

International Rescue Committee

Traditional Justice
and
Gender Based Violence

Research Report
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EXECUTIVE SUMMARY

The Study

Background:

The International Rescue Committee (IRC) had been working in the area of Gender Based Violence in Timor Leste for over two years. It was apparent that there was a growing need for data to guide further program development. The IRC initiated this study into traditional justice systems which was to incorporate and utilize information from an earlier IRC study into the prevalence of domestic violence in Timor Leste (2002/2003).

This study was funded by USAID.

Aim of Study:

The principal aim of this study was to gather information regarding local justice systems in Timor Leste and how these systems handle cases of gender based violence.

A further aim was to gather information regarding police services, the formal justice system and how these together with service providers are utilizing local justice systems. Recommendations were to be made which would assist in the protection and promotion of women's rights in the context of these systems.

Location:

The three districts chosen for this study were Ainaro, Cova Lima and Oecussi.

Duration:

The study took place between March and August 2003. Although the study was originally a six month project due to the process of recruitment for an expatriate researcher and the need to allow time for report writing and translation of the document, the study itself had to be completed within four months. This time frame severely reduced time allowed for doing the field research, analysis and writing up of findings.

As a result of these restrictions, the potential for reaching a large number of respondents was quite limited. A total of 25 women were interviewed and their stories recorded in order to gain a glimpse into how local justice systems influence their search for protection from violence. A further 35 women were interviewed through Focus Group Discussions. Consultations and interviews were also held with approximately 60 people in the wider social context including holders of local justice, police, women's representatives, formal system actors and staff of NGO's and health services

Findings:

1. Women's use of Justice Systems in Timor Leste

Approaching local justice processes is generally initiated by a woman's family. They 'call' members of their own family to solve the problem; and/or those members of their family who have the cultural power to solve the cases, such as the 'Lian Nain' and/or family elders. A hearing takes place where the victim and accused present their stories. They are supported by their respective families while the case is supported by statements from 'witnesses', most probably family, friends and neighbors. The administrators of the hearing weigh up the stories presented, and apportion blame to one or both parties. The payment of compensation then takes place between the families. If users are unsatisfied with the outcome they may take it to higher levels of local justice which may involve the community representatives such as the *Chefe do Suco*.

A woman who presents a complaint of violence to a local justice hearing cannot be guaranteed that 'justice' in the true sense of the word will be delivered however. Women have minimal and often superficial participation in justice hearings and find that the rulings which are passed are often based on the administrators of justice own biases and cultural beliefs regarding women's status in society. Even when a hearing succeeds in putting blame on the guilty party/accused, she can never be guaranteed that the compensation which is decided upon will be given to her, or that the original problem will stop. Local justice has little power to enforce its rulings, whether that is in regards to the compensation payment or the prevention of further violence. Men are not forced to take responsibility for their violent acts while women are apportioned blame for causing violence to occur in the first place. The right of appeal exists in some form, but is not a secure option as women are often afraid to bring cases to higher levels for fear of retribution from those holders of local law she may be insulting by doing so.

2. Police Services

Accessing police services is also problematic. Women go to the police because of fear for their own safety, in the hope of protection from violent husbands, and in the expectation that the formal justice system will stop the violence that they are experiencing in their homes. The experience of going to the police however is not always

a supportive and protective one. Women cannot be guaranteed that police officers will take their cases seriously, nor ensure that they are no longer exposed to real threats. Women often withdraw their complaints from the police system due to the ways in which police handle cases, and/or often, because of their lack of economic power, some women prefer to solve problems through local justice due to a fear of losing economic support should their husbands be jailed.

Police are also sending women back to local justice or solving violence cases at police station level. Women are returning home from police stations with the belief that the violence they have experienced is not valid or 'serious' enough to be dealt with by police. They are told that should it happen again in future, the police will deal with it then. Even so, women often find that this is not happening as subsequent complaints may also be ignored in this way. They remain in violent homes having exhausted both police and local justice options for help. Some cases are reaching the courts however, and in similar fashion, their cases are often sent back to local justice, sometimes determined by the actors in the court or often requested by women themselves. Police services are not sufficiently addressing women's justice and support needs and are both frustrating and confusing women regarding the role which police have in assisting them in these matters.

3. Attitudes to Violence

Attitudes to violence as a whole are debilitating to women's chances of achieving justice. Crimes of sexual assault and physical violence are often hidden behind the ways in which administrators of local justice oversee hearings. An administrator of justice resolves cases by focusing on the events which occurred prior to the act of violence. Whoever is seen to be at fault during that time is therefore blamed for the violence. This will not always just be the guilty party – it can be the accused, the victim or both.

The harm which a violent act has on a woman is not addressed, nor is the need for the perpetrator to take responsibility for his actions and reform his ways. In cases of sexual assault or rape for example, the need to cover a woman's and her family's shame and find support for a child born out of wedlock supercedes the act of violence which may have taken place. The research team met with many women who had been sexually exploited outside of the marriage relationship and were 'abandoned' by these men, to bring up children alone and live with a shame which may prevent any future marriage options. Domestic violence is similarly invalidated as an act causing damage and harms to a woman through the way the administrators of local place responsibility on women to manage and prevent violence in their homes.

Police attitudes are similarly harmful to women. Police officers' own attitudes towards what can be considered as 'serious' violence and warranting attention and that which is 'minor' violence and therefore inconsequential, will determine whether a woman receives assistance or not.

4. Lack of Protection

The approaches and attitudes inherent in those controlling access to the existing justice systems in Timor Leste are doing little to recognize the consequences of their actions on women. The protection of women from violence, especially following the reporting of that violence is essential to her present and continuing safety. Women are being sent home to potentially hazardous situations, with no guarantees that the problem has been adequately dealt with or that the violence will stop. Separation from a violent partner is not an option in local justice, and women are often condemned by community peers for going to the police who are seen as facilitators of 'divorce'. Pressure from both holders of local justice and family members put severe stress on women and often determine what routes of justice they choose to follow, if they look for justice at all.

Children's rights and the effects of both violence in the home and the processes of justice on them are not considered by those who oversee both the formal and local justice processes. It is often their concern for children which dissuades women from pursuing stronger legal enforcement against violent husbands. Both police and local justice administrators thus give no regard to the effects which both the violence women have experienced and the attitudes they receive from justice holders has on them. Women are not receiving adequate support and care following experiences of violence and the subsequent stresses which using justice processes can cause.

5. Rights

In consideration of international standards, it is evident that women's rights are not given adequate consideration in their search for justice, especially in local justice proceedings. Local beliefs systems stipulate the power which individuals may possess, and women are not attributed any of this power, especially in regard to the decision making power in local justice settings. According to the cultural systems this research approached, women have never had and can never possess such power - in this way the possibility of them receiving equal participation and hearing within justice processes is minimal. The systems are inherently biased towards women's status, decision making capabilities and their roles within their communities.

6. Interface of the Formal and Local Justice Systems

The research found however, that users of local justice systems identified both positive and negative aspects. Women used local justice because of its basis in their culture and the fact that it is a familiar and known concept. It was seen however to often blame women for the cases of violence presented and women users were dissatisfied with this characteristic. Police were seen to have more force and capacity to scare violent husbands into stopping their actions. A combination of the two were seen to be most forceful, where women could take advantage of cultural and accepted methods of dealing with problems, while ensuring that processes were fair and delivered what they wanted – justice for the act of violence and for that violence to stop.

The relationship between the two systems is currently quite strained. It has caused much confusion for women users who are caught in the interface between the two systems, and for the administrators of local justice and police themselves who are not sure where the line between the two processes is. Holders of local justice are open to and desire a formalization of the relationship between the two systems so that local justice can become more forceful and respected by community members.

The two justice systems which are currently running alongside each other in Timor Leste are failing to adequately and fairly deal with cases of gender based violence which women present to them. Both are inherently patriarchal in their attitudes towards both women and the violence they protect. However, both systems do have positive traits which need to be built upon to ensure that women's rights are both protected and promoted in a culturally accepted way.

7. The Need for Change

The high prevalence of violence against women needs to be both recognized and addressed by Timorese communities. This needs to be done in a way which promotes critical self-analysis regarding attitudes and levels of acceptance of violence against women, and its roots in Timorese societies. Through further research and education, which can both stimulate self-analysis while simultaneously collecting information, needs for change can be identified and developed by Timorese communities.

The current tensions between the local and formal system holders are doing little to foster a secure and supportive environment in which women can access justice for crimes of violence. A formal engagement between the two is needed. This type of arrangement would facilitate a response to local justice holders' requests for recognition of their practices and ensure that cases are not being lost. Such engagement would also allow the debilitating cultural practices within local justice to be addressed and changes which need to take place facilitated in a way that is inclusive and supportive of all stakeholders. While, these changes may take a long time, women are still suffering from violence which is being perpetrated against them daily and in all levels of society. Women's services are needed to support women in the search for justice and protect them from the dangers which already exist and may be created through their use of either of the existing justice systems.

INTRODUCTION

Since the crisis of 1999, the IRC has been working on Gender Based Violence (GBV) issues in Timor Leste. IRC has completed extensive research on the prevalence of GBV within Timor Leste and has conducted advocacy and education programs on violence against women. The problems which women experience within local systems of justice emerged through some of IRC's previous work which highlighted the need to undertake an investigation into how these systems address cases of gender based violence and the implications these have for women's rights. IRC received funding from USAID for this study.

A six-month research program was developed and the 'Traditional Justice and Gender Based Violence Research Program' began in March 2003. The program aimed to gather information regarding how local justice systems in East Timor handle cases of gender-based violence; how police services and the formal justice system are utilizing local justice systems. It also aimed to make recommendations as to how women's human rights can be promoted and protected in the context of these systems.

This report is the result of a research project which has taken place over a five-month period. The report is based on several weeks of consultations with relevant actors and a review of related literature, 32 full days of 'field research' in which over 60 interviews and 6 Focus Group Discussions were held and subsequent analysis of these interviews to draw out the main findings.

Significance:

While the study fulfills its original objectives of looking at how local justice treats GBV, the significance of this research is that it provides a picture of what happens to women during local justice processes through the words of women themselves. By women telling their stories and expressing opinions of their experience of using justice systems in Timor Leste, a great deal of information has emerged regarding the obstacles women face in achieving justice. This kind of information can be used to augment the services which currently exist to assist women and also to prompt further research into this area. The work has highlighted the need to ensure that women are supported in their search for justice following an experience of violence.

The research has also resulted in several other useful findings. It reviews and provides commentary on the research methodologies which may or may not be suitable for women in the Timor Leste context. A bibliography of literature has also been produced which can be used by other researchers and program developers who are attempting to address questions related to customary law in Timor Leste.

The report consists of five sections:

1. An explanation of the methodology and a discussion on how it was determined,
2. An overview of previous research to inform the reader of the cultural and social context of the findings, and a review of some pertinent issues relating to violence against women, its prevalence in Timor Leste and the difficulties which cultural features present for women seeking justice,
3. A presentation and discussion of the main findings and results,
4. Conclusions and Recommendations from the findings,
5. Appendices including individual women's stories; a report on the researcher's own experience of doing this research; the bibliography of related literature and other relevant documents supporting the research.

METHODOLOGY

Reference Group

IRC established a Reference Group of six members to serve as a steering committee for the research (see Annex A for 'Terms of Reference'). Members were invited according to their levels of involvement in the area of local justice and/or women's development and the contribution they could make to the development of the research. This group consisted of representatives from the Asia Foundation, The Hak Foundation, Fokupers and Advocats sans Frontiers. The Ministry of Justice and the UNMISSET Human Rights Unit were also invited but could not attend. Initially, meetings with the Reference Group were held on a monthly basis, and were both helpful and informative for the research. However, due to lack of attendance, difficulties in coordinating members, and the rapid nature of the research, the meetings were discontinued towards the end of the project. Overall, the process greatly assisted in both the formulating the initial ideas and defining the research focus. As a methodology it is recommended, as the broad range of experience and inputs achieved can be used to influence the research positively. The Reference Group's membership and management however is time consuming and challenging, and perhaps more suited to a lengthier piece of research in which feedback to the group over a longer period of time would be beneficial to ongoing work.

Study Location

The research was done in two phases. The first phase consisted of research in the districts of Ainaro, Cova Lima and Oecussi. These districts were chosen on the basis of contacts and experience the team members had

in these areas. The areas also represented a mix of existing patrilineal/matrilateral social structures and languages and IRC's former work with community groups in those areas. The second phase consisted of interviews with relevant organizations/individuals following the completion of field research.

Research Design

In order to determine the best approach for this research, initially the team met with over 30 people/representatives from UN agencies, government, national and international NGO's. Through these meetings a substantive number of research documents and information relating to local justice in Timor Leste was collected. The team also facilitated a 'Focus Group Discussion' (FGD) with six IRC staff on the topics of local justice and 'Gender Based Violence (GBV)'. This FGD served as a means through which the research team could learn of the varying processes existing in the areas of the country that the staff members came from. They shared their experiences and offered some ideas on the current trends in thinking on this subject by everyday Timorese. This overall process helped the team with knowledge and collecting information, and with determining the direction of the research.

A review of the literature, and consideration of the information obtained, indicated that a gap existed in terms of research and information on local justice in Timor Leste from the 'user's' point of view. The team thus decided on a qualitative/ethnographic research approach in order to gain an insight into women's experiences using local justice systems to solve issues related to GBV. Following consultation with the Reference Group, it was decided that the focus of the research should be as follows:

1. Women's experiences/perceptions → Use case studies from women's own 'story-telling' to gain a picture of how women who have been victims of GBV have used localized ways of dealing with the problem. From these stories, an insight would be gained into women's experiences and perceptions on using both these and other justice options.
2. Local Justice leaders' experiences/perceptions → Hold interviews with holders of local justice at local level and gain an insight into how these processes work and how the leaders see GBV cases being treated. Once this information was gathered it would be possible to compare these with the women's views.
3. Formal System → Hold interviews with executors of formal justice and examine how they use or do not use local justice systems, how they see its place within the legal system while addressing GBV; compare these views with those of the women and leaders.
4. Civil Society Reps/Service providers → Interviews with organization's which deal with cases of GBV to obtain their perceptions on both the formal and local justice systems as a means of assisting women.

With these objectives in mind, the research took open approach was adopted allowing interviewees to lead the research. While women were specifically targeted for their experience in using local justice systems, interviewees were given the opportunity to tell their own stories, in their own way, using their own words and framework, i.e 'unstructured' interviewing. Where sufficient information was not obtained by allowing the interviewee to talk freely, a semi-structured interview guide was used. (See Annex 2 for Interview Guides).

Interviews were held with holders of local justice, police and service providers in the districts. These interviews were semi-structured and allowed room for the team to conduct interviews in response to the issues which were raised by women in their story-telling, as well as correspond to research objectives. The interviews with actors in Dili were also semi-structured. These second interview guidelines were not designed until the research with women was completed. The questions therefore reflected the issues raised by the women themselves— not just by the IRC team and its research objectives.

Samples

Women respondents

Purposive sampling methods were used in order to fulfill the need to speak only with women who had used local justice in relation to GBV. The number of prospective interviewees was not pre-determined. This left room for the team to explore different avenues through which to access women. This method allowed us to experiment with and determine what methods were more successful in approaching women about such sensitive issues. Efforts were made to meet with women who had gone to the police and then returned to local justice, those who had tried local justice before the police, and those who had only used local justice systems. This latter objective was more difficult to achieve due to lack of time for the research. (However, I fully believe that should ethnographic/social research be conducted by a researcher who stays in a village and has the time to wait for women to voluntarily come forward, the participation levels and outcomes would be very positive). There fore access to women was initiated through a number of different methods.

In Ainaro, the team was able to take advantage of previous existing relationships in one village. The expatriate researcher had worked in the village for 18 months previously and was immediately able to establish easy open discussions around the research topic. It is noteworthy that because of these links, this was the area where the best and easiest results were obtained from the field research. An ethnographic method was used whereby a focus group discussion was held with the local women's group and from that women slowly came

forward voluntarily for interview over a period of several days. At district level, cases were accessed through the local Vulnerable Persons' Unit (VPU) Police Officer. In Co va Lima, interviews with women were mainly obtained through the local VPU officer. It was more difficult for the team to try to reach cases which had not accessed the police as our time in that area was interrupted with the floods in June. In Oecussi, cases were accessed through both the Centro Feto and the local VPU Police Officer. In total, 25 women came forward and told individual stories (two were not particularly applicable and the stories are thus not included in the final analysis, therefore the total number of interviewed analyzed was 23 respondents). A further 35 women were accessed through Focus Group Discussions with local women's groups.

Efforts were made to complete as many interviews with women respondents as possible before speaking with the other interview subjects. This was to allow our interview process to be informed and led as much as possible by the women's own ideas and experiences, and not just by our original research findings and priorities.

Holders of Local Justice

The team attempted to meet as many of those involved in administering local justice as was possible in the time we had. In all areas we met a Council of Elders and individual Chefe de Suco's, Chefe de Aldeia's and Lian Nain's/Dato's. The sampling was randomly based depending on availability of individuals for interview and our access to them. Approximately 35 persons involved in the administering of local justice were interviewed either individually or within Focus Group Discussions.

Police

In each District the VPU Police Officer was met and interviewed. An investigating officer was interviewed in Oecussi.

Service Providers/Civil Society

Semi-Structured interviews were prepared beforehand and adjusted as was needed depending on findings from interviews with women. The Gender Focal Points, OMT and women's leaders in each district were interviewed. The mid-wives in Ainaro and Suai hospitals were interviewed, but unfortunately not in Oecussi due to unavailability. In Cova Lima, the 'Uma Feto' representative and in Oecussi a member of the 'Centro Feto' staff was interviewed. The Human Rights officer in Suai (covering also Ainaro) was interviewed; we did not meet the Human Rights Officer in Oecussi as he was unavailable. Members of the church were interviewed in Ainaro and Oecussi.

Dili

Interviewees in Dili were decided on after completion of the first analysis of the research findings. Those interviewed were representatives of national level police departments, Prosecutors office, Public Defenders Office, Human Rights and national NGO's working in the area of women/rights.

Other

The team observed a number of CAVR Reconciliation meetings. This enabled us to look at a model which is attempting to marry the local and formal justice systems and observe the local processes used within those meetings.

The initial project proposal for this research made a strong recommendation for the team to observe a 'local justice process' taking place. While this would have been extremely interesting and beneficial to the research, a number of factors prevented this from happening. I certainly felt that we could not request a community to allow us to take part in the reconciliation of an issue which by all accounts may be private and in the local world view a family/community issue. The spontaneous nature of these processes also contributed to the inability to plan to be present for a reconciliation process should we have wished/been invited. The schedule of the research meant that we had limited time in each area, and even though we were invited by one Chefe de Suco to witness the closing feast of a problem that had already been resolved, we could not engineer further involvement.. Again, long-term research in one particular area could facilitate this possibility for future research.

We also took into account the views of the many people we spoke to during the course of the research. In particular, the inputs, views and feedback from people who have completed or are currently conducting research on local justice in Timor Leste were taken into account and greatly appreciated.

The Team

The team consisted of one expatriate 'Project Manager' (Researcher) and two Timorese 'Research Assistants'. The Project Manager is a sociologist/community development worker with previous published qualitative research on adolescent girls in Kosovo and experience of working with women's groups in Timor Leste. One of the Timorese research assistants/translators had previous experience with the IRC in field work/research on women and gender issues in Timor Leste, while the other joined the team temporarily and had previous translating and field work experiences.

Language is of course an obstacle when doing research in Timor Leste. The Timorese researchers speak Mambae, Tetum and Indonesian which was essential for the areas we were researching in. The expatriate speaks Tetum, also extremely beneficial not only during interviewing in but in establishing rapport with respondents. In Oecussi, we required the assistance of one of the staff of Centro Feto to assist us with Bakeno.

Data collection

The team spent 27 days altogether doing the 'field' research, approximately 9 full days in each area. Once this was completed, the interviews were assessed and the main issues and findings derived before undertaking Dili level research over a 5-day period.

Preliminary visits were made to each location in advance of the research activities. The assistance of police and community members allowed for interview schedules to be agreed with targeted interviewees. We tried as much as possible to adapt our research agenda with those of the people we wanted to meet. These schedules were organized through channels which we felt would be least harmful to respondents, such as through the VPU officer who had had existing relationships with women, or through a local women's organization.

The majority of interviews with women were recorded by Dictaphone and transcribed by the team as soon as possible afterwards. Interviews with holders of local justice were both recorded and hand written at time of interview, similarly with remaining interviews. We were concerned that the presence of the Dictaphone may be off-putting for respondents. Initially, with some people they did at first appear uncomfortable with it. We explained it's purpose to all those people whom we used it with, and once its purpose was understood, permission was sought to use it.

The Research Assistants also made a further visit to the districts once the research analysis had been completed in order to give some feedback to those who had participated. This visit endeavored to ensure that participants felt valued for their inputs and were aware of the outcomes and any ideas which had been recommended as a result of the research. We also wanted to get a sense of the impact which participating in this research may have had on women in particular. With the volume of research taking place on local justice at the moment¹, the team felt that it was important to mitigate against research fatigue and the negative consequences this may have for future programming/research initiatives.

Human Subjects Protection

Due to the nature of the research and the close level of communication the team had with women interviewees, it was important to consider the impact that the process could have on participants. A 'consent form' (See Annex C) was prepared before hand as a tool with which to explain to all participants the purpose of the research and how the information they gave us would be used. It was ensured before commencement of interview that all participants understood that they could refuse participation and/or stop the interview at any point if they wished. The consent form also included assurances of the confidentiality of information expressed by participants. The level of understanding of this process was of course questionable, as was the level of understanding of what our research entailed and for what purposes it was being done. However, some women did express fears over sensitive issues being spread around their village and asked pertinent questions about how confidentiality would be respected within the research itself. For these purposes, in the discussion of the research, women's names and all other identifying markers have been deleted and/or changed.

Questions to consider when doing research with women in Timor Leste

In view of the fact that during the period of this study, there were several other research projects on local justice in Timor Leste running concurrently with ours, and due to the sensitive nature of the theme which we wished to explore, there were a number of issues/questions which needed to be considered before commencement. These issues are included here for two reasons. Firstly, they serve as an account of the debates which helped to define our chosen research methodology and focus. Secondly, the discussion provides context for others interested in pursuing research of a similar nature. These are also issues/areas of discussion which we suggest future researchers take in to consideration, especially in relation to any deeper explorations/programming on women's use of local justice systems.

The Term 'Gender Based Violence'

One of the main questions deliberated was the applicability of the term 'Gender Based Violence' or 'Domestic Violence' within a research framework in Timor Leste. Firstly, we had to consider the terms themselves in regards to our own thinking and understanding of them. The term 'Gender Based Violence' covers a wide range of offences and acts which are applicable to women, men, boys and girls. Use of this term in defining the research therefore implied that it would cover all members of society who have experienced violence deriving specifically from their 'gendered' role in society. This research, which was small in its scale and depth, simply could not cover such a vast range of potential interview subjects, while also making a comprehensive

¹ The following organizations were undertaking research on local justice in East Timor mid-2003: IRC, ASF, Asia Foundation, Peace and Democracy Foundation, UNMISSET Land and Property Study, At least 2 other PHD studies.

comparative analysis of the subsequent research themes which emerged. With this in mind, we decided to focus solely on 'women' as a social group. We recognize that women's experiences are not exclusive of the context in which they live, especially in regards to their role in caring for children and the interconnectedness of the shared experiences of the 'mother child' relationship. However, in consideration of the previous work and research which IRC has completed on women's issues in Timor Leste and the need to tackle the common assumption that women are unfairly treated within local justice systems, we felt that allowing women to relate their experiences was the best contribution the team could make to the current research and thinking on the local justice systems which exist in Timor Leste. In this way, women could express their own opinions on local justice without any preconceived notions on our part influencing the outcome.

Secondly, these terms do not exist in the local Timorese languages/psyches and are concepts which come from international perspectives and ideologies. It was necessary for us therefore to compile a list of terms which we could use to explain the research concepts at the local level. Facilitating a Focus Group discussion with the IRC staff and a women's group, as well as listening to local terminologies upon arrival in research areas, greatly assisted the team with this. The team therefore endeavored to ensure that research questions and approaches were tailored to suit local languages/perceptions as far as was possible. It involved a lot of learning for the team also, especially in terms of linguistics! This approach also mitigated against the potential for case studies to slip through the loop. There was a danger that international definitions of 'domestic violence' or 'GBV' would not sit with local meanings and understandings of violence, according to the local world view. Therefore, use of these terms could prevent the team from meeting women who, in our definition might have experienced 'domestic violence', but by local definition had experienced something that is not given a label, but accepted as normal behavior.

Previous and ongoing Research

A review of the literature, as mentioned above, was very important in identifying existing gaps in research and looking at and learning from previous methodologies which had been employed. Such was the volume of research, both ongoing and completed, that the researcher felt that compiling a list of this literature would be a positive contribution to current and future work in this area. This list is by no means inclusive and is meant to serve simply as a starting point for those undertaking similar research in future. It should be considered as a resource that can be added to by those working in this area as more research is completed. It is included as Annex D and is structured according to a CD-ROM of these documents which has been compiled in conjunction with another researcher. See Annex D for details.

Selection of Methodology

"What people do may be very different from what people say they do."² Obtaining an assessment of what people actually do was one of the primary considerations in planning this research, especially in light of the sensitive topics to be addressed. Finding the right style, approach and methodology in consulting women was key to ensuring positive dynamics between the team and those we were researching, and thus in ensuring successful results. We did not want the research to be too 'constructed' or the results shaped solely by the categories we chose to employ to frame women's experiences and the study itself. Too constructed an approach could have greatly affected how the research subjects interpreted and responded³ to our questions. In selecting our methodology, we therefore had to take into consideration the effects which our own backgrounds and experiences might have, and the power relations which might be generated between the researchers and those interviewed. We needed to consider what effect the presence of an international could have on the level of information obtained from speaking with rural women? Whether women might be too shy to talk openly to a foreigner? How communities might react to an outsider investigating such a deeply cultural issue? Or whether they would welcome outside inquiries about their lives and the opportunity to talk about them?

Influencing Factors

Approaching women themselves could also bring with it practical problems.

- Access to women was an issue to consider. Women are extremely busy, and time to sit and talk may be restricted. At times it may be inappropriate, or impractical, for a researcher to visit women's homes, and in relation to the topic we wished to discuss, even harmful to their safety. Therefore we tried to make the research as flexible as possible and respond to times when women were available to talk (for example in the evenings) and in environments which they felt safe to talk in.
- Suspicion from both women themselves and their family and community⁴ was a factor which could have prevented their participation. Openness and caution in entering communities was a must.
- The means through which we met women respondents was also an issue to consider. Meeting them through people such as the local Chefs might prevent women from speaking openly due to the fear that what they say might be reported back to them. Entry points can have both positive and negative effects on

² Bartenek and Louis, 1997.

³ Status of women, Canada; 2001

⁴ Scheyvens and Leslie; 2000; pg 2

the dynamics and outcomes of research and should not be overlooked as key contributors to a successful study.

Research Approaches

There is a risk that 'outsider-researchers' can have a tendency to take a holistic approach to a study and see those being researched as a 'group' rather than as 'individuals'.⁵ However, the gap in individual accounts of local justice processes, particularly those of women, led us to conclude that a 'case study'/individual experiences' approach was best. In this way, the results would apply solely to the people the time and place studied⁶ and would best suit the very short time limit for the research project. This use of case studies would allow us to maximize the opportunity for voicing women's own opinions on local justice.

In consideration of the size and scope of the research, this type of approach suited best as it prevented the presumption of applying the findings to a wider population, which was not possible with this type and timeline in research (our field research timeline was only 27 days). It also meant that the results 'document the experiences of a group of people for their own sake as well as in the interests of further theory and development'⁷. The research would serve to highlight women's views and the need to examine these further before findings could be practically applied to any large scale initiatives in response to the study. We concluded that the 'case study' approach would allow women to articulate their experiences from their own world view and serve to demonstrate the range of experiences of local justice which may exist.

The status of the research team

The dynamics produced between the interviewer and the interviewees can be influential to the type and level of information forthcoming from participants. We needed to consider how women might react to being approached by a foreigner wanting to discuss sensitive issues. In this type of research there is the debate that "insider status.....can reduce the difficulties in research in terms of access and rapport with participants". However, one view is that "outsiders can give a more critical and analytical approach"⁸. It can be unwise to assume that an insider can automatically be more effective. An outsider can just as likely bring benefits to a research project such as 'neutrality' where the interviewees feel more comfortable talking about private matters to a complete stranger (which has been the previous experience of the author). It was hoped that speaking with an 'outsider' would lessen fears regarding the possibility of scorn towards individual viewpoints should the research be conducted by peers or people who may be seen to have vested interests in maintaining cultural/societal norms. The pool of skills which can be gained from employing an external researcher is also a factor that contributes to the level of critical analysis on the information gathered⁹. The gender of the researcher was also a factor to consider. Having gender in common encourages women to respond¹⁰ and in a patriarchal society as Timor Leste¹¹ it was recognized that women would feel more comfortable discussing issues which are exclusive to women, with other women. T

The IRC team was made up of one international which to bring wider research experience to the study and two Timorese researchers who were essential to the levels of rapport established with interviewees. All members were female, in an effort to try to overcome any gender barriers which we felt otherwise might prevent the ease at which women would express themselves.

Questions of Power and Ethics

An open/qualitative approach to research may not always empower women to critically express their opinions in the ways useful to the research. Women may never have felt the need to critique cultural processes, or maybe do not feel that they are being discriminated against in local justice, but are in fact quite happy with the status quo. Perhaps they are not "conscious of the forces which have acted upon them"¹² and if so, how could they articulate objective views on processes which have been inherent in their lives and culture? This was something we had to be prepared for in the way in which interviews were conducted.

Questions of research ethics are important. The ownership of information, the dissemination and use of this information and the appropriateness of privileged westerners carrying out research outside of their own cultures¹³ need all be considered. We were aware of the consequences which may have resulted from doing this type of research with women and made efforts to minimize these, such as accessing women through appropriate/formal

⁵ UEA, *Coming to Terms with Research*

⁶ *Status of Women, Canada; 2001,*

⁷ *Ibid*

⁸ Pugh and Brooks, 1999

⁹ UEA, *Coming to Terms with Research*

¹⁰ Scheyvens and Leslie, 2000

¹¹ UNFPA; 2001; pp 5

¹² *Status of women, Canada; 2001*

¹³ Scheyvens and Leslie, 2000

means and carrying out interviews in locations of their choice where possible. The likelihood that women might share accounts of traumatic or difficult incidences was something we needed to prepare ourselves for. People who do not usually have the opportunity to voice buried emotions, may take participation in such a research process as an opportunity to do so. This can be a very positive and an enabling experience as it encourages people to articulate their needs, reflect on and evaluate the systems which disadvantage them and gives them opportunity to contribute to the analysis of a particular social issue¹⁴. It could also have the reverse effect of bringing forward issues which women are not ready to deal with and have kept buried for certain specific reasons. Addressing such sensitive and personal issues should therefore be done with caution. When we felt that a particular woman needed further assistance with a case we made active use of the access points (such as police and women's organizations) through which we had met women. Some cases were referred to the human rights unit, to local women's organizations and in several cases back to VPU officers to follow up as was appropriate and in line with women's wishes.

A REVIEW OF RELEVANT LITERATURE AND ISSUES

Local Justice in Timor Leste

Throughout the period of undertaking this research, it became clear that there are many different interpretations of what constitutes local law or justice in East Timor. This is reflected in the range of terminology which is used to describe these systems, and in the assumptions that are made on the 'ancient' or 'traditional' nature of these practices. Previous research into justice systems in Timor Leste have concluded that terms such as 'traditional', 'Adat' or 'custom' are inappropriate. These terms imply a definition of practices which have remained fixed over a long period of time, and do not account for the ways in which external forces may have influenced and affected them, thus changing them over time¹⁵. Also, local systems vary from place to place. Terms such as 'community justice' do not give room for the various types of communities, individuals and social interactions which in this way are presumed to be homogenous¹⁶. Such terms also suggest these systems apply to, are owned by and participated in on an equal basis by all members of that particular 'community'. A large diversity in the types of mechanisms of justice exists in Timor Leste, and with this a large range of descriptive terms in local and national languages also exist. Consistent with the experience of undertaking this research, it is clear that while practices differ from area to area, so too does the terminology used. People will refer to these systems in the words which gives meaning to the processes for them. In following this, and other research papers cited above, I have opted to use the term 'local justice' in the discussion in this paper. It is the most suitable generic term and is used to allow room for the diversity in the nature and structure of local practices which exist throughout the societies of Timor Leste.

As mentioned before, there is a range of literature/research existing on local systems of justice in Timor Leste¹⁶. Sociological, linguistic and anthropological inquiries and analysis into social systems in Timor Leste have been completed during both the pre and post 1999 era. While it is not necessary to regurgitate this information again, a very brief summary of some of the accounts of existing cultural and social systems in Timor Leste is included in order to give a context and understanding to the reader of where this research is placed. Further reading is essential for a fuller understanding of the intricacies of the socio-cosmic systems ordering Timorese societies.

The Social Order

In general, Timorese societies are ordered through the maintenance of relations with the ancestors, whose presence and influence helps to stabilize society through the practice of rituals and protocols. Social interactions at base level take place between 'houses' and relationships¹⁷ linking these houses are established through marriages that take place between their members in a typical patrilineal society, through marriage, a woman is transferred to her husband's kinship group and her welfare is then their responsibility¹⁸. The two kinships are tied by the exchange of values which takes place between the families. The 'wife giver' family gives symbols of fertility and femaleness which are given with the woman to the other family. The 'wife taker' reciprocates with symbols of maleness and security, such as buffaloes and money. This exchange is often referred to more commonly as the 'bride price'. In Timorese cultures, it is actually seen as a cementing of the relationship between two families and is the basis of relations between the two for generations to come. In this case also, socially, the 'wife giver' will always have superiority to the 'wife taker' as their source of life and fertility¹⁹. Each house has an elder who is responsible for contact with the ancestors and all things relating to ceremonial relations with them. Each hamlet has a king or liurai who, in contrast to the elder of a house, is responsible for all things outside of the sacred, for relations on an external/political level. These dualistic relationships exist at all

¹⁴ Ibid

¹⁵ Hohe and Nixon, 2003, pp.11-12; Mearns, 2002, pp.30-31

¹⁶ Mearns, 2002, pp. 31

¹⁷ Nixon and Hohe, 2003, pp. 13

¹⁸ Mearns, 2002, pp. 21

¹⁹ Nixon and Hohe, 2003, pp. 13-14

levels in society, as already seen in the 'wife giver' and 'wife taker' relationships²⁰. It is in the maintenance of the relationships of exchange between the two that potential for conflict and dispute between 'houses' may occur. A disruption to the flow of values between houses is seen as a disturbance to the social order and equilibrium of society. A debt has been made between two families. These values therefore have to be replaced, and the correct exchange used to re-order the interrupted cosmos. The two need to be reconciled in order for peaceful relations to be restored²¹. The perpetrator cannot simply be punished or removed from the community for what he has done²². This 'value replacement' and the idea of the creation of a debt, is also associated with the idea of 'covering shame' which an act has brought on another family. The act is not just associated with the individuals involved, but between the houses which they come from²³. This closing or covering of the shame is done through the exchange of goods, a compensation for the crime committed, which closes the feelings of shame experienced by the victim's family. This then opens the way to the very important stage of reconciliation. This consists of some form of ceremony (usually feasting) which ensures that both sides have re-established a peaceful relationship again and that community at large has no need to fear further disturbances to the social order²⁴. The goods for the ceremony will be decided during the hearing of the crime and involve a contribution by either the perpetrator or both parties to the crime. This reconciliation ensures that the ancestors are appeased and that by closing the shame on a family's name there is no risk of future retribution or sanctions from the ancestors. These processes are overseen by various authorities who act as a representative of the ancestors and due to their lineage have the power to execute these ceremonies²⁵. Among these, depending on the location, is the 'Lian Nain' who is the 'keeper of the word/the owner of words, the 'maçair fukun' who is the holder of the law and the 'Dato Uain' who exercise power to make decisions in local rulings²⁶.

A hierarchy of authority exists at community level which is adhered to when trying to solve problems. For example, when a problem occurs within a family, the heads/elders of that family (including those mentioned above) will convene to try to resolve it. If this is not successful, the case will be brought up to the next level to the *Chefe d'aldeia* and so on up to District Authority level. Only when required would a report about the incident be made to the police²⁷. Mearns, in his study in 2002, also found that the main advantages of using local justice systems was the speed at which they could be mobilized and their sensitivity to local social contexts. Despite the inconsistency of the decisions resulting from these processes, and inconsistencies in the nature of these processes, most people saw them as the most viable and realistic options for the near future, recognizing the governments' inability to address local problems efficiently²⁸.

The research papers cited above all give an explanation of some of the reasons why diversities in processes exist. They explain how the characteristics of local justice enable it to adapt to the influence of more recent external stimuli, such as the political occupations of East Timor. More recently has been the arrival of Independence and the UNTAET era and with it the implementation of national and international laws and conventions. These are yet another force which the socio-cosmic order needs to assimilate into its belief system. While the challenge to marry the two systems has been widely looked at, the accommodation of principles of women's rights and gender equality has yet to be reviewed in depth, specifically in relation to the inheritance of power from the ancestors and men's exclusive role in this.

Gender Based Violence

The following is a working definition of 'Gender Based Violence' (GBV):

"A broad term for any harm that is perpetrated against a person's will, that has a negative impact on the physical or psychological health, development, and the identity of the person, and that is the result of gendered power inequities that exploit distinctions between males and females, and among males and females. Although not exclusive to women and girls, GBV principally affects them across cultures. Violence may be physical, sexual, psychological, economic or socio-cultural. Categories of perpetrators may include family members, community members, and those acting on behalf of or in proportion to the disregard of cultural, religious, state or intrastate institutions."²⁹

²⁰ Ibid, pp. 15; Babo Soares; 1999; pp. 3

²¹ Nixon and Hohe, 2003, pp. 17

²² Mearns, 2002, pp. 42

²³ Hohe and Ospina; 2001; pp.20-23

²⁴ Babo Soares, 2001; pp. 15-18

²⁵ Nixon and Hohe; 2003; pp. 22 – 25

²⁶ Babo Soares; 1999; pp.3

²⁷ Mearns; 2002, pp. 38-39

²⁸ Ibid

²⁹ Ward, Jean, 2003

The gendered experience of violence cannot be examined without looking at the wider social context in which violence occurs and is based³⁰. Many cultures have beliefs and customs which serve to normalize and justify violence of this form. In relation to violence against women for example, both men and women may agree that it is right for husbands to beat wives. Culture or traditions may be used as the grounds for this and tolerating this reason for violence against women may serve to perpetuate these practices and beliefs. Such acts of violence enacted in the name of culture contravene international conventions such as CEDAW (Convention for the Elimination of all Discrimination Against Women) and the UN Charter for Human Rights³¹. These conventions call for the protection of the rights of citizens and the security and freedom of the person. Timor Leste has signed the CEDAW and early next year will submit its report on progress made towards fulfilling the standards set in the convention³². This convention commits its signatories to protect women from all types of violence as described in our working definition. It highlights the need for states to fulfill its obligations to the convention, with particular attention to local customs or religions which might try to legitimize any form of mistreatment or exploitation of women. In this context, the prevalence of GBV in Timor Leste needs to be looked at in light of the local social and cultural practices and beliefs which may or may not influence and determine levels of violence against women.

Gender Based Violence in Timor Leste

The 'bride price' in Timor Leste is cited by many to be the main source of discrimination against women. Generally, within the bride price system, a woman's uncles will negotiate the exchange which takes place between her-own and her future husband's family. Once this has been completed, she will go and live with her in-laws³³. The exchange of goods takes place from both sides as described before, and is seen as recognition of the woman's value as the future producer of her husband's lineage³⁴. More recently however, there is the belief that through this system, women are now seen as a commodity and may be treated what way her husband wishes³⁵. The woman is therefore seen to be 'owned or controlled not only by her husband but even more so by her husband's family'³⁶.

Family disputes and violence perpetrated by a husband to wife is considered as a 'normal' yet very private occurrence within the family³⁷. In an IRC study on the 'Prevalence of GBV in East Timor'³⁸, 51% of women consulted stated that in the last 12 months they had felt unsafe in their relationship with their husband; and in the 'IRC Pilot Study on GBV in East Timor'³⁹, it was found that in the past year, 24.8% of women had experienced violence from an intimate partner. The nature and form which this violence takes place is varied. Those identified as most common were physical abuse such as being hit, kicked, punched, slapped, twisting of arm or hair pulled (21%) and psychological abuse such as husband threatening to harm the children, the woman's possessions, the husband stopping the wife from making her own decisions or making her feel bad about herself; 4% had been threatened to be killed by their husband⁴⁰. Interestingly, women who married young were at significantly greater risk from some forms of intimate partner violence, especially intimidation and control; over 60% of the women surveyed were 10-21 years of age, therefore indicating that early marriage may put women at greater risk⁴¹.

Women's own attitudes to domestic violence are significant, especially in relation to domestic violence campaigns which have taken place in Timor Leste and the drafting of the Domestic Violence Legislation this year⁴². 51% of those surveyed in the 'IRC Prevalence of GBV Study' strongly agreed that "a man has good reason to hit his wife if she disobeys him"⁴³. Therefore, motivations for seeking assistance for violence are important to consider. Again, in this study,⁴⁴ 84% of respondents strongly agreed with the statement that 'family problems should only be discussed with people in the family', and 51% of women felt that the best way to cope was with support from their family. Most women who did seek help for domestic violence went to their family (32%), 5% went to 'traditional justice'⁴⁵, 3% went to police, 9% tried to forget about it⁴⁶.

³⁰ Ibid

³¹ Population Information Program; 1999; and UN Women's Watch

³² Information from Office for Promotion of Equality, Timor Leste

³³ UNFPA; 2001; pp. 8

³⁴ Mearns, 2002; pp. 21

³⁵ Focus Group Discussion with IRC Staff; May 2003

³⁶ IRC; FGD Report, 2002.

³⁷ UNFPA; 2001; pp. 8

³⁸ IRC, 2003

³⁹ IRC, 2003

⁴⁰ IRC, Prevalence of Gender based Violence in East Timor, 2003

⁴¹ IRC, A Determination of the Prevalence of Gender Based Violence Among ConflictAffected Populations in East Timor, Pilot Study, 2003

⁴² Information from OPE and UNMISSET Gender Focal Point

⁴³ IRC, 2003

⁴⁴ Ibid

⁴⁵ This research queries this finding, as the term 'traditional justice' may have led respondents to exclude family resolution and mediation techniques as forms of 'traditional justice', this will be explained further in research findings section of this report

Local Justice Processes and Gender Based Violence in Timor Leste

Women looking for assistance or justice for acts of violence perpetrated against them may look to local reconciliation methods as a means for doing so. As described before, a woman's marriage is not an individual experience, but is part of the collective experience of creating and maintaining relations between wife-giver and wife-taker groups. Similarly, when she moves to the husband's family following bride price negotiations, her and her husband's relationship is seen within the context of the two families' relationships, and that of the community as a whole (while she will remain somewhat connected to her original family)⁴⁷. Interference in the relationship by in-laws is a source of much conflict between couples, with the husband having to bow to his family's expectations of his wife, even if he does not agree. While they may not only cause conflict between the couple, in-laws may also be instrumental in reconciling the couple. They will always take the side of the husband in the belief that, as she was bought, the wife should serve the husband in his role as head of her family. Support from a woman's own family in defending herself in such circumstances is crucial⁴⁸. It is her uncles who will initiate a solution and negotiate on her behalf. The woman is not seen as an individual nor is the experience of violence as an individual experience. The settlement of the problem may involve a 'Kasu Sala' or penalty/sanction which is given to the woman's family, not to her⁴⁹. These sanctions are given in view of the previous exchange of goods which has taken place between the families and is a compensation for the shame that has been caused by those at fault⁵⁰. These sanctions may often fail in deterring the perpetrator from repeating the violent act, as the penalty may not be severe enough and it does not tackle the root causes of the violence and the factors leading to it⁵¹. Women leaders feel that the use of local justice systems is 'not better than nothing' as it undermines attempts to implement standards of law which might combat factors preventing women from accessing it, such as powerlessness and shame⁵². However, inherent cultural practices, beliefs and norms are so powerful that even with education in the era since Independence, standards of human rights and other modern concepts are being both mis-understood and completely lost due to the massive gap between these concepts and the realities on the ground⁵³.

The Formal Justice System

The legacy of the UNTAET administration and the issues surrounding the development of a functioning formal legal system for Timor Leste in consideration of existing customary law has been widely discussed and documented⁵⁴. Amnesty International, the studies by David Mearns, Rod Nixon and Tanja Hohe all offer evidence on the merits of the local and formal systems and the problems which have been identified in the relationship between the two.

In terms of women's access to justice through the formal legal system, several issues arise. In the 'IRC Pilot Study on GBV', Police were identified as difficult to access by 68.4 % of the respondents⁵⁵. Those who do get access to the police are still disadvantaged by the fact that in line with their compatriots, patriarchal Timorese police officers believe that women are at fault for the violence and it is something that should be dealt with within the family⁵⁶. Compounding this is the fact that the new Timorese police force lacks adequate training and is dubious of the court system which they are feeding into⁵⁷. Women themselves fear the full power of the formal system and want sensitive issues such as domestic violence to be dealt with within the realm of the family⁵⁸.

Integration of Human Rights/Gender Principles into Local Justice Practices

When women experience violence and look to local practices for compensation, often the principles of human rights or gender equality play no part in the decision making process which resolves the issue for them⁵⁹. Utilizing such mechanisms can lead to serious human rights violations according to the UNTAET Human Rights Unit⁶⁰. However, international rights standards are alien concepts to Timorese communities, who may see them simply as ideas coming from the outside which they do not fully understand⁶¹.

⁴⁶ IRC, A Determination of the Prevalence of Gender Based Violence Among Conflict-Affected Populations in East Timor, Pilot Study, 2003

⁴⁷ Nixon and Hohe, 2003; pp. 18

⁴⁸ UNFPA, 2001; pp. 10

⁴⁹ UNFPA, 2001; pp. 10

⁵⁰ Nixon and Hohe, 2003; pp. 17-21

⁵¹ UNFPA, 2001; pp.10

⁵² IRC; FGD's; 2002

⁵³ Hohe and Ospina, 2001; pp. 68

⁵⁴ See Bibliography Annex 4

⁵⁵ IRC, 2003

⁵⁶ UNFPA, 2001; pp. 4, 11

⁵⁷ Mearns; 2003; 36-37

⁵⁸ Nixon and Hohe, 2003; pp.50

⁵⁹ UNFPA; 2001; pp. 10

⁶⁰ Maritn, 2001

⁶¹ UNFPA, 2001; pp. 14

However, the proclamation that cultural practices contravene international standards of law and rights serves to undermine the contribution which a culture's value system can make to principles of fairness and rights in law. This standpoint presumes that these practices are unjust and negative, instead of exploring what positive aspects they may contain. It looks at the system holistically instead of recognizing that some individuals are open to and may be striving to integrate international rights standards and practices⁶². It also presumes the practices to be concrete and resistant to change, which they are not⁶³. They are in constant motion and able and more often ready to adapt to changing situations and influences⁶⁴.

Human Rights practitioners argue that cultural laws have little to contribute to achievement of rights and equality⁶⁵. In relation to the current situation in Timor Leste, the President Xanana Gusmao, in a speech delivered at a conference on Traditional Justice in Dili⁶⁶, emphasized the importance of identifying and utilizing what is good about these systems⁶⁷. Faced with this choice, proponents of the rights struggle could therefore either ignore local practices or engage with them. In opting for the latter, there is potential to expand the scope and impact of the campaign for universal rights, and ensure that it is done in an encompassing and un-alienating way⁶⁸, especially for Timorese societies who have had no prior experience of these broad principles. When culture is deemed to be at fault⁶⁹, individual agency and the power of those who may already recognize the need for change may be ignored⁷⁰, or even worse oppressed.

The bride price system and the asserted values inherently associated with it may be correctly or incorrectly taken at face value by westerners and educated Timorese, as placing a market value on the woman. Either ways, the practice does allow for women to become vulnerable to mis-treatment which is not acceptable in terms of her rights and needs⁷¹. Customs which impinge on women's rights therefore need to be challenged. Local belief systems such as the need to restore the flow of values between families following an disturbance to it, clashes directly with international systems of situating an act of violence against a woman in the public sphere and treating it as a 'crime'⁷². While local justice practices may not be reaching the standards and principles established by the international community in regards to treatment of 'crimes'⁷³, lack of clarity and understanding of what constitutes 'women's rights' or 'gender equality' is causing much confusion and fear within communities in Timor Leste⁷⁴. The cultural outlooks of both women and men in Timor Leste, often create a space where physical violence against a women is acceptable⁷⁵. It is these beliefs therefore that will determine when, why and where women look for help in the experience of violence. Whether local practices or options provided by the government (according to international standards) satisfy her needs is a crucial first step in understanding what elements of these systems either alleviate or heighten her experience of violence.

⁶² Nyamu-Musembi, 2002; pp. 20

⁶³ Mearns, 2002

⁶⁴ Nyamu-Musembi; 2002; pp. 3-5

⁶⁵ Ibid, pp. 20

⁶⁶ Asia Foundation, Dili, June 5th and 6th 2003

⁶⁷ H.E. President Kay Rala Xanana Gusmao, 2003

⁶⁸ Nyamu-Musembi; 2002; pp. 38-39

⁶⁹ Nyamu; 2000; pp. 11

⁷⁰ Ibid pp. 41

⁷¹ Mearns, 2002, pp. 21 & 29

⁷² Nixon and Hohe; 2003; pp. 63-6

⁷³ Ibid

⁷⁴ UNFPA; 2001, pp. 14

⁷⁵ Mearns, 2001, pp. 27

DISCUSSION OF RESEARCH FINDINGS

1. Introduction

To say that women utilize local justice systems does not indicate that 'justice' exists, either in a woman's personal experience or in her expectation of justice as such being met. The definition of 'justice' ranges from a "quality of being just....and...integrity in the dealings of (people) with each other.... to... the rendering to every one his due or right."⁷⁶ According to this definition when women approach local or formal justice process, women are looking for recognition of their rights and for their problems to be dealt in a way which is respectful to these rights. It implies that women expect these processes to be inherently fair to their users and for a delivery of 'justice' which results in the wrong-doer being appropriately punished.

Through this research it became clear that while women look for justice, they are doing so in an attempt to have the violence they experienced recognized as wrong and for the violence itself to stop. Whether this is what is achieved through their use of the justice options available to them is the subject of this report. Through an evaluation of the stories women recounted and an analysis of the issues emerging from their use of both local and formal justice systems, the report highlights the factors which prevent and/or assist women in their search for justice. It is these factors that determine a woman's experience of using justice systems and whether their rights are both respected and considered as the processes attempt to deliver justice.

The information contained in this report comes from the findings of qualitative research undertaken over a 32 day period in Timor Leste. The research involved 'field' research in three districts and further interviews with relevant actors and organizations in Dili relevant to the research. The research focuses on the information and issues which emerged from story-telling by women respondents. These stories are included as Annex E and the reader is encouraged to read these stories in whole, to gain an insight into individual women's experiences of the justice processes they used. The report refers to and quotes women on their experiences in order to support and demonstrate arguments and analysis. The opinions expressed by respondents from a wider context are also referred to in the same way. The information these respondents gave us was in response to questions we developed as a result of hearing the issues women raised in their story telling and in line with our own research objectives. Two Focus Group Discussions held with Council of Elders in Cova Lima are also included in Annex F as an example of the types of discussions we had with administrators of justice.

Limitations

The research is limited in its scope, as it covers only three districts, and in the short time period given it was only possible to speak to a limited number of respondents, especially as due to the qualitative nature of this research it was difficult to access potential women respondents. The numbers of women we spoke to in each location are detailed below.

Table One: Respondents met in each location and how they were sourced

Location	No. of Respondents (n=23)	Source
Ainaro	11 individual women and two women's groups	Through Police VPU : 8 Through a Women's Group : 11
Cova Lima	4 individual women	Through Police VPU : 4 Through Council of Elders: 2
Oecussi	8 individual women and 1 women's group	Through Police VPU : 3 Through Centro Feto : 5

The findings in this report are informed by the individual stories told by women and the interviews which were undertaken with community leaders, holders of local justice, mid-wives, women's leaders, women's support organizations, church, police and formal system actors, and relevant organizations.

Background

The idea for the research itself was instigated by the International Rescue Committee, an international NGO working in Timor Leste since 1999. The research stems from a wider IRC interest in addressing issues of Gender Based Violence in its work in developing countries around the world. It is within this framework that the concept for this research developed. The research proposal was therefore based upon the assumptions of an 'outside' body whose work is rooted in international standards and definitions of what kind of treatment is wrong and right for women.

⁷⁶ www.brainydictionary.com

The actual research undertaken within Timor Leste has also come from this kind of standpoint. The research and analysis of the findings contained in this report were undertaken and written by the expatriate researcher. It is therefore influenced by the researchers own background which includes the study of gender and women's issues, and from experience in development work approaches based on international principles of women's rights.

The interpretation of respondents' stories and interviews were carried out by Timorese research assistants. These interpretations are therefore informed by these individuals' own backgrounds which, while they may be open to and supportive of women's rights from the international perspective, are influenced by their own cultural backgrounds (See Annex G for Research Assistant Report). This has meant that the research project has been influenced by many different view points and cultures. This fact has allowed for very interesting and varying discussions and analysis of research findings prior to and during the writing of this document. All efforts have been made to be as objective and as transparent as possible regarding the information which people gave us about their lives and practices. The reader must be aware from the outset of where the research has been positioned and the fact that the results are written with regards to international standards and definitions of women's rights.

A Note on Terminology

Due to the use of Tetum words within the report and the need to explain issues/concepts as they were explained to us by the people we spoke to, we include a brief list of explanation of terms to assist with understanding of the following discussion:

- Adat → An Indonesian word for the sacred laws or belief systems on which local justice is based. The term was used by respondents to refer to the system and its features in its entirety. I have borrowed the use of this term in this report for ease of explanation regarding features of the systems and as reference to how respondents themselves classified their beliefs/experiences,
- Celcom → Term for *Chefe d'Aldeia* used in Cova Lima (comes from the former CNRT structures)
- Community Leaders → An umbrella term used in the report to refer to the members of a community who may be involved in judging a justice hearing including the *Lian Nain* figure, and Chiefs of the village, (both the political and spiritual representatives),
- 'Council of Elders'/ 'Conselho de Catuas' → A Council of Elders in a village made up of *Katuas Adat*, Chiefs of village etc.
- FGD → Focus Group Discussion
- 'Formal Justice' → The formal/national justice system being implemented by the Timorese Government, including police and courts,
- 'Kasu Sala'/ 'tate'/ 'denda' → Different terms found in Ainaro/Cova Lima/Oecussi for the compensation/penalty payment made as a result of local justice, (more often referred to in report as 'Kasu Sala')
- *Katuas Adat* → The Elders (male) who hold the laws,
- *Lian Nain/Direitus Humanus/Dato* → Different terms we found for the 'holder of words' i.e the person in a clan/village who has the power to 'cut words' or make decisions on rulings in local justice hearings, (more often referred to in the report as 'Lian Nain')
- *lulik* → Sacred
- *Problema mane ho feto* → A term for the range of problems that may occur within a relationship between a man and a woman,
- OMT → 'Organisasaun Mullhere Timor'; national women's organization which developed during and as part of the resistance to Indonesian occupation of Timor Leste,
- *Uma Adat/Ukun* → The sacred house of the village/sacred laws,
- VPU → 'Vulnerable Person's Unit' of the Timor Leste Police Services
- 'words' → English translation of the Tetum term for the 'law' which is used to make decisions/judgments in local justice,

2. Options for Justice

2.1 Staying Silent

Firstly, it is important to point out that, similar to countries around the world, many Timorese women do not look for justice⁷⁷. They may remain silent, and try to cope with the problem themselves. Others, for example, many put up with domestic violence for a long period until they reach a point where they just cannot take anymore. As

⁷⁷ In the IRC Pilot Study on GBV, 23% of women surveyed said that 'they did not report the incident of violence'

we used purposive sampling methods we only spoke to women who had utilized justice systems. However, through the story telling process it was clear that some women had endured significant abuse until, as a last resort, they looked for a way to resolve the problem. Women who followed this pattern were those who came across in interviews as most emotional and distressed over what had happened to them. Some were still suffering from the violence they were telling us about and had only gone for help in a last act of desperation.

The reasons why women feel that they cannot, should not or do not want to look for help or justice are numerous and varied. The belief that, domestic violence for example, is something that women must put up with as part of married life, was a recurring theme throughout all of the interviews, and will be discussed in more detail later. Briefly, local attitudes towards the presence of violence in the home, and local gossip and pressure from both women and men, were referred to as reasons why women might not feel that they could react to experiences of gender based violence. Many felt that they should just conform to a role and life that was expected of them. Maria, from Ainaro, put up with violence in her home for a long period of time, before another member of her family contacted the police after they witnessed the extreme level of violence she was experiencing. She said

“During that time I wanted to go to the mountains to my family but they said not to. Some of my neighbors told my family what was happening. They said that if he beats me a little bit that I should just put up with it and not act like a child running back home every time something happens...my sister....just saw me bleeding on the floor and thought I was dead.”

Like Maria, other women also mentioned the role of family support in their decision to look for justice. Those who lived far away from their own family were at a disadvantage. We spoke to two women (and heard several stories of other women) who recounted stories of being abused physically in the home, but were unable to seek justice due to their dependency on their husband and his family. These women did not approach anyone for help as their own family was too far away and their husband's family would not support them. Notably, West Timorese women married in Timor Leste are the most worrying cases, as the distance, both geographically and now politically, makes it difficult for women to contact families when in need of such support. Rosa⁷⁸, from West Timor, had approached her husband's family for help in dealing with the violence he was perpetrating against her. They ignored her, and even blamed her for causing the violence. Such attitudes compound women's feelings of despair and isolation. Most alarming is that this kind of attitude can convince an already demoralized woman to put up with what is happening and accept blame for the situation. Meanwhile, Rosa's family in West Timor had at one point, tried to intervene, but because she lived so far away, this had no real impact on her efforts to amend the situation.

The consequences of reporting incidences of violence are also significant factors. Apart from the blame which they might receive, family violence on a larger scale was also a consideration. Women were afraid that if they reported what was happening to their family, then violence would flare up between the two families, making the situation far worse. Even though Joanna⁷⁹ eventually told her parents what was happening, “My father forbade people from telling my uncles because we were worried that they would go and kill him (accused)”. Also, another woman's family⁸⁰ attacked the family of a man who had made her pregnant outside of marriage. The police in Ainaro also cited this as a reason why women were often afraid to voice what was happening to them.

Women also expressed pessimism towards the options for justice which were open to them. Some regarded using any justice processes as pointless, and not beneficial to their situation. Suzannah, who eventually had had enough of the treatment she was experiencing, explains why she waited so long before alerting people to what was happening to her:

“My mother....was crying and she said “This is why you have lost so much weight while in Dili. Why didn't you tell us that people were treating you like a dog? You have been suffering alone”. I said “I was afraid because he was my husband and I was also afraid in case you would just ask him to pay 'tate' (compensation)”. Normally here, if a man makes a mistake like this he just pays a penalty, and that's why I didn't tell them”. (Suzannah, Oecussi).

⁷⁸ Respondent from Cova Lima

⁷⁹ Respondent from Ainaro

⁸⁰ from Ainaro

Suzannah felt she had to accept this treatment as it came from her husband. Even if she did report it, she thought that he would be simply given a penalty to pay, which would not ease her suffering nor stimulate any action to stop the violence she was experiencing. Other women who had gone to the police expressed frustration at the fact that even if they did go to the police their complaints would end up being sent back to local administrators to resolve it, so what was the point?⁸¹ (The merits of local processes will be discussed in more detail later).

Women such as Suzannah who had been suffering for so long in silence saw 'suicide' as one option for ending their misery. Four out of the twenty-three women who told their stories to us mentioned the wish to end their suffering through suicide - "I feel that I just want to die." (Rosa, Cova Lima) or had attempted to commit suicide:

"After the fourth time I drank 'Baygon', but God did not accept me so I am still alive". (Suzannah, Oecussi)

"I often think of suicide but my children ask me not to do that because they are too young to lose me." (Sansa, Oecussi)

In the IRC Pilot Study on GBV⁸², 50% of respondents displayed signs of 'psychological distress and impaired social functioning'. Women are under extreme levels of stress in attempting to manage violence in the home and/or violence which may come from perpetrators in the general community.

Finding the reasons why women do not look for justice to deal with violence was not an objective of this research. However, we suggest that it become a priority for those organizations who are working on issues of violence against women and women's rights. The discussion of the research findings which follows gives some insights into the factors which can impede women's decisions to appeal to justice processes.

2.2 Looking for Assistance

Women who looked for justice referred to two options which they had utilized: Local justice processes, including family mediation, and formal justice processes including the police and court system.

Table Two: Different justice mechanisms which the women had used

Process Used	Number of Respondents (n=23)
To Local Justice and resolved there with a compensation payment	6
To Local Justice and resolved there, but no penalty paid and brought to police	3
To Police and brought to court and back to local justice	3
To Court and awaiting final hearing	1
To police and then back to Local Justice	6
To police and resolved in police station through a joint statement	4

This table demonstrates the wide range of experiences women can have when looking for justice.

Local Justice – an overview

The ways in which women accessed local justice systems, and what this meant varied from place to place and even from case to case. There was not one 'uniform' experience or method through which local justice was accessed or used. Findings support the need to refer to these systems as 'localized', conforming to people's needs and preferences, case by case. As the law is not written down or standardized, it is also subject to the different personalities involved and their own interpretations of how justice should be administered. What was clear was that local justice processes do not conform exclusively to the concept of a 'court' or 'hearing' in accordance with western notions implied in the delivery of justice. A meeting or discussion will be held, which we will refer to as a 'hearing' in this report for ease of explanation. The people involved in administering local justice may not give consistent rulings in every situation (even though guidelines for penalties may exist) and thus a conventional, stereotypical local justice process cannot be described definitively. I attempt to outline the general patterns which occur according to the stories we heard.

Naturally, the first place that a large number of women interviewed turned to for support in seeking justice, was family⁸³. Like anyone who has experienced an upsetting or traumatic event, people who are close to you will be relied upon for support and assistance. In a Timorese setting, this has even more significance. As discussed in

⁸¹ Respondent Ainaro

⁸² IRC 2003

⁸³ IRC Study on GBV found that 51% of women went to family

the Literature Review, a woman's family and in East Timor particularly uncles orchestrate any exchanges and/or relationships which take place with possible suitors and/or marital partners. It follows that any disturbances that then occur within these relationships are seen as the responsibility of her family/uncles. Therefore, they, along with the 'Katuas' (Elders) of the family, may take it upon themselves to mediate the problems which a woman presents to them. The person in that family who is the 'holder of the words' (see terminology) may be involved at this point also. Or he may be contacted at a later stage, depending on the wishes and practices of that family. I would therefore like to make the point that I consider that 'Local Justice' is not just a process which takes place as an event external to the family unit, involving actors from the wider community setting. It is very much a process that can occur (wholly or initially) within the family and indeed, may be administered by immediate members of the family themselves.

The following accounts of local justice processes come from a conglomeration of the women's stories we listened to. I wanted to demonstrate the range of routes, processes and obstacles which a woman might face and use in local justice. I have also described and categorized them according to location, to illustrate the variation in processes that were found and the different terminology which people used to describe these processes (this is not to say that the process described are uniform for that district, but are the general patterns which we found).

Ainaro:

We met three cases of a pregnancy outside of marriage, and these women had all waited for their pregnancy to be noticed by someone in the family. Then, her mother or parents, angered by what had happened to their daughter, would openly and vehemently accuse the man's family of 'estrage' (rape/destroying her). Both families would 'call' their family members together, particularly the uncles/elders of both parties involved. They would then meet at an appointed time and place, usually the woman's home. The 'Lian Nain'/'Direitus Humanus'/'Dato' may or may not be called at this point to rule over the process and make the judgment. Some families would automatically have the 'holder of words' from the beginning or wait until a later stage to call them in.

Similarly, a woman would go to her family for support following an incident of violence. The family, usually her parents and/or uncles/elders, would then decide what route to take to resolve the problem. As above, both families would 'call' their members together. The reconciliation process would then involve the uncles and/or elders and/or Lian Nain/Direitus Humanus/Dato of each family.

Women explained that "because the problem is inside the house, the first thing we do is go to the Lian Nain, and if it is solved by the Lian Nain, there is no need to go to the *Chefe d'Aldeai*" (FGD Ainaro). The members of their family who have the responsibility of protecting the 'uma Adat' (Ferek no Katuas) may be involved also.

The accused and the accuser typically sit at the front, surrounded by the administrators of the process, being questioned by them and supported by their respective families. At this stage, the Lian Nain/Elder is responsible for asking each party 'why are you here?' and asks them to explain what happened to bring them there in front of him. The 'Direitus Humanus'⁸⁴ in one village was described as being chosen by the community because of his awareness of traditional laws and his ability to resolve problems fairly. "When there is a problem, he must ask both sides of the story and he will decide who is right and wrong." (Ainaro FGD). More typically, the Lian Nain/Dato holds that position as a result of his family lineage and the powers that have been vested in him from the ancestors. The Lian Nain/Dato will balance up the information received from the victim and perpetrator. Inputs may be given by witnesses, family or friends, which can have a large impact on the outcome of the case. For example, one women's group stated that "When the woman comes from the same village, the parents of the woman will participate. If the woman is from another *suco* and her parents cannot attend, only the family of the man attends. The result is always to blame the woman; she is wrong even if she was right. Even when the woman is right, the man might have a friend or member of the family speak to defend him and they put the woman down to blame her." (FGD Ainaro)

When a decision has been made, if everyone is in accordance, the decision is finalized and closed. The Lian Nain/Dato is then responsible for administering a 'Kasu Sala' which is a payment from the guilty party to those who have been recognized as shamed, and needing compensation for the deed committed against them. Typically, if a man is blamed for an incidence of violence against his wife, he will be requested to pay goods to her family: "He gave some money and goats to my family. My parents gave back one *tais* and one pig." (Lucia, Ainaro). In this case, the victims' family also gave the perpetrators family goods, in the spirit of exchange and maintenance of family relations (it may also be related to the precedent set by the original bride price that was paid for the woman's marriage). This type of compensation is seen as a method of closing the shame which the victim's family has experienced. The 'Kasu Sala' may also/otherwise involve the provision of a 'feast' for all those involved. An example from Ainaro: "They gave my husband a 'Kasu Sala' of providing food to all of the

⁸⁴ Literally meaning 'Human Rights' it was interesting to find that in one village they had renamed the 'holder of the words' figure as 'Direitus Humanus' in recognition of his skills in being open and fair in his rulings; the reason why he was voted into that position. Even more interesting is the fact that women openly criticized him as being completely biased during his rulings.

village...they decided to resolve it like this, we killed some chickens in order to have 10 plates of corn for the village. Half for us and half for the 'Dato', in order to 'taka-lia' (close the issue)." (Elda, Ainaro) . Once this has been completed, relations between the families are restored and the process ends.

The 'family mediation' level, with the possibility of the Lian Nain/Dato/Direitus Humanus, resolving the problem as described above, was the most basic stage of local justice described to us. However, in some cases, those involved may not be satisfied with the decision made by the Lian Nain/Dato/Direitus Humanus; and want to take it to the next level of authority for ruling. This typically means going to the Chefe d'Aldeia. The Chefe d'Aldeia will hear the case again, in similar fashion as described above, and also take into account the 'words' which were passed by the Lian Nain/Dato/Direitus Humanus originally. He will pass another ruling according to how he sees it (similar or different to the original one) and a 'Kasu Sala' is settled as described above to resolve the case.

Again, if one or both of the families are not satisfied with this, they may go to the next level, to the Chefe do Suco. He will follow the same process. A 'Council of Elders' might also be convened at the stage at which a case might be sent to the Chefe d'Aldeia and/or Chefe do Suco, depending on the location. At this stage however, if the Chefe do Suco cannot resolve it, he has the authority to pass the case on to the police. He will write a letter of referral to the police. Either the family or the Chefe himself will then take it there and request the police to deal with the case. In some places, the Chefe de Suco was seen as the only one with the authority to liaise and work with the police.

Therefore, a typical local justice process may involve the following pattern:

Alerting family member → Mediation by family members only and/or → Ruling of case by Lian Nain/Dato/Direitus Humanus → To Chefe d'Aldeia → To Chefe de Suco → To Police

Not all cases will follow this exact procedure. For example, women/families might go directly to the level of the Chefe de Aldeia or Chefe de Suco, or the Council of Elders; skipping family mediation and/or the level of the Lian Nain/Dato/Direitus Humanus. This decision will often depend on their location near to these people, and who they deem as most appropriate to solve the case.

Cova Lima:

Similar to Ainaro, the first level at which a problem might be resolved was within the family. A decision is made by family members on what is the best action to take. One woman described how following an incident, "That night, people called the Adat Elders (Katuas Adat). The Adat Elders (Katuas Adat) are my grandfathers. The people also called the Chief of Aldeia (Celcom) and (the suspect's) uncles." In this case, the family members are involved in solving the problem, along with the respected authority of the Chefe d'Aldeia.

This was their starting point towards resolving the problem. The presence of the suspect's family member's is highlighted as necessary. In another case, the elders were also called to resolve a problem "We resolved it through Adat and the Lian Nain" and when it was not resolved, the Lian Nain decided to pass the case on to the Chefe do Suco." (Filipa, Cova Lima) This also demonstrates how cases may be passed up to higher levels, not just by decisions made by family members but by the authorities involved also. In Cova Lima, the penalty/compensation was called 'tate'. It is decided by the ruling authority in consultation with the victim's family and is the means through which a case is resolved and the family's shame closed.

The process follows the same pattern as outlined in Ainaro above. However, in Cova Lima, an additional level was mentioned (this is not to say that it does not exist in Ainaro also, simply that it was not mentioned by the people we spoke to). Cases may be referred by the Chefe do Suco to the Sub-District coordinator, as an intermittent stage between the police and the Chefe do Suco. At this stage, the sub-district coordinator is seen as having the power to either resolve the case finally or refer it to the police.

Oecussi:

What differed in Oecussi was the terminology used and the ruling administered. Normally, an 'Adat' leader will administer a 'Denda' (penalty/compensation) on those found to be to blame. However, the relation of the 'denda' to the bride price was important here. "We didn't use denda because it was a problem just between the families.....My family wanted to ask for a 'denda', but because my bride price had already been fully paid they could not ask for more." (Sansa, Oecussi) Instead, the 'Katuas Adat' gave them advice on how to live peacefully. The 'Adat' also brought 'tua' for everyone to drink to close the problem. A Chefe d'Aldeia in Oecussi also described how he would never give a 'denda' ruling between a married couple. The reason was that if the husband was to give goods to his wife's family in compensation, then those goods would come from the house that the woman lived in also. She would end up losing out again, which made no sense to him. Instead, his ruling involved giving advice to the couple on how to have a peaceful relationship in future. "They gave us advice to make peace between us". (Sansa, Oecussi). In some cases the guilty party is requested to provide goods to the 'Katuas Adat' for overseeing the process and to close the process properly "...the Chefe d'Aldeia made him give a 'denda' of a bottle of tua...and cigarettes for the Lian Nain" (Dolce, Oecussi).

Several women mentioned that their families had attempted to resolve the problem within their families first, before involving the 'Lain Nain'. In Oecussi, the same patterns as Cova Lima were found – including the possibility of bringing the cases to the level of the Sub-District Coordinator.

Formal Justice – an Overview

Patterns were similar over the three areas investigated. There seemed to be three ways in which the police might be approached.

1. Victim of violence presents the problem to the police directly following an incident of violence:

Women described how they went alone, directly to the police immediately after/during an act of violence. It would be an impulsive decision, and had a lot to do with her levels of fear, the perception of threat and/or injury and their location near to the police (to be discussed later).

Upon arrival at the police station, the police would question her as to why she was there. Two things could happen then, depending on the level of injury as perceived by the police and the attitudes of the police officer involved. If the case was deemed 'serious' i.e the woman was physically injured, and/or bleeding, she would be taken to the hospital for assessment. The case would then proceed from there, as described below. If she was not seen to be visibly suffering from injury she would not be taken to hospital.

The woman would then be questioned about what happened. Following explanation, in most cases, the police would present options to her (according to police officers) for her to make a choice about what she wanted to do. The majority of women however, stated that the police explicitly encouraged or advised them to take cases back to local justice, and were then promptly sent home. If the case was deemed as 'serious' by the police, the man would be arrested and brought to the station for questioning.

In some cases, if she insisted on intervention from the police, both she and her husband would sign a 'joint statement', a tool being used by the police to 'mediate' or solve what they see as smaller issues in the police station. In this statement letter, the perpetrator would promise not to repeat his actions with the clause that if he did, 'next time', the police would use the statement as a basis for sending him to jail. They then returned home together.

The case then may or may not be resolved through local justice, depending on the wishes of the couple. If it is put to local justice, several community leaders mentioned that the police may come and observe proceedings. With or without their participation, a statement on the resolution of the issue would be sent to the police for their records.

If a woman wanted to take the issue to court, the police would arrest the suspect. She would then be brought home. The case would be processed through the legal system and the woman told to wait for further information from the police on the progress of the case. The Prosecutor might forward the case to the courts or send it back to local justice. The hearing would be held in Dili, and even at this stage, there is the possibility that the case could be sent back by the judges to the local system.

The police may or may not follow-up with monitoring of the case - transport and willingness permitting.

2. A Family member contacts the police

"My sister did not consider 'Adat' because she just saw me bleeding on the floor and thought I was dead" (Maria, Ainaro). Family members who witness extreme violence may be propelled to take action and go to the police. In other cases, as described above, the family might decide what justice route to pursue and decide to go to the police instead of contacting the 'Katuas Adat'. "Then we brought him to the tribunal because my brother in law and my sister said that we should.... That day, I did not go to the police. It was my brother-in-law who told the police because I could not talk." (Mena, Ainaro)

The process would then generally follow the process as described above. The family and community leaders may get involved in negotiating with the police on how the case should be resolved. The family may succumb to local pressure/police encouragement to bring the case back to local justice at this point.

3. Hierarchy of Local Justice and the police role in this

Having followed the different levels of local justice as described in the first section, a woman and her family and/or the administrators of justice may decide to take a case to the police. This may be done for two reasons.

If the parties feel that the case cannot be satisfactorily resolved by the local 'Adat' administrators, it can be deemed serious enough to be sent to the police. Examples include the inability to resolve the identity of the man responsible for impregnating/raping a woman⁸⁵.

The other reason may be dis-satisfaction with the outcome of a case already solved by the 'Katuas Adat/Community Leaders'. Women complained that men charged with paying compensation often failed to produce the goods. Women believed that it was the responsibility of the police to enforce him to do so, and approached the police for help with this matter.

3. A Discussion of Women's Experiences of Using Justice Processes

The following is a discussion of how women experience the justice procedures which are available to them. It is important to outline the factors which determine whether these processes deliver justice to women or not.

3.1 The experience of using local justice:

In this section the findings are discussed in terms of:

- Women's Participation in Local Justice,
- The Rulings and Outcomes of Local Justice,
- The Administration of Penalties/Compensation,
- The Potential for Bias within proceedings,
- The Right to Appeal, and
- The impediments to justice processes taking place.

Women's Participation in the Local Justice Process

In examining justice process, it is necessary to look at the various roles which a person might occupy – as the user seeking justice or defending themselves, as the administrator of the justice ruling, as observer etc. We tried to identify and examine at what levels women felt they participated in local justice processes, and at what levels they did not.

As Users:

Women in general felt positive about their participation in the justice processes which they utilized. As the 'victim', a woman, along with the suspect, will be brought forward to sit in front of those judging the case. She is asked to tell her side of the story and explain why she has come before the family/community. Women generally said that they were asked to speak and were listened to by those overseeing the case:

Sansa; Oecussi:

IRC: Do you think that they listened to you during this process?

They listened, and gave me an opportunity to speak.

An OMT leader agreed, and said that in a local justice process, both the man and woman are given an opportunity to speak⁸⁶. Looking at this more analytically however, the value of this opportunity to contribute is questionable. While women may give accounts of what they feel the problem is, and tell their story as such, they are not guaranteed that their views will be fully incorporated into the final decision making process and outcome.

"When I spoke they didn't really listen to me." (Filipa, Cova Lima)

It was evident that the potential for a woman to fully express what she really wants and have that actively listened to and considered is minimal. For example, in a lot of cases, especially those where a woman had become pregnant outside of marriage, women were presented with what was perceived as the appropriate solution instead of being asked what they might want:

IRC: So, who actually resolved the problem?

The 'Direitus Humanus' from my family resolved it.

IRC: Who decided to call the 'Direitus Humanus'?

My brothers decided to call him to see whether the man was going to accept me or not.

IRC: When they called the 'Direitus Humanus', did they ask you what you wanted or not?

Yes, they asked me if I wanted to marry him and I said 'yes'. And then they asked again and I said that I would marry him but he doesn't want to marry me." (Joanna, Ainaro)

⁸⁵ Example Filipa, Cova Lima

⁸⁶ OMT Cova Lima

Some women expressed dis-satisfaction about the ways in which they were able to participate, one woman commented:

"I would have liked them do something to find out about how I feel and what I want. They never asked me about this."(Sansa, Oecussi)

Another woman, whose husband had sexually abused with her sister, found that the issues were resolved between her sister and her husband, without consideration for her feelings in the matter:

"They didn't include me – just my sister and my husband. They didn't give me a chance to speak. I was very hurt. They had already made peace between them...." (Joacquina, Ainaro)

While women might speak up, their true feelings on the matter may not be considered or listened to. It is questionable whether what she says actually has any effect on the end result of a hearing. It seems that those making the ruling will simply adhere to existing norms ordering relationships between women and men. They will use cultural practices such as marriage relations and arrangements as the basis for how incidences of violence should be dealt with.

As decision makers

While women may have subjective experiences as 'users' of local justice, what was un-mistakenly dear was that they could never participate as ultimate 'decision makers' in this process.

Upon initially inquiring with women and community leaders whether women entered into this authoritative role, some people replied that they did. In areas where 'Council of Elders' have been established through the CEP Project, OMT leaders and members of councils described how sometimes, during rulings, the local OMT representative and sometimes a female youth representative would be present during the hearing of a case. When further questioned about their level of participation, they all said that these representatives would have the possibility to speak within a hearing if they needed to. The OMT leader and mid-wives in Cova Lima and Ainaro said that if they were present in a hearing, that they would support the woman's point of view if they felt that she was unfairly receiving all of the blame. For example in response to a question about her levels of participation in local justice rulings, one OMT representative⁸⁷ stated:

"We just follow it as the representative of the women. If the 'Conselho de Katuas' invite us we come, if they ask us to speak, we speak. If they don't invite us, then we will not come. If they invite us we will be present and sit with the Council to resolve the case, and with the Celcom and Chefe de Suco. If they do not invite us, we will not come. If they invite us as a woman and as OMT, we also have the right to assist the process of resolving the case."

This, on surface level, is a very positive thing. However, can women always be guaranteed that a women's representative is invited to attend? One OMT leader present in an FGD to present findings back to respondents before this report was completed, told us that they are not always invited to attend justice processes and have no power in determining whether they sit in on cases or not⁸⁸. Male members of these councils stated that in recent times they have been told that women should be part of local decision making processes; they are thus acceding to this. This assent did come across as an almost grudging acceptance in some cases, a perception of the need/pressure to conform to that which came from the outside. In one area⁸⁹, the 'Council of Elders' said that women do not participate in the council at all. They said that this was because women have no experience in these processes and responsibilities, and therefore cannot make decisions. They said that women themselves thought this (they did not expand on whether this was their own perception or that women had explicitly told them this), and therefore were not and should not be on the council. After discussing this at length with them, they concluded that women could be on council but, none have come forward, and they cannot force women to be on the council if they do not want to be. There seems to be a lack of confidence from both community leaders and women themselves in women's decision making abilities, which has serious implications for participation of women in society as a whole.

Women's participation in these processes needs to be looked at a little deeper however. These councils, like other community committees established in the name of development, have been organized and initiated most usually by an external influence. There are certain conditions put in place before councils such as these are recognized as a functioning representative body of the community – such as obligatory membership by OMT and the Youth Organization and an obligatory gender 'balance' ('balance' in most cases meaning one or two women to a majority male quota). The question of whether this representation is there in response to an external stimulus or because of recognitions of the value a woman's input can make is pertinent when examining

⁸⁷ OMT Representative Cova Lima

⁸⁸ OMT Representative Cova Lima

⁸⁹ Ainaro

women's decision making powers. Regardless of whether a woman is present or not, will what she says be taken into account and really listened to in the first place? Or will the locally determined power brokers make the decisions in the end anyway?

How then does this relate to justice processes and women's ability to become decision makers in these? From our earlier description of local justice processes, it is clear that many cases which are presented by women may not even reach the level of a community council or the community leaders that make up its membership. Also, many members of these councils are not involved in overseeing or making decisions in local justice processes. As we have seen before, it is the elders of a family, the Lian Nain or 'holder of the words' from that family/locality and at later stages the individual community leaders such as the Chefe do Suco and the Chefe d'Aldeia who are deemed as having the power to 'cut the words'⁹⁰ or make the final decision.

Customarily, what gives these people decision making powers? Is their lineage and the spiritual connection they have with the ancestors, their knowledge of the 'words' or the laws which the ancestors have passed down? It is only these chosen people who can make decisions on problems in the community, especially the 'Lian Nain' figure who has the most acute knowledge on the 'words' which the ancestors have passed down. A female community representative therefore, in theory, will not have this power. She will represent the community, especially women within that community, as a whole, and participate in decisions about the life of the community, and the political and developmental issues external to the realm of the socio-cosmic. She will not however, possess the special gifts of 'words' which local justice administrators are believed to have. For example, we arranged to meet one Council of Elders in Cova Lima to discuss our research. Eleven people turned up, nine men and two women, and it was a very interesting and informative discussion. However, at the beginning we established that none of the 'holder of words' had been invited. We asked why:

IRC: Is there any 'Dato' here among the 'Conselho Do Catuas'?

"They did not come today. People here are just members of the Council of Elders and the Council of the Suco. I didn't invite those involved in family problems. I didn't inform them, otherwise they would have come. They are the ones handling cases."

The Chefe do Suco felt that because the 'Dato' only deal with problems and issues within the family, we would not be interested in speaking with them. Their role is to pass law, not to deal with outsiders and issues arising from that. We therefore wondered whether a women's representative would really have any power or influence in a local justice decision-making process.

We challenged the Lian Nain's and other community leaders about this. We wanted to establish whether women could actually participate in or ultimately pass a decision/ruling in local procedures. The responses we received confirmed our suspicions and offer a fascinating look at the roots of inequality in Timor Leste. The following was the flow of a discussion with one Council of Elders⁹¹:

"All this time, women, or OMT have never been involved in the process because since the ancestors time, the people that normally resolve problems are only men. But now, in the face of Independence people claim that women should be participating inside. So, now we are in a phase of learning, looking for women who are able to speak against problems, to sit together with us to resolve the problem. We are trying in all parts in order for women to sit together with us, to decrease all those things. We accept this because whether you accept it or not, we can't talk short or long, but there's only women will know exactly their position as a woman and how to do that.....We think about justification for women to be involved, my idea is that whatever way it takes place, we should be equal, that means that if we sit together we will have the same responsibility and rights, it does not mean that it is only the man that can do this. If so, it is better not to ask women to participate in this work. (He sees men and women as equal. So, because a woman cannot rule in a justice procedure, then she should not be asked to participate as this would only result in discrimination against her as she cannot decide on cases)

IRC: What about the Lian Nain, is there any female Lian Nain's? Apart from the women who are victims, are there any women who are involved in deciding the case?

Before, it was the same thing. In there, the woman will come with her family, the man will also come with his family; they sit there but they don't speak up, they just listen. In 'Adat', there are only men, not women.

IRC: Why do you think there are no women?

Women are not able. Old women are not able to 'hakotu lia' ('cut words'/decide on cases) because they have no 'beran' (power). If a woman was involved inside it would put the man's power down. It will influence the man's power.

⁹⁰ Tetum 'tesli-lia'

⁹¹ from Cova Lima

IRC: And it is not good if it influence's the man's power?

Women's power has been taken from man's power, so women can't decide on cases because the man has participated in war and the woman has not.

IRC: Why has the man got power to decide on cases and women do not?

Because, the man is brave and a woman is not. They do not know the 'lia fuan' (words/law). They do not know how to speak. They cannot decide on ruling of cases because from our ancestors, it is men who resolve cases, women do not, 'hakotu la hola' (don't decide).

IRC: How did the man get power to resolve cases?

He has the power to 'tesi lia' (cut words) because the man has been born with this ruling, the ruling about 'Adat'. The man holds the 'ukun Adat' (law), women hold the 'ukun Adat' but it is only within the sphere of the house. There are 'feto Adat' but within the house only. Woman will participate in the 'lulik' celebrations, but within the house. Regarding the problem, when a man and woman 'sala malu' (mistake against each other/sex), it does not involve women, men resolve it. 'Adat' women can only manage the house, if we do 'lulik' inside the house women will be involved.

Another Council of Elders had similar views: (Suai Matai)

IRC :Is there a woman in the Council of Elders?

It is all men and women. There are some women but they are not active. The 'Conselho Do Suco' has two women and 'Conselho Do Katuas' has one woman. The problem is that they are not active. Would you blame us for this as men? We know that it is about equality and rights. We also give them their freedom. This is elections and democracy. The community elected them and appointed them.

IRC: According to your culture, when resolving problems within a marriage, is it a man or woman who does this?

In one 'uma Adat' we have a male Katuas Adat and a female Katuas Adat, but the woman is not involved in solving the cases.

IRC: Why does the woman not resolve the problems?

In problems of violence or force, they will just sit and listen; they want to hear the truth. After that we will inform the women about the result, because the woman has no power. This is a tradition in which women only take care of the house, so if there is any problem within the family, she will just listen and I will speak. Resolving cases is just bestowed on a man. About the problem inside the family, when you come to talk to me, as a woman I will just speak. But to sit in front to solve the problem, this is the responsibility of the man. If the man is not there, they will find another young man to replace him. If there is no other man, she herself will be responsible but she will call some people from another clan that still have a cultural relationship with them to help her think and to help her with it. So, in regards to solving cases, woman themselves give it to men to look at. It is not that the man says "I should resolve it." It is because they have a culture that men only can look at problems or conflicts. But also, they will listen to the opinions of a woman."

From these examples, it is evident that regardless of how many women might sit on a council or a decision making panel, in the end it is only those who have been given the power to make decisions by the ancestors that can do so. And these are all men. A Chefe de Suco in Ainaro stated that the 'Lain Nain' or 'Dato' will decide on the result of a hearing; women can be present in terms of listening to the case, even contributing perhaps; but the power to make the final ruling rests with the men who have the authority to do so. In Oecussi, a Chefe d'Aldeia, stated that "it has always just been men who resolve problems in Adat. Now we have heard that women should be involved in making these decisions also – but I do not agree as I believe that women would not look at a case properly, but would blow it out of proportion and make it worse. Women are not educated and therefore cannot be relied upon to make such important rulings.....

Women participants always have the opportunity to present their case during the Adat process."

What is evident from analysis of the opinions of women respondents and those of the community leaders is that women's participation in local justice exists on a very superficial and cursory level. According to the cultural belief systems that were explained and justified to us, women will never possess the power to be a decision maker in customary law. They may participate as a 'user' or a 'victim'. Even at that level however, they are not guaranteed an inclusive or fair encounter with local justice, as according to the power-system which is handed down through the generations, the ancestors have declared women unable to perform these duties.

The Ruling

In order to pass a decision, administrators of the process said that they weigh up both aspects of the situation presented to them, and make a final decision based on this, as described so well below.

"Hitting each other or sexual assault within the family, or men and women having sex outside of marriage; I always say to 'clean the house first'. Then if we look at family problems and if we find that a person is wrong,

then we need to wash the house (repair the problem). We ask the man and woman, ask them to speak up. One speaks first and the other follows. If I find that a woman is wrong, then she is wrong. If the man is wrong, then he is wrong. If they don't follow the decision, I can inform the Chief of the Council or my chief because they do not follow it. This means that we go to the office. But if they follow it, it stops within the family." (Chief of Suco, Cova Lima)

As discussed already, the fact that a woman participates in a hearing cannot guarantee her equal weight in influencing the outcome of that hearing. While women said that they participated, they also reported that in local justice processes 'the woman is always blamed'.

A discussion with a women's group in the initial stages of the research found deep feelings of resentment towards local justice processes. Women whispered about a 'secret' discrimination that exists in their village. They felt that the justice process in their village was prejudiced in regards to 'women's rights'. Interestingly, this group had had exposure to training on the principles of 'gender' and 'rights' through association with an international NGO⁹² and could identify what they felt were unfair practices. They saw the discrimination as 'secret' because only they as a group recognized its existence (due to their training), but could never speak about it openly. They felt that the justice processes always blamed women, no matter what happened or whose fault it really was, and this had to be accepted. They said:

"The result is always to blame the woman; she is wrong even if she was right. Even when the woman is right, the man might have a friend or member of the family speak to defend him and they put the woman down to blame her. The man is always right." (FGD Ainaro)

A woman may also face blame from her family members and those of the accused. They may support the accused due to their own values about issues of violence against women. One respondent faced such a difficulty because her grandfather owed money to the person she accused of raping her:

IRC: How did you feel about this?

I felt good. They spoke a lot. Sometimes they said that maybe it is not the man's fault – my grandparents said this. Other people from his family blamed me also. My Grandfather said that it wasn't this guy. I said that it was impossible because I know that I can only have one man.

IRC: Did the Chief of Suco not listen to you at all?

He was on the side of the man and wanted to send the case back to the Lian Nain. But his family didn't want that because he (the Lian Nain) was more neutral and they wanted to go to the Sub-district Coordinator. It was not resolved there as the man denied what he had done.

IRC: How did you feel when they didn't listen to you and didn't believe you?

I saw that they didn't believe me, so I just wanted to bring it forward to the next level, because it is impossible for a woman to have more than one man." (Filipa, Cova Lima)

In problems between men and women, whoever is seen to have done wrong prior to the act of violence is at fault, and therefore is to blame. It seems that regardless of whether an act of violence or sexual assault has taken place, it is the events which led to this that will be examined and ruled upon. This research suggests that executors of local justice do not look at the act of violence itself as violating the victim involved. The effects and impact of violence on the victim are secondary to the events which caused the violence to occur – unless the woman is displaying physical injury which is discussed later. Justice holders simply look to why this event occurred (a woman leading a man on for example), what the consequences are (pregnancy) and how to apportion blame in a way that shame is closed and disruptions within the community appeased (payment of compensation).

The following story demonstrates how a woman, who has been the victim of a violent husband, was apportioned blame for the act:

IRC: What are the good and bad aspects of the Adat process?

.....The bad thing is that they never really look at the problem, they just always blame the woman.

IRC: Why do you think that the woman is always blamed?

Because I have had this experience myself. I felt hurt because they did not believe me, but they didn't care about that. They only blame the woman and they blamed me.

IRC: What happened?

⁹² Concern Worldwide, Women's Empowerment Program

There were two cases. First, after he beat me I ran away to my parents' house. They said that I should not have run away but it should just be solved here.

The second time, he beat me with the rope for the dog and I felt so bad and sick. I took a stone to hit him with it, but I didn't. Then during the Adat process, they all said that it was my fault and if something had happened to him I would be in jail now.

IRC: And they didn't say that he should be in jail to because of what he had done to you?

"During the process both of us were blamed. They blamed me because I left the house and reported to the police, and they blamed him because he had beaten me. They said that I am a quiet woman and don't talk too much so therefore he shouldn't beat me."(Sansa, Oecussi)

Maria, a victim of severe forms of domestic violence, was apportioned blame because her reaction to the violence was deemed inappropriate by those judging the case. The fact that she tried to defend herself and went to look for help is not examined within the context of the circumstances which led to her actions (i.e in a court in a more developed country, her actions would be seen as a response to a serious and valid threat to her safety caused by her husband). In this local justice setting, her husband's violence against her is examined in light of general perceptions on her personal characteristics, defined by subjective observers. The violence which he perpetrated against her is not seen as the issue at stake. Had she not been a 'quiet woman' perhaps she would have received all of the blame in this case and her husband been free of any blame. It is within cases such as this that men are not being made to take responsibility for their violent actions. There is no effort to instill a sense of wrong regarding domestic violence, to convey the host of harmful effects violence has on women and the responsibility men have in changing their violent damaging behavior.

Discussing this with several community leaders proves the point. One *Chefe d'Aldeia*⁹³ described how he makes his decision in a case where a husband has hit his wife:

"If the man comes home and the woman has not cooked the rice on time, he is angry and hits her.....if she's been hanging around not doing anything all day, and he beats her, that is her fault.....if she doesn't confess to this, then the neighbors will say that they saw her like this and she will be blamed."

While a woman might complain that her husband has beaten her, the administrators of justice simply want to know what happened to cause the violence to occur. From this analysis, they apportion blame to either side – in the cases we heard about, more often victims received some of this blame. While the circumstances leading to violence may be considered in determining the type of sentencing delivered in a court in more developed legal systems, in local justice in Timor Leste, the events occurring prior to the violence are the main focus of a hearing. The harm which domestic violence inflicts on victims is hidden by the ways in which holders of justice choose to put the victim's behavior at fault and in this way reinforce male superiority over their wives.

It was found to be similar in the judgment of a case of sexual violence. One woman told us the following:

IRC: Did they talk about the fact that you were raped? Or were they just concerned with the fact that you were pregnant?

They said that as I was already pregnant they just wanted to resolve the problem when the baby is born. They didn't talk about the fact that I was attacked and screamed. They defended the man. First, they tried to get him to admit it, when he didn't they went to his side.

IRC: How?

When I spoke they didn't really listen to me. They defended him because I am alone. I don't really have parents and I am poor. They just ignored me.

IRC: Do you think that they believed you?

I think that the Lian Nain may have believed a little. When we were with the Chief of Suco he said to me 'Maybe this is not the man who did this to you'. They didn't believe me; I argued that it was him. They said that he is not my boyfriend, so how could he have had sex with me?" (Filipa, Cova Lima)

The administrators of justice were not prepared to believe this woman's story and were quick to defend the man in question. As will be discussed later, sexual violence is not seen as the problem, the fact that there is a baby to care for and a woman's value been discredited is the reason that the issue has come to light. The woman's experience of violence is not considered.

In resolving these cases, the administrators of justice have simple solutions – keep the family together. In a domestic violence case for example, regardless of what has happened, the principle is to maintain the social

⁹³ Oecussi

arrangement that was established through the bride price and marriage system/God. Or in the case of rape/sexual exploitation outside of a marriage relationship, the solution is to prevent deviation from the norms in which sexual relations are placed. It seems therefore that local justice processes are willing to overlook a criminal offense in the interests of maintaining social norms, especially the privilege of male members. This can be to force women to remain in violent relationships or to make women enter marriages that are based on a single or several violent exploitative sexual acts. Through the practice of such 'justice' principles women's experiences of violence are both invalidated and ignored.

Women therefore might not receive the outcome they expect and want. One woman who reported domestic violence explained how she was blamed because she asked to separate from her husband. Even though she had experienced extreme violence at his hands, the administrators of justice blamed her for the fact that she wanted to leave him (and therefore break the arrangement that had been established by social norms and beliefs). It was only with support of family and being strong enough that she got what she wanted:

"At the level of the Chief of Aldeia, I was the one who was blamed because I wouldn't accept this man back At the level of the chief of Aldeia, they said to my father that (her husband) should give a compensation to him and that I should go back to (her husband) and then be married properly.....

(And later....)

IRC: What did you find was not so good about using Adat?

Before, Adat blamed me because I refused to accept him back and he wanted me back. During the Adat process with the Chief of Aldeia, they said that I have to pay three times to him because I wouldn't accept him back. Then my father said that whether my daughter is wrong or right we should go to the government law and there we will see whether she is wrong or right..... But the Chefe do Suco blamed him because he had hit me and had broken the law."

IRC: When you were experiencing this problem, did you get any support?

I got some support from my family, some blamed me and some didn't so I just accepted what they said." (Suzannah, Oecussi)

In this case the Chefe do Suco recognized the problem of violence – the respondent felt that this was because he was more educated than the Chefe d'Aldeia. It is worth noting that in some instances 'violence' is recognized as a problem. This however is directly linked to individuals' own subjective perceptions of what constitutes a 'violent' act and their level of exposure to and understanding of principles of human rights. In this example, the Chefe do Suco is a figure, at the last stages of the justice hierarchy that will have had many interactions with international actors due to his position as representative of his community in a district capital. Those involved in resolving disputes at the first stages of local justice, as described before, will most likely not have had such opportunities, especially in rural areas. This was identified as a problem by the VPU police officers we spoke to and highlights the need for any development initiatives to reach right down to 'base'⁹⁴ level, as requested by so many people we met. The impact of the absence of development initiatives in isolated remote areas was obvious even through this small scale research. Rural villages demonstrated stronger cultural and discriminatory practices, and people living in district capitals were more inclined to be aware of neutrality issues and the fact that police who were nearby might be a fairer option.

Whenever we asked an administrator of justice how he resolved a case of violence, they all gave very similar answers. They said that they would ask the man "Why did you hit her until she is bleeding/injured like this?" Their questions always referred to a visible injury. While the report discusses attitudes to violence later, it is important to point out here that perceptions on what constitutes an incident of violence and that which is considered as normal or acceptable behavior will determine whether domestic violence is brought before local justice and how such a case is then resolved. Physical harm that is visible to the eye, and therefore cannot be ignored, is given some recognition in local justice hearings. (This does not however assist those women who present with injuries which are not visible to the naked eye. This includes (and is not exclusive to) injuries on parts of the body which are covered by clothing, all forms of sexual violence, long term physical abuse which may not provide satisfactory visible evidence, all forms of verbal abuse and the long term psychological abuse which women endure as part of any violent experience). For example, a woman who reports a 'minor' incident of violence within the home, such as 'slapping, hitting or kicking'⁹⁵ may find that she is blamed for causing the incident because she may not have cooked the rice on time for example (as referred to above). These acts of violence are seen to be part and parcel of life in the home and something she must put up with. Furthermore, this reason for blaming her for the violence is, according to international norms and standards, incredibly unjust and quite pathetic. Despite this, the violence is seen as her fault and she will be apportioned blame accordingly. When the violence is considered 'serious', such as that resulting in injury, she may still be blamed in this way, but

⁹⁴ A term used to describe the very grass-roots levels of Timorese societies

⁹⁵ Woman respondent in Oecussi

her husband will also receive a portion of the blame. This relates to the fact that some community leaders saw serious injury as wrong. Even still the woman will have done something to provoke it and be blamed along with her husband. The impact of the violence on the woman is not looked at, nor is the man encouraged in any way to acknowledge that he is responsible for inflicting physical and psychological harm on his wife.

The level of violence her husband unleashes was associated with alcohol consumption by some of the administrators of justice we spoke to. While drunken acts of violence were seen as wrong by them, they still saw the woman as having a role in causing the violence. A 'Katuas Adat' in Cova Lima explains:

"A woman is blamed when, for example, one point is when she sees that her husband is drunk and of course he is not conscious. The problem is that she does not need to provoke him; just leave him drunk and go out from the house and go to the neighbors. If he is drunk, he has no consciousness. But sometimes when he is still drunk, she comes and she speaks to him with a loud voice, she does not go somewhere else to avoid the man until he is conscious again. If he is drunk and she comes and speaks loudly like this it will create more problems, hitting between the man and woman."

Again, it is the woman who must take responsibility for causing violence to happen and the man who is simply the victim of a wife's nagging and provocation.

The act of self defense receives similar treatment. In a case where a woman may physically defend herself from her husband's violent attack (as in Suzannah quoted above), she will also receive blame for injuring or the intent to injure her husband. Again, the fact that her husband attacked her in the first place and she may have been defending herself from death is not considered during the evaluation process.

"There was no penalty during the process as both of us were at fault, we had both made a mistake as he had beaten me and I had cut him with the machete. The Chief of Aldeia gave a chicken and my husband and I brought some Tua and we ate together to make peace." (Silvera, Oecussi)

The VPU officer in Cova Lima felt that these judgment processes were unfair to women. She believed that local justice "does not follow gender principles and places the woman's value as very low. Adat only uses a penalty to resolve the case, and if the woman is blamed all the time then the man will continue to abuse her – who will defend the woman and gender rights?....it always makes discrimination against the woman as a man always decides the outcome ... therefore we should not use Adat unless it is fair to women." An OMT representative⁹⁶ described how in some hearings which she observes, "If the man always blames the woman I advise him and try to get him to see the woman's side of things, his family is often more vocal in blaming the woman." The involvement of family members can also influence how blame is apportioned and is discussed later under the section on 'bias'.

A Chefe d'Aldeia in Oecussi added an interesting piece of information to our research, a peculiarity which we could not investigate further but is included here as a point which I recommend needs further investigation and analysis. He explained that years ago, cases of violence within the home were resolved differently. He talked about 'absolute Adat' in which "if a man slaps his wife, he must pay buffalo to her parents; there is no examination of who is right or wrong, just the fact that he has hit her is wrong and he must pay a penalty for that." It would be interesting to look at why the procedure has changed and why violence against a woman is no longer seen as an offence, along with the fact that attitudes towards the bride price and the value it once bestowed on women has changed. It also serves to emphasize the point that now, administrators of local justice are not looking at the act of violence as the issue, but rather at the behavior of the individuals involved which merits judgment.

Administering Compensation/penalty for the wrong-doing

Once a decision has been made, a compensation or penalty has to be paid by those who were seen to be at fault. It varied from place to place, depending on the local practices:

As one woman in Cova Lima explained:

"The good thing is that if there is a case, then there is always a penalty, an exchange of goods between the families, like the bride price so there is a good relationship between the two families." (Filipa)

Women and administrators described different types of practices in relation to compensation for a wrong doing:

- A payment of goods by the wrong-doer to the family of the shamed, (Ainaro and Cova Lima)
- An exchange of goods between two families, (Ainaro and Cova Lima)
- Moral Advice, (Oecussi)
- Provision of gifts/food to the administrators of justice/community (this may be included in all of the above or an exclusive act), (Ainaro and Oecussi)

⁹⁶ Cova Lima

- A public act of punishment. (Ainaro and Oecussi)

The payment of goods

The exchange of goods will usually be a two-way system, in the spirit of exchange between families. In a case of domestic violence, this will be to close the shame on the family which has been offended and re-establish positive relations between the two families. In a rape/sex and/or pregnancy outside of marriage case, it will be to close the shame on the woman and her family and compensate for the destruction of her 'value' within the social-marriage system and the fact that she may not be able to marry in future, i.e like a retrospective bride price. The process varies from place to place. It may also involve the payment of goods from those ruled to be at fault to those who were offended against. This was more common with cases where a woman was seen to have been used sexually outside the context of marriage and disrupted the social norms surrounding that. The goods exchanged may include animals, tais, 'Adat' symbols, money and food.

Moral Advice

Both women and administrators of local justice described how as a result of a ruling 'advice' may be deemed the appropriate means to reconcile a couple. While, most cases may include the offering of advice to disputing parties, in Oecussi, often this advice was given in the place of a 'compensation payment'.

In a case of domestic violence, the decision maker involved speaks with the couple and advises them on how to lead a peaceful life together. This may include instructing the man not to drink so much and counseling the woman to refrain from provoking her husband and to stay out of his way at times like this. The advice is very simplistic and practical, and the emphasis seems to be on educating the woman to do her duties in the household conscientiously and finding ways to prevent aggravation of irritated or drunk husbands. We did not hear about any advice regarding how wrongful violence is and the fact that problems could and should be resolved easily through communication within the relationship, that violence is not necessary. One mid-wife that we spoke to described how often women come to her own home looking for help with injuries from domestic violence and how to deal with it. She said that she gives them advice about how to "behave in the home and keep peace with her husband."

One variation in this pattern came from a Chefe d'Aldeia in Oecussi who stated that the route a woman took to utilizing the justice he administers could determine the penalty he gave:

"If a woman goes straight to me for help, there will be no penalty given, just moral advice. If she goes to her family for help, they will go to the chief and then the perpetrator will be told to pay a penalty to the family for what he did."

However, by simply chastising a couple in this way, not only does it attribute the violence to both people equally, it does nothing to reprimand the perpetrator of the violence. There is no penalty which might be an incentive to prevent him from repeating the act. This places women in the very dangerous position where she returns to a household in which previous violence has been condoned, and the pressure is on her to prevent it from happening again.

Provision of Food

Eating together signifies that reconciliation has taken place and the disputing parties can go forward in a peaceful relationship. Those using the process may be asked to bring food to close the process after the compensation has been passed, or the giving of food itself may be the penalty administered.

"There was no 'tate' during the process as both of us were at fault, we had both made a mistake as he had beaten me and I had cut him with the machete. The Chief of Aldeia gave a chicken and my husband and I brought some 'tua' and we ate together to make peace".(Silvera, Oecussi)

If, one person is charged, they alone will pay the compensation which may also include food:

"They told my husband to give a 'Kasu Sala' to my parents to close the shame and to give food to everyone; necklaces and Adat relics to my family and food to everyone." (Joacquina, Ainaro)

Public Punishment

While women did not mention that they or those they had brought to local justice had ever been given a punishment, several of the community leaders described how they sometimes used public acts of shame to try to prevent violence from occurring again.

One Chefe do Suco⁹⁷ had a rather original way of dealing with the problem:

⁹⁷ Ainaro

“When a man beats a woman they take the case to me.....I ask the man to carry the woman around the village until he decides to come backI make them do this because then everyone in the village will know what has happened and they will be ashamed so they won't do it again...”

(He did admit through further questioning that sometimes women do not want this and then he just gives them moral advice to convince him not to hit her again. These kinds of punishments may actually deter women from reaching out to local justice as they do not like the penalty that is given).

Another member of a Council of Elders in Cova Lima stated that in a previous role in Aileu, he had become concerned at the level of child abuse taking place. He tried to find a way of preventing it from happening:

“I designed a punishment of marching through the market. The child that had been raped would walk first in front, the suspect would follow, then I would put a frying pan on his head, 20kilos of soil on his back and shave his hair off. The frying pan that was used as a helmet was my own frying pan. Then people would play the drum behind him and they would walk around the village. In front of each house he would say ‘House, listen to me, what I did is not good, therefore don't follow what I did’. Since that time, there was no more sexual violence in Aileu until the time that I left. This will cause more shame than putting him in jail.”

Enforcement of justice and future prevention

The question of whether these methods actually stop the violence was disputed widely. Women differed in their opinions, as did the opinions between women and community leaders and women's leaders. The following are examples of the types of arguments put forward for and against this method:

Women users felt that the process and the ruling itself was good, however the issue of enforcing payment of the penalty was of greatest concern for them. Women who felt that the ‘Kasu Sala’ did not work were those who recounted bad experiences with it. Women who expected a compensation payment to them or their family from an offender described how after the case was ruled, he might not actually present the goods owed. He would fail to respect the ruling passed and simply ignore it. This leaves women in a very vulnerable position, especially if she and her family are relying on the payment of goods to assist with the livelihood of a child outside of marriage.

The worrying aspect of this is the fact that women's belief in the authority of local justice is greatly damaged. If the experience is that regardless of what is decided, the penalty will not be paid—then what is the point of looking for justice at all? Even if they did follow it up and called another hearing on this, all that would happen is the man would get another ‘Kasu Sala’ which he may also not pay again. There seemed to be no way of enforcing this rule. The administrators either had no interest or no ability to do so. Therefore, the perpetrator of violence may not pay up and will suffer no consequences as a result of this.

Women did however think that the police had a role to play here. Those in isolated areas felt that if they had access to the police, that the police would enforce the ‘Kasu Sala’ and make the offender pay⁹⁸.

“The only way to oblige him (to pay) is to bring it to the police, we'll see. If he doesn't want to pay we can also bring it to the police, and see whether he pays or not.” (Tereza, Cova Lima)

Women expressed deep frustrations at the lack of attention from the police to this matter. One woman even felt that the reason the police did not assist her (when she requested assistance to force a man to pay ‘Kasu Sala’ to her and their child) was because they could have been bribed by the man in question. There is a general misunderstanding on what constitutes a ‘crime’ or a ‘civil’ case and the role which police might play in these. However, it is also apparent that police are not adequately explaining these differences to them⁹⁹. This is also serving to diminish people's faith in the police and therefore discourage women from seeking assistance from the police in future.

Both the mid-wives we spoke to felt that the compensation method of reconciling problems between men and women was not effective. They felt that rich people could take advantage of it. They could afford to pay for goods many times over. It does nothing to instill fear of the process or prevent them from repeating offences.

The overseers of local justice spoken to in Ainaro felt that the ‘Kasu Sala’ was strong enough to prevent an offender from reoffending. They could not conceive of the fact that this method could be ineffective. They believed that through the administration of a ‘Kasu Sala’ all people will obey, as otherwise they are afraid of consequences from the ancestors if they do not. They stated that the ancestors would be angry and unleash severe punishments such as making someone go crazy or dieing if the ruling in a local justice process was not followed.

⁹⁸ Respondents Ainaro

⁹⁹ See Joanna, Ainaro for example

The issuing of a 'Kasu Sala' is taken very seriously by 'Katuas Adat'. They have a strong belief that the influence of the presence of the ancestors alone will ensure that an offender pays the compensation due. They also believe that people will not repeat an act that they have already compensated for, as otherwise the penalty would be stronger next time.

In practice it seems that men who commit Gender Based Violence of some description are not paying up following a local justice ruling. This seemed to be particularly true for those women we spoke to who had become pregnant outside of a marriage relationship. A young girl/woman is left to fend for her and the child, waiting for the man in question to deliver much needed material goods. When he does not, she has no avenue to assist her.

Bias

The methods used by holders of local justice to examine cases raises the question of bias. The tendency to focus on who is at 'fault' or to 'blame' demeans the seriousness of the act of violence itself. They often do not see violence as wrong. Therefore a woman will never receive 'justice' - in the sense that a penalty is imposed on a wrong-doer and compensation is given to the victim within proportion of the events which have taken place.

Other areas where 'bias' may be present is within the relationship between the ruler and those using the system. If a 'Lian Nain' from both families are called together, and together they make a decision on a case, this may mitigate against the potential for bias. However, it is often just one administrator such as a Chefe d'Aldeia or a Chefe do Suco who is overseeing a case. They may be related to the victim or the accused – a very likely possibility given the kinship structures of Timorese villages. This factor alone could greatly distort their ability to deliver a fair hearing.

As one woman from a gender focal point put it "The Chief of Suco's may not be chosen by the government, so there are no ways of ensuring that he is neutral in his rulings."

The other potential for bias is through the calling of 'witnesses' to contribute to the case. Community members and neighbors may be asked to give their opinions on the characters of the people involved, or comment on who they think may be 'right' or 'wrong'. They have the ability to influence the case in favor of friends or family. For example, women may be accused of not cooking on time and being at fault thus eliciting violence from her husband. Their neighbors will be asked to confirm what she had been doing all day – whether she was working and therefore did not have time to cook, or was doing nothing. Should she have had an argument with one of her neighbors there is the high likelihood that they can incriminate her. This fact reflects the inability of administrators of justice to critically evaluate witness statements and judge their validity. Although, one Chefe d'Aldeia¹⁰⁰ said that they would check the 'background' of the witness to ensure that they did not have a personal agenda in giving evidence. The neutrality of these contributions is still very questionable. They are believed to contribute greatly to the outcome of a hearing. The same Chefe d'Aldeia explained his dissatisfaction with the police who arrest suspects of violence without first asking the neighbors and community leaders their opinions on whether he did it or not, and who they think is wrong or right – emphasizing the arbitrary ways in which decisions in local justice are made.

A member of the Centro Feto organization in Oecussi explained why she felt that the local justice process is unfair to and biased towards women. She said that she did not feel that it was fair because the 'Adat Elders' believe that once a woman is married, she must do what her husband says. She pointed out that in a local justice process:

1. All decisions are made by men,
2. They don't listen to women,
3. The woman is always blamed.

The justice rulings we heard about demonstrate inherent gender biases. Women are not given equal opportunity to present and argue their experiences of an incident of violence. From the outset the outcome of a hearing is determined by the values and attitudes to women which exist in the patriarchal Timorese culture.

Appeal

The absence of an appeal system within local justice was noted by some rights advocates. However, the research found that through the hierarchy of justice which exists in the communities visited, an appeal system of sorts does exist. Families who are not satisfied with rulings made at the levels of justice which they first use can go up to the next level if they so desire. The transparency of these appeal systems is questionable however. A case may be brought from the Lain Nain to the Chefe d'Aldeia for example. He may then be influenced strongly by what happened in the previous hearing and the rule that was given there. Bias in favor of his colleague's initial ruling may hamper the possibility for a fresh trial to take place. One women's group also alerted us to the fact that even though a woman has the right to bring her case to a higher level, she may not in reality do so

¹⁰⁰ Oecussi

because the administrator of justice at the original level will be angry and condemn her for this. He may even request a 'Kasu-Sala' for the insult she makes towards him by suggesting that the case be brought to another level¹⁰¹. Therefore, while options for appeal are technically put in place, women may be afraid to go forward and are intimidated into accepting the first ruling.

Hearing Process Impeded

Even if a woman approaches local justice systems she is still not guaranteed that the process will go ahead. Women and community leaders expressed frustration at the fact that sometimes they call an offender to partake in a hearing, but he does not turn up. While, the Chefe do Suco might try to pressure the man to participate, his efforts are not always successful. Some community leaders expressed fears at this responsibility. They described how sometimes they would try to force a man to come and participate, but would be given death threats and would then immediately back down in fear. Often the community might wait until the offender comes voluntarily to participate once the situation has calmed down somewhat. Often however, he simply refuses. His family generally will follow what he wants and will not have any influence over him in convincing him to face up to his responsibilities. Similar to the issues surrounding the failure of payment of compensations, nothing can be done to force him to participate in a hearing. Women's options for achieving justice are therefore thwarted before any of the above factors already discussed can come into play against her. Whether women might be forced to participate in a hearing or have any agency in refusing to participate is an issue which upon further analysis would give further insight into power structures in Timorese communities.

3.2 The experience of going to the police

Women's experiences of utilizing police services are discussed as follows:

- Choosing the Police Option
- Utilizing the Police Services
- Retracting Complaints from the Police
- Perceived Police Corruption
- Formal System Courts
- Additional Comments on Police Services

Choosing the Police Option

The majority of women who went to the police did so themselves directly. The decision was an impulsive reaction to violence they were experiencing. We found that they went to the police over the local process for several reasons:

- For Protection, and from the fear of being killed,
- To scare their husbands and prevent further violence,
- Location near to police station,
- Quick resolution of a problem.

Women saw the police as a force which could offer them protection from the violence they were experiencing in the home. One respondent described how she understood that the police were placed in communities by the government to provide security and believed in them to do so. Some women described how during an act of violence they would flee to the police station for help:

"It was good because I felt that I was not safe in my home so I reported what was happening to the police so we could feel safe."

IRC: And do you feel safe now?

Yes, because I reported what happened to the police and I am now safe in my house. I had to tell the police before he killed me." (Silvia, Ainaro)

Women also saw the police as serving a role of chastising their husbands, as a way of teaching him a lesson

"So, I went to the police to try to scare him." (Angelina, Oecussi)

As will be discussed a little later, women may not always have wanted their husbands to be sent to court and then jail, but wanted them sufficiently frightened of that prospect so that the violence stops.

"I would like him to go to jail, but just for 2 or 3 days to scare him and stop him from doing it again." (Silvera, Oecussi)

¹⁰¹ FGD Ainaro

One *Chefe do Suco*¹⁰² said that when a case goes to the police it is with the understanding that it is simply an act to scare the man. The case would then revert back to the *Chefe* to solve. He actively co-operated with the police in this, using the police as a means to pacify the woman involved and making her feel 'valued'.

This option however was not available to all women to consider. Women who lived in more isolated areas said it was difficult to get to the police and thus relied only on the 'Adat' processes. A woman in a very isolated village stated that "I don't know of any cases that have gone to the police" (Lucia, Ainaro) in her area. The police were too far away.

The mid-wives confirmed this and the mid-wife in Ainaro felt that the biggest obstacle to women who want to exercise the right to use the police was transport to central areas where police are located. Women we met who lived in district capitals or beside police stations were far more likely to go to the police directly for help.

Women also had the perception that the police service was quicker and the problem would be solved quickly by going to them.

"When he beat me, I was scared and nervous. So, I went to the police and then the court. I never thought about going to the Adat. I could have used Adat, but not with this problem. I couldn't wait for the Adat leaders because he could have killed me by the time they came. It was better to go to the police as their office is near my house."(Silvia, Ainaro)

IRC: Which did you prefer handling your case – the police or the Adat?

"I don't know. I heard that the police would solve a problem quickly, that's why I prefer to go to the police."(Filipa, Cova Lima)

Also, those who were dis-satisfied with the result of Adat because their compensation had not been paid to them believed that the police should enforce men to pay the *Kasu Sala*, saw the police in this role.

One of the fears voiced by women in a remote village in Ainaro was the language differences between them and the police in the next big town. They feared that they would not be able to express themselves to the police. This is an issue for women in isolated areas who fear going to the police and may stop them accessing police assistance.

Utilizing the Police Service

However, presenting cases to the police did not always guarantee the kind of help that women were looking for. There are several factors that determine a woman's experiences in employing the police as means to access justice:

- Women's perceptions of the police role
- Police attitudes to women and violence,
- Police acting as mediators
- Corruption
- Differences in police procedures

Women's perceptions of the police role

Women had mixed views on what they thought the police could or should be doing for them. As stated above, they saw the police in the role of protector, to stop the violence and teach their husband a lesson. Women did not always want their husband's to go to court and jail, but to be sufficiently scared by the police to prevent them from continuing the abuse in the home. It was clear that women did not always understand the difference between a crime and a civil offence. Upon presentation to the police this difference was not always explained properly to them either. When the police failed to handle their complaint they were very unsatisfied, and those who had had this experience held a general belief that the police were not doing their job properly. The most worrying factor in regards to this is that women may maintain the belief that police do not help them and will not go to them with future problems. There is the possibility that such attitudes will spread around small communities and therefore may affect other women's decisions on whether to contact the police or not.

Also, in relation to the hierarchy of justice existing in the areas we researched, some women saw the police as the place of last resort in resolving their case. If the outcome of a local hearing was not satisfactory, going to the police would be the final stage at which a proper solution must be found. This particularly relates to the aforementioned practice where women would turn to the police to enforce the payment of a compensation they were owed from an offender. Women saw the police as having a responsibility to enforce payment and were extremely disappointed when the police did not do this.

¹⁰² Ainaro

While women's own mis-understanding of local police roles and services may be a contributory factor to their misinterpretation and negative attitudes towards police services, the police themselves do little to improve this situation. They are clearly not explaining to women the nature of the role of the police, and what they can and cannot do in relation to the issues they are presented with. Women are leaving police stations frustrated with the lack of police assistance. Police are facing a multitude of issues which do not fall within their authority everyday. One woman¹⁰³ who firmly believed that it was police responsibility to enforce an owed compensation payment for the upkeep of a child, went to the Chief of Suco for a letter of referral to the police. She received gruff treatment from the police and was left waiting for months for assistance she believed the police were going to give her:

IRC: Did the police give you an opportunity to tell your story and what you wanted?

Yes, they did but because the man wouldn't come to the station the police couldn't do anything. The police didn't want to come here to take him. I went back to them many times about it with my father and uncle, but the police just always asked us 'where is the man?' I am still waiting for them to contact me. They read the letter and when I went with my uncle they said that according to the letter the problem is already resolved and asked us what we were doing there. They asked me who had written the letter and I said that the Chief of Suco had and because I am illiterate I don't know what he wrote in it. The police were angry with us and they tore up the letter and I was upset. They said that we had already made peace so why was I coming to them now?" (Joanna, Ainaro)

Several women stated that they are still waiting for a response from police on their case (some up to one year later). These responses may never come, as police may not consider their case a crime and therefore not their responsibility to deal with it. This fact however, is not being explained and communicated adequately to women.

The VPU officer said that she felt that if the "government law" was clear and understood by all that the resolution of problems in communities would be far easier. While this is true, police are causing stress to women and not maximizing opportunities for implementing good practice policies. Police need to realize that it is up to them to educate people on the role of police. While we were informed of community education programs¹⁰⁴ which serve this need, it is the actual day to day individual encounters with clients in police stations that matter. These will have the biggest impact on women's understanding of the police and how they may or may not assist them.

Due to the treatment she had received from the police above, Joanna was of the opinion that:

"The police don't care about me and they didn't bother to ask me anything about what had happened to me. They never contacted me again. The police don't use the law properly."

Police attitudes to women and violence

Individual police responses to the presentation of cases of violence at stations largely determined the level of attention a woman received. As explained before, there is a widely held belief that only 'serious' violence may be dealt with by the police and all other are minor events are dealt with by the family and 'Adat'. This was true for the police also. Women explained that police officers were not taking their cases seriously. Unless they could see physical scarring or physical evidence of violence, which then classified it as a 'serious' violation, they would not process the case. One woman¹⁰⁵ reported her case to police and was told that police 'do not deal with domestic violence cases'. Only when she showed them her severely bruised and injured arm did they react (similar to local justice).

Police are sending a clear message to women that they will only deal with 'serious' cases, or cases that had not been possible to resolve at village level. Georgina from Ainaro explains:

"If I went to the Lian Nain he would not be scared. The police also said that these kinds of problems should not be brought to the police but should be dealt with by the elders. The police said that they will not deal with cases where we are hitting each other, that these cases should be handled by the Lian Nain, and only if he cannot solve it then it can be taken to the police."

Women who went to the police for support in seeking justice and for protection from violence often did not receive it. Harmful police attitudes to violence also included mis-understanding the act of self-defense. Similar to the attitude of community leaders, a woman who reacts to protect herself is seen to be in the wrong:

"The police did not ask me, they just blamed me. They said that I should be in jail because I had cut my husband. I said to them that I would not have cut him if he wasn't beating and choking me until I almost died. So, should I just keep quiet even though he is beating me?" (Silvera, Oecussi)

¹⁰³ Ainaro

¹⁰⁴ Community Policing Unit, Dili

¹⁰⁵ Ainaro

The VPU Police Officer is responsible for dealing with cases involving vulnerable people, such as women and children who are victims of violence and abuse. The women we met therefore should be dealt with by VPU officers. Most of the VPU officers we met came across as very sympathetic to women and their circumstances and wished to assist them in whatever way they could. However, with the limited training they receive, some practices are questionable in terms of women's protection and legal rights (more later). What is most worrying is that in the areas we went to, there was limited VPU presence. In Ainaro there were two VPU officers in the whole district, in Cova Lima one and in Oecussi, two, both based in the District capital office. These women work one shift per day. Therefore in the police sub-stations in their district, and during the times that the VPU officers are not on duty, women who report cases may have to do so to police officers who have not been sensitized to the issues surrounding violence against women. One VPU officer explained that she felt that her colleagues, (other police officers) did not support the work of the VPU. She is often told by colleagues to 'forget about those women'. She said that she feels that this is like a further act of violence against women. This kind of attitude may also place peer pressure on VPU officers and affect the manner in which they handle cases. Women may also report incidents of GBV to police officers who will not take their case seriously or give it the attention it deserves. Male police officers are also coming from an inherently patriarchal culture which does little to assist their understanding of women's rights (there are 2206 male police officers and 572 female police officers in TLPS)¹⁰⁶. Female police officers may also have attitudes which may be accepting of certain levels of violence – as will be expanded upon in the sections discussing attitudes to violence in Timor Leste. A staff member at the 'Centro Feto' in Oecussi also felt that police officers did not support women who reported cases of violence. She felt that the police officers were too young and inexperienced to be dealing with these cases. They also do not support or make use of the service which 'Centro Feto' provided. She even explained that in one case the police tried to get a perpetrator of violence to meet his wife in the safe house they had placed her in.

This dismissive attitude towards violence against women may impinge on women's rights to attain justice through the formal sector. It appears that women may not be given information regarding their rights, which would enable them to make an informed decision on the ways in which they may attain formal justice.

Silvera, whose story of self defense, used above, fled to the police in fear for her life following an attack by her husband, and her act of self defense was to save herself. When she arrived at the police station:

"The police only asked me what had happened but they didn't ask me what I would like to do – whether to use the court or Adat. But they told my husband when he was in hospital that when he is well the case would be brought to court. They just sent me back home. My husband refused to let the case go to court and told them that it would be resolved through Adat."

They did not give her the opportunity to decide what she wanted, but listened to the perpetrator of the violence and followed what he wanted. They followed his wishes and even participated in a local justice ruling on the case, having blamed her for an act of self defense (as above).

Police acting as mediators

As a result of police attitudes cited in this discussion, and in response to adapting practice to the practical needs in dealing with violence at the 'base' level of Timorese society, police are not always following standard police protocol. Women described situations in which police were acting as mediators, resolving problems that came to the station themselves, instead of sending it up through the formal system. Women thus felt that the police had a role to play simply in resolving a problem between her and her husband in a police station as a case was presented.

"If he had not run away I would have liked to solve the problem with the police that day." (Elda, Ainaro)

The VPU officers we spoke to confirmed this. Police do mediation between the couple, to help them decide what to do¹⁰⁷ – whether to go back to local justice, whether to go to the courts, or resolve it in the police station. Women felt that the police were 'good' because they helped them to think about whether the case was 'serious enough' to bring forward to court (what are implications of this process, especially if women are being advised by a police officer who does not have VPU background and sees violence against women as a trivial matter? What are the basis of these arbitrary judgments/decisions, and are women being fully informed of their rights in relation to the formal system?) While this process may be helpful for women, the information they are being given and the approach and tactics used are questionable and need further investigation in order to identify the potential damage it may be doing in terms of women's access to justice.

When a woman presents an incident of GBV to the police, in order to administer it, police engage in the following practices:

- Advise women to resolve the problem in the family and send them straight home,

¹⁰⁶ Human Resources Dept. of TLPS National Headquarters, Dili.

¹⁰⁷ VPU Cova Lima

- Resolve cases in the police station themselves through a Surat Pernyataan and send them home, and/or
- Advise women to take their case back to local justice administrators to be solved there, following the signing of a Surat Pernyataan,
- Send cases back to local justice themselves; often a Surat Pernyataan will be made in the local process then.

The fact that violence is a crime, and when reported to the police should follow proper legal procedures is often ignored¹⁰⁸. A police officer's own personal perspectives on a crime such as domestic violence will greatly influence how he handles a case.

"I went straight to the police. I explained everything to them and they said that this problem is in the family so I should go back and solve it with my family. They said that my family had created this problem so we should resolve it with them. I went back home." (Natalia, Ainaro)

A police officer's own belief systems and culture will also have a part to play and therefore cases are being repeatedly sent back to 'Adat' to be resolved. Some women explained that when they approach the police, officers are ridiculing them as to why they have not first gone to the local justice process. They may chastise them for skipping the local processes and put pressure on them to go back to local justice.

Police may then try to resolve the issue themselves or send it back to the 'Katuas Adat' to resolve. They are using a tool called a 'Surat Pernyataan' (join statement) to resolve cases as they are presented in stations (usually domestic violence), and/or to refer a case back to 'Adat' and/or when a woman decides to withdraw the case back to community and not proceed to court with it.

"They took statements from both of us and sent us home." (Rosa, Cova Lima)

Women are now using the signing of a statement in the police station as an option. We received conflicting information on the origin of the document and how its use is initiated. We did not find any guidelines on its use. Without time to fully investigate the process, we found that the practice originates from Indonesia and were common practice in Indonesian times in Timor Leste. Women told us that the suggestion to use the statement as a means to resolve a case comes from the police. However, a police officer in Oecussi said that the use of the 'Surat Pernyataan' was always suggested to be used by women themselves; while the VPU officer in Cova Lima said that it was an initiative from the police, which was backed up by the national Community Policing Unit in Dili. Having seen the statements in police stations, and from those women in possession of them, they appear to be formalized documents, not random suggestions by women who may have some knowledge on the use of such procedures. The purpose of the document is to resolve the problem at police station level, lending the weight of the police force to the procedure, sufficient enough to stop the violence (for the mean time anyway). Both parties are to state their side of the situation. The man agrees not to repeat violence and the woman agrees not to report him again unless he does. This record is kept as proof for future reference should the incident happen again. The idea is that with this letter, the offender understands that if he repeats his actions the proof of earlier acts of violence will be used to send him through the formal system. Some women stated that they determined what was written in the letter, others said that police wrote it for them and just told them what it meant and to sign it.

"The police advised me to make a 'Surat Pernyataan' as therefore if he did it again, the police would have proof of what happened this time and then would know to send him to jail next time." (Maria, Ainaro)

This system is similar to the restraining order that is used in legal systems in countries such as Australia. However, in that context the offender is bound to stay away from the victim to prevent further harm. Like the Surat Pernyataan it implies that should the offense occur again he will suffer legal repercussions. The strength and effectiveness of such a tool in the Timorese context is questionable however, as police officers often fail to implement and follow-up the conditions stated in the document.

Some women were told by police that once this statement was made, if the act was committed again, their husband would go straight to jail. It seems that this was used as a means of threat to the man, to intimidate and scare him from repeating his actions. Women therefore believe that if they report the incident to the police that their husband will disappear off to jail. Some women might not want this to happen – and thus they may not report further violence to the police in the fear that their husband will in fact go to jail, leaving them alone to care for their family. However, the women who may want their husband to go to jail, may be disappointed by empty promises.

From what I understood, on the first occasion that an incident of domestic violence is reported, the police will make a Surat Pernyataan to resolve the problem. The case is solved and the couple return home, with the belief

¹⁰⁸ Standard Operating Procedures for VPU for examples

that if it happens again he will go to court/jail. The woman who reported the incident is told that if it happens again, they should report it to the police and the person will be arrested straight away. This is not always happening.

We question whether police are simply acting simply as 'chastisers' to the man in question. Will this statement have any impact on resolving the case legally? Also, we wonder how appropriate this system is when a huge number of women in Timor Leste cannot read or write¹⁰⁹.

We were unable to determine whether this procedure has a concrete and/or legal basis. It is not mentioned in the 'Standard Operating Procedures' manual for VPU Police Officers. The VPU officer in Cova Lima said that with this method, if the perpetrator repeats violence against the woman 2 or 3 times they 'will make no more excuses' and arrest him. The question is, how many times it is acceptable for a man beat his wife before he will be arrested? If we look at the story of Rosa in Cova Lima, (Annex E) we can see that she approached the police three times, made a Surat Pernyataan on two of those occasions and still there has been nothing done to stop what is happening and deliver the justice she deserves. This lack of action raises the question whether the use of a statement is to fob off women who come to police stations with complaints of domestic violence?

The impact is that women are left open to further abuse in the home. They must once again find the courage to approach the police, or wait until such a time that the violence reaches a 'serious' level before they feel that they can approach the police again. Of concern is the fact that some women told us that after signing this statement and being promised future assistance should the violence continue, upon returning home, police officers told women that they could not report violence to the police again. They are instructed to go to the local justice administrators first.

Carla in Ainaro has such an experience:

".....Then he said bad things about me and my family. Then he hit me many times on the head. I pinched his neck to try and stop him. I decided to go to the police to tell them what had happened. The police asked me why I hadn't gone to the Lian Nain. But I said that the Lian Nain lives too far away from my home, the police are nearer. The police arrested him and took him to the station and brought me home. In the morning, they brought me back to the station to resolve the problem with a 'Surat Pernyataan' (joint statement).

"The police decided to make the Surat Pernyataan and gave one to each of us to sign. They said that if he did it again that he would go to court.

IRC: What did the Surat Pernyataan say?

I couldn't read the document as I can't read or write. The police explained that this letter said that if he did it again he would go to court.

I felt so bad as he had beaten me and I was pregnant and I am scared that I will have a problem with my baby when it is born. That's why I went to the police. And now the police have made the Surat Pernyataan. So, if it happens again I should go to the Lian Nain not to the police. The police told me to do this. If the case is not resolved by the Lian Nain, then I will go to the police.

IRC: If the police had not said this to you, what would you prefer to do?

If the police hadn't told me to go to the Lian Nain, then I would prefer to go to the police, to make him scared and to get rid of his attitude towards me.

IRC: Do you feel scared now because you feel that can't go back to the police?

Yes."

Women are being sent back into potentially violent situations, with no protection and in some cases, the comfort of the option of going to the police for help taken away. Police officers also described how they would warn the perpetrator not to be violent again – believing that their words are sufficient to prevent the continuation of the abuse.

Like Carla's story above, many women found that police were advising and actually sending them back to local justice systems. Police might send the woman back herself or go with her to contact the local 'Lian Nain' or community leader to start the process of local justice.

"The police sent us back to Adat. They said that they could not arrest ***** , this problem is between the families and should be solved by the families, as ***** would like to make a 'tate'." (Tereza, Cova Lima)

¹⁰⁹ IRC study on Prevalence of GBV found that 46% of respondents "could not read at all"

Police often do not fully inform a woman about police procedures and what she is entitled to through the formal justice system¹¹⁰. Police are often just making their own decisions on the cases they receive.

“When I went to the police they sent the case back to the Chief of Adeia to solve it.... The police decided.” (Angelina, Oecussi)

The practice of making a statement, as described above, is also sometimes used in this situation. In Cova Lima, the community leaders explained that often cases come back to them from police and once they have it resolved, they send a letter to the police stating as much. The police will sometimes observe these procedures to ensure that cases have been solved and to provide security if the complainant or the families involved feel that it is necessary.

IRC: What did the police do?

The police just shook their heads. They advised us not to do it again. They advised me to stay calm when he comes home drunk and not to bother him. So, I follow this advice and keep quiet and only ask him for money when he is not drunk.

IRC: What police officers were there?

Two Timorese and one international.

Effects

As police officers may not always provide correct advice or implement correct procedure they are distorting women’s understanding of what the police/formal legal system is, and what it can do for them. The relationship that is being cultivated between the formal and local systems means that women understand there to be a formal connection between the two, that police have a role in enforcing local laws that have been passed. It is also encouraging the outlook that there is no point in going to the police at all, as all that they will do is send cases back to local justice:

“.... if we go directly to the police, they will only send it back to ‘tesis tradisaun’.” (Mena, Ainaro)

One woman also said that

“The police said that if it happens again that both of us will go to court – but if this happens, what will happen to the children? They are all so small. The police told me that we should go home and be good to each other and to not let this happen again”.(Carla, Ainaro)

This woman now has the understanding that both her and her husband will go to court, leaving their children without parental care. While the police may have made an offhand threat or tried to push her to use local systems, it has distorted her understanding of the formal system. She and other women like her will thus fear using the system in future, and perhaps avoid it altogether.

The method of sending women back to local processes also puts serious pressure on women who may have already been under pressure from the violence in their home. Going to the police may have been the breaking point for them. When they do not receive the support they are expecting, it may compound their distress. Police officers seem to be oblivious to this and to how their own behavior can compound women’s suffering. Police officers have three months training, and at most four years working under the laws of the Republic of Timor Leste. There is very little evidence to suggest that police officers understand or are sensitive to issues around violence against women. One VPU officer said that “sometimes the victim comes in and they have only been slapped once and we advise them to go back to the *Chefe do Suco*, but the victim says that if we don’t take her statement she will go and commit suicide.” The way that this piece of information was relayed to use implied that the officer in question felt the woman to be making the issue bigger than it was and that her problem was too trivial to warrant the attention of a police officer. Police officers are sending women back into violent situations without protection or the implementation of proper procedures to discipline the perpetrator and make him take responsibility for his actions.

We received mixed messages from police regarding their use of these different practices. An investigating officer in Oecussi stated that police never tell women to take cases back to Adat, that they just follow what women themselves want. The VPU officer in the same station stated that police sometimes advise women to go to community leaders with their problem. Three women in Oecussi said that the police had sent their cases “back to ‘Adat’”. The VPU officer in Cova Lima said that they follow whatever the victim wants, while three stories in Cova Lima demonstrated that women’s wishes were not assessed by police and were not followed. Of six

¹¹⁰ The Standard Operations Manual for VPU Officers states that all cases that are presented to a police station must be processed to the prosecutor

cases of physical violence in Ainaro, four had been advised by police to make a statement with them and solve the problem in that way.

We came across one very interesting case in Cova Lima. A woman was suffering violence at the hands of her son who is suffering from epilepsy. Not knowing how to handle her son, she approached the police who advised her to “bring him there to teach him a lesson; otherwise he might get worse in the future.... In the police office he hugged me and kissed me and apologized, he promised not to do it again. We did this with a police officer who said that he should do this and then take me home. I thought that I can’t do anymore than this, as he is my son.” The police were playing mediator between mother and son, thinking that this would resolve the problem. They did not look at the fact that the boy was sick and needed medical attention, and that the case therefore needs to be handled differently. It also demonstrates the level at which police are actively promoting and undertaking mediation themselves at station level. Women are hoping for more than is currently possible from an inexperienced and under-trained police force.

The ‘Standard Operating Procedures for the Vulnerable Person’s Unit’ states that

“Police have never had the authority to refer any criminal matters to traditional justice. All cases are to be referred to the Prosecutor without exception.....it is important to bear in mind that crimes of violence against the person, irrespective of the relationship between the suspect and the victim, are serious offences which should be investigated and prosecuted.”

Police officers are clearly not investigating all complaints of violence which women present to them. As we have seen, they may immediately send them home, send them back to local justice or mediate the matter themselves.

We also found contradiction in police procedures. VPU officers stated that all cases of domestic violence were to be handled by them. While they could not be in the station 24 hours, we understood that if a case came in during their absence they would take it up as their responsibility afterwards. This is not happening. Other officers who have received no training in the area are dealing with, mediating and closing cases of domestic violence. In Oecussi, it was explained that women presenting with cases of domestic violence who did not want to proceed to court were dealt with by investigating officers in the sub-stations, and after the file was closed would be sent to the VPU officer for inspection. Only those who wanted to go forward to court were dealt with by the VPU. As we have seen, the number of women who may want to go to court and the numbers who actually are enabled to do so by the police are questionable. Also, an officer in Oecussi stated that all cases, whether solved in the stations or not, must have the file sent forward to the prosecutor, in line with the stated guidelines above. The ‘National Community Policing Unit’ in Dili said that this was not the correct procedure to be used. It was not within the scope of our research to look into this matter further. We did so in the interests of women’s current and potential future use of the formal legal justice system in Timor Leste. It is clear that erratic and inconsistent police practices may block women’s potential for accessing and having exposure to formal legal procedures. While the workload and the lack of experience of the police force is recognized, we suggest that these issues be looked into further in order to strengthen the services which police are providing to communities, including women who are victims of violence.

Retracting Complaints from Police

Women are also making their own decisions about whether to process cases through the formal legal system. When enabled to make this choice by police officers, or convinced to do so, women often opt to solve the case outside of the formal legal mechanisms. It is a difficult decision to make, as women are caught between wanting justice for what has happened to them, and the practical realities of their own lives.

Women generally withdraw their complaints from the police because of:

- Economic difficulties,
- Pressure from both families to withdraw the complaint,
- Pressure from neighborhood gossip and the shame this brings.

Women are reliant on their husband for economic support, for themselves and their immediate family. In cases of domestic violence, women may want justice and the violence to stop, but they also feel trapped in their reliance on their husbands:

Maria, Ainaro:

“The police said that they would take him to Dili if I wanted him to go to jail but I said ‘No, I would like him to go to jail, but I have three children that I need help with to care for. Next time he can go to jail’. The police advised me to make a ‘Surat Pernyataan’ as therefore if he did it again, the police would have proof of what happened this time and then would know to send him to jail next time.”

Elda, Ainaro:

IRC: Did you feel that the process with the ‘Dato’ was good?

It's good as long as the children are looking for food and I am dependent on this man.

All VPU officers cited the same reasons of economic reliance on partners as reasons why women might not bring a case to court. One very committed officer explained that she would like to assist women to resolve cases quickly through the courts but she is held back by the fact that women who report cases may withdraw them. She also explained that some of the reasons that they do this are because of Timorese culture. Women have been ridiculed by neighbors and family for taking such a serious step as to send their husband to court – when domestic violence is not seen as such a serious matter. Her husband's family will be especially unkind, withdrawing any support from her and her children should she proceed to court with a case. There are also local attitudes towards the system to take account of. Women stated that if they bring their husband to court he will ask for a separation. They are afraid that he will leave them completely while they need their husbands for economic support. The community leaders and 'Katuas Adat' put forward the same point. A Council of Elders in Cova Lima stated that a man who is put in jail by his wife will want nothing to do with her following his period of detention; immediate divorce. This can also apply to a period of arrest when he may be held for 72 hours. Many of the community leaders we spoke to saw the formal system as a gateway to divorce and the local system as a means for reconciling and keeping families together. Women are thus trying to make decisions about which legal processes to follow within this extremely pressured context. Their decisions will reflect the systems which they are part of as much as their own wants and needs.

Police are supposed to be enforcing procedures to protect victims however. The 'Standard Operating Procedures for the VPU' states that "If the victim changes his/her mind regarding prosecution, the matter must still be taken to court.....There is no requirement to have the victim's agreement to prosecute matters of domestic violence. Only the Prosecutor has the authority to decide whether to charge the suspect." Police officers are responding to their own cultural beliefs and values regarding violence against women and how it should be handled. They are also adapting police practice to the practicalities of the situations they are dealing with daily, such as requests by individual women to withdraw their complaints. It is resulting in a haphazard approach however, as procedures are not being followed which would both standardize police practice and users' understandings of police services and ensure that women are being protected.

Perceived Police Corruption

Corruption within the police system was mentioned by several women respondents. Upon analysis, there are two aspects to this. The first is that women often perceived that a level of corruption exists due to the way that their cases were handled. While they may not have had proof that corruption was occurring, they felt that it may be present or the potential for it is there. This is in part the fault of police themselves. For example, one woman in Ainaro had gone to the police thinking that they could enforce the payment of compensation by a man who had made her pregnant and failed thus far to pay up. At the time of speaking to her, the police had still failed to address this issue after one year. While the police may not have seen it as their role to enforce local justice rulings, this woman did. The difference in opinions and the reasons for this were not explained to her. It left her to conclude that "I suspected that they didn't want to resolve my problem or that the man tried to influence the police so that they didn't care about me...they don't use the law properly" (Carla, Ainaro). As observed already, women's understanding of the law may be incorrect, but it is up to individual police to handle these situations professionally, in a way that will not discourage women using the service in future.

We did find some evidence of mal-practice. There were three cases which demonstrated these.

Filipa in Cova Lima had been raped and had been unable to resolve the problem through local means. She and her family then approached the local police station for help in processing the complaint. This was what she found:

IRC: What were the police like?

The police officer that I met was a brother of the man's (accused) father. The police officer said that he didn't want to put the case through the police. My parents said that if he wouldn't do this then they would go to the police station in Suai."

This is just one example of what could be a more regularly occurring problem in future. The TLPS are introducing community based police to remote areas. While it is a much needed initiative, potential for this kind of corruption and control over access to police services is likely.

Police are also open to pressure from influential and powerful figures in communities. Graca in Oecussi was almost deported from Timor Leste without any legal basis for this. The man who had raped her was a local government official. When it became clear that she was pregnant and there was a possibility of people finding out what he had done, it appears that he influenced the police to try to deport her into West Timor. Police officers attempted to do so without proper procedures or explanation to her why this was being done. While we did not investigate the case any further with police, it was obvious that officers had simply done what they were

instructed to do by people with more power than them. This raises all sorts of serious questions regarding the potential for power clashes and control over police resources at community level.

Two women told stories of police abusing their positions as police officers. While this mis-use of power was not in a formal capacity, the fact that had the status of police officers gave them leeway and power to sexually exploit these two women. Tereza's¹¹¹ boyfriend was a police officer. After he had raped her, he promised in a local justice setting that he would marry her. He disappeared afterwards, claiming work duties as the excuse. Her family tried to resolve it again and again, eventually approaching the police about it. Her family felt that it was the responsibility of the police to make him pay the compensation that they eventually agreed upon. He was placed in a different region of work and the matter ignored. Tereza felt that "their behavior to me was not good because they spoke on behalf of their colleague". She also said that

"For me, I thought the police were not good because they always belittle the problem. Like, if the problem doesn't involve a police officer they would resolve it quickly, and come with their car and take the suspect. But when the problem involves a police officer with the local population, like my problem, they don't care about it."

Even though the role of the police may not be to enforce local justice, this was not explained to her. He abused his position and the fact that police will not become involved in these kinds of matters. The result was that her family now regards the police as a corrupt body.

Elena in Oecussi had a similar sort of experience. Her boyfriend formally approached her family to engage her in future marriage. Despite not organizing the date of their marriage, he said "Now we just come to bring this message so that later on, if other people come, then they will know that this one already has an owner (she is engaged) because we need to attend a training there (in Dili). If father (Elena's) does not accept this and then when we come back from Dili we do not accept Rita, then she can go to the police, and people there might fire me from the police."

Before their official marriage, he pushed Elena into performing marriage duties early, such as doing his washing and living with him for one week until her family realized what had happened and called her home. He subsequently refused to marry her. The officer in question used his status as a member of the police to get credibility with her family, and then used her in what way he wished. She tried to get the police to help, as he had promised they would, but she received no response from them. She was not sure whether this was because he was their colleague or whether the police did not handle cases like this.

Formal System Court

We spoke to four women who had reached court with their cases (the research was concentrating on meeting women who had used only local justice processes). They all came through as exceptionally strong and independent women, who had great support from their families.

"They gave me time to speak and listened to me. The police arrested him after they heard my story. In court they listened to me"..... The families agreed that if he beats me like this that we should go to the police to stop him doing it again. I wanted him to go to jail. Before I thought that he was my husband so he needs to learn not to beat me like this again. But if he does it again, he can go to jail. I can survive alone without him". (Silvia, Ainaro)

The police we spoke to expressed fears over sending cases of domestic violence or rape to the courts. They were afraid that women would say that the police had forced them to go to court and that they did not want to be there. They said that women reacted this way for two reasons – they were afraid of the entire process and also because they had had time to think and were now afraid that their husbands might be sent to jail and they would be left to fend for themselves and their family alone. Family pressure to withdraw cases is also a factor here (VPU Ainaro).

Women who did reach courts found that judges asked them why the case hadn't been resolved through local justice already. Mena, who had been raped, had her case brought directly to the police by her brother had the following experience:

"Viente Reiss said that 'This case is not right, why has it come a step away from the 'Lian Nain'? The 'Lian Nain' should try to solve it first. If it is not resolved there then a letter should be sent to the police before bringing it to the court'. The judge decided that the man needed to make a report twice a week to the police..... The court said that this problem is supposed to be solved by the 'Dato'..... We had to follow Adat to solve the problem, if not, the 'Dato' would say that we had not respected them because we did not choose them to solve the case." (Mena, Ainaro)

¹¹¹ Cova Lima

One case¹¹², went back and forth nine times between the court and local justice, as the court would not deal with the case and the accused would not turn up to organized local justice processes. It was upsetting and frustrating for both the family and police involved¹¹³. Eventually the court members went to Ainaro with the family to force the suspect to participate in the administration of justice locally.

One very positive case was that of Graca, who was raped, and then almost deported by local police. During the hearing in Dili she felt that the administrators of justice were looking at the fact that she was raped and who was responsible, not just at the fact that she is pregnant and needs support for the child, as in the Adat system in general.

This is a very important point in looking at the rights of women in justice settings in Timor Leste. With district courts not operating full-time in either Oecussi or Cova Lima, there is great potential that women's cases which are processed to the courts may not actually be heard. As the VPU officer in Cova Lima explained, the court in Suai is not operating and they have little or no transport to bring cases to Dili. Police can only hold suspects for 72 hours and in one case, while awaiting a trial in Dili, a man who was accused of domestic violence was freed after his 72 hours was up and he fled across the border and disappeared. She pointed out that after UNMISSET leave Timor Leste there will be no means whatsoever, however urgent the case, through which to transport cases to Dili.

If a formal legal system is one in which rape or violence is looked at properly for the act in itself, without bias, it may be the only functioning system that can deliver justice to women. If that option is not actually made open to women, then the potential for those accused of acts of violence to be set free from both the formal and local systems is huge. We managed to meet only two actors in the formal legal system due to time pressures. Nonetheless, it was reassuring to meet a female Prosecutor who strongly insisted that any cases of rape be processed only through the formal court system. She sees it as a crime that must be dealt with within the formal system, despite the difficulties of preparing evidence and local definitions of 'rape' and sexual assault. She also saw domestic violence as a crime and supported women who wanted to bring their cases to court – however in practice she found that once women reached the courts they would request it be sent back to their community as they could not cope economically if their partner was jailed. A female Public Defender echoed the classifications of violence which we had found in the districts. She thought that minor incidents should be sent back to local law while more serious cases be processed through the courts.

Additional Comments on Police Services

In the areas we researched, VPU presence was limited. Officers appeared to be under much pressure due to their commitment to assist women and the need to process cases quickly. Their training to deal with these special cases is minimal. The National VPU office informed us that, all police officers receive three months of training and those selected to be VPU officer receive a further 17 days of training on issues of domestic violence and vulnerable persons¹¹⁴. They explained that it was then up to these officers to train the other officers in these issues. The skills and support which women are looking for through formal justice is stretched and of questionable quality, through no fault of police officers who are trying their best to adapt to local situations and needs as they perceive them. Efforts are needed however to strengthen police officers' understanding and recognition of the huge step which a woman might have taken to come forward and seek justice and the impact of violence on her.

A summary of one woman's experience of going to the police demonstrates the many issues and effects which police attitudes can have on a woman's experience of violence and how it can compound her situation:

"I go to the police but they do nothing..... I was going to go to the police. But I didn't go because he said that he had only beaten me lightly, that I'm not wounded and said that if the police come to get him he will complain that they can't arrest him (for light beating).

The first time I went to the police was because he tried to burn down the house.... The police came because he was beating me and had destroyed all our things in the house. He was drunk and tried to burn down the house. Actually, he treats me bad everyday. I went to tell the police and they took him away. They took statements from both of us and sent us home..... The reason that I went to the police the second time was because he threw me against the wall. So we made a letter of agreement (Surat Pernyataan) with the police.....This was our second time at the police and they told him to report to them every Saturday for three months.....Last Saturday he beat me again. He's supposed to report to the police every Saturday, but he didn't go last Saturday as he was in Dili..... I want to make a report. I can't handle this situation. If he does it again I will report him. But the police said that I could only go to them if I am bleeding so they have proof and then it is a crime. How can I go now? (because he has not made her bleed) ... Before, he tried to kill me and held a knife to my throat.

¹¹² Maria, Ainaro

¹¹³ Respondent VPU Ainaro

¹¹⁴ According to National VPU Office, Dili

When I went to hospital I said that I was just sick with a pain, I didn't tell them that it was from choking. If you came to my house I could show you the curtain he cut by accident when he was trying to cut me. I showed the police but they were silent.

I went to the police near my house (neighbor) last Saturday for help, but he said no, that because my husband did not beat me seriously I could not report it to the police. He just kicked the cupboards, and threatened me with a knife to my throat and said that he would beat me until all my bones are crushed. He said he would kill me before he goes to jail. He even slashed the curtains.....The police said to me 'why don't you give him some drugs in his food to kill him?'. And I said that I often think of killing him, with a drug or something. What do you think; should I do this?" (Rosa, Cova Lima).

4. Contextual Issues

To further highlight the impact these processes can have on women's security, well-being and experiences, I wish to discuss a number of issues which emerged from the research. This discussion serves to demonstrate the range of issues which determine a woman's experience of gender based violence and her subsequent search for justice. Firstly, a look at sexual and physical violence as the two most common violations we encountered in our research. Then an analysis of elements of women's experience of looking for justice which both compound and determine their experiences.

Table Three: Women's' experiences of GBV

Offence	Number of Women
Physical violence within a relationship	11
Physical and sexual violence within a relationship	1
Rape	4
Sexual Exploitation (engages in a sexual relationship/encounter, unclear whether consent has been given)	4
Adultery	1
Threat	1

The most common complaint was that of domestic violence within the home, followed by sexual exploitation of some form, as defined later. One case of adultery was encountered where the woman had approached local justice administrators as a means through which to settle the problem between her and her husband. Through the research we found that while 'adultery' has been removed from Timorese law as a crime¹⁵, many women still believe it to be a crime and seek justice for their husband's behavior and compensation for care for both women he is with.

4.1 Sexual Violence and Exploitation

Of the twenty-three women we met, nine had experienced some form of sexual violence or exploitation. During this research it was difficult to determine the exact nature of acts of sexual violence and whether they had occurred as a result of or in the context of 'violence'; or from consent between a man and woman. In the interests of controlling the effects which recall of these events might have on women, we did not explore the incidents themselves too much, but focused on the justice processes they engaged in afterwards. We did find however, that there exists a large gulf between definitions of rape and indecent assault in developed countries and the local/cultural definitions and understandings of the sexual abuse of women. This is significant in understanding the way in which local norms determine experiences of sexual behaviors. It is for this reason that we have used the title 'Sexual Violence and Exploitation' in order to envelop the international and local classifications of what may constitute a sexual mis-demeanor.

Rape: and the 'crime' of 'abandonment'

As referred to in the methodology, we first met with a women's group to discuss the issues and the terminology which we would use in the research. We presented our explanations on 'Gender Based Violence' and looked for their own explanations of violence according to their own experiences. What happened in that discussion was to set a pattern for the remainder of the research? Women repeatedly put forward accounts and examples of stories of sexual abuse and violence where a man will force and/or engage in a sexual act/relation with a woman and then want nothing more, nor take any responsibility for this act and its consequences. They called these cases "Abandona" i.e 'abandonment'. It is hard for us to define the exact nature of some of these relationships. In some, (4) it was clear that rape in the strict international definition (sexual penetration without consent) had occurred – a man had forced a woman against her will to engage in sexual intercourse. Others however, described having a relationship with a man, instigated with the promise of marriage; then becoming pregnant and later being 'abandoned' by him when this was made public. The nature of this relationship is however

¹⁵ 'Adultery' as a crime was removed by the UNTAET administrations from the Indonesian Laws being used in Timor Leste

problematic, as from their stories we cannot be sure whether women consented or were persuaded/forced by the man to do as he wanted.

It was therefore difficult to gain a definition of the local view on 'rape' (definition as above) Women used the Tetum word 'estraga' which can mean to 'rape' or to 'destroy'. For example 'Sira estraga hau-nia uma' i.e 'They destroyed my house' or 'Nia estraga hau' i.e 'He destroyed/raped me' – depending on the context in which it is spoken. This term was used by women, and by the community and women's leaders we spoke to, in reference to women who had been 'abandoned'. It therefore could mean that the woman had been raped in the true sense of the word, a rape which resulted in pregnancy. Or, if we refer back to cultural or systemic orders in Timorese societies, we see that 'estraga' can mean that she had been 'destroyed' in the local world view sense of the word. As detailed in the Literature Review, within the social systems which rule relations between families, women have a certain 'value'. They represent and provide the value of fertility in relationships that are organized between families. This 'value' needs to remain pure and thus exchanged rewardingly within local social regulations. Therefore, a woman's value can be 'destroyed' through engaging in/or being forced into a sexual encounter/relationship outside of the arranged marriage relationship and the social dynamics this embodies. Therefore, regardless of any strict definitions of rape which may be employed, a woman who experiences a sexual activity outside of the marriage/family consent sphere is seen as 'estraga' i.e destroyed. People we spoke to therefore felt that 'abandonment' was a crime against them, an act of violence that left them used and abused. We therefore include these cases as examples of sexual exploitation of women, according to their own definitions.

One point I wish to raise here however, is that current and future legislation on sexual violence and abuse, will need to further explore local definitions of violence if local needs are to be adequately met and the gulf between local and formal systems of justice in dealing with this issue be bridged¹¹⁶.

According to this theory, and in keeping with what we found in our research, a sexual act is seen to take place within the context of marriage, and as a symbol representing the commencement of marriage. Women used descriptions/words such as:

"On the way home my boyfriend attacked me and tried to choke me. And then he was my husband. He made a relation with me and 'estraga' (rape/destroy) me." (Mena, Ainaro)

After a man had approached her promising marriage, Filipa¹¹⁷ said "we 'hola malu'" (had sex/marriage – it can mean both depending on the context). These words imply the sexual act/marriage simultaneously, as if the two are inseparable. Therefore women often believe that when they engage in a sexual relationship with a man that they automatically are or will be married. When it does not result in marriage she is 'estraga' i.e destroyed as her value has been damaged. Men may use these cultural definitions and beliefs as a means of coercion to take advantage of young women to normalize what may constitute a violent sexual act.

We received comments from community leaders, mid-wives and women's leaders about the worrying increase in unsanctioned sexual relations taking place between young people (through consent also). They worry that increasingly young people are engaging in sexual relationships outside of an arrangement between families. 'Elders'¹¹⁸ expressed much confusion about how to resolve cases of "liking each other" and/or a woman becomes pregnant outside of marriage. Previously, such problems would simply be solved through the marriage of the couple. Now however, young men are refusing to marry these women they are 'destroying' and basing their right to do this on the principles of 'democracy' and 'freedom' now existing in Timor Leste. The elders feel that the new government law enables people to have sex like this, and treat women like this and that it is wrong. Whatever type of relation has occurred, they see that the woman is shamed and left with no 'value' and the man is naturally free as he has more 'power' than the woman. (Incidentally, many people blamed these uncontrolled sexual relations on the influx of pornographic VCD's recently). Community Leaders do not see the formal law system of imprisonment as adequate compensation for the fact that a woman's value has been taken away from her. They blame the formal system for allowing such liberty in sexual relations and destroying the women's status in their community¹¹⁹. The local system of 'closing shame' is the most appropriate means through which to compensate her family for this act and re-establish her status according to local values.

As the 'Katuas Adat' blame the formal law system for this shaming of women and sees the practice of imprisonment inappropriate for offenders, it is interesting to look at the cultural beliefs which will determine how a woman is treated when she uses local justice for a cases of sexual exploitation/assault. In the words a Council of Elders in Cova Lima:

¹¹⁶ For example the new Domestic Violence Legislation, has no mention of abandonment cases and we wonder whether through practice there will be the necessity and the opportunity to amend this in future.

¹¹⁷ Cova Lima

¹¹⁸ Cova Lima

¹¹⁹ Ibid

"This is because of the appearance of 'gender' and 'people liking each other'. And sometimes the man is always right now, and women are always blamed. About the decision on cases where people like each other we should follow this: there is no other way for this than to follow 'Adat' from before, we feel like it is good because it gives a value to the woman.....'Before I was only her boyfriend and I never 'estraga' (destroy/rape) her or did anything like a wife and husband. Now she is pregnant and she blames me, why? It can go to 'Adat' and then the Chefe d'Aldeia and the Chefe do Suco. I will follow this, even if he is right 100%, but when he is in front of the 'ukun'; after he leaves he has to leave something behind. That's the way that we resolve the problem. But we are stunned when 'gender' is applied. People entering easily and out easily. So, he can lead a woman on and it also allows other men to do the same thing, and the one who will be the victim is always the woman."

And another Council of Elders:

"Then, if the women have children and the man also has children, the women follow the man or the man follows the woman. If they don't have children, but they just talk, I will call both of them and ask 'do you like each other?' The woman says "I like him" the man said "No, I don't want". Then I ask them "If you don't want this, why do you meet each other?" The man answers "We have met". Then I ask them "Then why don't you stay together?" He says "We have met, we just talked, and we haven't done anything." I ask "Then who is shamed? The woman is shamed. The man is fine. So, don't do it again in the future. From today you must stay away from each other and do not be near each other again." In another case, the man made the woman pregnant and then refused to marry her. Then, I asked the man "Is that your child or not?" He said "That's my child". To the woman "Is this the man's child or not?" She said "His child". "Then will you be married or not?" Then the man said "I don't want to marry her". Then I said "You don't want to marry her, but that's your child. You both are just hiding. It's like it is not in front of everybody, just hidden. And the child is innocent, in the stomach it doesn't know. Who has asked you both to make a baby? And then the man refuses to marry her? If you both want to 'koalia sala malu' (have sex) and then don't want to marry, then the man should take care of the baby because it is not the child's fault."(Matai)

IRC: How does the Council resolve sexual violence cases? If it is sexual violence, what is that 'tate' and who will be blamed?

For 'tate', if we ask them and they say that it was indeed rape, first we will ask him to marry her because he has raped/destroyed ('estraga') her. If he refuses, we say to him that you can refuse but you must 'tate' with this much money and this much buffalo and horses. You must 'tate' because if you have raped her, then we can just consider that she is not complete anymore and people will not care about her anymore. That's all. The culture is like that".(matai)

The Ruling on Sexual Violence cases

We can see that in the ruling on a case of sexual activity outside of the social order, what is looked at is the disruption that has occurred against the social order, the offence or shame that has been committed against a woman's value within the social system (see earlier discussion on this). What is of most concern here in terms of women's safety, is that local justice process do not seem to be examining the act of violence. Whether what occurred was in-fact a violent forced act against a woman's will, or took place with consent from both parties is not examined. This is very alarming, especially when you consider the interchange of words and terms that can be used – there is no investigation into whether she was 'estraga–destroyed' or 'estraga–raped'. The focus of the hearing is the 'shame' which has been brought on the woman and her family; and in the case of a resulting pregnancy, the parentage and compensation needed for taking the woman's value away before she is married.

Filipa¹²⁰ was raped by a member of her community. When it was evident that she was pregnant, a local hearing was called. The fact that she was pregnant as a result of this encounter was more important than looking at the crime of rape committed against her. The fact that the man in question denied the act made it even more complicated for local justice administrators to be able to give him a 'tate' and close the case (see earlier discussion in 'perception of blame' section for direct reference).

Mena¹²¹, was also raped. Her family could see the distress she was suffering following this incident and arranged to resolve the issue. Despite her anguish following the experience of rape by this man, they confronted him about his duty to marry her. The hearing did not address the issue that what he did was a crime and a grave brutal act against this Mena's person. He refused to marry her, even though what Mena actually wanted was for him to go to jail.

The ruling/decision on these cases is very simple: marriage. Women and local justice leaders all seem to think this is the best solution, regardless of the type of sexual relation which has taken place. Despite having been used sexually women still believe that they should marry, especially when they are pregnant.

¹²⁰ Cova Lima

¹²¹ Ainaro

“...people saw us like that (a sexual act) and we must accept each other.” (Tereza, Cova Lima).

This is now becoming more problematic however, as attitudes are changing and young people will not go along with a demand for marriage to take place: A Council of Elders¹²² described how they find it difficult now to resolve these problems through marriage:

“But when they say that they like each other and ‘gender’; we are not able to resolve the problem.”

Nonetheless, it is still the practiced method. Tereza in Cova Lima had a very difficult experience with her boyfriend. He forced her to engage in a sexual activity and was seen by members of the community. Her boyfriend automatically reverted to local norms and expectations by saying that he would marry her, and then reneged on this promise:

Tereza describes that he said:

“She’s my girlfriend, it’s my responsibility to marry her’. After he said all this, the witness who was my uncle said ‘No, we should go home if you want to marry her, you have to go home, and the three of us have to go home now’. The three of us went home. That night, people called the Katuas Adat. The Katuas Adat are my grandfathers. The people also called the Chief of Aldeia (Celcom) and Antonio’s uncles.

Then, my grandfather asked him ‘Now, it’s like this, what do you want to ask, what do you want? Are you going to marry her or not?’ My grandfather asked him like this. Then he answered ‘I will marry her, I take responsibility to marry her’.”

Then he disappeared and failed to deliver on his promise:

“His family said, ‘We just follow Antonio, if he wants, we want, if he doesn’t want we don’t want’. That was finished. I said that I didn’t mind, if you just follow Antonio then we can call Antonio here with his family and we try to solve the problem again....When resolving it (again), they asked Antonio what he wanted and he said ‘No, I just want to give ‘Tate’ (penalty). I will not marry her because I’m not able to have a household yet.”

What is most striking here is that even though Tereza was not happy with what he had done, because everyone knew that they had known each other sexually, she still wanted to marry him and was willing to accept what ever he wanted. There was no discussion of the fact that he had indecently assaulted her.

Similarly, Ana¹²³, who had become pregnant from a sexual relationship with a man (it is not clear the nature of the sexual encounter), saw marriage as the best solution to her problem. The ruling of the case is questionable. Entrenched in the belief that a sexual relationship is the equivalent of marriage, when the man refused to marry her, the decision on the case was that he could then not marry anyone else:

IRC: Did they ask you what you wanted to do?

No, they did not ask me what I wanted to do. I got an opportunity to speak and I said ‘you should marry me because I have a child by you’. He accepted this but he was already with another girl.

IRC: What was the result of this meeting?

The result was that an agreement letter was written. Because he would not marry me the letter said that he also could not marry anyone else. I agreed with this, but now he has already married another woman! I have received nothing to support my child. I just work by myself in the gardens.

IRC: So, has anyone since followed up the ‘Adat’ ruling to enforce what was decided?

No, no-one has followed this up.

IRC: What do you feel about all of this?

He had promised not to marry another woman but he did. The process was not good because he did not give any support for my child.

IRC: So, were you happy with how your problem was dealt with?

I was not happy because he married another woman. He had signed the agreement but still he married another woman.

Carla¹²⁴, also engaged in a sexual relationship with a man who promised marriage. When he reneged on this promise after she became pregnant, the case was brought to local justice. He was given a ‘Kasu Sala’ which he

¹²² Cova Lima

¹²³ from Ainaro

¹²⁴ from Ainaro

still has not paid. These rulings leave women in the very vulnerable position of having no support in raising a child alone. She said:

“...he recognizes it (baby as his) but he never gives anything for the baby. I asked him to accept me and the baby but he said that he didn’t want to marry me, he just mentions ‘Kasu Sala’ but never gives it. He is still single.”

The administering of a goods payment to men who, in women’s eyes commit these crimes, does little to ease the hurt and helplessness women experience following an act of sexual violence and/or ‘abandonment’ and the situation they are left in socially and economically.

One woman in Oecussi identified the reasons why local justice would not have been a good option to help her with the fact that she had been raped:

IRC: Based on your experience for example, if one day the problem had to be resolved through Adat, what would happen do you think?

The man will be fine. He will be happy with the family because he thinks that he has paid the ‘Denda’. We know how the man is. Even if he has destroyed a woman’s life he only pays a little ‘Denda’ and then he is free. I don’t want this kind of life because he hurt me a lot. I’ve said this in the police station that I don’t want to resolve it through ‘Adat’. Whoever wants to resolve it through ‘Adat’, they should prepare to answer questions. I can’t think too long. It is better for me to die than to live. That’s what I want for now because I am the one who is suffering.” (Graca, Oecussi)

In regards to the treatment of rape cases in the formal system, the definition and proof of ‘rape’ is difficult¹²⁵. If the court does not have sufficient evidence, such as sperm samples, then they send these cases back to Local Justice. However, speaking to women, and to mid-wives who deal with these cases, most likely there are no real services through which to make such tests and provide evidence. And, to begin with, will a rural woman and her family know what kind of evidence is needed if they decide to go to court and try to prove that rape has occurred? Police officers complain that women present cases of ‘rape’ to them which turn out to be ‘abandonment’ cases where a consensual sexual act has occurred and the man in question then fail to marry the complainant. They dismiss such cases as a civil offence, not a criminal violent act. However, by dismissing such cases so easily, the possibility that ‘rape’ may have occurred may be overlooked, especially in light of the different cultural and international definitions of ‘rape’ being used in Timor Leste at the moment. The experience of women is that they therefore rarely obtain justice either through the formal or local system. Two OMT leaders in Cova Lima also commented that police should be dealing with these cases of ‘abandonment’ (in the true sense of the word). They recognize that they are of a civil rather than criminal nature, but want them to be classified as “civil rape” and dealt with through a formal capacity.

The Consequences

Unwanted pregnancies

One of the mid-wives explained that, following the experience of rape and/or pregnancy outside of marriage, women come to her to request her to perform abortions. She described how women are regularly performing ‘traditional’ abortions, such as eating unripe pineapples, to try to stimulate an abortion, or going to a local mid-wife to ‘massage’ or knead the stomach to stimulate an abortion of the fetus. Also, in some cases, where the man involved does not want to take responsibility for his actions, he will concoct dangerous mixtures for women to drink to try and kill the baby, often resulting in the woman’s own death.

She commented that one of the most negative aspects of going to ‘Adat’ is that then everyone in the village will know about the pregnancy, which brings even more shame on the woman and her family. A lot of families just want an abortion performed quietly, so that the girl can still marry successfully in the future.

She also told us one story of a young girl who hid her pregnancy and delivered it alone. Immediately after the birth she tried to smother and kill the newborn. Neighbors heard it, and rescued it, but the baby eventually died in hospital in Dili, four days later. The woman in question thought that it was better to kill the child than to raise it without a father. In another story that she recounted, a girl became pregnant from a sexual relationship with a man who promised to marry her. When she became pregnant and he refused to marry her, she went nine times to the Chefe do Suco to resolve the matter. They said to wait until the baby was born to resolve it. She became extremely depressed and this was seen as one of the reasons that she died during delivery. Now the family is left caring for the baby.

Women are suffering much distress and anxiety from the ways in which sexual relations/rape are treated in their immediate social context. Local justice does little to ease their misery. For example, if a woman becomes

¹²⁵ Indonesian Criminal Code and future Domestic Violence Legislation for examples of definitions

pregnant outside of marriage, the man she accuses of rape or of being the father or her child may deny his part in the case. There then seems to be a common practice whereby a final decision on the ruling of this case will be reserved until the birth of the child. This is in order to prove the parentage of the baby according to whom the baby looks like. If the baby does not resemble the father in any way, then he will be absolved from any responsibility. This is clearly a subjective and arbitrary system of judgment. It is a nerve-racking and stressful experience for a woman who knows who her attacker/sexual partner was, yet, her claims can be completely discredited owing to the appearance of her newborn. The use of scientific methods would obviously support and protect women more. However local attitudes may still hamper the relief that these methods might bring, not to mention the shortage of such facilities in the country. In one case of rape in Cova Lima, the perpetrator repeatedly denied that he had done it. The case went up through all levels of local justice and eventually reached the police. The police suggested doing a blood test once the baby is born to determine parentage. While the victim in all of this wanted to pursue this option, her parents discouraged it. They had heard other stories where the accused had performed 'witchcraft' to prevent the test being done; this witchcraft had resulted in the woman's death. They therefore feared the process and did not want to use it.

Social effects

The mid-wives, the Sisters from Ainaro and OMT leaders all identified cases of 'abandonment' as the biggest social and psychological problem facing young women and girls. The social and economic consequences of a child outside of a marriage relationship are compounded by the fact that within local justice, the man cannot be 'forced' to pay a 'Kasu Sala' to help with upkeep of the child. He is usually asked to do so, and promises to do so, but in the cases we spoke to, the accused had not delivered on this promise. It is worth noting again that women themselves identified this phenomenon as a particular ordeal or form of violence facing women, despite 'abandonment' not being commonly included in definitions of sexual exploitation. For this reason alone, this issue needs further attention and exploration with communities. The VPU officer agreed, however also adding that clarifying definitions of 'rape' are important once they approach the formal legal system.

The sisters suggested that parents should listen to their children more – instead of just directing them in what to do and exploding in anger when it is found that a girl is pregnant. They felt that girls in particular are repressed by their parents and not encouraged to be independent, follow and complete school, have a career etc. They have no voice and their needs are not listened to. Education for girls is needed, particularly in relation to sex and what to do when they "like a boy". (Sisters, Ainaro)

A worrying factor is that girls who experience 'abandonment' will drop out of school in the expectation of marriage. When the marriage does not occur, they may spend a long time trying to resolve the problem culturally, by waiting for the arrival of the 'Kasu Sala'. They then miss out on part or the remainder of their education, as they cannot simply return to school but must wait until the following school year – if they return at all¹²⁶.

"Because **** promised, we Suai people are like this. If we promise in 'Adat' to be married then we leave school, unless the man brings us back to school and says to the priest that we can go back to school and they can accept us there." (Tereza, Cova Lima).

A theme which emerged strongly throughout the research was young girls' vulnerability to sexual violence and exploitation. As referred to before, it was difficult to make out whether actual 'rape' or a consented sexual relationship had taken place. Girls just didn't seem to be able to distinguish or identify where consent had taken place, where they may have been coerced and exploited and/or forced into a sexual act – except in cases where they had experienced violence also and expressed fear at what had happened and reacted to it. Otherwise, having sex meant being married, without realizing the possibility of the consequences of pregnancy, false promises and family pressure and shame. Both the OMT leader and the Sisters in Ainaro suggested that what was most needed for young women was sexual and social education. Having completed this research, I emphasize this need also. Sexual education would arm girls and women with the knowledge to make informed decisions on whether to enter sexual relationships or not, the consequences of them and when was appropriate to say 'no' – and have this prerogative validated in their minds.

4.2 Physical Violence

Women's own attitudes to physical violence affect when and how they look for justice. There is a belief that a certain level of violence is tolerable, even expected within a marriage relationship. Discussions on violence with women's groups and through individual story telling enabled us to gain an insight into women's stance when it comes to violence in the home. A Focus Group Discussion with one group¹²⁷ informed us that:

¹²⁶ See Mary, Cova Lima for example)

¹²⁷ Ainaro

"If a woman doesn't want to do all the work, this can make a man angry, and he has the right to beat her.....the man has the right to hit you because you don't do your work.....if a man doesn't work we don't have the right to hit him, we just talk."

Justifying this kind of behavior was easy. They put it down to love and education which the man was demonstrating to his wife "it happens because of small problems.....we teach each other because we love each other, and afterwards we always make peace."

Two of the VPU Officers which we spoke to reconfirmed these findings. While they believed that an incident of violence against a woman was a crime, they felt that "Women need more training on Domestic Violence as a crime, as they think it is a normal acceptable event as it happens daily."

A Gender Focal Point worker reiterated these views by stating that it is "normal" for a man to slap a woman if he has been out working and comes home and the food is not ready on time. She sees this as the woman's fault. She believes that women have equal rights with men, but advises women not to forget what their duties and responsibilities in the home are. She said that if women neglect these duties, their husband's will beat them. A woman needs to fulfill her responsibilities so that in the event of her husband beating her, when she reports it to the police, she can be sure that she is right in doing so, that the violence was not her fault as she had been attending to all of her tasks in the home.

The administrators of local justice held similar views. They explained these views in the context of the beliefs and values which have been passed down from previous generations:

"...the issues of hitting each other in the family according to what the ancestors said, as we all know, is that it is only the spoon and plate hitting each other, it is just a trivial matter." (Cova Lima)

Community leaders stated that it would only be very serious incidences which would warrant attention of local justice administration. In their descriptions of how they would oversee a case of violence between a couple, several leaders gave examples of the kinds of questions they would ask such as: "Why did you beat her until she is bleeding?" (Ainaro). The questions they quoted always referred to a serious injury/bleeding which was visible to the naked eye. It was apparent that any other forms of physical violence or verbal abuse which did not sustain a serious injury were not considered serious enough to be given time in a hearing. Also, we asked about whether the compensation penalty in local justice prevents men from repeating violence against their wives. A Chefe d'Aldeia in Oecussi stated that men might repeat violence if they are drunk – but otherwise it would 'just be a slap' – an acceptable form of violence about which he, as an administrator of justice, does not see anything wrong. Several of the 'Katuas Adat' and the community leaders illustrated how they see violence. They spoke at length about the responsibility a woman has in managing the violence she endures. They stated that women should learn not to provoke their husbands when they are drunk, as this is what causes the violence. The violence that occurred therefore was the fault of the woman. (See interviews in Annex F for more)

Fortunately, for women concerned, they did at least see a man's drunkenness as a fault in itself sometimes too, and he would also then be blamed for the violence (Chefe d'Aldeia Oecussi). As discussed already, local justice processes will always look for the reason that violence occurred. It would be a 50/50 split between apportioning blame for violence on the man and woman in question. A case of domestic violence will therefore be looked at in the context of apportioning blame to one or both parties for causing it– instead of recognizing the basic fact that any form of violence is wrong from the outset.

Even a (male) representative of a local organization in Cova Lima who is providing care services and support for victims of domestic violence agreed with this outlook. He stated that a man is right to hit his wife in instances where she has not cooked the evening meal on time for example. While the organization provides a very important service for women victims of violence, the guidance offered to assist women, such as encouraging them not to provoke their husbands, and do their duties on time, are dubious in terms of women's protection.

In looking at all of these view points, it seems that attitudes towards violence from both women themselves and influential peers, leaders and family members, will determine whether or not she seeks justice and whether 'justice' is indeed achieved. As they put it, 'minor' incidences of violence are part of everyday life, and it seems that only when the violence results in injury, or it has been so consistent that she is at breaking point, that outside intervention will be deemed appropriate.

"After the seventh time I felt worse and had had enough because he did not treat me like a loving wife, but just beat me." (Suzannah, Oecussi)

A normalization of violence and an acceptance of certain levels of violence seem to have developed within the Timorese societies we researched:

"If he was like other husbands and just kicked and slapped me then I would have just talked to him." - Silvera in Oecussi on the reasons why she had reported her husband to the police after her husband had tried to choke her.

There seemed to be a lack of support for those women who sought justice in such instances. An OMT leader was of the opinion that if women were educated they could make informed/diplomatic decisions on how to resolve the cases through/within the family themselves, without having to involve the police. Women should be able to cope with this alone. Several community leaders in both Cova Lima and Ainaro felt that women exaggerate problems of violence, and that is the reason that police send them back to local justice.

Perceptions on what constitutes a 'crime' were also an influencing factor. Police and community leaders explained the distinction between cases which should go to the police and cases which should remain within the family/community. As mentioned before, those cases deemed as "serious, such as killing or rape of a minor" could be brought to the police; "minor" incidents, including domestic violence, should be dealt with locally. In one community, women and the local justice leaders explained how the police had come and had a meeting in the village and explained this parameter to them¹²⁸. Women in that area therefore followed what the police had told them. An investigating officer in Oecussi thought that what constitutes a case of Domestic Violence is a situation where the victim is injured or bleeding. Also, one Chefe do Suco¹²⁹ explained how he is the only one with the power in the community to bring a case to the police - when he thinks it is serious enough. Initially he will give advice to women to try to solve it through local justice first. Only if he cannot succeed in solving it will he pass it on to the police.

"It depends. If it is small then I would resolve it here. If he beats me seriously, like with a stick then I want to take it to the police." (Sansa, Oecussi)

This classification of violence and determination of when cases should or should not be brought to the police was consistent in all of the areas we investigated. Women therefore are being told and believe that "light beating" without serious physical injury visible to the eye does not reach the definition of a crime and thus there is no justification in bringing it to the police – however consistent over time this treatment might be. With attitudes such as this it is not surprising that women are not accessing and receiving proper assistance with violence they are regularly experiencing.

4.3 Protection

The issue of protection for women is conspicuously neglected within both the local and formal systems. This is especially true for women who have experienced violence in the home, report it to one of the justice bodies and are then faced with very limited options for safeguarding themselves from violence both in the immediate and long term future.

After reporting an incident of violence we found that women had few options to consider:

- Return home immediately after reporting the incident (either to the police or local administrators of justice). She is then extremely vulnerable to repeated violence, especially from a partner who may be further enraged by the fact that she has reported him;
- Stay with family. She may then be vulnerable to pressure from her own and her husbands' family to withdraw a complaint, especially from the police for example. She will also be open to ridicule and stigma from neighbors and family who may not support her decision to report to either the police or the local system;
- Stay with the Chefe do Suco's family/in his office. This option makes her vulnerable to pressure from the Chefe to withdraw a complaint from the police and/or the processing of a case through local justice. She is also vulnerable to neighborhood gossip/pressures as the case is open and known by everyone. If she stays alone in the Chefe's office, she is then open to further attack from a partner who can seek her out when she is alone;
- Safe House – we found this option only in Suai and Oecussi town. Use of this facility greatly depends on whether the police officer she reports to offers this service to her.

As we can see, the first three options do little to assist women in very dangerous situations. What further compounds this, as we have seen, is the way in which the systems of justice are handled and controlled by those overseeing those processes.

For example, the mid-wife in Ainaro stressed that local justice does not offer any protection to women (or their children) who report domestic violence. They are left open to further abuse upon return home. As we saw earlier, the method of administering justice through the paying of compensation does nothing to ensure that the

¹²⁸ Ainaro

¹²⁹ Ainaro

violence is prevented in future. A Chefe do Suco in Ainaro recognized the need to protect women and would often have women stay in his house until a tense situation had calmed down, and he had the opportunity to oversee a hearing on the problem. Interestingly, he also said that if the violence had been severe, he would liaise with the police (after she had called them or he would contact them himself) and saw himself in the elevated role of allowing the police to put the accused in a cell for a limited time period so that the woman felt 'valued'.

In using the local justice option, a woman is still vulnerable to further attack, as her attacker is still loose in her home/community before and following a hearing. A woman who had been raped¹³⁰ was sent back from the formal system to the local system to be resolved, was left terrified to walk down the road in her own community:

"I am scared to meet him again, even if I see him on the road I run away quickly and hide in my family's house." (Mena, Ainaro).

As the attacker has not been removed from society, or appropriately penalized, as may be the case in a formal justice ruling, there is no guarantee that the violence will not be repeated. There is little reinforcement of the perpetrator taking responsibility for the violence. Even with the practice of dispensing penalties or compensations, along with the ever present threat of the wrath of the ancestors, one could cynically analyze that a perpetrator of violence can easily agree within a hearing to stop the violence, while in practice do the opposite. There is no guarantee that the process has reformed the character, nor is there follow-up to ensure that the victim of the violence is now living safely within her home.

Rosa, in Cova Lima, has had this experience.

"I don't know what to do now. If we talk with him in front of people he agrees with it all and is good. But then at home, he treats me so badly; I'm the bad one."

Women are trapped and forced to obey verdicts they generally must accept. One hearing on severe domestic violence in Oecussi sent a woman back home to a continuing violent and abusive relationship. She had fled the home to stay with family, but was forced to comply with a letter from the Chefe d'Aldeia, instigated by her husband, ordering her to participate in a hearing. Community leaders have little understanding of the impact of violence on women, and these practices may deepen the hurt and misery women are experiencing.

The police services do not do much better. As we already explored, police are sending cases, which should technically be processed through the formal system, back to local justice. This fact alone leaves women in long term potentially violent and dangerous situations.

"I felt so bad as he had beaten me and I was pregnant and I am scared that I will have a problem with my baby when it is born. That's why I went to the police. And now the police have made the Surat Pernyataan". (Carla, Ainaro) Carla had just returned home at the time we spoke to her. She was awaiting the delivery of her child and as we quoted her earlier, she is still scared of her husband and the potential damage to her and her unborn child.

Rosa went to both family and the police for help, neither of which helped at all:

"I went to his Uncle's house first to solve the problem, but he could not solve it. I went to the police then. They took statements from both of us and sent us home. After that he was afraid for about one week – but then he started again. When he goes out I feel safe, when he comes back I don't want to even see his face.....I feel so bad. I'm scared because he could kill me when he is drunk. He could come home and choke me while I am asleep. When he is really drunk I just keep silent and go to sleep with his grandmother and keep quiet."

She has no protection from the continuing violence, even after seeking justice from both the local and formal systems. The police have told her that she cannot report to them again until she is injured and can give visible evidence of the crime. Therefore she continues to put up with what the police classify as "minor" beatings - threats, choking to near death and verbal abuse as she awaits a severe beating which she can then use to justify going to the police - if she survives the attack of-course.

However, protection at the time of reporting an incident emerged as a most immediate need for women. This issue needs further attention and certainly improved handling by police officers. It is often at the time following a report of violence that women are in most danger. The perpetrator may be further enraged that she has fled and looked for outside help. It is at these key times that women need to be protected¹³¹.

¹³⁰ Ainaro

¹³¹ Respondent in Cova Lima

Police are sending women home into dangerous situations. For example, a man may have fled knowing the police are looking for him (see Elda, Ainaro in Annex E for example). The police then bring the woman to stay home alone that night - during which time the husband's return is likely, as is the potential for further violence when he gets there. Police are not offering women protection following their report of an incident of violence to the police station. Police are not listening to, nor understanding women's fear of returning home, and the valid reasons she has for this. Women have described how they have had to convince police officers to bring them to a location other than their home, due to their own personal safety fears:

Rosa, in Cova Lima, who we quoted above, reported her husband following an attack. The police tried to bring her home immediately afterwards, compounding her distress. She had to almost coerce the police to shelter her from the danger he posed. She was even willing to spend the night in a cell:

IRC: Do you think that the police have helped your situation?

They helped me because the second time I reported him, they had wanted to send me home but I said that if they send him home they can keep me in jail because otherwise you'll never see me again. They asked me then what do you want us to do? I said to put one of us in a cell, as this happens so much (the violence)."

Silvera in Oecussi had a similar difficulty in convincing the police how afraid she was and what might happen if she returned home:

"After I made a report to the police, they told me to go back home. I said 'No, I can't go back home, I am too afraid.' They said that my husband was in hospital now so he couldn't do anything to me. Then they dropped me to my house and I said to them 'I don't want to stay here, I want to go to stay with my family in *****.' They brought me there and after we had arrived the police told the police station there to keep an eye on me as I was still afraid. The children said that my husband had told them that when I got back home after he came out of hospital he would beat me until he killed me....Four days later my husband was released from hospital and came to ***** looking for me. The police took him back to Oecussi and told him that if he wanted to go again to ***** then he would have to make a report to the police first as his wife is so scared."

IRC: And what did you think of the police referring the case back to the Chief of Suco?

I was not happy because they sent me back home when I was still scared. (Sansa, Oecussi)

One police officer said that when he is dealing with a case of domestic violence, and the woman states that she is too scared to go home, he will still bring her home. He will simply warn her husband not to do it again. They may also ask neighbors to keep an eye on the situation. He felt that this was sufficient protection for her.

"The police took me home and told my husband to stop beating me, and that if he did it again that they would take him to prison.....The day that I went to the police I didn't get beaten after I went home, but I still felt afraid." (Silvera, Oecussi)

All police respondents stated that they often monitored cases following a report and/or resolution of the problem through the police or local justice. Women said that it did help and made them feel less scared

Police are also administering their own form of punishment and monitoring of offenders. Men are instructed to report weekly to the police station (see Rosa, Cova Lima in Annex E for example). The 'Human Rights Unit' in Cova Lima stated that it is not within the power of the police to administer such practices to offenders. The real question however is its effectiveness in preventing violence from occurring again and in protecting the victim. From Rosa's case we can see that it clearly does not succeed in its function as her husband failed to turn up for a signing, and when we questioned the police about it, they were unaware of this fact. Her husband had also been continuing to abuse her. Monitoring through weekly visits and questioning neighbors (VPU monitoring methods) does not guarantee that they will discern what is really happening. Despite this, women were happy that at least something was being done to acknowledge their circumstances. The VPU officer in Oecussi felt that weekly monitoring was a good exercise. She explained however, that when an international police officer had been working with them, they did monitoring all over the district. Now they had no car and so did monitoring once a week within Oecussi town only. Lack of resources are hampering women's access to the much needed support they are receiving and which gives them some recognition of their predicament.

The VPU officer in Cova Lima explained that police will liaise with 'Uma Feto', a women's organization, if the woman does not want to return home. As yet they have not actually used the service (bearing in mind that Rosa, quoted above, reported to these same police officers). The VPU officer said that they may take women to their family's home if that is where they want to go. If her husband wants to take her back home, the police may oversee that process to ensure that it is also what the woman wants. The representative of the 'Uma Feto' explained that women who come to their office often feel afraid to go home, but he convinces them not to be afraid, but just to be 'careful'. He explained to them that if it happens again they should go to the Chefe do Suco or the Lian Nain about the problem. Upon examination of the term 'careful' with him, he said that advising them

in this way is just some words of comfort, and that because the children are in the house, she would be safe. He also thought that referring her to the Chefe's in the village was sufficient protection. If she is really scared and insists, he would take then her to her family's house.

The Centro Feto in Oecussi has a safe house of which they seem to make active use. Staff from Centro Feto commented that police do not make suitable liaison with the group and felt that police do not utilize or explain the option of the safe house to women who report cases of violence. We met one woman in Oecussi who had made extensive use of the facility and received very strong practical and strategic support from the group. The availability of the house was instrumental in this particular woman's protection and her ability to achieve access to justice systems (Graca, Oecussi)

4.4 Separation

Four of the 12 women we spoke to who had experienced violence within a relationship said that they had wanted separation. Only one of these had succeeded, but not without a difficult struggle. These four women wanted an end to ongoing violence that they had lived with through their relationship with their husbands. However, separation seemed to be extremely difficult for women to achieve. For example, in a Focus Group Discussion with a women's group near Ainaro district capital, I asked the question "what would happen if a woman wanted separation from her husband due to violence"? I asked the question twice, and twice they reversed the phrasing of the response, citing situations where the 'man might not want the woman anymore' – they did not seem to be able to think of the possibility of a woman wanting separation, as it has not ever happened in their village. Interestingly, they also believed that it was the role of the police to make the man stay with the woman should he want to leave her.

There were two factors which were cited as reasons for staying with abusive husbands –church teachings and the need for support in raising children. The Catholic Church teaching prohibits separation of a marriage of two people joined through the church. Women adhered to this rule without question. The administrators of justice seem to also follow this teaching. They cited it as a reason to bring couples back together, along with local beliefs on maintaining social relations between families who have engaged in 'wife-giver' and 'wife-taker' relationships.

For example:

IRC: You wanted to go back to him?

Yes. I don't want to be divorced because we have been married through the church and we have children."
(Silvera, Oecussi)

A woman in Ainaro wanted separation from her husband. During a local justice hearing, the Lian Nain refused to allow it. He said they had to stay together; especially as they had been married in the Catholic Church. She conceded and then stated that she was happy with the outcome of the ruling, as she needed economic support from husband anyway– even though the problem originally started because the husband had no work and could not provide for the family.

Women are reliant on partners for economic support as discussed earlier. Even though it often was not clear what income or contribution their partner might be making, the security of having someone else and assistance with rearing children seemed a priority for women.

Family and local beliefs pressure women to remain in abusive relationships. The only woman we encountered who succeeded in separation offers an interesting insight into the obstacles women face when trying to achieve a separation.

Linda from Oecussi had informed her family that she wanted separation from her husband and would not go back to him. During a hearing, overseen by the Chefe d'Aldeia and Lian Nain's, they asked her what she wanted and she informed them. Her husband stated that he wanted her back. The administrators then proceeded to try to pass a decision to reunite the couple, telling her husband to pay compensation to her father, so that he would send Linda back to him. They had heard what she had said, but had not actually listened to her, or followed what she wanted. They then blamed her for asking for a separation. They tried to make her pay three times the normal compensation to her husband for her mistake of wanting a separation. Her father was going along with this until she vehemently refused to accept what was happening. Her father eventually listened to her and agreed to bring the case to a higher level to resolve it there. At that stage, the Chefe do Suco involved a women's organization in the hearing and this time she was listened to and her 'traditional' marriage (without Church ceremony) dissolved.

A different Chefe d'Aldeia that we met in Oecussi also stated that he would not separate a couple, but always keep them together. He does this through giving them 'moral advice' on how to live peacefully together. Elda's story demonstrates the factors which made her want separation, reconsider following influence from

administrators of local justice, and finally accede to her situation – with the hope that ‘next time’ she might achieve a separation:

IRC: Did they resolve the problem between you and your husband?

Like I told you, he beat me and then they resolved it. I said that I wanted to separate from him. But the ‘Dato’ said ‘No, you have been married in the church so you must stay together’.

IRC: But you wanted a separation?

Yes, but the law wouldn’t allow it. The ‘Dato’ said that we must just work, that we could not separate. But what work?

IRC: When he said this to you, what did you say?

I said ‘Ok, we can’t separate. But we have no food, no house and the government does not take a look at our situation. How can we have a life?’.

IRC: So, what was the outcome of the process with the ‘Dato’?

He said that we had to stay together.

IRC: But did you want this?

Yes, because of the children.

IRC: During the process, how did you feel?

I felt nothing – just that my house is destroyed and we have no food.

IRC: When the ‘Dato’ said that you had to stay with your husband, what did you feel?

I didn’t feel anything, I just thought about my house.

.....later....

IRC: So, how is your situation now?

If he does it again, we will separate.

....

IRC: What about the police law?

It was good, but the government doesn’t see the situation I am living in and I can only think about this. I presented my husband to the police and told them that we had resolved it with the ‘Dato’ and we made a ‘Surat Pernyataan’. I wanted this because if it happens again then I just want to separate from him.”

The option for separation in the formal system did not come up as an issue in women’s stories, as few cases reached that level of justice and those that did had it sent back to local justice. Even so, the fact that men could be jailed, during the detention period of 72 hours or a long term sentence as a result of a hearing, was likened to the idea of separation. The community leaders and ‘Katuas Adat’ that we spoke to made a correlation between the police services and divorce. They stated that going to the police is the same as looking for a divorce. They also were affirmed in the belief that a man who is sent to jail by his wife for something as ‘trivial’ as domestic violence is right in his decision to reject the woman once he is released. This attitude towards the police services is worrying. Separation is not a regular occurrence within the social order of Timorese societies (unless a man instigates it); therefore a perception that there is a link between the police and separation will be a disincentive for women’s to use their services. As women will not be given the option of ‘separation’ in local justice, the only way they may remove a violent partner from their home is through formal justice – if they are given the support they need to use this system.

4.5 Family Support Mechanisms

The involvement and influence of family is instrumental in a woman’s access to and achievement of justice. The family is usually the first place that a woman turns to for help, and it is usually the family that will take the decision as to whether to utilize family, local justice or police structures. Without family support, a lot of women did not feel confident or empowered to approach local justice.

“My parents decided to resolve the problem by going to the Lian Nain.” (Filipa, Cova Lima)

IRC: Who decided to go to Adat to solve the problem?

In Suai, with this type of problem we solve it through Adat and then we can go to the police.

IRC: Who decided?

My parents decided.

IRC: Did they ask you what you wanted?

They did not ask me, they just went directly to call the Adat. Then, they came and asked both of us about it. Then the man said he wanted to marry me and I said ok. (Tereza Cova Lima)

A family's decision on which route to choose is based, for the most part, on their own reference points and attitudes. It would be interesting to examine further what stimulates family to contact the police (Mena, Ainaro) or the 'Katuas Adat' (Filipa, Cova Lima) in cases of rape for example.

Linda's story explains a little behind her family's decision to solve the problem of violence in her marriage through local ways:

"My aunt said 'We are going to the police'. The police came and said they would like to make a police report on what had happened and to come to the police station at 4pm. My aunt wanted him to be put in prison. But my uncle said that as we had been engaged properly between the two families that he should not be put in prison. My uncle told my aunt that he should not be put him in prison before it was solved through 'Adat'. So, my aunt told the police that for the moment it would be solved through 'Adat' and if it was not solved properly there, and then he would go to prison." (Suzannah, Oecussi)

Her aunt's immediate reaction was to go to police. She was persuaded by her husband to follow local social norms that had created the relationship between the two families during the original marital arrangement. Recent awareness raising of 'rights' and the police services may be a reason for the change which is occurring, especially in young people's attitudes, to local ways of dealing with problems of violence¹³².

One women's group saw help from families and friends as the only real support they receive at such difficult times¹³³. They said that men think that because they paid 'barlaque' that they can do as they wish with their wives, and that the family should not be involved in the hearing. The group stated that if a woman does not have family support behind her within a hearing, then the likelihood is that she will not win her case. If this is true, then it is essential for women to have that support before going to local justice processes. The *Chefe d'Aldeia* in that area also said that he summons the woman's family to participate in the process, to assist and support her. It is especially important in light of the fact that according to a mid-wife in Ainaro, a woman will not receive any support from her husband's family if she reports incidences of abuse to any level. A women's organization in Oecussi remarked that the man's family, especially his sisters, will pressure and blame his wife during a hearing and try to turn the process in their brothers' favor. This is even more reason why family involvement and support in using justice processes is so essential for women.

Family involvement can also make matters worse, as Terezinha from Ainaro recalled:

".....My family then attacked his family and members of my family were arrested.

IRC: What had happened between the two families?

My uncle called the man to our house to ask him whether he would marry me or not. When his family were coming along the road to our house, my family met them and they fought each other, using machetes. My father was wounded and some of them were hospitalized. They brought the problem to the priest and he called the police." (Ana, Ainaro)

Family involvement does not guarantee a fair hearing, especially as sometimes family members may support the side of the offender. The offender's family can make matters far worse for her. In cases where their own family did not live close by, women found that if they went to the husband's family for help, they were often just blamed for creating the problem in the first place. Even if they were fully aware of the violence that was occurring¹³⁴ the family might just advise on ways to avoid provoking him and tell the woman to put up with it¹³⁵. That sort of outcome would curtail a women's search for justice.

4.6 Children

Due to time constraints, one issue which we could not explore as part of this research was the effects of violence on children, and how women's search for help and justice impacts on their children. Not surprisingly, children were mentioned frequently by respondents.

A Focus Group Discussion in Ainaro brought out this issue. At the beginning of the session the team was explaining the concepts behind our definition of 'Gender Based Violence' and trying to illicit the women's views on the terminology and the concepts behind these. We used some IRC posters on domestic violence as tools.

¹³² According to two Council of Elders met in Cova Lima

¹³³ FGD Ainaro

¹³⁴ See Linda Oecussi in Annex E

¹³⁵ See Acq Cova Lima in Annex E

When we exhibited one poster depicting a child watching their parents fighting in the background, there was an immediate reaction of both laughter and commentary from everyone in the group. It was the most animated they were throughout the session. Women felt that the pictures were very accurate portrayals of what happens in their home. They identified with one poster of the child watching a violent scene in the home as something which often happened. They also said that they often felt shame in front of their children when their husbands hit and abused them in front of the children.

The impact of violence in the home on children seems to gain little or no attention during a local justice hearing. As discussed before, the impact of violence on the woman is not the issue in focus during a hearing, and therefore, the impact on the children certainly may not be either.

Another issue requiring examination is whether abuse of children is considered during local justice processes as part of the woman's experience. As we have seen, women have minimal participation in a hearing, and the value of a child's experience may also receive minimal consideration. One woman in Ainaro mentioned that her children were victims of violence also "...and when he would come home he would always create problems with me, and beat me and my children" (Silvia, Ainaro)

A woman's individual experience of violence in the home is not exclusive from her relationship with her children. Angelina in Oecussi echoed the women's group in Ainaro by saying "When he is drunk he comes home and insults me in front of the children, I feel so ashamed. I said to him 'The children are getting older now, why do you still do this to me?'" She is embarrassed in front of her children, and increasingly so as they grow older. Rosa's older daughter was instrumental in convincing her mother to go to the police again for help, afraid that her mother might be killed one evening in the violence that was taking place in their home. Rosa's children were obliged to witness this violence over a long period, including sexual abuse of their mother. "Sometimes he came home drunk and, excuse me for saying this, but he made me have sex with him in front of our children." The effects on the children are evident when she says "Even my children are happy when he is not at home." The potential that a child's exposure to violence can create further cycles of violence as the child reaches adulthood is alarmingly great. This should not be ignored as an issue that should be addressed and given consideration in judgments passed within local justice processes. Timorese families, women victims of violence and administrators of justice did not mention this factor in their references to their experiences of resolving problems of violence in the home.

Some men may be afraid to physically harm their wives following police involvement and find other ways to punish their wives, which directly impacts on children. Women described how their partners were withholding money from them as a form of punishment. It seems to be a way at getting back at their wives, to punish them for reporting them to authorities.

Silvera explains:

"My husband is a drunk and he never stops fighting with me, always fighting everyday. We have a tractor for the rice fields, which we rent out, but he never gives me any of the money that we earn from this. Maybe this is his way of getting revenge for what I did (defending herself and reporting him). When I ask him for money for food for the children he says to 'Just give them some rice'. But I say 'No, we have money so we should buy vegetables for them'. He says 'No, you cut me, so I will never give you money'. I then say 'So why did we have these children if we cannot take responsibility for them?'. If I ask for money again he says 'this machine did not come from your family'.....Sometimes he chases me from the house and I have to sleep in the bush under the trees with the children for the night."

And Rosa:

"He treats me like old clothes. My children and I are suffering until now. For two years now we have had no money..... ***** owed us \$5 and I told the children that if they pay, that they could use the money to buy food. When I came back (from being away), my children complained that they had only been eating rice without vegetables. I asked them where the money from ***** was, and they said that their father had used it for drinking. Then I asked him where the money was and he told me that it was none of my business. He hits me all the time when I ask him about this. He borrows money all the time from people so he can drink. Then they come looking for the money and we have none. Sometimes they come when they are drunk. I feel so ashamed. I don't know what to do as he gives me no money. Sometimes I have to give them something; otherwise he would beat me until I die. When I ask him for money he beats me.....He beat me and beat me until our children came to separate us."

Children are also being left in very dangerous situations. As some women are forced to flee from violence, children are often left behind in the home while she reports the incident to police. Once the situation has calmed down, women have to get back home as quickly as possible to look after them. One respondent in Ainaro described how her husband had also fled once he realized that she had gone to the police, leaving their children alone and uncared for. The Uma Feto representative also pointed out that if a woman does not return home after fleeing to report an incident, the angered husband may take his rage out on the children.

Others are trapped because of their role in caring for the children. As discussed before, their main reason for not wanting to separate from a violent husband is the need to care for children. Women who are most desperate feel the strain of this most

"I want to go to West Timor but I have no money for transport. If I had money I would just leave the children and go to West Timor. I can't go on like this." (Rosa, Cova Lima)

As mentioned earlier, we found one case where a male child was prone to physically abusing his mother. He is epileptic and prone to spurts of violence, leaving his mother injured and fearful in their home. Women in these situations will not be able to separate from their offspring and without accessible health care systems will have to endure this treatment long term. The situation is augmented by people's general lack of understanding of such illnesses and the needs of those suffering from it. Families are receiving no support in handling such situations. I heard of one incident where a mentally ill person had destroyed the contents of a house from an angered outburst. It was handled locally, resulting in the killing of the mentally ill person.

Some children are experiencing severe abuse both directly and by witnessing negative relationships within the family. The need to stop family violence is crucial. Children's needs require further examination, especially in the context of the administration of local justice. If women are discriminated against in those systems, what is the position of young girls? Will girls be given the right to speak for themselves or be superceded in the belief that they can only be represented by an adult? Even more basically, is violence against children considered as an offence or part of 'normal' behavior towards children?

4.7 Community Pressure

Women described how administrators of local justice were actively telling them not to go to the police if they experienced some form of violence. Women explained how Adat leaders were angry with them for going to the police following an incident of violence.

"We had to follow Adat to solve the problem, if not, the 'Dato' would say that we had not respected them because we did not choose them to solve the case." (Mena, Ainaro)

"The Adat leaders told me not to go to the police; they said that if it happens again then it should be solved here. Only if it is a serious case it can be brought to the police." (Sansa, Oecussi)

Women who may want to go to the police are succumbing to pressure to follow what their leaders say. However, women also feel strongly about their sacred laws and feel that these should be followed. They felt compelled to go to the local justice systems:

"Women are not brave enough to go to the police because here we have Dirus Humanus, Chefe de Aldeia and Chefe de Suco." (FGD, Ainaro)

Community Leaders also indicated unhappiness when a case goes directly to the police first and then comes back to them. They wondered why they should hear it after that person has disrespected them by going outside local law¹³⁶. In order to demonstrate their unhappiness and encourage people to use local law first they demand that before they hear a case, the woman who has brought the case to the police pay an initial penalty because they did not respect 'Adat'¹³⁷.

4.8 After-Care for women

We brought up the issue of 'after-care' for women who have experienced GBV with the administrators of local justice. They felt that local proceedings adequately make up for any trauma or suffering she may have experienced or be enduring:

"If she receives the 'tate' according to what she wants, it already helps her heart, it covers the heart. So we can say that through this system it has already repaired her mentality, as she has already received 'tate'. In regards to what she is thinking, the spirit will know that we can't go forward if she thinks too much about it. How to fix it? She herself will find a way." (Cova Lima)

Again, this demonstrates a lack of understanding of the impact that violence may have on women, and a thorough belief that the philosophy of closing shame and reconciliation will sufficiently repair any damage that has been done.

¹³⁶ Ainaro

¹³⁷ According to Council of Elders, Cova Lima

However, even through the research process it was apparent that some women appreciated the opportunity to talk, to discuss what was happening to them and find a sympathetic ear. Social and psychological assistance are essential, especially following experiences of violence. Even if women do feel that their problem has been resolved the way they want it to be through local justice, this does not cancel out the need for personal care.

The only support women could mention was that received from family members (especially in relation to giving courage for a victim to fight her corner and insist on a large 'Kasu Sala' in abandonment cases¹³⁸). It was interesting that local mid-wife figures represent a covert support service in which women might receive assistance for personal and/or family problems. One mid-wife described her work in the district hospital – but then said that she has a building beside her house that women sometimes come to at night. She treats women for the after effects of violence and said that she counsels them in the best ways of keeping peace and avoiding conflict in the family (similar to that which the administrators of justice may deliver). Women do not bring these kinds of problems to her when she is at work in the hospital.

The women's organizations which we met in Oecussi and Cova Lima are providing essential safe house and support facilities for women. It would be of great advantage to women if these services were built upon to provide effective services reaching larger numbers of especially remote women.

4.9 Costs

The cost of justice processes can prohibit women's use of them. Following the protocols for using local justice, in some areas, it is compulsory to bring 'betel nut' and cigarettes for the Lian Nain's who preside over the hearing. Also, in order to respect the custom of eating together to 'close the shame'; usually those involved, (most usual the guilty party who may be the wife's husband so she ends up paying for it too) will have to provide a feast. The nature of this feast ranged from food for the administrators of local justice only, to providing a meal for a whole village. This is a significant burden on poor rural women and their families, so much so that it may even discourage women from seeking justice at all. Going to the formal system involves similar costs and often transport to Dili. This may entirely deter women's access to formal justice as the whole episode is too costly both monetarily and otherwise.

4.10 Women's Rights

Among respondents, there seemed to be a general awareness of 'rights' principles and their application to modern-day Timor Leste. However, it seemed that local understanding and 'meaning' of rights differs slightly from that of the conventional international definitions. One Lian Nain gave us some insight into this. He feels that local justice has not been included in the constitution/formal justice, and thinks that as a result women are too free within the parameters of government law (implying that local justice controls women and the new laws do not). He believes that women and men are equal, but that formal justice processes have had a bad impact on women, as it makes them freer. He stated that he believes in equality for men and women, but states that men should have 'higher rights' than women. For example, he believes that domestic violence occurs because of something that a woman has done, and therefore she has no justification for going to the police. The freedom of going to the police gives her the power to destroy the family¹³⁹.

A Council of Elders in Cova Lima also saw the negative aspect of 'rights', equality and gender:

"There are two things, a good thing and a bad thing. The good thing is that it can help the man to give time to find a job, and the woman can go to the field to help the man. Men also can help the woman when she delivers. The man can boil the water, can cook, or prepare the rice or corn. This is the positive point for us. The negative thing is it that it creates more sexual relations and this stuns us. We feel that these things are contrary to our culture, it is not only in ***** but in all of Timor Leste. Precisely, the women will be the victim, that is what we hate..... This is because of the appearance of 'gender' and 'people liking each other'."

These views demonstrate a belief that according to local cultures, men are entitled to a higher position and superiority over women. It is the new ideas on 'gender' and 'rights' which give more freedom to women and endanger men's privilege to treat women any way they wish.

The 'barlaque' or bride price system was quoted by many as being the root for discrimination against women in Timor Leste. An OMT representative said that it used to place value on women but is now distorted and has a negative impact on women's rights. According to the women we spoke to, it also influences women's potential for a fair hearing in local justice hearings. Men may use it as a basis for their actions and as a reason why a woman's family may not be involved in a hearing (which can be key in her ability to receive a fair hearing as discussed earlier):

¹³⁸ FGD Ainaro

¹³⁹ Lian Nain Cova Lima

"Yes. Normally if they resolve a case, the man becomes angry because he says that the family of the woman cannot attend because they have no right 'I have given things for her price already so it is my right to treat her bad or good. She is mine'."

"A man thinks that 'I gave my cow or my horse for her so even if she is wrong or right, I can beat her, that's my right'." (FGD, Ainaro)

While women may have investments in keeping the bride price system, they think its basis needs change to allow a more fair view of women within their communities:

IRC: Barlaque causes problems then?

"The Barlaque is given to our family and parents but women are the ones who suffer."

IRC: Why is it not good?

"Because the Barlaque goes to the family and we go to the mans house - we don't use these things and they treat us badly."

"We can keep Barlaque, but within the system we can put better terms/conditions." (FGD, Ainaro)

In speaking with both women and male community leaders/holders of justice, it was evident that violence within the home is excused as a means of 'educating a woman'. Several references were made by respondents regarding women's lack of education. Whether this is because many girls do not finish formal education, or whether even if they did follow a full schooling they would still be seen as uneducated because they are women was not clear, and deserves further research. Women also commented that their community leaders' lack of education is one of the reasons that hearings are biased against women. This supports the latter argument that women will be seen as uneducated because of cultural gender biases, regardless of their level of exposure to formal education. In this way, when a woman enters a man's home as his wife, she comes with the precept that she needs educating, i.e violence, in order to teach her to fulfill her duties as a wife.

There is potential for this to change with the introduction of higher standards of formal education. One Council of Elders¹⁴⁰ kindly commented that the researcher and perhaps even the assistant researchers may be capable of participating in decision making processes, as we had obviously received some education which allowed us to come and question him in this way. Perhaps over the long term there will be opportunity for women to assert their capabilities if a competent and equal education system is put in place, along with cultural changes that allow girls to continue schooling.

One Chefe do Suco¹⁴¹ saw the potential that local norms have for infringing on women's rights:

"I think the culture gives more benefit to the man. Sometimes in Timorese Lorosa'e law the woman always stays at home and she can never be 'ukun' (rule of the house). Women have never been a head of the family who might solve the problems with the (outer) modern system. So, if we strengthen this law, then the man only will have power. We can say that wherever the man can have more power, then maybe this is where you can see the bad impact or the negative side of traditional law ('lei tradisional'). Maybe in the east side the majority is like that. Women always stay at home and if she goes to school they will say 'why should you go to school, don't go'. The impact will be that the man will progress and women will stay behind. This can be the negative impact."

While rights education has taken place on a massive scale in Timor Leste¹⁴², it does not mean the aspects of culture which oppress or demean women have been altered in any real way. It has opened people's minds to the concept of equality, but in practice it is played out quite differently than what an international perspective might envisage or desire.

5. The Way Forward:

The Positive and Negatives of utilizing justice systems

In order to gain an insight into women's own investments in local justice processes and establish what works well for women, what does not and why, we asked women their opinions on the systems they had used and what they would like in future in terms of access to, and delivery of justice.

Local justice received varied critiques by the respondents, largely based on their own subjective experience of it, rather than a general overview of how the systems advantage or disadvantage women as a whole. As one woman said "It depends on the 'li-fuan' (law) passed and the problem involved." (Lucia, Ainaro) We felt at times,

¹⁴⁰ Cova Lima

¹⁴¹ Cova Lima

¹⁴² Amongst others by the UN agencies and electoral campaigns, IRC and other NGO's

that it was difficult for women to critically analyze the justice systems they had used – as in many cases they have had no experience of any other type of system which they could compare their experience with. There also seemed a pervasive fear of expressing dis-satisfaction with their community leaders, especially to people they did not know and perhaps therefore were not sure they could trust.

The location where open criticism of the processes was expressed most was in a village where an existing relationship with the expatriate researcher already existed (footnote to explain). Women confided in the researcher on a deeper level than other respondents did. Their strongest complaint was that the rulings in local justice always blame women, and that women do not get a fair hearing within the process. This was echoed by respondents in other areas too, but to a lesser degree in terms of frankness and openness. Respondents from women's organizations which we spoke to also highlighted the need for local justice to focus more on the humane aspects of women's experiences and the need for the impact of violence on women and their children to be considered within hearings. (Centro Feto Oecussi and Fokupers, Dili)

Through their analysis, women separated 'Adat' from the practice of justice, from the administrators of justice and the perpetrators of violence too. They all felt that 'Adat' in itself is a good system, that it should be respected and that Timorese law should always be used in their search for justice.

"I think Adat is good because the law has always come from Adat and we do what it says. We have a written and an unwritten law, if you have a need to, we just follow those." (Tereza, Cova Lima)

The administrators of justice did not fare so well. They are seen to be implementing the 'Adat' laws incorrectly and unfairly. One group of women even asked whether the team could do some training with their community leaders on 'gender' and 'rights' there and then as we did the research - such was their recognition of the biases in the application of local laws and their frustration with their lack of power to address these themselves.

Some women leaders like OMT representatives commented that local justice is not a very strong system. This relates to the inability of 'Adat' to enforce the payment of compensation. Some women and mid-wives in particular, believed that local justice does not have the power over men to stop incidents of violence from occurring again:

"I don't like Adat because up until this time he was beating me and it didn't stop until the police got involved." (Maria, Ainaro)

Community leaders and 'Katuas Adat' also expressed how they felt that their power over community leaders was slipping away, especially in more recent times. Stories were told of how previously, stronger penalties were used to enforce rulings. These hearings would require the presence of 'warriors' who would enforce rulings that were passed. If these rulings were not respected, repercussions could lead to death at the hands of these 'warriors'¹⁴³. People were therefore afraid and respected the 'Adat' and would not repeat offences. As these practices have been replaced by more humane versions, the power that local justice has over people has been lost somewhat. What needs to be looked into more is whether, more modern interpretations of local laws have led to decision making becoming more biased in the interests of maintaining their power.

Some women have strong faith in their local justice system – for them, the problem simply rests with the accused, who do not follow the ruling passed during local hearings. The lack of competence of local justice to follow-through on payment of penalties for example is seen to be the fault of the accused only. The 'Adat' law is still seen as a good and respected system.

"For me, the Adat is very good, but my husband is bad and I don't know why he won't change his ways." (Silvera, Oecussi)

Another reason that local justice was perceived as important is because it is common to all members of the community. People know what is happening and they also learn that problems highlighted through a hearing are not acceptable behavior in general (i.e teaches them a lesson too)¹⁴⁴. In this way, reconciliation between men and women and their families are accepted and recognized culturally within the community. People are then free to move on and put the problem behind them:

"For me, it is important that my door is closed so that wherever I walk he doesn't have any relation with my house and I am then free to marry someone else." (Suzannah, Oecussi)

Interestingly, when asked about what could be improved in the local justice system, it was not just the need for more equality and fairer application of laws that were mentioned. The two women's groups we met in Ainaro

¹⁴³ According to a Council of Elders in Cova Lima

¹⁴⁴ Ainaro

expressed their desire for people to take account of their own actions. They stated that people should behave better towards each other so that there would be no need to use local justice in the first place. Women wish for a 'prevention rather than cure' approach to some of the issues and problems they are facing. However, whether the onus is on them to maintain that peace within the household, in keeping with the moral advice they receive from their Elders, is not clear. Through the research, it was evident that while communities are incorporating principles of 'rights' and 'equality' within their culture, there is a long way to go to a stage where respect for the person over-rides the instinct to violence, and the false apportioning of blame for this, which is affecting so many women.

The community leaders and 'Katuas Adat' in general had no real criticisms of their justice processes. They expressed a belief that 'Adat' is the better system for their communities as it demonstrates community faith in each other, that women and men must trust each other. Local law is the key to bring families back together. Going to the police is seen as an insult to this trust. They also feel that the formal system always blames the man by putting him in jail¹⁴⁵ (i.e. what the woman did to cause the violence, as they would see it, is not considered in the formal process). All community leaders spoken see local justice as a means of controlling populations and disciplining them – especially at the 'base level'. They do not feel that the government law can reach to their level, which is why use of local justice is so important there. They said that if the government did some proper training with them could they use government law to discipline people in their communities¹⁴⁶. They also saw 'Adat' as having the advantages to assist the police in resolving cases and reducing their caseload.

One Chefe do Suco was very frank and open in critically analyzing the systems he is perpetuating in his village. He was the only person who admitted that local laws may oppress or impinge on women's rights. He thinks that the disadvantage of Adat is that women do not have any power within the processes. As a result, people think that women should not be educated. Therefore men will be able to progress and women will be left behind¹⁴⁷. Such thinking affords opportunity for the negative aspects of customary laws to be accessed and built upon so that local priorities and beliefs remain intact while not affecting the rights or freedoms of female community members.

One VPU officer we spoke to saw local justice as a very limited system. She said that as it only has one means of resolution through the administering of a compensation payment/giving advice, this approach may not always be particularly appropriate for individual cases. Agreeing with the views of women leaders, she felt that local justice has no real system of enforcing its rulings. However, she felt that people still prefer to use it over the police option. She believes that local justice administrators want to maintain current practices in order to keep the bride price system in place, and in this way men can have control over women they marry. She saw the administrators as 'not neutral' in their rulings and this is the reason why she does not engage with them or make any relations between her work and that of local justice.

However, it was clear from speaking with women, community leaders and other police officers that local justice and police are often working together to address cases of GBV in their community. The two systems therefore are interfacing at various levels within communities which is causing much unrest and confusion for both users and administrators of justice alike.

Formal Justice vs Local Justice

Within the limitations of this project, it was difficult to gain a deep perspective on the current relationship between formal and cultural law in Timor Leste for several reasons. Community leaders were open about their levels of involvement with the police, despite their confusion over these relationships. Most saw that a link exists but that while they work with the police, their relationship has not yet been formalized. Police on the other hand were less reluctant to admit any involvement between the two, and did not see that any 'relationship' as such existed just yet. The reality as we saw it is that police and community leaders are inevitably consulting on cases and using each other's services where necessary and each deems appropriate. This relationship has not been formalized in any way and thus, users, particularly women as we have seen, are suffering gross counts of injustice and lack of respect for their problems as they are sent back and forth between the two systems, or simply become the subjects of unfair and un-standardized processes.

As discussed above, women know local justice or 'Adat', they use it because it is familiar and what they see as a cultural way to resolve their problems. It is not always satisfactory and they therefore see the police as the alternative. Police may be the first place they go to for protection, and women who live in isolated areas are prevented from accessing this option, (despite its failings). There are tensions between community leaders and police, over their perceived need to protect their positions as holders of local justice. These tensions create barriers to women's freedom in accessing the justice service of their choice. As part of the hierarchy of justice that women might follow, women find that even when they reach the level of the police, they are still not receiving

¹⁴⁵ Respondents Cova Lima

¹⁴⁶ Ainaro

¹⁴⁷ Chefe do Suco, Cova Lima

adequate legal advice and procedures. They may be sent back to local justice again or ignored, and leave police stations with mis-understandings of what police procedures can and cannot do for them. Either way, the current climate in which local justice administrators are struggling to maintain their power over their community members, and enforce 'Adat' law, is oppressive for women who seek justice in some form or other. Women are battling local pressures to stick to local norms and processes, while desiring the perceived protection which a police service should provide but ultimately does not.

While women expressed desires to have access to both systems, community leaders explained that because they are in the 'base'¹⁴⁸ only they know how to solve the problems which occur in the base. One Chefe do Suco¹⁴⁹ believed that the constitution drafted by the government is not strong enough to be used at the aldeia level, and even presented examples of where he had tried to apply the statutes set out in the constitution in his rulings but could not. He said there was no guidance in the constitution to assist him in the task of solving problems in his locality. Community leaders generally were of the opinion that the government does not have the skills yet to undertake their roles properly. They think that national leaders do not see the importance of local culture nor see that the best way forward for Timor Leste is to build from what they have always known. They see this as one reason why, up to now, local justice processes have been largely ignored by their new government. From what they have said, it is evident that the two systems can never work together if the powerful presence of the original system is ignored or simply paid lip service.

Community leaders believed that people simply have to use local justice processes. One leader said that "Timor cannot be a stranger to itself", and that people must use the culture and traditions that have come from the ancestors." (Chefe do Suco, Ainaro) They believe that respect for the 'uma fukun' comes first, "we came from our parents and ancestors so therefore we should respect them first before going to the police with problems." (Council of Elders, Ainaro). It is for this reason that they pressurize women to follow local law and only when they see fit can it go forward to the police and formal law level.

The majority of community leaders whom we spoke to felt that the two laws are not 'together' as they need to be. While formal law is now being written, local law has always existed (Chefe do Suco, Cova Lima). They generally wanted the hierarchical system formalized. The church's doctrine is also important here as it gives a moral basis for the law. They all expressed a desire therefore that formal law be based on the laws in the communities in the bases to make it recognizable and familiar to Timorese people. They see their role as solving both 'large and small cases' within their community, with the police exclusively dealing with killings or rape of minors.

All were passionate about their beliefs and the power of 'Adat'. In order to gain some insight into the strength of feeling towards their cultural systems, we asked them how they would feel if local justice processes were abolished in favor of formal justice. We were surprised just how heated some of these discussions became. All respondents felt that if local justice was abolished as a method for resolving community disputes, they would lose a way of life and culture – and would have nothing to pass on to future generations¹⁵⁰. Local justice just cannot be abolished according to the 'Katuas Adat' we spoke to, as it has been there since the beginning of time, and therefore they would lose everything if it was gone. Their grandfathers and grandmothers would be split up and there would be no order on the relationships between families. Some went as far as to say that if that happened that they would protest against the government, and even gather all of the community leaders together to violently oppose any such activities which a government might implement¹⁵¹. Some expressed the desire to write their own law, which could be used locally, but have not yet been organized this. They feel that a foreign law is being implemented which has no affinity to Timorese customary law. Only if new laws are based on cultural practices will they be appropriate for use in their communities.

Some did conclude however that the use or power of local justice could be 'decreased' but not abolished. They feel that now 'Adat' is not so strong, and because of the new ideas on 'democracy' and 'rights' people are not respecting the local justice processes. Some concluded that as a result of this, local justice and formal justice should work together. This idea comes from their perceived need to strengthen the power of 'Adat'. They feel that 'Adat' is weakening in the face of the current changes in Timor Leste and that people are beginning to only respect and fear the government law. They requested strong education on culture for their communities as a way to revive customary law and enforce respect of traditional processes among the community.

'Katuas Adat' stated that they are very confused about their current roles in communities. They said that before they would solve all those problems arising in the community. They are now getting mixed messages from both the police and Chefe do Suco about what they can and cannot do, and feel very unhappy with this¹⁵².

¹⁴⁸ The word 'base' was used by respondents to refer to the lowest level villages in Timor Leste, i.e the grass roots

¹⁴⁹ Ainaro

¹⁵⁰ Council of Elders, Ainaro

¹⁵¹ Council of Elders, Cova Lima particularly vehement about this topic

¹⁵² Chefe d'Aldeai, Oecussi in particular

One Chefe d'Aldeia¹⁵³ explained that he feels that the formal system is pushing them to use foreign laws that are alien to them. He has had the experience where human rights officers have come along and forced him to open up old cases which he has already solved but which the formal system feels have been discriminatory. As a result, while he would like the two systems to work together, he feels that it is all too complicated. Before, they never had to use letters or statements and now he has to do so - to prove to police that cases are solved and how he has solved them. He said that before people would complain of lack of education of the 'Adat leaders' caused problems, but now too much education has also caused problems. Human rights officers are obviously having positive effects in protecting people rights. These are extremely positive initiatives, especially in light of the findings of this report which demonstrate the level of bias which women are facing. It not so welcomed from community leaders such as this Chefe d'Aldeia however, as the relationship and way in which formally systems impact on local justice has not been formalized with them.

The formal and local system are therefore interfacing and operating along side each other in an unregulated capacity. Both police and holders of local law would like it formalized. One VPU officer commented that the police/formal system already uses local justice, that an informal relationship exists. Cases are sent back and forth from the courts to local justice, not just from police stations to community leaders. Therefore, this is frustrating for police who may then see no point in processing cases to the court which will just come back to the community again. Similar to community leaders, police are confused about where they can and cannot refer to local justice, and for most officers, their own upbringing will determine what they see as culturally appropriate justice for their communities.

Women also supported a combination of the two systems. Their own cultural beliefs and pressures dictate a need to go to local justice, while the perception that formal law is stronger and more fair led some women to conclude that the ability to access both, to take advantage of their particular individual strengths, served them best:

"The first time, after going to the Chief of Aldeia, and then he did it again, I was upset and hurt. But when I went to the police I felt better as it stopped him from doing it again. It feels better to have the police and Adat together." (Angelina, Oecussi)

Although the research only focused on cases of gender based violence, the confusions described and demonstrated to us regarding the current and future relationship between the formal and local systems has far reaching effects for all areas of law and order in Timor Leste and needs urgent attention.

6. Conclusion and Recommendations

It is evident from this research, that both local and formal justice processes are being used daily to resolve cases of violence against women. Through their practical use, users and holders of the justice processes have identified what is strong and weak about the systems, and what needs to happen in terms of standardizing justice processes within their new country.

From our analysis, we can conclude that local justice processes are not adequately dealing with cases of GBV in communities in Timor Leste. The processes are subject to bias and lack of consistency in judgments. They are based on cultural systems and beliefs that are inherently discriminatory to women, both as users of the system and as potential administrators of justice. These cultural practices and beliefs both oppress and depress women through a lack of understanding of the act of violence and the impact this violence has on women and their families and communities. People who judge these cases are people who reinforce practices which impinge on women's rights. The police system, simply through lack of experience and training, is also inadequate and ill-equipped to deal with the complex social issues which they are being presented with. The police system currently lacks the capacity to understand and deal with issues facing women in a humanistic and empowering way.

However, both systems have positive traits which are both meaningful and important to Timorese communities. It is these positive qualities which need to be highlighted and focused on. In that way women's rights can be protected and promoted through whichever system they choose to use to in order to achieve justice for incidences of GBV.

People have varying levels of respect and fear of the two justice processes. Personal and cultural investment in 'Adat' will ensure that this system continues to be used, especially in more remote areas. If women are going to keep using this system, and they will, then those aspects of it which are damaging to their needs and rights need to be reformed. This process however, needs to come from within. Holders of justice whom we spoke to are open to and eager for such reformation to take place – as long as it is respectful to their beliefs and enforces the system which they have so much faith in. As long as any engagement with local justice practices are done in an

¹⁵³ Oecussi

inclusive and open manner, communities will gladly embrace the opportunity to formalize the means through which members can be disciplined in a way that is appropriate and fair to all.

Women's involvement is of-course integral to this process. Their involvement however should not be undertaken according to the previous models which have been used in Timor Leste. Women must not be placed on community committees as a token effort/symbol. Culture cannot be used as an excuse to demean women's decision making abilities or the power they may or may not have to effect change on the processes that oppress them. Unfortunately, customary systems have enforced the belief, especially with rural women, that they have no capacity or right to make decisions in their communities. They have been socialized by a patriarchal system and a culture that has been suppressed socially and politically for centuries.

It is only through long term exploration of cultural 'traditions' that power holders will be able to recognize their attitudes towards women are unacceptable by international standards. Education and awareness raising on concepts of violence, respect for the person and issues of equality need to start from the basis of the culture which has developed to control women's agency. People with investments in the bride price system and local justice processes need to be given the opportunity to analyze their own views and look at why oppression of women arises from these systems. It is only when this occurs that genuine support for women's rights and their status as equal to that of men in their community will come into fruition. This will take a long time. As will any efforts to reform or incorporate the local justice systems into formal justice systems – which obviously should be concurrent with strengthening of the police forces. As police officers follow the same cultural beliefs as their local justice counterparts, it is essential that they too are enabled to open their minds to the real meanings behind rights based approaches to delivery of justice.

It is in keeping with requests from respondents for those in higher levels to "place their eyes towards the base"¹⁵⁴ and look to what already exists, that his paper concludes with some ideas which might enable a sound and wholly inclusive approach to local justice and the possibilities within them for the promotion and protection of women's rights.

Recommendations:

- The high prevalence of 'Gender Based Violence' in Timorese communities needs to be addressed. While information may exist on its form and presence, understanding the investments of power holders in perpetuating such practices will enable a holistic approach to eradicating violence against women. Education and training programs on rights and equality and the dissemination of information are not sufficient to create the fundamental shift in mentality which is needed. Education programs need to challenge participants on their present acceptance of levels of violence in their lives, and the justifications they use to normalize these. Such an approach would enable people to question their own beliefs and practices, especially towards violence and the status of women in Timorese societies. Education and research needs to be done in a way that simultaneously allows people to analyze their own attitudes to women and violence and assists them to identify where these have developed from. It is only with this kind of approach and self-analysis that ordinary Timorese people may become catalysts for their own perceived needs for change in their communities.
- This paper has only brushed the surface of a wide range of issues which are affecting women in Timor Leste. Many questions have been raised during the discussion of findings regarding the violence women experience and the ways in which local justice can compound rather than alleviate these experiences. Further research may answer these questions and allow an informed and effective approach towards tackling GBV and strengthening justice services to assist victims. Research should include investigation into the current interfacing between the local and formal justice system and the effects this is having on the achievement of adequate standards of human rights in Timor Leste; an analysis of how children's rights are affected by local justice rulings and ways in which they can be protected from harmful effects of those and the violence they are experiencing and witnessing in the home; and an exploration of how Timorese cultures have developed discriminatory attitudes towards women which now determine the biases underpinning its rulings on violence against women. Such information collection and analysis will afford a more informed and appropriate approach to facilitating the achievement of respect for women's rights which is so urgently needed.
- The attempt to place a formal justice system working on top of a local justice system based on cultural law clearly has not worked. The two are currently conflicting and causing much confusion and frustration for administrators and users of justice alike. The problem will not go away and according to respondents, any attempt to abolish or ignore the local system will certainly make matters worse. The current status of justice in Timor Leste is having disastrous effects on those women whose problems are being lost amidst the confusion and power struggles that are occurring between the local and formal systems. The holders of

¹⁵⁴ Mentioned by several Council of Elders and women

local justice whom we spoke to specifically requested engagement with the formal sector and a formalization of the relationship between the two. They are open and ready to share their knowledge while also ready to absorb principles which might 'come from above'. The Ministry of Justice is in the process of great change and acknowledging the need to incorporate local justice must be part of this process for future planning. An initial step towards this could be locally based debate forums in which holders of local justice could come together to open debate and discussion on the issue. This should involve those who have the cultural power to rule in local justice processes, not just elected community representatives. This type of process needs to go right down to the very basic level of community structure in Timorese villages, not just engagement with district level actors. These panels for discussion will allow holders of local justice to present what they perceive to be the positive and negative aspects of their law, and where they think the two systems might meet, and vice-versa. This will afford the opportunity to hear their perspectives and work from there in a way which is acceptable by them which will be of optimum benefit to any process attempting to initiate formal cooperation between the two systems. It is also through such a forum that an opportunity will exist to tease out information on the belief systems that lead to discriminatory practices that so much affect women's access to justice. Critical analysis of their own belief systems and where they and the formal system see the need for change can then be established and developed.

- While the culture of Timor Leste needs to be respected in any endeavors made to bring about positive change, culture cannot be used as an excuse to maintain the status quo which is debilitating to women's development. The Office for Promotion of Equality of the Timor Leste Government is currently writing its report to the UN on its progress towards implementing the statutes set out in the 'Convention for the Elimination of Discrimination Against Women'. As pointed out in the Literature Review of this paper, one of the statutes sets out and clarifies that cultural practices which are harmful to women cannot be allowed to continue¹⁵⁵. Women in Timor Leste are not just socially, but legally, entitled to the achievement of equal rights through their government's ratification of CEDAW. The only way that this statute can be achieved is through active engagement with cultural practices which block women's rights. The OPE therefore needs to make deliberate and conscious efforts to inform themselves of and address the features of Timorese societies which are harmful to women's rights. This can be done through further research as suggested above and through lobbying of government and donors to provide the means for long term programming promoting positive changes as identified by Timorese communities through analysis of research.
- A stronger effort needs to be made to cultivate a police force which is ready to deliver police services to distressed women in a humanitarian and supportive manner. While police officers obviously need further training, it is the methods used and the duration of this training that will determine the success or failures of its services. Again, presentation of training modules does not guarantee that individual prejudices are eradicated in the practice of police work. Officers need to be facilitated to examine their own attitudes towards women and violence so that a culture of police enforcement which is both protective to women and prohibitive to any forms of minor or serious violence is fostered. The type of specialist training given to VPU should be given to all police officers as it is not just VPU officers who deal with cases of GBV. Developing specialist sections of police, such as the VPU, are commendable and imperative to assisting vulnerable persons. However, it needs to be acknowledged that in practice vulnerable persons are reporting to officers who have had no exposure to the types of issues which should be addressed through VPU-type training. Also, while current community education programs regarding the police are essential and positive activities, it is the actual behavior and practices of police officers in dealing with clients that has the biggest effect in influencing community's perceptions and opinions on their local police services. It is only through improvement in the delivery of services that women will feel comfortable in approaching police and satisfied that they have been listened to and assisted within the authority and means that the police have available to them.
- Any improvements to the justice systems as suggested above are going to take a long time. Meanwhile, women are suffering daily from the effects of violence targeted at them. Services for female victims of GBV are essential in easing women's experiences of both violence and the search for justice. The models we have looked at, including community based women's support organizations and the Fokupers 'mediation' model appear to be working well and providing some relief and support to women. While the current dual system of justice is in operation, women need assistance with ensuring that their cases are not lost among the confusion between the two and that they receive adequate and supportive assistance with resolving issues of violence. In particular, young girls need protection from sexual abuse and exploitation, in a preventative rather than curative manner. Social and sexual education is essential, especially in light of the impact of open sex and porn literature and film now widely available in Timor Leste. Police need to develop methods for addressing cases of 'abandonment' in a supportive and sensitive way, so that these problems are recognized for the harm and distress they can cause to young women who have been exploited in this way. Training on using and implementing the standards and definitions on violence and protection of women as stipulated in the forthcoming Domestic Violence legislation will be key to this.

¹⁵⁵ UN, 1979, CEDAW

7. Research Issues

Some comments on the research experience are included which may be useful for future research projects.

Confidentiality:

Some women were very concerned that their stories would be repeated to other people in their village and that men would find out what they were saying to us. This message came from women from one village who had had a previous bad experience. An organization had come to the village and had asked questions about incidents of violence in their village and had then repeated the information in a neighboring village. This resulted in further violence and tensions within and between the communities. Confidentiality in doing this type of research is essential. We felt quite strongly about protecting the information women gave us and were adamant to check with them at the time of doing the research and in a subsequent visit to research sites that we had permission to publish their stories as long as anonymity was ensured.

Womens' conceptual framework

It was often difficult to get women to think objectively or on a conceptual level about 'law' and 'justice' as concepts and how the different types of justice processes affect them. There were two reasons for this:

- They had no understanding of the real legal differences between local justice and formal justice,
- They were often too preoccupied with their 'practical' needs (e.g food and shelter) to be able to comment on what their 'strategic' or legal needs might be.

Sensitivity to issues arising:

Some women became upset during interviews, mainly those whose problems had not yet been resolved. However, one woman in particular stated that she was grateful to us for allowing her to speak about her problems, as she had had no-one to listen to her for so long. Interviewing gave women the opportunity to talk about their experiences and reflect on those. However, due to the nature of the research process it was difficult for the team as we felt unable to address those problems and assist women constructively. The best we could do was pass cases which we felt needed attention to Human Rights Officers and to women's support services to ensure further assistance.

Follow up visit:

Revisiting the women interviewed in order to do a follow-up interview proved useful. Although constrained by time, (a longer process could have allowed research findings to be discussed further with women), it allowed closure of the research for the team and respondents. Main findings were presented and discussed with as many of the original respondents as possible. Women were given the opportunity to agree or disagree with the main findings, which also allowed us to ensure that we had focused on the most important points according to respondent's wishes. In one area, a woman insisted on the participation of her husband in the session, so that he could listen to the results and understand more about the effects of violence in the home. She also suggested that the findings be broadcast on local radio to encourage awareness of the effects of violence against women.

A further reason to return to research communities was to check whether our techniques had had any adverse affects on respondents. Women stated that generally they had had little negative reaction from partners or neighbors for participating in the research. However, we found that the situation of some women had been affected by our visit. Women stated that their husbands' behavior had improved somewhat during the time of our first research visit and that of the second. While violence may have ceased for the time being, it raises the question of what might have precipitated the change.

Some women said that husbands were curious and wanted to know more about what the research entailed. Other younger women, especially those having problems in marriages or who had experienced 'abandonment' stated that the research experience had allowed them to reflect on their situations and some of the issues that had been raised. Interestingly, they also remarked how meeting young professional Timorese women (research assistants) had opened their minds to the fact that they did not have to rely on men for their livelihoods. It seemed that the team made an impression on some respondents. The skills level demonstrated by the research assistants and their comparative independence alerted women to what was attainable. One respondent had joined a computer training course having been influenced by some advice given by one of the research assistants.

It is recommended that time to revisit research sites be incorporated into research plans to gather post-research experiences, evaluate impacts and ensure that findings reflect what women originally reported.

