

## Article

Jeswynn Yogaratnam\*

# A Review of the 2010 Domestic Violence Law in Timor-Leste

**Abstract:** In July 2010 the Timor-Leste Government promulgated the Law Against Domestic Violence. This is part of a constitutional promise to improve women and child security. Inherent in this development is the shift from traditional dispute resolution system to a state criminal justice system. This shift identifies domestic violence as a public crime and relies on greater participation from the stakeholders of domestic violence, i.e., the police, prosecution, legal services, health care services, social care services and community leaders. This paper examines the legal framework of the new domestic violence law and the impact on the stakeholders in delivering the legal obligation to promote women and child security in Timor-Leste. Inherent in this discussion is the question of whether the new law can reform the traditional justice system, change community behaviour and meet the competing challenges of cultural relativism in each district of Timor-Leste.

**Keywords:** Timor-Leste, domestic violence, law, 2010

---

\*Corresponding author: **Jeswynn Yogaratnam**, Charles Darwin University, Casuarina, NT, Australia, E-mail: [jeswynn.yogaratnam@cdu.edu.au](mailto:jeswynn.yogaratnam@cdu.edu.au)

## I. INTRODUCTION

On 7 July 2010, the Timor-Leste Government promulgated *Law No. 7/2010* as the new state law on domestic violence (hereinafter referred to as “the new law”).<sup>1</sup> This was part of a constitutional promise to uphold principles of universality

---

The observations and analysis in this article are based on Mr. Yogaratnam’s findings during and after an AusAID gender violence project in Timor-Leste (2009–2011). The AusAID project was conducted together with Dr. Suzanne Belton and the Judicial System Monitoring Programme (JSMP) of Timor-Leste.

<sup>1</sup> *Law No. 7/2010*.

and equality<sup>2</sup>; to ensure equality of men and women<sup>3</sup>; to improve access to justice<sup>4</sup>; and to comply with international law obligations.<sup>5</sup> Importantly, the new law is also an attempt to advance community awareness on women's rights and change attitudes and behaviours concerning domestic violence victims. As observed by Her Excellency Secretary of State for the Promotion of Equality, Dra Idelta Maria Rodrigues:

The enactment of the Law ... is a step in the right direction towards addressing structural gender inequalities that underlies the disproportionately higher level of violence that is committed against women and children.<sup>6</sup>

Key to this discussion is the relationship between the traditional justice system and the formal justice system. This is an underlying tension that must be addressed because the new law (through the criminal justice system) treats domestic violence as a public crime and it may be viewed as displacing the traditional justice system from dealing with such matters.

In addition, as a public crime there is a shift of greater responsibility to the stakeholders within the criminal justice system to form effective safeguards and protection mechanisms. The stakeholders here include the police, public prosecution services, legal aid service providers, health care service providers, social care services, community leaders, *etc.* This shift of greater responsibility is necessary in order to meet the broader objectives of the new law, which are set out in the preamble to be:

- prevention of domestic violence;
- protection from domestic violence; and
- assistance to domestic violence victims.<sup>7</sup>

---

<sup>2</sup> *Constitution of the Democratic Republic of Timor-Leste*, s. 16.

<sup>3</sup> *Ibid.*, s. 17.

<sup>4</sup> *Ibid.*, s. 26.

<sup>5</sup> *Ibid.*, s. 9. In particular international obligations under the *Convention to Eliminate All Forms of Discrimination Against Women* (18 December 1979), 1249 U.N.T.S. 13 (entered into force 3 September 1981) (CEDAW) and the related Protocol which Timor-Leste accessed to on 16 April 2003.

<sup>6</sup> Foreword by Her Excellency Secretary of State for Promotion of Equality of Timor-Leste, in "Addressing Gender-Based Violence in Timor-Leste, A Manual for Legal Aid Lawyers – Volume 1 – Legal Framework" (USAID; JSMP; Asia), online: <<http://jsmp.tl/wp-content/uploads/2012/05/Addressing-Gender-Based-Violence-Legal-Guideline-%E2%80%93Volume-1.pdf>> (last accessed at 20 August 2013).

<sup>7</sup> *Law No. 7/2010*, Art. 1.

Notably, these objectives are partly achieved by empowering the domestic violence stakeholders<sup>8</sup> to act with meaningful outreach to *Chefes de Sucu* (chiefs of villages) and *Chefes de Adelais* (chiefs of hamlets). This is crucial because any effective traditional justice reform in treating domestic violence as a public crime will come from the change of attitude of community leaders themselves.

With the recent promulgation of the new law there is an expectation that equality of women will be achieved through legislative reform; civil society advocacy; and government agency initiatives.<sup>9</sup> Such initiatives have already been advanced through the Office of the Secretary of State for the Promotion of Equality (SEPI)<sup>10</sup> as part of the government's National Priorities Program in 2009.<sup>11</sup> This is in addition to the recent move to recognise civil society movements like the Judicial System Monitoring Programme (JSMP) who have been conferred the status of an official legal aid provider for domestic violence victims through its Victim Support Service unit.<sup>12</sup>

In improving access to justice, the new law can be viewed as adopting a process of vernacularisation,<sup>13</sup> through the transfer of the translation of ideas and practices developed in cosmopolitan centres such as the United Nations into terms appropriate for local contexts.<sup>14</sup> This is achieved in two stages. First, the collective responsibility afforded to the *stakeholders* – police, public prosecution service, legal services, health care services and social care services – in networking together to effectively unplug access to justice.<sup>15</sup> Second, through the government developing a National Action Plan which involves active collaboration with civil society organisations, local government (community leaders) and families of communities.<sup>16</sup>

Vernacularisation through the new law is necessary because the new law makes domestic violence a *public crime* and potentially reforms the traditional

---

**8** *Ibid.*, Art. 7.

**9** *Constitution of the Democratic Republic of Timor-Leste*, s. 7.

**10** An agency of the Timor-Leste Government.

**11** The Government of Timor-Leste has established seven working groups on various themes under the National Priority Program for 2009. The themes are food security; access to justice; rural development; human resources development; public safety and security; social protection and social services; and clean and effective government.

**12** On 21 December 2012, the Victim's Support Service of JSMP was launched as an independent legal aid organisation known as Women and Children's Legal Aid (AlFeLa).

**13** This is through the introduction of international law rights for women as enshrined in CEDAW, *Convention to Eliminate All Forms of Discrimination Against Women* (18 December 1979), 1249 U.N.T.S. 13.

**14** P. Levitt & S.E. Merry, "Unpacking the Vernacularization Process: The Transnational Circulation of Women's Human Rights", online: <[http://citation.allacademic.com/meta/p\\_mla\\_apa\\_research\\_citation/3/1/0/9/2/pages310922/p310922-1.php](http://citation.allacademic.com/meta/p_mla_apa_research_citation/3/1/0/9/2/pages310922/p310922-1.php)> (last accessed 21 October 2013).

**15** *Law No. 7/2010*, Art. 7.

**16** *Ibid.*, Art. 13.

justice system. Hence unless the local context is considered, the existing difficulties faced by women will not be removed and there may be a fallback to the traditional justice system which anecdotally is said to merely “kill the pig<sup>17</sup> and let the women continue to suffer.” The existing difficulties include barriers to the formal justice system as a result of geography and expense; a reliance on traditional justice approaches which have a poor human rights record; and limited knowledge of laws and rights among domestic violence victims.<sup>18</sup> As such, in examining the purpose, content and application of new law, there is a need to understand the interplay between the new law and the *Penal Code* (together with the traditional justice system).

This paper examines the legal framework of the new law, the observations of the JSMP and the impact on the stakeholders in delivering the *legal obligation* to promote women and child safety in Timor-Leste. Central to this discussion is the question of whether the new law can be juxtaposed with the traditional justice system, change community behaviour, and meet the competing cultural challenges in each district of Timor-Leste.

## II. THE NEW LAW AND THE TRADITIONAL JUSTICE SYSTEM

A common observation in the legal systems of post-colonial States is the existence of a slippery slope on which legal pluralism slides. This may be a result of the legacy of colonial laws; the introduction of transitional laws; the advent of post-transitional state laws; and the uncertainty of where traditional customary law and religious edicts operate within the new legal system. Consequently, this can create a state of confusion on the effectiveness and application of the new law within the formal legal system,<sup>19</sup> especially where the implementation and socialisation of the new law lacks consultation with traditional leaders and integration with the existing customary law.

In Timor-Leste, the successful implementation of the new law on domestic violence would require an inclusive engagement process with the traditional justice system to elucidate the status of customary law on domestic violence in

---

<sup>17</sup> This is part of the compensation in the traditional justice system where an animal is sacrificed as reparation for the crime committed.

<sup>18</sup> See P. Levitt & S.E. Merry, “Unpacking the Vernacularization Process: The Transnational Circulation of Women’s Human Rights”, online: <[http://citation.allacademic.com/meta/p\\_mla\\_a-pa\\_research\\_citation/3/1/0/9/2/pages310922/p310922-1.php](http://citation.allacademic.com/meta/p_mla_a-pa_research_citation/3/1/0/9/2/pages310922/p310922-1.php)> (last accessed 21 October 2013), at 109.

<sup>19</sup> The formal legal system includes the *Constitution of Democratic Republic of Timor-Leste* (22 March 2002); the *Penal Code* (30 March 2009); the *Civil Code*; *United Nations Transitional Administration of East Timor (UNTAET) Regulations*; International law; and East Timorese law.

the context of the new law. It is the author's view that there will be inconsistency in the application of the new law in Timor-Leste in the first few years of implementation because the new law and customary law will compete in steering the direction of social change. However, as legal pluralism historically demonstrates, each legal system will mutually adjust to become intertwined orders.<sup>20</sup>

Customary law in Timor-Leste customary law is known as *adat*. Historically, *adat* is perceived as customary orders which are tied to local notions of identity and associated notions of appropriateness, as such they constitute patterns of social ordering associated with both implicit deeply held social norms and more explicit rules.<sup>21</sup> *Adat* is usually administered by community leaders through the traditional justice system and not the formal legal process of the courts. The traditional justice system is different from the state legal system because it is based on a dispute resolution system involving *adat* with the aim of restorative justice. While there is no agreed definition on restorative justice, it is understood to be based on symbolic, material and moral outcomes through: repairing the harm; the chance to receive an apology, reparation, healing and/or empowerment; the opportunity to tell one's story, participation in the process and in decisions about the outcome of the matter; the chance to learn more about the offender and in doing so become less angry and less fearful; and the chance to transcend resentment and become a more virtuous person.<sup>22</sup>

It appears that when *adat* is applied in the context of domestic violence in Timor-Leste, the common observations include: the woman victim does not get a chance to be heard or to respond; shame is dealt with via an agreed reparation such as killing a pig or making an offering; the couple is made to reconcile without considering the trauma to the victim; the offender may not come to recognise his actions as criminal; the woman may be stigmatised in the community for raising the matter and shaming the family; and the offender is likely to repeat the offence for lack of an effective deterrent. Clearly, while restorative justice may have its merits in dealing with other civil and criminal disputes, it may not be achieving justice for domestic violence victims. Justice for these women would mean the right to be heard, protected, and to access justice outside the traditional justice system. With the new law justice for these

---

**20** John F. McCarthy, "Between *Adat* and State: Institutional Arrangements on Sumatra's Forest Frontier" (2005) 33(1) Hum. Ecol. at 57.

**21** *Ibid.*

**22** J. Stubbs, "Beyond Apology? Domestic Violence and Critical Questions for Restorative Justice, Criminology and Criminal Justice" (2007), online: <<http://crj.sagepub.com/content/7/2/169>> (last accessed 15 October 2012).

women would not only lead to a consequence of penal punishment to the perpetrator but more importantly to an assurance of systemic and systematic support to the victim. For example, providing safe shelters for the women and children who are separated from the family; counseling to the perpetrators to deal with their behaviour; and upskilling the women while in shelters so they are economically independent and have a choice of whether to return to their spouse. While the new law provides measures for the rehabilitation of victims and measures to support offenders<sup>23</sup> a question that arises is, “does it displace restorative justice in the traditional sense which aims at restoring the family unit?” There is no simple answer to this question, because in the absence of the new law completely ruling out the traditional justice system in domestic violence disputes, there will be a hybridity of law (*adat* and the new law) dealing with such cases.

Another matter challenging any attempt to rule out the traditional justice system is the *spiritual reconciliation* that takes place through *adat*, that is, the ceremonies that are traditionally adopted to restore peace within the family. In Timor-Leste, keeping the spirits at peace (through offerings) is part of the traditional justice system in dealing with domestic violence. Matters of domestic violence are viewed by the traditional justice system as a sign that the family is being disturbed by the spirits. While this is not expressly recognised in the new law, it is expected that the hybridity of law will keep such traditions entrenched, as even when domestic violence disputes do find its way to the formal justice system. On this matter, it is important to note that customary law is recognised within the Timor-Leste Constitution. Section 2(4) of the Timor-Leste’s *Constitution*,<sup>24</sup> states:

The State shall recognise and value the norms and customs of East Timor that are not contrary to the Constitution and to any legislation dealing specifically with customary law.

This means that *adat* will still have a place within the legal framework of Timor-Leste unless it is inconsistent with the *Constitution* and state law. The principal question that arises is whether there is an inconsistency between *adat* and the formal legal system in the context of domestic violence? It appears that while the *Constitution* recognises *adat*, uncertainty remains on the applicability of *adat*<sup>25</sup> in areas where the *Constitution* and state legislation provide for laws that intersect with the traditional justice system. It is the author’s view that *adat* is

---

23 *Law No. 7/2010*, Arts. 26 and 27.

24 The *Constitution* came into effect on 20 May 2002.

25 Laura Grenfell, “Legal Pluralism and the Rule of Law in Timor-Leste” (2006) 19 *Leiden J. Int’l L.* 305.

not inconsistent with the new law in the context of domestic violence and therefore remains applicable. It is axiomatic that the purpose of the new law is to provide alternative access to justice when dealing with domestic violence victims, perpetrators and stakeholders more effectively. The purpose of the new law is not to oust the application of *adat*. It would be an ambitious and controversial endeavor if that was its purpose because 90% of domestic violence cases are dealt with via the *traditional* justice system.<sup>26</sup> In addition, it would be unconstitutional to oust *adat* as there is no direct inconsistency with the new law. However, one remains intrigued with a particular clause in the draft version of the new law that was deliberately expunged from the promulgated version. Article 2(3) of the *draft* version of the new law provided as follows:

Domestic violence shall also refer to *cultural and traditional practices* that expose women to special risks of violence and abuse[.] [emphasis added]

The strength of such a clause lies in its potential to illuminate special risks of violence and abuse within cultural and traditional practices which could amount to domestic violence (in the spectacle of the new law). While the elements of such risks are beyond the scope of this paper, it is the author's view that Parliament deliberately omitted to include such a reference to disavow itself from the consequences of intersecting the new law with the traditional justice system that could lead to some direct inconsistency. Had Parliament included the clause it would have been inescapable to identify such cultural and traditional practices which would be viewed as *inconvenient truths* pertaining to special risks of violence and abuse condoned in *adat*. Clearly, Parliament did not wish to deal with the inconsistencies. This would have been too onerous a task for a State which has entrenched traditional and cultural practices. Parliament preferred to leave it to the *Penal Code* and the new law to deal with such *risks of violence and abuse*. This observation is predicated on the understanding that *adat* still has a place in the formal justice system and that Parliament will always be slow to directly rule against it but instead provide alternative pathways through the formal legal system to deal with the *inconvenient truths* of *adat*. Ultimately, this is a way in which one can reconcile the new law with the traditional justice system. Victims of such *risks* will still have the benefit of addressing their grievance through the formal legal system.

---

<sup>26</sup> The ODE report, "Violence against Women in Melanesia and East Timor: Building on Global and Regional Promising Approaches" (2009), online: <[www.ode.ausaid.gov.au/publications/pdf/vaw\\_cs\\_full\\_report.pdf](http://www.ode.ausaid.gov.au/publications/pdf/vaw_cs_full_report.pdf)> (last accessed 20 August 2013).

### III. THE NEW LAW AND THE INTERPLAY WITH THE PENAL CODE

At the outset, it should be noted that the Timor-Leste *Penal Code* is itself relatively new law, having repealed the Indonesian *Penal Code* in March, 2009. This means that the application of the *Penal Code* provisions, while similar to its predecessor have untested provisions in the way in which it will intersect with the new law. As such, civil society like the JSMP has a vital role to monitor decisions on the application of the *Penal Code* provisions alongside the new law to truly assess the success of the implementation of the law.

Importantly, the new law sets out a conceptual shift to domestic violence by recognising domestic violence offences as criminal acts in cognisance with the *Penal Code*. This is expressly provided in Article 35<sup>27</sup> and Article 36<sup>28</sup> of the new law which makes specific reference to various articles of the *Penal Code*. In this regard, there is clear parliamentary intention that the new law be read in conjunction with the *Penal Code*. This means, for instance, in a domestic violence case where the wife is assaulted, the assault, under the new law, may trigger a simple offence against physical integrity under Article 145<sup>29</sup> of the *Penal Code* or a more serious offence under Article 146.<sup>30</sup> This also means an assault in a domestic violence context will *not* be treated as a lesser offence to that of non-domestic violence case, for instance, where a woman is randomly assaulted by a stranger on the street.

The JSMP has expressed the importance of aligning the *Penal Code* with the new law. While Articles 35 and 36 of the new law achieves this, there is some concern that there could be confusion on the application of certain provisions of the *Penal Code* when read together with the new law. For instance, Article 154 of the *Penal Code* states that mistreatment of a spouse includes physical, mental or *cruel types of treatment*. It is unclear if the term *cruel treatment* could be interpreted to include any behavior under Article 2 of the new law (which specifies domestic violence to include physical, sexual, psychological and economic

---

<sup>27</sup> Article 35 of the new law refers to various crimes within the *Penal Code* that could be classified as crimes in the category of domestic violence. This includes “Mistreatment of Spouse” (Art. 154 of the *Penal Code*); “Mistreatment of Minor” (Art. 155 of the *Penal Code*), “Homicide” (Art. 138 of the *Penal Code*); “Termination of Pregnancy” (Art. 141 of the *Penal Code*); “Simple and Serious Offences Against Physical Integrity” (Arts. 145 & 146 of the *Penal Code*); “Sexual Coercion” (Art. 171 of the *Penal Code*); “Rape” (Art. 172 of the *Penal Code*) and “Sexual Abuse of a Minor” (Art. 177 of the *Penal Code*).

<sup>28</sup> Article 36 of the new law makes reference to all the *Penal Code* provisions in Art. 36 of the new law and classifies it as “public crimes” of domestic violence.

<sup>29</sup> Simple offence against physical integrity.

<sup>30</sup> Serious offences against physical integrity.



violence). The JSMP is of the opinion that *cruel treatment* in Article 154 could be interpreted to include the behavior in Article 2 of the new law. JSMP states such an interpretation is necessary otherwise some domestic violence is criminal (if the behavior is included in the *Penal Code*) but some domestic violence is not criminal (if the behavior is included in the new law but not the *Penal Code*).<sup>31</sup> It is the author's view that such confusion does not arise because Article 36 of the new law makes it clear domestic violence crimes referred to in the new law are public crimes. The fact that Article 35 of the new law expressly refers to Article 154 of the *Penal Code* means that the domestic violence, even the cruel treatment in Article 154 on mistreatment of spouse, will be treated as criminal in nature.

## IV. EXAMINING SUBSTANTIVE PARTS OF THE NEW LAW

The introduction of domestic violence as public crime comes with a suite of principles, concepts, expectations, facilities and *language* which are intended to systematically and systemically filter through the legal system and community at large. This section of the article will consider some of the substantive parts to the new law.

### A. The Meaning of Domestic Violence

Under Article 2 of the new law, domestic violence means physical violence, sexual violence, psychological violence and economic intimidation. This includes threats such as intimidating acts, bodily offenses, aggression, coercion, harassment or deprivation of freedom. The benefit of defining the scope of domestic violence is that it may deal with the *inconvenient truths* of *adat* which may appear to condone infliction of harm to women by way of customary practices. In particular, cases of marital rape and sexual assault where, by way of the *burluque* system (similar to a dowry or price for a bride system), there is an implicit understanding that women can be controlled by the spouse and that denying sexual relations by the wife is tantamount to denial of a spousal right. By way of the new law, if for example, a woman is sexually assaulted; told not to leave the home; not allowed to work; or is not provided with any means to sustain her day today living, this can be classified as a case of domestic violence.

---

<sup>31</sup> JSMP and FOKUPERS Report, "Facing the Challenge of Domestic Violence in Timor-Leste: Can the New Law Deliver?" (July 2013).

The JSMP commended the inclusion of sexual violence in Article 2.2(b) as a distinct form of physical violence as it recognises that sexual violence is possible even within a marriage.<sup>32</sup> Accordingly, while the concept may appear obvious to a non-Timorese external observer, in Timor-Leste because of the prevailing cultural values and practices, this inclusion is very important for prosecutors and the victims alike in establishing a case of sexual violence in the context of marriage.<sup>33</sup>

In interpreting the scope of sexual violence, the JSMP added that it is vital for sexual violence to include conduct which limits or nullifies the exercise of sexual and reproductive right and other acts not commonly understood to amount to sexual violence in Timor-Leste such as: *sexual harassment, verbal abuse, leering, threats, exposure, unwanted touching, incest, rape, mutilation and ritual abuse*.<sup>34</sup>

## B. The Concept of Family

In Timor-Leste the concept of family according to *adat* is trans-generational, in that family includes grandparents, aunts, uncles, cousins, *etc.* Interestingly, the new law applies the trans-generational concept of *family* to domestic violence. This is apparent from the scope of *family* as potential domestic violence claimants in Article 3 of the new law.

Pursuant to Article 3 of the new law, other than spouses, domestic violence victims include: ex-spouses; persons living under analogous conditions spouses (even without cohabitation); ascendants and descendants of both spouses; and any person who exercises a domestic activity in a continued or subordinated manner.

It is apparent from the last category that the new law deems such persons as *family* even where there is no kinship to either party. This is similar to the understanding of *family* in the district village communities where family relationships are not restricted to kinship but persons who have taken a domestic role in the family, such that those minding a child or attending to day-to-day chores are also considered as family.

Article 3 of the new law is supported by the JSMP and they are of the opinion that it protects those who live together but are not legally married and includes

---

<sup>32</sup> *Ibid.* at 31.

<sup>33</sup> *Ibid.* at 32.

<sup>34</sup> *Ibid.* at 32.

homosexual couples in as much as heterosexual couples. While the new law does not specifically mention sexual orientation in the equality provision in Article 4,<sup>35</sup> the JSMP is of the opinion homosexuals should not be discriminated against nor be denied equal protection under the new law.<sup>36</sup>

### C. Witness Protection

Securing a witness in domestic violence cases can be a challenge. This is due to both the cultural expectation of maintaining the honor or reputation of the family, and the aim of *adat* to reconcile the couple. In most cases, the woman complainant is likely to reside in the community of the male perpetrator. The witnesses may be hostile and not forthcoming with the truth.

The JSMP has observed that the *Law on Protection of Witnesses*<sup>37</sup> will be relevant and helpful, especially Article 4, which permits concealment measures for witnesses in judicial proceedings.<sup>38</sup> To this end, the new law states that the court shall apply procedural measures for the protection of witnesses and people with knowledge of the facts.<sup>39</sup> This could improve the prosecution's case but only if such procedural measures come with support structures for the witnesses. For instance, in remote villages where a witness has to travel a fair distance to court, the anonymity of the witness may be compromised from his or her mere absence from the village. To this extent, there must be outreach of the prosecution service to the districts or teleconference facilities. There should also be support centres where the witnesses can stay over with their children and per diem support, if need be, otherwise the mere economic constraint of having to leave the village to attend court will deter the witnesses from coming forth.

---

**35** Article 4 of the new law: "Every individual, regardless of ancestry, nationality, social status, gender, ethnicity, language, age, religion, disability, political or ideological beliefs, cultural and educational level, enjoys the fundamental rights in human dignity and shall be assured equal opportunity to live without violence and the right to persevere his or her physical and mental integrity."

**36** See JSMP and FOKUPERS Report, "Facing the Challenge of Domestic Violence in Timor-Leste: Can the New Law Deliver?" (July 2013).

**37** *Law No.2/2009* (6 May 2009).

**38** See JSMP and FOKUPERS Report, "Facing the Challenge of Domestic Violence in Timor-Leste: Can the New Law Deliver?" (July 2013).

**39** *Law No. 7/2010*, Art. 39.

## D. The Requirement of Consent and Witness Statements

With domestic violence being a public crime it means that the State (through the public prosecution service) will take action against the defendant. Under the new law, the consent of the complainant must be obtained before any intervention can proceed. The new law also provides for the right of the complainant to withdraw consent. This is reflected in Articles 5.1 and 5.6<sup>40</sup> respectively which state:

### Article 5.1

[A]ny intervention to support the victim should be made after the victim gives his or her informed consent and shall be limited by full respect of the victim's will.

### Article 5.6

The victim may at any time withdraw his/her consent by his/herself or through his/her legal representative.

It must be understood that although the complainant has a right to withdraw consent at any stage of the prosecution, the State may choose to continue with the prosecution. This may complicate the prosecution's case especially if the complainant chooses not to cooperate but it does not in itself bring the prosecution's case to an end.

The prosecution's case can be further complicated when victims and witnesses who are related to the accused choose not to give evidence. Article 125 of the *Criminal Procedure Code* of Timor-Leste provides as follows:

1. The persons below may refuse to give a deposition as witnesses:
  - (a) progenitors, siblings, descendants, relatives up to the second degree, adopters, adoptees, and the spouse of the defendant;
  - (b) a person who has been married to the defendant or who cohabits, or has cohabited, with the latter in a relationship similar to that of spouses, in relation to facts that have occurred during marriage or cohabitation.
2. The authority competent to take the deposition shall, under penalty of nullity, advise the persons referred to in sub-article 125.1 that they are allowed to refuse to give a deposition.

The JSMP is of the opinion that Article 125 undermines both the capacity for the state to adequately protect family member victims of crime, and the criminal

---

<sup>40</sup> *Ibid.*, Art. 5: “[A]ny intervention ... shall take place after the victim has given...free and informed consent.”

justice system itself.<sup>41</sup> They have stated that in such cases there should be a requirement for judicial instructions to the witness that Article 125 is not synonymous to “a right to remain silent,” which only applies to the perpetrator. The judicial instructions should explain the consequences of exercising the choice not to give evidence.

Another aspect of consent which can be problematic is in relation to young people who lack capacity to give consent. In this regard, it is the view of JSMP that where there are relationships with significant power imbalances (when domestic violence occurs), there is a need to recognise that it will be difficult to ascertain whether the complainant is freely withdrawing his/her consent and whether he/she is subject to pressure from other individuals.<sup>42</sup> The JSMP has suggested that in such situations service providers (police or otherwise) should be required to investigate the issues and document reasons for withdrawal of consent. In particular, where the service providers believe that the threat to the complainant’s safety is imminent, immediate protection should be afforded.<sup>43</sup>

## E. Sentencing

In the past, there have been concerns with the legal competency of the Timor-Leste judiciary due to lack of training. There has been a case in domestic violence where an all-male panel of judges stated that “the cultural situation in East Timor allows a man to control the actions of his wife.”<sup>44</sup> In 2008 it was

---

<sup>41</sup> See JSMP and FOKUPERS Report, “Facing the Challenge of Domestic Violence in Timor-Leste: Can the New Law Deliver?” (July 2013).

<sup>42</sup> Report by JSMP & FOKUPERS Report: “Facing the Challenge of Domestic Violence in Timor-Leste: Can the New Law Deliver?” (July 2012), online: <<http://jsmp.tl/wp-content/uploads/2012/05/Facing-the-Challenges-of-Domestic-Violence-in-Timor-Leste-2011.pdf>> (last accessed 20 August 2013).

<sup>43</sup> See JSMP and FOKUPERS Report, “Facing the Challenge of Domestic Violence in Timor-Leste: Can the New Law Deliver?” (July 2013).

<sup>44</sup> Susan Harris-Rimmer, “After Guns Fall Silent: Sexual and Gender Based Violence in Timor-Leste” (3 November 2009) Issue Brief Number 5: Timor-Leste Violence Assessment, at 5, online: <[http://www.google.com.au/url?sa=t&rt=j&q=&escr=s&source=web&cd=5&ved=0CEwQFJAE&url=http%3A%2F%2Fmercury.ethz.ch%2Fserviceengine%2Ffiles%2FISN%2F143628%2Fpublicationdocument\\_singledocument%2Fc897f6b2-8502-4d36-8d18-6e714aa40d35%2Fen%2FTimor-Leste-Violence-IB5-ENGLISH.pdf&ei=G-lhUoyuL43uiAefjYHYDg&usg=AFQjCNGWzmTQjklUQtjt\\_fm2TLrVbtNSA&sig2=ZLx2fx33TrGCHyY-TJybYg&bvm=bv.54934254,d.aGc&cad=rja](http://www.google.com.au/url?sa=t&rt=j&q=&escr=s&source=web&cd=5&ved=0CEwQFJAE&url=http%3A%2F%2Fmercury.ethz.ch%2Fserviceengine%2Ffiles%2FISN%2F143628%2Fpublicationdocument_singledocument%2Fc897f6b2-8502-4d36-8d18-6e714aa40d35%2Fen%2FTimor-Leste-Violence-IB5-ENGLISH.pdf&ei=G-lhUoyuL43uiAefjYHYDg&usg=AFQjCNGWzmTQjklUQtjt_fm2TLrVbtNSA&sig2=ZLx2fx33TrGCHyY-TJybYg&bvm=bv.54934254,d.aGc&cad=rja)> (last accessed 20 August 2013).

reported in the JSMP's "Case Law Analysis in Baucau",<sup>45</sup> that a father who raped his daughter was sentenced to only three months imprisonment.

The concern of unskilled judges became alarming on 25 January 2005 when local judges failed written evaluation and were suspended from hearing cases.<sup>46</sup> It is instrumental that judges undergo training to be able to recognise domestic violence as a public crime. This is important for sentencing purposes and judicial instructions provided during trial.

Following the sentencing analysis of JSMP in 2008 (prior to the new law) of the Bacau District Court,<sup>47</sup> JSMP found the sentences were not proportional to the crimes committed. While the report acknowledged the decisions as positively recognising criminal acts of violence to women as criminal violence, the majority of the decisions applied suspended sentences. This is because in most cases the offences were treated as light maltreatment under the perception that the victim and perpetrator will reconcile. This attitude of the Courts can lead to undesirable results, causing women to feel intimidated by the legal process and unconvinced with the alternative to *adat*. The concern is that the increased application of suspended sentences would not be an effective outcome to deal with the problems of the traditional justice system, that is, reconciliation of the victim and perpetrator without any significant deterrent to the perpetrator and no assistance to the victim for the trauma endured. While there is merit to suspended sentences, it cannot be made the norm for domestic violence cases. This is the reason appropriate training for the judiciary on sentencing policies is necessary.

The new law places greater emphasis on exercising judicial discretion when sentencing on substitution to imprisonment. For instance, under Article 38 of the new law, the Court may substitute the penalty of imprisonment with a penalty of fine as long as the *Penal Code* provisions are adhered to and<sup>48</sup>:

---

**45** See Report by JSMP & FOKUPERS Report: "Facing the Challenge of Domestic Violence in Timor-Leste: Can the New Law Deliver?" (July 2012), online: <<http://jsmp.tl/wp-content/uploads/2012/05/Facing-the-Challenges-of-Domestic-Violence-in-Timor-Leste-2011.pdf>> (last accessed 20 August 2013).

**46** JSMP, "Overview of the Justice Sector: March 2005" (January 2006) at 20, online: <<http://jsmp.tl/wp-content/uploads/2012/05/Final-Overview-Report-2005-e.pdf>> (last accessed 20 August 2013).

**47** JSMP, "Overview of Justice Sector 2008" (January 2008) at 17, available online at <<http://jsmp.tl/wp-content/uploads/2012/05/Overview-Justice-Sector-2008-English.pdf>> (last accessed 20 August 2013).

**48** This article deals with substitution of prison sentence for a fine. This occurs where the court believes based on surrounding circumstances that the execution of the sentence should not be suspended altogether.

- the security of the victim has been guaranteed; and
- the perpetrator agrees to medical treatment or to follow up measures by the victim support services; and
- such a measure is advantageous for maintaining the unity of the family.

The JSMP is concerned that fines could lead to the perception that crimes of domestic violence are not that serious. They have also raised the fact that fines may have a negative impact on the women and the family as a whole given the economic dependence of women on their spouse in Timor-Leste. Instead, the JSMP has recommended other sentences such as community service (which is a sentence available under Article 79(1) of the *Penal Code* if the perpetrator is sentenced to less than 12 months imprisonment, or a fine) and suspended sentences.<sup>49</sup> There is also a need to ensure that fines are administered through the court, otherwise it would render the fine meaningless if the perpetrator controls the finances of the victim and the family.<sup>50</sup>

It should be noted that the alignment of the new law with the *Penal Code* on sentencing means that (Article 67 of the *Penal Code*) the substitution of prison sentence for fine only applies to prison sentences *not exceeding twelve months*.<sup>51</sup> This in effect means that the court cannot substitute imprisonment with a fine for more serious domestic violence offences, for example rape,<sup>52</sup> sexual coercion,<sup>53</sup> mistreatment of minor,<sup>54</sup> mistreatment of spouse and serious offences against physical integrity.<sup>55</sup> Effectively, this means that substitution can only occur for “Simple Offences Against Physical Integrity” pursuant to Article 145 of the *Penal Code*.<sup>56</sup> This clarity in law will hopefully alleviate the current concerns in the JSMP’s watching brief reports<sup>57</sup> on inconsistent sentencing in domestic violence. The future watching brief reports by the JSMP will be a good indicator

---

49 See JSMP and FOKUPERS Report, “Facing the Challenge of Domestic Violence in Timor-Leste: Can the New Law Deliver?” (July 2013).

50 *Ibid.*, at 49.

51 *Penal Code*, Art. 67.

52 *Ibid.*, Art. 172.

53 *Ibid.*, Art. 171.

54 *Ibid.*, Art. 155.

55 *Ibid.*, Art. 146.

56 This is because offences under Art. 145 are punishable with “up to 3 years imprisonment or a fine.” This means that where the court decides to sentence less than 12 months under Art. 145, the court could make a substitution of imprisonment for a fine under Art. 38 of the new law.

57 A watching brief is where an interested party monitors and observes the court proceedings of a case.

on whether the Courts are applying sentencing discretion in accordance with the new law.

## F. Legal Assistance

The new law in Timor-Leste clarifies the scope of legal assistance to domestic violence survivors to the following<sup>58</sup>:

- provide legal counseling;
- report to the police and public prosecution on occurrence of domestic violence cases;
- advise victims on the judicial proceedings;
- contact relevant community groups to assist the victims;
- monitor the treatment given by police, prosecution service and the courts;
- advise victims, witnesses and family on progress of judicial proceedings;
- and
- monitor cases.

Historically, access to legal assistance has been poor in Timor-Leste. In the JSMP's March 2004 court monitoring report of the Dili District Court, they identified<sup>59</sup> more than 55% of all criminal hearings scheduled during the monitoring period were related to women. Seventy-eight per cent of the criminal hearings related to sexual violence and only 16% of all women-related cases proceeded to trial. When cases do proceed to trial, no significant progress was achieved towards reaching a final decision. Even though a number of complaints were lodged during the period of observation, not one domestic violence case was scheduled for hearing. Interestingly, in the JSMP's 2012 Institutional Report,<sup>60</sup> the Women's Justice Unit (WJU) (which monitors four district courts and the Court of Appeal) found that out of the 430 criminal cases monitored, 37% (161 cases) were crimes of domestic violence. This statistic does demonstrate an increase in reported cases of domestic violence and its progression within the legal system.

---

<sup>58</sup> *Law No. 7/2010*, Art. 25.

<sup>59</sup> M.A. Bere, "Women and Justice in Timor-Leste" (2005) 68 *Dev. Bull.* at 55–57, online: <[https://crawford.anu.edu.au/rmap/devnet/devnet/gen/gen\\_legal.pdf](https://crawford.anu.edu.au/rmap/devnet/devnet/gen/gen_legal.pdf)> (last accessed 20 August 2013).

<sup>60</sup> JSMP Annual Report, "2012 Overview of the Justice Sector", online: <<http://jsmp.tl/wp-content/uploads/2012/05/Overview-of-the-Justice-Sector-2012.pdf>> (last accessed 20 August 2013).



However the JSMP 2012 Annual Report also states that the legal assistance is not proportionate to the demand especially when there are only 24 prosecutors and 22 public defenders in Timor-Leste. Also, JSMP's Victim Support Service unit (VSS) remains the only specialised legal support service for women with growing community legal aid organisations, including Fundasaun Edukasaun Comunidade Matebian (ECM), LBH-Liberta and Fundasaun Fatu Sinai Oecusse (FFSO). To this end, it is expected that the 2010 Legal Aid Law and the 2012 amendments to the *Law on Private Lawyers*<sup>61</sup> will improve the roll-out of legal assistance and the quality of such service providers. In regards to the *Legal Aid Law*, the JSMP through its VSS has now been officially recognised as a community legal aid service provider after over a decade of providing pro-bono legal assistance to victims of domestic violence. As an official legal aid provider, VSS can now reach-out more effectively to domestic violence victims in remote areas. In relation to the *Law on Private Lawyers*, the amendments to the law has allowed for private practice lawyers (including those in civil society) who had been working since Timor-Leste gained independence to continue with their practice and for all future private lawyers to attend training at the Judicial Training Centre to standardise the training for private lawyers. This means that existing private lawyers can continue to represent victims of domestic violence (while attending training on developments of the new law). This may not deal with all of the demand for legal assistance but it does alleviate the burden of the current public legal services.

In providing legal assistance it is important that any barriers of communication are adequately dealt with. The legal services providers within the current legal system must be able to communicate to the victims in a language understood by the women. At present, the official language of the Courts is Portuguese. Most women from the districts, other than Dili, may not speak or understand the Portuguese language. So it is important that the legal services providers have interpreter services in district dialects or at least in Tetum (which is also considered to the national language). This is crucial because access to justice can only be achieved if the victims understand the legal process during court proceedings and are not intimidated by language barriers in making their claim.

As for the delivery of legal assistance there must be consistency in procedure to avoid different standards of services. To this extent, the Secretary of State for Promotion of Equality, Dra Idelta Maria Rodrigues, recently commended the JSMP (together with USAID and The Asia Foundation) for preparing

---

<sup>61</sup> Decree Law No. 39/2012 on the First Amendment to Law No. 11/2008 and the Proposed Amendment No. I/III/I.

a manual for legal aid lawyers when addressing gender-based violence (which includes domestic violence) in Timor-Leste.<sup>62</sup> The two-volume manual which was made available in 2012 sets out the legal framework and a step-by-step guide in representing victims.

## G. Police Assistance

The role of police in improving access to justice for domestic violence victims is crucial in order for effective legal assistance to take place. This is because the investigatory process and collection of evidence is vital to the prosecution's case. Prior to the new law there was no clear role of police assistance in domestic violence cases. There was inconsistent exercise of discretion on whether a victim should deal with the *Chefes de Sucu* and *Chefes de Adelais* through *adat* or proceed to the formal justice system.

In year 2000, the Vulnerable Persons Unit (VPU) was set up at designated police stations and it was expected to be serviced by at least one female police officer.<sup>63</sup> This officer would be specifically trained to facilitate interviews with female victims. This role of specialised offices is now recognised in the new law.<sup>64</sup> Based on the new law, a police specialised attendance service shall intervene once there is communication by the hospital services or pro-bono support services such as the JSMP's VSS about a domestic violence incident. In this regard, even prior to the new law, the VPU in 2008 made some significant procedural changes, for instance, the classification of gender-based violence. The VPU classified domestic violence into "assault/domestic" and "dispute/domestic". The purpose of the change in classification was to deepen the understanding of the nature of the cases and to better document and respond to specific complaints.<sup>65</sup>

While the composition and training of the specialised team is not clearly defined, the new law provides that police assistance must include:

- informing the victim of their rights;
- referring the victim to a shelter house;

---

<sup>62</sup> Foreword by Her Excellency Secretary of State for Promotion of Equality of Timor-Leste, in "Addressing Gender-Based Violence in Timor-Leste, A Manual for Legal Aid Lawyers – Volume 1 – Legal Framework" (USAID; JSMP; Asia), online: <<http://jsmp.tl/wp-content/uploads/2012/05/Addressing-Gender-Based-Violence-Legal-Guideline-%E2%80%93-Volume-1.pdf>> (last accessed at 20 August 2013).

<sup>63</sup> See JSMP and FOKUPERS Report, "Facing the Challenge of Domestic Violence in Timor-Leste: Can the New Law Deliver?" (July 2013) at 3.

<sup>64</sup> *Law No. 7/2010*, Art. 24.

<sup>65</sup> *Ibid.*

- ensuring the victim receives immediate medical and psychological assistance;
- ensuring the mental health profession undertakes an evaluation so that the victim continue to benefit from necessary support;
- preparing reports to be submitted to prosecution service (within five days from the date of knowing the facts); and
- informing the Office of Public Defense where the victim is not in a financial position to pay for legal services (within five days of knowing the facts).

In accordance with the new law, the police must undergo training to be able to respond and document evidence relating to domestic violence. This means that in cases where a victim lodges a complaint with the police after being sexually assaulted by her spouse, it is incumbent upon the police to investigate and provide the services (above) instead of the police advising the victim to return home and reconcile with her spouse. Where the victim is not satisfied with the police assistance, following Article 36 of the *Disciplinary Regulation of National Police of Timor-Leste*, lawyers can make complaints against individual police if they fail to perform functions (such as failing to notify the prosecutor of the crime reported to them, mediating a domestic violence case themselves or referring a case to *adat*), if their demeanor and attitude suggests they are not taking the victim's complainants seriously.<sup>66</sup>

## H. Prosecution Service

In addition to the obligations of the prosecution service as provided in the *Penal Code*, the new law places additional obligations, which include informing the victims of their rights and referring them to hospital and safe houses, where it has not been done.<sup>67</sup> Similar to legal assistance, the outreach of the prosecution services must extend beyond Dili and the main districts. This requires the police to work closely with the prosecution service while investigating the domestic violence crime in the remote villages. The prosecution service should set out a guide or best practice for preparation of domestic violence case so the police can conduct an investigation with greater diligence. This should include the type of

---

<sup>66</sup> “Addressing Gender-Based Violence in Timor-Leste, A Manual for Legal Aid Lawyers”, Lawyers – Volume 1 – Legal Framework” (USAID; JSMP; Asia), online: <<http://jsmp.tl/wp-content/uploads/2012/05/Addressing-Gender-Based-Violence-Legal-Guideline-%E2%80%933-Volume-1.pdf>> (last accessed at 20 August 2013).

<sup>67</sup> *Law No. 7/2010*, Art. 28.

questions to ask and evidence that should be collected at the aftermath of the crime or immediately thereafter.

## I. Assistance in Hospitals

Medical evidence adduced through doctors' reports and nurses' notes could corroborate the complainant's statement that the complainant did in fact sustain injuries or psychological trauma as a result of domestic violence. The quality of such medical evidence is dependent on the assistance provided at hospitals and district clinics and the initiative taken by the healthcare professionals when attending to the victims.

In accordance with the new law,<sup>68</sup> whenever a patient discloses they have been subjected to domestic violence, or the clinical diagnosis allows an inference of domestic violence, a specialised hospital service shall be called to intervene. This is similar to the police specialised unit but in the context of medical assistance. It includes:

- medical follow-up;
- protecting evidence relating to probable crime and undertaking of medico-legal examination;
- inform the victim of rights and measures that may be adopted;
- communicate facts immediately to police or prosecution service;
- prepare report and submit to competent authorities; and
- refer the victim to shelter house, if need be.

Similar to police assistance, the role of the healthcare professionals is vital in assisting the prosecution gather the “best” evidence for their case. An observation on the implementation of the new law is that with only five hospitals in Timor-Leste providing such services, the remote district clinics are disadvantaged.

One of the concerns raised by the healthcare profession is reconciling the need to report on domestic violence and the duty of care owed by the profession to domestic violence victims in respect of confidentiality. Reports concerning the victims “doctor–patient” conversations may need to be disclosed to the police and prosecution. It is common that patients/victims make statements in confidence and therefore the legal question that arises is to what extent the profession is required to disclose this information. It is unclear from the new law if

---

<sup>68</sup> *Ibid.*, Art. 22.

there will be mandatory reporting. Having said that, the new law includes a precautionary rule that the profession adhere to code of professional conduct.<sup>69</sup> This implies that rules of confidentiality may still apply and the sharing of confidential information will be dependent on the consent of the victim.

## J. Support Centres and Social Care Services

As identified above, one of the reasons women would resort to *adat* is because they do not have to overcome cultural constraints. In most cases where a woman has children and is economically dependent on her spouse, she may not have any other alternative but to resort to the traditional justice system. Going through the formal legal process would mean leaving the family home and taking the children along. This would incur food and travel costs. Therefore there is a need for support centres at district and sub-district levels.

With the new law,<sup>70</sup> the government through the Social Solidarity Ministry is expected to establish, manage and supervise the national network support centres. The centres are based on the concept of *Fatin Segura* (safe place) which aims to bring existing service providers together to support the network of safe places at sub-district levels. These centres assist victims by providing direct assistance, refuge and guidance to the women, men and children in need of support while dealing with their domestic violence claims. According to the new law, the support centres will include *reception centres* and *shelter houses*. In districts where no *shelter houses* exist, the *reception centres* shall assume some functions of the shelter house.

The objectives of the shelter houses include<sup>71</sup>:

- to temporarily receive victims of domestic violence, with or without minor children;
- to ensure psychological assistance and/or medical, social assistance and legal support deemed appropriate to the situation of the victim; and
- promote effective social reintegration where possible.<sup>72</sup>

The new law further provides that users and minors shall enjoy various rights while at the shelter houses which include accommodation, food, health, privacy

---

<sup>69</sup> *Ibid.*, Art. 23.

<sup>70</sup> *Ibid.*, Art. 15.

<sup>71</sup> *Ibid.*, Art. 16.

<sup>72</sup> Pursuant to Art. 16(2), the Social and Solidarity Ministry will define through complementary legislation the procedures common to all shelter – including access to information, admissions, maximum duration of stay, *etc.*

and education.<sup>73</sup> This form of temporary social security encourages women to access justice through the formal justice system where there have been no satisfactory outcomes through *adat* or where *adat* has failed to bring about reconciliation. This means regardless of whether women have been subject to *adat* in dealing with their grievance, the shelter houses will provide assistance.

In order to ensure equal access to the shelter houses, the service at the shelters are provided gratuitously through the National Network Centres. To achieve this, the government has been working closely with non-governmental organisations (NGOs). The gender-based violence Referral Partners Network (Rede Referral) – a networking group composed of government bodies, UN agencies and international and national agencies – have set up Referral Pathway groups to access transport and find accommodation for women and children who have experienced violence.<sup>74</sup> One the most effective NGOs in domestic violence, aside from JSMP, is The East Timorese Women's Communication Forum (FOKUPERS). FOKUPERS provides counseling, legal advice, court accompaniment and shelter in Dili. FOKUPERS also has gender-based violence focal points in the community in four districts.<sup>75</sup>

As the role of support centres is also to promote social reintegration among domestic violence victims, SEPI has initiated programs for sustainable income through production of marketable products by victims of gender violence.<sup>76</sup>

In 2012, of the five hospitals in Timor-Leste, only Dili Hospital has an equivalent of a support centre, Fatin Hakmatek, which provides medical treatment, counseling, legal advice, some practical assistance with food and transportation, overnight accommodation and referrals to other services. It is managed by Psychosocial Recovery and Development in East Timor (PRADET), who provides mental health and psychosocial support for women who have experienced violence.<sup>77</sup>

It must be noted that until more districts have clinics with support centers within walking range of the village, there will be limited participation of victims

---

<sup>73</sup> Law No. 7/2010, Art. 17.

<sup>74</sup> See JSMP, "Overview of the Justice Sector: March 2005" (January 2006) at 20, online: <<http://jsmp.tl/wp-content/uploads/2012/05/Final-Overview-Report-2005-e.pdf>> (last accessed 20 August 2013).

<sup>75</sup> The other NGOs include the Alola Foundation and church-based organisations such as the Missionary Sister Servants of the Holy Spirit and Santa Bhaktia.

<sup>76</sup> Law No. 7/2010, Art. 33 – the Ministry responsible for social services supports the victims in the process of social reintegration as well as in the provision of alimony.

<sup>77</sup> See JSMP, "Overview of the Justice Sector: March 2005" (January 2006) at 20, online: <<http://jsmp.tl/wp-content/uploads/2012/05/Final-Overview-Report-2005-e.pdf>> (last accessed 20 August 2013).

within the formal justice system. In such cases, *adat* may continue to be preferred as the only choice of dispute resolution.

In recognising the difficulty and reluctance of most women to relocate to a shelter, the new law allows for coercive measures, such as removing the perpetrator from the family residence and prohibiting contact with the victim. Such measures may be applied where there is danger to life; or to the physical, mental or sexual integrity of the victim.<sup>78</sup> To this end, another positive development through the new law is the economic assistance to the women through granting an order for provisional alimony.<sup>79</sup> Alimony may be granted at the request of the victim or the Public Prosecution Service. Pursuant to the new law, where there is economic insufficiency on part of the perpetrator to pay alimony, the alimony shall be borne by the Ministry of Social Solidarity. This is consistent with Timor-Leste's international obligation under Article 12 of the *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* which creates an obligation for the State to pay restitution where the perpetrator cannot be identified or has no means. Notably, this is a helpful and practical solution which is dependent on the government's budget allocation for such purposes.

## K. Improving Community Awareness to Prevent Domestic Violence

In 2002 it was reported that the *Chefes de Sucu* and *Chefes de Adelais* (district village leaders) believe that there was only *adat* that existed as law.<sup>80</sup> However, a decade later this is not the case. This is because the Timor-Leste Government's awareness programs include engagement with the traditional justice structures. This was supported by United Nations Integrated Mission in Timor-Leste (UNMIT) and the United Nations Development Programme (UNDP) to inform the community on government policy in this area. In addition, the Ministry of Justice in 2009 organised several consultations and workshops on traditional justice in Dili and other the districts.<sup>81</sup> This consultative approach is expected to result in the traditional justice system being more receptive to the new law.

---

<sup>78</sup> Law No. 7/2010, Art. 27.

<sup>79</sup> *Ibid.*, Art. 32.

<sup>80</sup> D. Mearn, *Looking Both Ways: Models for Justice in East Timor* (Australian Legal Resources International, 2002) at 30.

<sup>81</sup> See JSMP, "Overview of the Justice Sector: March 2005" (January 2006) at 20, online: <<http://jsmp.tl/wp-content/uploads/2012/05/Final-Overview-Report-2005-e.pdf>> (last accessed 20 August 2013).

However, the Women's Justice Unit (WJU) of the JSMP has raised concerns about the need to change the patriarchal attitudes within the traditional justice system. For instance, the practice of *burluque* (paid bride) assumes women to be possessions to their spouse and hence the act of domestic violence may not in itself be viewed as a crime but rather a spousal right to control the spouse. In attempting to change such community behavior, the new law mandates training and information sessions for *Chefes de Sucu* and *Chefes de Adalais*. This is viewed as an important exercise in changing the patriarchal attitude of the village leaders towards women. Such training together with the change under the 2004 election law, which makes female representation at the *Sucu Council* mandatory,<sup>82</sup> may even lead to reform of the structural inequality faced by women in the traditional justice system.

In addition, the new law provides for the sensitisation of public opinion.<sup>83</sup> Importantly, the community awareness programs target the future keepers of *adat* – the children. This is carried out through the school curriculum where school children are taught important lessons about domestic violence.<sup>84</sup> At the tertiary level, the new law supports and encourages the study and research of the factors underlying physical, sexual and economic domestic violence.<sup>85</sup>

Notably, the success of community awareness programs is not only to be assessed from improved access to justice but also the change in community attitude towards women and domestic violence. This is important because the strength of community awareness in itself could lead to a more progressive traditional justice system which in time can complement the formal justice system.

## V. CONCLUSION

Ultimately, the effectiveness of the new law will be dependent upon the political will of the government and the efforts of the *stakeholders* to enforce it. It has taken over a decade for the policy and legislative debates on domestic violence to crystallise into law. It is likely to take another decade for the government to

---

<sup>82</sup> *Ibid.*

<sup>83</sup> *Law No. 7/2010*, Art. 9 – this is achieved via the media to combat gender violence and encourage a change of behaviour. The Association of Men against violence (AMKV) – active in engaging men in ending violence against women and working with community to promote gender equality. Some common slogans – “Now that I know if I beat my wife, I will end up in Becora” (Becora is where main prison is located).

<sup>84</sup> The new law, *ibid.*, Art. 11.

<sup>85</sup> *Ibid.*, Art. 12.



build the socio-legal and socio-economic infrastructure to effectively deal with domestic violence at all the districts and sub-districts in Timor-Leste. In the meantime, it is the vernacularisation of international law in Timor-Leste in relation to the protection of women and children's rights<sup>86</sup> which will pave the way to structural and systemic implementation of the new law.

Article 41 of the new law states, "it is incumbent upon the government to approve norms deemed necessary to the implementation and development of this law within 180 days." While the 180-day mark has lapsed with slow development, the feedback from the JSMP since the implementation of the new law is largely reassuring – that there is genuine legislative intent to deal with domestic violence in Timor-Leste. The amendments to the *Private Lawyers Law* and the recent *Legal Aid Law* demonstrate that the government is acknowledging the strength of the stakeholders, in particular civil society organisations like the JSMP in meeting the demands of victims of domestic violence. The increased funding to the Ministry of Justice in the Budget 2012<sup>87</sup> from USD \$14.24million in 2011 to USD\$19.05million in 2012 does allow for greater investment in realising the objectives of the new law. The JSMP has added that the increased budget to the justice sector must be filtered through to benefit district courts which are still inadequately funded. District courts deal with the majority of domestic violence cases and there is a need for increased capacity of human resources to process the registered cases in timely manner and increase the delivery of justice through more mobile courts.<sup>88</sup>

In regards to *adat*, it is the author's opinion that the academic and political discourse on whether the formal justice system trumps the traditional justice system is a discourse that has already been spent. The Timor-Leste government did have the opportunity to address the *inconvenient truths of adat* but choose not to. Instead, it is to be accepted that there is no conflict of laws and an alternative path way for victims of domestic violence to gain access to justice. Perhaps the more pertinent observation in time to come is the extent to which

---

<sup>86</sup> This includes the *Universal Declaration of Human Rights*, GA Res. 217 (III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948); the *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171 (entered into force 23 March 1976); the *International Covenant of Economic, Social and Cultural Rights*, 16 December 1966, 993 U.N.T.S. 3 (entered into force 3 January 1976); CEDAW, *Convention to Eliminate All Forms of Discrimination Against Women* (18 December 1979), 1249 U.N.T.S. 13; the *Convention on the Rights of the Child*, 20 November 1989, 1577 U.N.T.S. 3 (entered into force 2 September 1990); etc.

<sup>87</sup> 2013 State Budget, Book 4A and Book 4B, cited in "2012 Overview of the Justice Sector", JSMP Annual Report, "2012 Overview of the Justice Sector", online: <<http://jsmp.tl/wp-content/uploads/2012/05/Overview-of-the-Justice-Sector-2012.pdf>> (last accessed 20 August 2013).

<sup>88</sup> *Ibid.*, at 87.

*adat* meets with the changing of times and the structural reform that takes place through the change of community behavior. Importantly, this does not mean that *adat* becomes passé, instead, it takes on a complexion of restorative justice from the perspective of the traditional ceremonial expectations of *healing* within the community. It is for this reason the hybridity of laws will always exist, tacitly at least.

In conclusion, it is the continued independence of socio-justice organisations like the JSMP (in keeping government accountable) that forms the bulwark to the new law. As observed by the Her Excellency Secretary of State for Promotion of Equality, Dra Idelata Maria Rodrigues<sup>89</sup>:

The passage of laws is only the first step to addressing social inequalities. It is the ongoing application of laws to real-life cases and the meaningful enforcement of laws through the justice system that will see long term changes.

**Acknowledgement:** Mr. Yogaratanam acknowledges the guidance of Dr. Belton, the dedication of the JSMP team, and the leadership of the JSMP Executive Director, Mr. Luis de Oliveira Sampaio, in writing this article.

---

<sup>89</sup> *Ibid.*, at 61.