settlement was another issue that was raised by a number of women. The stories varied significantly: in some cases they had lived in a rental house so there was no clear major asset for division; in other cases, the husband was deliberately keeping their assets for himself as another way of controlling her; in yet further cases, the husband actively stole major assets—either through outright theft or forgery.

In most cases where they had separated, the most common scenario was that the wife needed to find a new home. Even for women who did manage to continue living in the marital home, this raised a whole new set of issues, as the husband would commonly come back to harass her, as was the situation for one woman interviewee in Dili. In this case, he had agreed to move out of the marital home, however there were ongoing issues as he commonly comes to her house late at night and abuses her. As she explained, he now lives with his second wife but she lives in constant fear of him, as he continues to claim that she and the house are his 'property'. However, as the divorce proceedings are taking a long time to be heard and she does not have sufficient money to pay rent on a new house without some proceeds from the current house, she cannot leave. When asked what would be a good outcome for her, she explained, "if he is always coming here because of the house, I want to just sell the house and then we can divide the money. And then hopefully he will stop coming here and abusing me"[162]. However, she must wait for the court to hear her case before this can be resolved.

For the remainder of the women, they had to find another place to live. For those who are very poor this is a major issue. As one woman explained, she had spent many years living on the streets because she did not have a house to live in.[163] In another case, the only option aside from the temporary solution of the women's shelter was a small house in the mountains: "I want to go back home. But my home is very far, and it's not good. When it is the rainy season, rain is always coming through the roof, my home is always wet. The children and I always get sick."[164] In a third case, in which the husband had taken a second wife, she has asked for him to build her a small house, allowing him and his wife to live in their marital home. In exchange for this, she has said that she would not ask for a divorce or create other problems. However, he has refused to do this as he wants to have both his wives under the same roof.[165] There were many variations of these stories. As the Subdistrict Administrator of Baucau explained,

[160] Agustinho Soares, VSS Lawyer, Suai, 23 April 2012
[161] Fatima Sara dos Reis, Coordinator Fokupers, Suai, 22, April 2012; Agustinho Soares, VSS Lawyer, Suai, 23 April 2012; Domingas Tilman, Coordinator Uma PAS, Baucau, 3 April 2012; FGD Baucau Referral Network, Baucau, 4 April 2012
[162] Woman interviewee 21, 7 May 2012
[163] Woman interviewee 22, 7 May 2012
[164] Woman interviewee 10, 15 May 2012
[165] Woman interviewee 11, 15 May 2012

there are a number of domestic violence cases in which a husband will abandon his wife but contest a divorce because he does not want to divide the property with his wife.[166]

In discussing rights to house and land, however, this also links with issues of land tenure and family land. In rural areas, it is common for large family groups to occupy the same area. For marriages that follow patrilineality (the majority of Timor-Leste), in which the woman marries into the husband's family, the practical reality is that it is unfeasible for the woman to claim any of the land or the house. If it is customary land it is not so readily bought and sold.[167] But more importantly, if she were to continue living in that house it would render her constantly vulnerable to abuse from her husband and his family—her close neighbours. This makes the possibility for claiming common marital assets complicated, needing to be resolved on a case-by-case basis, recognising the complexity of land tenure in Timor-Leste.

In addition to division of common assets, there were also a number of cases in which the husband had stolen the woman's assets. There were three cases of very clear theft, with one involving outright theft and two involving forgery. In one case in 2011, the woman had fled from her husband and lived in the women's shelter, having to move from one shelter to the next as he continued to threaten her. When she finally was able to leave the shelter, she discovered that he had stolen all of her money by forging her signature[168] and emptying her bank account. She has been unable to recover any of this money. As she explained, she now "must start again from zero" and while she owns a number of small businesses, they require a cash flow which she no longer has access to.[169] In a second case in Dili in 2002, the woman operated a small restaurant out of her home.[170] She and her husband were already divorced and a property settlement agreed, however she came home one afternoon to find all of her goods (including restaurant assets) had been taken.[171] She went back to court and was successful in getting her restaurant assets returned, however had to forego her private assets. In a final case in Suai, the husband forged his wife's signature in order to sell a second house that they owned jointly. This was before they were divorced, and she was successful in getting her part of the proceeds. However, when they separated because of the violence, this meant that she had no place to live, as her husband continues to live in their primary home.[172] As with other civil cases, the many obstacles in claiming their rights through the formal system have meant that these women had very little power in reclaiming her assets.

F. Going Forward

The stories of the women who participated in this research revealed many interlocking issues that they faced when attempting to access assistance. These ranged from attitudes of 'blame the victim' when attempting to get support in stopping the violence, social and economic dependency which tied her into existing family relationships, a preference for resolving issues locally—despite the wishes of the woman, uneven responsiveness of the police, lengthy court processes, and lack of social support structures if a woman chose to leave the violent relationship.

[166] Regina de Sousa, Baucau Subdistrict Administrator, Dili, 11 August 2012
[167] See for example Fitzpatrick, Daniel, Andrew McWilliam and Susana Barnes (2012), Property and Social Resilience in Times of Conflict: Land, Custom and Law in East Timor. Ashgate Press 2012.
[168] Forgery as per Article 303 (1) (a) PC
[169] Woman interviewee 3, 3 April 2012
[170] Woman interviewee 23, 11 August 2012
[171] Aggravated theft as per Article 252 (1) (e-g) PC
[172] Woman interviewee 16, 23 April 2012

To date, there has been much emphasis put on socialisation of rights and obligations under the legislation, which according to many stakeholders has certainly been needed. The new legislation has given local stakeholders a vital tool to engage in more robust community education campaigns, designed to educate local leaders on their responsibility to refer domestic violence cases, and educate women on their rights to access help and support.[173] In addition, the procedural changes wherein domestic violence is defined as a public crime appears to have been very effective in dealing with one of the major issues that victims faced before 2010: the tendency of the police to return domestic violence victims to traditional authorities to have the case resolved through *adat*. While there are nonetheless many issues in police responsiveness that were raised by research participants, the act of officially removing police discretion in receiving and registering domestic violence cases appears to have been a positive step in improving women's access to the formal justice system

However, going forward, the stories of these women also highlight the need to consider the capacity of the formal justice system to be appropriately responsive to the cases that are being brought to the courts. For most stakeholders and women interviewees, the current inability of the court system to process their cases means that they are losing faith in the formal legal system, which is also having a snowballing effect as other women decide to not to take their problem to the police. This is creating a tension between the formal legal regime that defines domestic violence as a public crime and the needs of women victims. On the one hand, because they are unable to withdraw their complaint, many domestic violence victims become hostile witnesses, thwarting the formal court proceedings—a source of deep frustration for police and prosecutors, and women's support services alike.[174] This can create a new version of 'blame the victim', as women are pressured to bring their cases forward, despite the formal system's inability to help them. VPU officials in all three case study sites explained that convincing women to be brave and to put faith in the formal system was often one of the most difficult parts of their job.

On the other hand, the economic reality for many women is that bringing their case forward makes their lives that much more difficult—which is exacerbated by the length of time that they must wait for the case to be heard. As one woman explained, the grinding poverty that she had experienced since bringing her case to the police and her husband consequently abandoning her had been just as destructive as physical beatings:

> Violence that gives you injuries, you can take them to the hospital to be nursed. But violence that is inflicted slowly, emotional or financial, that also is violence. But people don't think this is violence. They say, you haven't been killed, you haven't got serious injuries. But this other violence, it can also kill you, it can send you crazy.[175]

Many of the issues that have been raised in this report are entrenched, and come back to lack of human and other resources across many different areas, including the police, the prosecutor's office, the courts, social security services, NGOs, and others. There is clearly no single intervention that will change the reality for these women, which is why an inter-sectoral approach such as that outlined in the National Action Plan for Gender Based Violence (NAP) is important. The NAP is Timor-Leste's first multi-sectoral approach to addressing gender-based violence and it identifies short and long-term goals for three years (2012-2014). It describes how state institutions, civil society and development partners will work together in the education, social services, justice, security and health sectors, to reach these goals. It outlines the strategic areas of focus, spheres for mutual collaboration and improved mechanisms for coordination, monitoring and evaluation[176].

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[173] Amelia de Jesus Amaral, VPU police officer, Suai, 24 April 2012, Zelia Trinidade, Prosecutor Suai District, Suai, 24 April 2012
[174] Interview VPU Suai, Baucau, prosecutor Suai, Alola, women's rep
[175] Woman interviewee 13, 15 May 2012
[176] Office of The Secretary of State for Promotion of Equality(2012), *National Action Plan on Gender-based Violence*, p.2

Two years after the adoption of the Law Against Domestic Violence (LADV), its practical implementation - as highlighted in the current research - has revealed a number of areas where clarification or enhancement is needed. Improved coordination between all entities carrying responsibilities under the LADV is certainly key to delivering better protection, support and remedies to domestic violence victims. Under the LADV and the NAP a vast array of sub-legislative measures, ethical professional codes and operational procedures and guidelines are envisaged.[177] However, given the urgency for domestic violence victims, perhaps government, civil society and development partners ought to also focus on strengthening existing mechanisms and procedures rather than waiting for further measures to be developed or enacted. Understanding institutional gaps that require better coordination between different agencies would also assist with ensuring women get better responses to their complaints.

Given the reality that many women only go to the police once they are in fear for their lives, it is unlikely that additional resourcing to deal with existing cases will immediately ease the strain. This is because it is impossible to predict how many otherwise 'silent' cases will be brought forward as systems are improved.

As well as improving the responsiveness of the formal justice system, there is also a clear need for greater focus on the livelihoods of women—both in increasing their 'bargaining' capacity when they seek help in dealing with the domestic violence, and in supporting them if they choose to leave (or are abandoned). An issue that was raised many times by research participants was the expectation that women look after a large number of children, and the challenge of ensuring that fathers also take financial responsibility for this. While many legal aid service providers are also limited in their capacity to assist women victims of domestic violence, with too many cases and too few resources, some legal aid providers have recognised the importance in supporting their clients in claiming (child) maintenance[178] through the courts. This is also an important area for the government to address, looking for creative ways to monitor and enforce court decisions to provide maintenance, possibly involving local leaders, MSS, and/or government employers where the father is a public servant.

Finally, while the government and other stakeholders have a clear responsibility to improve the responsiveness of the formal system, the individual success stories for a number of women interviewees also show other ways forward. Women interviewees who had previously been dependent on her husband, but who had either chosen or been forced to become economically independent, all expressed relief at their present situation. As one woman explained,

> I don't think I have lost anything in separating from him. Because I am no longer dependent on him. I know that it is not just men who can get food, I too can live without him. Even though sometimes he cries and asks for me to come back. I have my own work, selling umbrellas.[179]

Similar sentiments were expressed by another woman who had found work in the women's shelter where she had originally gone for help. By her own admission, when she first went to the shelter for help, it never occurred to her

[177] See for example RDTL, Law Against Domestic Violence (Law 2007/2010): Articles 15(4) & 16 (2) operational guidelines and procedures for reception centres and shelters, Article 23 (1) (a) Code of Professional Ethics and Standard Operating Procedures for social assistance services, and Article 33 (2) MSS diploma on maintenance.

[178] RDTL, Law Against Domestic Violence (Law 2007/2010), Articles 29-34 cover a broad concept of maintenance for DV victims (spouse/ex-spouse/descendant/ascendant) '*in need of assistance*'. It includes but is not limited to children (see specific reference to 'minor' in Article 31).

[179] Woman interviewee 21, Dili, 7 May 2012

that she could earn a living of her own and would have preferred to have been able to stay with her husband's family. However, now she much prefers her economic independence and the self-respect that this brings.[180]

According to Articles 15 and 16 of the Law Against Domestic Violence, in justifiable cases victims are entitled to receive training on personal, professional and social skills to 'contribute to their successful social reintegration'. Government programs to fulfil this obligation are yet to be realised in practice. Nonetheless, small training programs that have been run through women's shelters have shown the potential in increasing women's ability to earn an income of their own. The training that is currently being offered, such as sewing or cooking, has had the important impact of showing women their economic potential and challenging the gendered division of labour, opening up new opportunities for these women to move beyond the violence.

[180] Woman interviewee 18, Suai, 25 April 2012

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Appendix A - List of Research Participants

WOMEN INTERVIEWEES

In-depth interviews with women who have experienced domestic violence:

Woman interviewee 1	3 April, 2012
Woman interviewee 2	3 April, 2012
Woman interviewee 3	3 April, 2012
Woman interviewee 4	3 April, 2012
Woman interviewee 5	3 April, 2012
Woman interviewee 6	3 April, 2012
Woman interviewee 7	3 April, 2012
Woman interviewee 8	3 April, 2012
Woman interviewee 9	3 April, 2012
Woman interviewee 10	15 May, 2012
Woman interviewee 11	15 May, 2012
Woman interviewee 12	15 May, 2012
Woman interviewee 13	15 May, 2012
Woman interviewee 14	23 April, 2012
Woman interviewee 15	23 April, 2012
Woman interviewee 16	23 April, 2012
Woman interviewee 17	23 April, 2012
Woman interviewee 18	25 April, 2012
Woman interviewee 19	25 April, 2012
Woman interviewee 20	3 April, 2012
Woman interviewee 21	7 May, 2012
Woman interviewee 22	27 March 2012
Woman interviewee 23	7 August, 2012
Woman interviewee 24	11 August, 2012

BAUCAU

In-Depth Interviews with Stakeholders:

Juliao Antonio da Silva de Jesus	Program Manager, ECM	2 April 2012
Lino Lopes	Director, ECM	2 April 2012
Domingas Tilman	Coordinator, Uma Pas	3 April 2012
Filismena Belo	Assistant Coordinator, Uma Pas	15 May 2012
Joao Sancho Pires	District Second Commander PNTL	9 August 2012
Kamis Miguel Mendoca	District Community Police Commander	9 August 2012
Madaleina Ximenes Freitas	Sub-section chief, VPU	9 August 2012
Francisca Ribeiro	Coordinator, Fundasaun Alola	10 August 2012
Regina de Sousa	Baucau Subdistrict Administrator	11 August 2012

Focus Group Discussion with Baucau Referral Network, 4 April, 2012

Faisal Saleh	Coordinator	Orfanato Al-Amal
Adilson Freitas	Community Police officer	PNTL Baucau
Norberta Belo	Community Police officer	PNTL Baucau

Domingas Tilman	Coordinator	Uma PAS
Nicolau Freitas	Monitoring Assistant	UNMIT HRUS
Januario da Costa Cabral	Responsavel PH	Orphanage
Agapito Rodrigues	Assistant PDHJ	PDHJ Regional
Jesuina H.B. Ximenes	Facilitator	World Vision
Cecilia Ximenes	A.S. Laga	MSS/DNRS
Dulce Soares	OPI Baucau	MSS/DNRS
Luis da Cunha Rego	Mental Health	SDS Baucau
Jose Celestino	Legal Officer	VSS
Antonio Freitas	Animator	MSS/DNRS

SUAI

In-Depth Interviews with Stakeholders:

Herculano Granadeiro	Coordinator, The Justice Facility Suai	19 March, 2012
Madre Mafalda dos Santos	Head madre, Suai women's shelter	20 April, 2012
Fatima Sara dos Reis	Coordinator, Fokupers	22 April, 2012
Agustinho Soares,	VSS, Lawyer	23 April, 2012
Angela Gusmao Pereira	Coordinator, Suai women's shelter	23 April, 2012
Amelia de Jesus Amaral	Police officer, VPU	24 April, 2012
Zelia Trinidade,	Prosecutor	24 April, 2012
Quintino da Costa	OPI Suai, MSS	25 April, 2012
Agustinho da Silva	Suku Chief, Debos	25 April, 2012

DILI

In-Depth Interviews with Stakeholders:

Luisa dos Reis Marcal	Manager, Pradet	9 April 2012 and 7 August 2012
Azira Reis	Advocacy Manager, Fundasaun Alola	11 April, 2012
Daria da Costa Ximenes	VPU Commander, Dili	17 April, 2012
Silveiro Pinto Baptista	Adjuntu PDHJ, Dili	14 May, 2012
Hipolito D. Sarmento	Suku Chief, Caicoli	20 April, 2012
Lucio da Costa de Jesus	Suku Chief, Comoro	20 April, 2012
Maria Carvalho Freitas	Women's Rep, Bidau	11 August, 2012

Appendix B - Research Framework

Access to Justice: Women's Legal Needs Research

Background

The Access to Justice (ATJ) program, implemented by The Asia Foundation with funding from the United States Agency for International Development (USAID) has been running since 2002. The program provides funding to community legal aid organisations to provide litigation and non-litigation services across the country. The legal aid organisations supported by ATJ currently have 56 percent women clients, most of whom are the victims of domestic violence. ATJ works closely with the legal aid organisations to enhance legal aid service delivery for women clients and increase the capacity of women lawyers. This has included supporting the Victim Support Service (VSS) - currently a unit of the NGO Judicial System Monitoring Program - to become the first legal aid organization serving women and children clients.

Activity

To support legal aid service delivery for women clients, ATJ plans to conduct research on women's legal needs, specifically looking at obstacles facing women victims of domestic violence in accessing justice and the civil law needs of women victims of domestic violence. The research will focus on civil law areas such as divorce, maintenance, child custody, and right to land and property. It will also focus on the ways in which women seek to access the formal legal system, and the obstacles that impede their access.

Research inquiry

The research aims to answer the following questions:

1. What are the civil law needs of women victims of domestic violence? What impact does civil law needs have on a woman's decision to seek to prosecute domestic violence?
2. What is the perceived optimal legal outcome(s) for women victims of domestic violence, taking into account, social, economic, and cultural interests?
3. What challenges do women victims of domestic violence face in accessing justice in the informal and formal justice system?
4. How can legal aid organizations better tailor their support to achieve optimal outcomes and meet the access to justice needs of women victims of domestic violence?

Research methodology

Effectively capturing contextual information from women who have experienced domestic violence requires giving the interviewee space to 'tell her story'. This in turn means that the research must take a qualitative approach that is responsive and flexible to the information provided by the interviewee. Some consistency is also required to facilitate comparative analysis, allowing for the development of stronger findings and recommendations. ATJ has therefore determined to take a qualitative approach to the research in which up to 50 people will be interviewed:

- *Women who have experienced domestic violence*

ATJ aims to interview 35 women who have experienced domestic violence will be interviewed in one to one open-ended interviews. ATJ will seek to interview both those who have sought assistance through the formal system and those who have addressed the violence through the informal system. ATJ will conduct an individual risk assessment prior to conducting each interview and will ensure fully informed consent from the interviewee at all stages of the

interview. Sampling will include a combination of purposeful and snowballing, wherein research respondents will be identified through TAF's legal aid partners, and other local stakeholders. All interviews with DV victims will be conducted in a private place according to the victim's wishes. [See below – Research Risks].

- *Stakeholders*

Fifteen stakeholders, including local NGOs, PNTL officers, local leaders and other local level actors involved in domestic violence cases, will also be interviewed, including through focus group discussions.

Research questions

To facilitate comparative analysis, information on the following key areas will be gathered for each research site:

At the suku level:

- How aware was the victim of her rights when the DV took place? Was there misinformation provided by family, local leaders and/or police at any time which impinged on her seeking support?
- What types of support did the victim seek in dealing with the DV situation? How effective were these?
- Ultimately, what was the outcome of the case? What were the expectations of the victim when she went for help? Were these realized? If not, why not?
- What would be an ideal outcome/s, from the victim's perspective? What are the outcomes that local leaders aim to realize in resolving a DV situation? Are these different? Why?
- Tracking the DV resolution process. In each situation, what were the steps that were taken? Who were the key decision makers in deciding *how* to resolve the DV situation? Who were the key decision makers in *resolving* DV situations? Why? What was their role? How effective were they in meeting the victim's needs?
- What was the 'trigger' in taking the case to the police?[181] Was the trigger common across the different DV cases? What obstacles did the victim need to overcome in going to the police? How did she overcome those obstacles?
- How effective were the police in meeting the victim's needs? Were they active in pursuing the case? Did they send her back to the local leaders? How would the victim like to see the system changed to better meet her needs?
- If the case went to trial, how effective was the prosecutor/court in meeting the victim's needs? Were they active in pursuing the case? How would the victim like to see the system changed to better meet her needs?
- Was there an akorda malu signed? Who arranged the akorda malu – and what did they want to achieve? Did the victim know the contents of the document that she signed? What was the impact of the akorda malu on the victim's case?

At the subdistrict and district levels:

- What types of support do DV victims need? What types of support are actually being provided? What is stopping necessary support from being provided?
- What is the current level of awareness among victims and stakeholders of victims' rights? (incl. protective measures, financial support for criminal proceedings, divorce and property settlement, reparations, child custody, child support and maintenance).
- Would greater awareness of these civil law rights generate different outcomes? Why/why not? What else is needed?
- Would the victim benefit from greater support during local dispute resolution processes? What form should that support take? Who should give that support?
- What are the key social, economic and cultural obstacles that are faced by DV victims: (i) in obtaining support that is responsive to their needs? (ii) in accessing her legal rights?
- Who would be the appropriate support entity for addressing these obstacles? Why?

[181] Commonly it is serious injury (raan sae) and/or use of a weapon, but not all cases are dealt with in the same manner. Local leaders will also say that the victim can simply choose to take the matter to the police, but this is often not a practical reality

- What local strategies are proving most effective, and what constraints are being faced by local organizations in combating DV? How are these constraints being addressed?

Detailed information on the victim's age, education level, income, marital status (incl. details on customary nature of the relationship), number of children, place of origin and place of residence will also be gathered in victim interviews to contextualize her responses. While some questions will be more appropriately addressed to DV victims, and other questions by local stakeholders, every effort will be made to gather responses from a range of different interviewees (including both victims and stakeholders) in order to ensure qualitative data.

Research output

ATJ will produce a report based on the research. The report will be mainly for the legal aid organizations that ATJ supports. ATJ will provide feedback on the report to the legal aid partners in a workshop, using a power point presentation outlining the main findings.

The report of the research will be public and will be distributed to some government and non-government agencies. The identity of the women - or any information which could identify them - will not be mentioned in the report. The case studies produced from the interviews will also not be in the report.

The main uses of the report will be:

- To provide feedback on the research to the legal aid organizations to help them provide services to women clients;
- To talk to agencies – government and non-government – about how they support women who have experienced domestic violence.

Location

This research will be conducted across three districts: Dili, Suai and Baucau. These locations were selected to ensure urban/rural balance, but above all to ensure that appropriate services are available to the women interviewees should they be needed.

Research Risks and steps to minimize the risks

The research team comprises one Timorese and one expatriate interviewer – both of whom have experience in interviewing women who have experienced physical and/or sexual violence. However, therehere are nonetheless two significant risk factors in relation to the research:

- Physical security of the interviewees
- Risk to the psychological health of the women interviewees as they recount their stories

ATJ will take the following steps to minimize these risks:

Risk assessment prior to contact

A risk assessment will be conducted prior to approaching potential interviewees. Interviewees will be approached through local service providers such as legal aid organizations, local NGOs who work with women, VPU, and/or others.

Local service providers will be specifically asked to keep the physical and psychological health of potential interviewees as their main priorities when giving recommendations. They will also be asked to only suggest potential interviewees if they meet the following criteria:

- There has been no recurrence of violence in the past 12 months
- The potential interviewee has already spoken to others of her experience, so is less likely to experience re-traumatisation from being interviewed.
- If the case is ongoing, will the interview cause any harmful impact to the woman or impact negatively on her case.

Other questions that will be part of the initial risk assessment include:

- At what stage in the process is the case?
- Is the woman safe from the perpetrator? Have there been threats to the research participant, her family, or others because of the woman's case?
- Is the perpetrator obsessed with the participant such as following the participant and monitoring daily activities?
- Has the research participant recently announced to the perpetrator of violence that she is planning to disclose abuse or that she is planning to leave the relationship, employment, residence, etc.?
- Is the woman in an environment where she has family support?
- Can the service provider approach her in a confidential manner?
- Is she likely to be able to leave her daily routine to meet with the researchers without causing any undue attention?

Analysis by TAF

The initial risk assessment

TAF will base its initial risk assessment on the responses to the questions above. In the event that TAF is satisfied that there will be no risk to the interview, arrangements to meet with the woman will be made either by the service provider or by TAF directly based on an assessment of the most secure method of contact.

During interview

Prior to and during the interview, TAF will follow the principle of 'do no harm'. If it appears that there is any risk to the physical security or psychological health of the woman, TAF will call a halt to the interview and if necessary call in assistance.

Ensuring informed consent

- When approaching the interviewee to arrange a time, and also immediately prior to the interview, the researchers will provide a simple explanation of the research.

- The interviewee will be asked for her consent at the beginning of the interview. To ensure that this is informed consent, the request for consent will be repeated throughout the interview and ATJ will inform the interview of a question and then ask whether they wish to answer. Consent will also be sought at the end of the interview, once the interviewee has completed the interview and understood the nature of the questions.

Techniques employed to reduce psychological harm

- When scheduling interviews, the interviewee will be asked to choose a time so that she could relax after the interview, rather than needing to return immediately afterwards to a stressful situation.

- The questions for the interviews will focus more on the process of seeking legal assistance, than on the incident/s of violence. The interviewee will not be asked to describe the incident/s of violence.

- Throughout the interview, the interviewee will be reminded that she can stop the interview at any time, without needing to give a reason. Prior to interview, the researchers and interviewee will also agree on a simple hand signal for the interviewee to use to stop the interview if she becomes distressed. The interviewers will also exercise their own judgment, and suggest stopping the interview, if they consider that the interview is becoming harmful.

Logistical and research design

- Interviews will be conducted in a safe place according to the victim's wishes. For those who prefer an interview to be conducted outside their home, a safe place for interviews will be arranged through local service providers. 'Interruption plans' will be developed prior to research and agreed upon prior to interview, for use if the interview is unexpectedly interrupted. If there is an interruption, interviewers will quickly change the subject to pre-agreed topics such as women's health issues, child care, or household duties.

- Locations have been selected on the basis of the presence of support services, both from legal aid organizations and from counseling services. At the end of each interview, ATJ will provide contact details to the woman of both the local office of VSS, Fatin Hakmatek and other counseling services.

- Follow up visits will be conducted with victims once the research is completed, to feed back the results of the research and ensure they feel valued for their contribution, and also to check if participation in the research had any negative impact on the woman and/or her family and community.

Ensuring confidentiality

- Only one woman from a household will be interviewed, thereby ensuring that other members of the same household and family are not aware of the nature of the research questions.

- All members of the research team will be required to sign a confidentiality agreement, ensuring that they do not disclose the details of interviewee, and/or her specific situation outside the parameters of the research aims & objectives.

- ATJ will not record the name and place of residence of the interviewee on any notes or any computer file. Instead ATJ will use a system of numbers to identify different stories.