

## Domestic Violence in Timor-Leste: A New Law and New Obligations to Face Old Challenges

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### Introduction

7 July 2010 marked an important change for human rights protection in Timor-Leste: the Law Against Domestic Violence (hereinafter referred to as “the new DV law”) was officially promulgated through the *Jornal de Republica*, creating a new regime to combat the entrenched phenomenon of domestic violence. The framework changes the status of some crimes of domestic violence and creates a comprehensive system of responsibilities borne by the police, prosecutors, public defenders and legal, health and emergency professional services.

Amidst government, international NGO and domestic civil society efforts to educate the general population one domestic human rights NGO, the Judicial System Monitoring Programme (JSMP), and two academics from Australia identified the imperative to train the professional service providers engaging directly with domestic violence victims on their obligations under the new DV law. A successful bid for an AusAID human rights grant allowed these partners to design and implement a one-day training program delivered across four districts to legal, medical and health professionals; its purpose was to enhance understanding of the law, the obligations it imposes on various agencies, and the avenues created to assist domestic violence victims. JSMP is uniquely knowledgeable both of the legal, practical and social implications of the new law, through its Women’s Justice Unit (WJU), and the challenges facing domestic violence victims in accessing justice, through its Victim Support Service (VSS).

Following the completion of the training, four staff from JSMP and one of the research partners, Dr Suzanne Belton, presented two panels at the 2011 Conference on Communicating New Research on Timor-Leste held in Dili, Timor-Leste, on 30 June and 1 July 2011. One panel was presented in Tetun, and the other in English, but both comprised the same three topics: 1) The New Law Against Domestic Violence: Understanding The Legal Framework; 2) Providing Training in Law to Legal and Health Professionals in Timor-Leste 2011; and 3) Challenges Facing Domestic Violence Victims in the Formal Judicial Process. Three papers on each of these topics are available in the Tetun version of the edited conference proceedings. This paper consolidates all three presentations into one English paper. A detailed critique of the new DV law has been published by JSMP and is available on the JSMP website, [www.jsmp.minihub.org](http://www.jsmp.minihub.org).

### The Law Against Domestic Violence: Understanding the Legal Framework

This section surveys the pre-existing legal framework and context prior to the new DV Law, the aims and important principles contained in the new DV law, the content of professional obligations imposed on various organs to assist domestic violence victims, and underlying concepts critical to the law’s operation.

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### *Pre-existing legal framework and context*

Understanding the significance of the new DV Law is predicated on appreciating the social and legal context within which it was passed. Domestic violence is a pervasive and long-standing problem in Timor-Leste, overwhelmingly experienced by women and children at the hands of husbands and fathers, respectively (Committee on the Elimination of Discrimination Against Women (CEDAW), 2009). Estimates of the incidence of domestic violence range from around 28% as described below to 70% (Catholic Australia, 2007) but these are generally understood to be under-representative of the actual occurrence of domestic violence. Additionally, the significance or harm of domestic violence is minimised (UNFPA, 2007).

The most recent and comprehensive attempt to measure incidence of domestic and gender based violence is the 2009 Demographic and Health Survey (National Statistics Directorate, Ministry of Finance, Democratic Republic of Timor-Leste, 2010). The results demonstrate at least 30% of women over 15 years of age experience physical or sexual violence; that the incidence increases between 25-39 years; and that between 20 - 30% of women believed marital rape was allowable. Unfortunately, the customary methods of addressing this violence typically deprive women and children of a voice in the resolution process, which, according to VSS, generally takes the form of mediation such as a Tais or pig offering, and fails to attempt to prevent recurring violence.

Recent recognition of the extent and seriousness of domestic violence in Timor-Leste has prompted government campaigns, such as the “Say No to Violence Against Women” media campaign, as well as health NGOs (such as PRADET) to focus on improving services for domestic violence victims and extensive human rights training on domestic violence for community leaders, the youth and police by domestic NGOs including JSMP, Alola and HAK.

Prior to 2010, the Timor-Leste Penal Code recognised mistreatment of the spouse (Articles 154 and 156) but in limited terms that failed to challenge the cultural acceptance of domestic violence. Furthermore, other crimes such as homicide, rape, sexual assault, serious assault and assault, are rarely prosecuted when they occur within a domestic violence context. It is against this backdrop that the need for a progressive framework to better address the incidence of and harm caused by domestic violence was met with the introduction of the new DV law.

### *Definitions, obligations and principles in the new DV Law*

The culmination of over 10 years of advocacy by civil society and a prolonged drafting process, the DV Law has three principal aims (Article 1): to prevent domestic violence, to protect victims of domestic violence, and to assist victims of domestic violence. The law recognises crimes of domestic violence (defined in Article 35) as public crimes (Article 36) which means that the initiation of the prosecution process is no longer dependent on the victim-complainant making an official report or his/her continuing explicit consent. Punishment is according to normal criminal procedure, but importantly, courts have authority to make a number of coercive measures aimed at protecting victims and families (Article 37).

Domestic violence is defined to encompass four types of violence: physical, sexual, psychological and economic. It is notable that sexual violence explicitly includes sexual relations within marriage and is defined broadly; that psychological violence encompasses emotional damage and reduced self-esteem through a diverse range of methods; and that economic violence includes retention, partial subtraction, or total destruction of personal items, working instruments, impeding work inside or outside the home, or access to economic resources (Article 2(2)).

The definition of “family” for the purposes of defining such violence as domestic is defined broadly, going beyond familial relationships to include people who are economically dependent on or in a relationship where they are under the influence of the perpetrator (Articles 2(1) and 3).

Obligations are articulated for a number of agencies and involved parties, including services that are yet to be established. The government has broad obligations to develop a National Action Plan, distribute DV material in communities and the education system, and to assist and support victims through numerous entities (Articles 9 – 15, 33). These include establishing support centres and shelters to provide

immediate assistance, accommodation, counselling and psychological/medical/social/legal assistance (Articles 15, 16).

Emergency and social services are to provide immediate assistance and connect the victim with services to meet ongoing needs (Articles 20, 21, 23). Specialised hospital services are required to preserve evidence, make and communicate reports to authorities and provide medical assistance and follow-up advice (Article 22). Legal professionals are to provide advice and representation, monitor treatment by state agencies, monitor the progress of the case and refer victims to other services as required (Article 25). Police, through the specialised services of Vulnerable Persons Units (VPUs) are similarly required to refer and facilitate access for victims to other services, as well as adequately prepare documents required for prosecutions (Article 24). This interconnected network of services and processes is to operate according to fundamental principles including consent (Article 5) and confidentiality (Article 40).

The law is ambitious, and its success depends on the establishment and effective operation of numerous services and agencies. There are some areas that may prove logistically challenging: the requirement of consent before police interventions may lead to intimidated victims refusing police assistance and exposing themselves to greater risk of harm; there may be conflicts of interest if victims seek legal advice from Public Defenders who will ultimately represent the defendant in the same case; and confidentiality obligations will require medical, hospital, social and legal professionals to be very careful about which facts are reported to police and prosecuting authorities. However, the law is an important tool to encourage behavioural and attitudinal change in a society whose domestic violence victims have historically suffered in silence.

### **Providing Training in Law to Legal and Health Professionals**

This section describes the project designed and executed by JSMP in collaboration with the two research partners, Dr Suzanne Belton from the Menzies School of Health Research and Mr Jeswynn Yogaratnam, from the Faculty of Law at Charles Darwin University in Australia. The project was conceived as a multi-disciplinary workshop targeting medical, health and legal professionals whose understanding of the broader network of services available to domestic violence victims will promote better collaboration in the comprehensive delivery of assistance. All information summarised below can be found in the AusAID report, available on request from JSMP.

#### *Project execution*

The first stage of the project involved designing, distributing and collecting surveys from legal and health professionals in four districts (Dili, Baucau, Suai and Oecusse) to determine their knowledge, beliefs and practices in dealing with victims of domestic violence so that the workshops would cater to their learning needs and the social context of their work. The information gathered from the surveys included: demographic information, attitudes and opinions, how victims were defined, sources of help, whether and what previous training had been received, the presence of domestic violence in personal networks, and knowledge of services available for domestic violence victims.

Over the four districts, 142 professionals participated in the surveys, which disclosed: the majority of respondents did not think domestic violence was common, but that it affected all sections of society not just the poor and uneducated; people were divided about whether alcohol caused violence, that it is tradition for men to control women, that women could leave a violent situation, and that women provoked domestic violence. The majority felt that if someone in your family hit you it was domestic violence, and that this was justified at times. The top five useful sources of help (in descending order of rates of identification) were the local police (82.9%), a women's NGO (58.6%), a family member (48.6%), a female lawyer (42.1%) and the church (42.1%). Only two people believed domestic violence is a private matter (1.4%), and only five (3.9%) identified traditional leaders as helpful people. Male lawyers, doctors and friends were all less frequently identified than their female counterparts.

Factors that would inhibit reporting of domestic violence, in descending order, were: embarrassment (57.9%), fear of prejudice (55.7%), fear of losing children or home (49.3%), fear of not

being believed (44.3%), a desire to protect the partner or family (47.1%), and concern about confidentiality (24.3%)

Based on this information, the workshop syllabus was designed and written to combat popular myths about domestic violence, target specific areas of ignorance about legal obligations under the new law, and identify the variety of services that may assist domestic violence victims. The workshops were attended by 216 hospital/medical administration workers, doctors, medical students, nurses, midwives, lawyers and paralegals. The structure of the training involved presentation of material from expert guest speakers and some interactive activities designed to engage participants and encourage their critical thinking of the issues.

### *Project results*

Post-workshop surveys revealed a number of changed attitudes and increased understanding of individual professional obligations. Participants commented that: shame is a primary reason for low reporting; wives, maids and children are most affected; domestic violence is complex and requires more training; domestic violence is against the rights and interests of women; victims need to be spoken to in private; different professionals have different obligations; and that there is an obligation to report domestic violence to authorities.

From the results, it is also clear that knowledge about the importance and effect of the new DV law is low among doctors and nurses in particular, and that this severely undermines the quality of care domestic violence victims receive. Further, services are very limited or non-existent and reliant on domestic and international NGOs because the government has not yet invested the resources necessary to establish the network of services envisaged in the law. It is hoped that the National Action Plan will succeed in increasing professional knowledge, expertise and willingness to address the challenges confronted by domestic violence victims.

### **Challenges Facing Domestic Violence Victims in the Formal Judicial Process**

This section describes the challenges victims encounter at every stage of the formal prosecution process, including after the new law was passed. While many of these problems have a long history and are part of the socio-legal environment in Timor-Leste, some of these challenges are specific to prosecuting the crime of domestic violence, which has only started in significant numbers since the DV law was passed in 2010. All the observations, inferences and conclusions are drawn from the direct experience of JSMP's Victim Support Service assisting women and children victims of domestic violence engaging with the judicial system – further information and detail is available from the VSS upon request. Victims are referred to as female because this is the demographic VSS targets, and comprises the overwhelming majority of domestic violence victims in Timor-Leste. For further information about the nature of VSS' work and current challenges, their latest report, *Legal Protection for Victims of Gender Based Violence: Laws Do Not Yet Deliver Justice*, can be accessed from the JSMP website.

Since domestic violence is prevalent and often not known to be a crime, the common belief in communities is that domestic violence is acceptable to the extent that it is private family matter. East Timorese culture does not support victims accessing the formal justice system, particularly in patriarchal communities which comprise the majority of the population. This is compounded by: the lower levels of education and literacy among women, their economic dependence on male relatives and their subsequent fear of abandonment and inability to be economically self-sufficient, even for the duration of the court case.

Logistically, the majority of the population live in rural areas, making transport to court and self-maintenance in another town difficult for women without their own income. Linguistically, even if the woman complainant is literate, her literacy will be in Tetun rather than Portuguese, the official language used in courts and government. This problem also affects other stages, including understanding and complying with summons' written in Portuguese, as well as understanding and participating in court proceedings. Lack of Portuguese language skills is also common in other agencies; for example, general

police inability to understand Portuguese compromises enforcement of judicial orders or other official documents.

At the police station, victims are often questioned insensitively, or after being required to wait in the same room as the person who is the alleged perpetrator: this exacerbates victims' fear of the formal process and its repercussions on daily life. Police frequently lack resources to allow victims to stay or sleep in a separate room, take victims to hospitals or shelters, telephones to call medical or other emergency services, or to investigate cases thoroughly and quickly. Consequently, when prosecutors receive the files, they are often incomplete and cannot be pursued. If the victim attends the Prosecutor's office, her version of events will differ from the original complaint made at the time of the incident, due to the time elapsed and her continuing economic dependence on the alleged perpetrator. There are still problems with continuity of cases and the re-traumatisation that occurs when victims are required to relate the harm they have suffered several times.

If the case proceeds to court, victims will often encounter the defendant again because there are no separate waiting rooms, and they are required to give evidence in the court room (rather than from another secure location), so they often pass the defendant on their way into court. The *Law on Protection of Witnesses* (2008) addresses some of these challenges but is yet to be implemented. Most problematic is Article 125 of the Penal Code, which allows family member witnesses the discretion to refuse to give evidence against the defendant. Judges sometimes refer to this as the witness' "right to silence" which is not only factually incorrect, but dangerously misleading because it suggests that victims are exercising a 'right', when in fact they are contributing to the continuing denial of their own rights.

In cases that result in a conviction, the decision is often delivered months after the case is heard and not sufficiently communicated to law enforcement agencies, allowing convicted defendants to remain at liberty and in contact with the victim, and to avoid making alimony or compensation payments that may have been ordered by the court. Throughout the process, due to the limited nature and number of services, victims are generally unaware of assistance they may be entitled to, particularly with respect to alternative accommodation and support that would allow them to leave a domestically violent home.

Notwithstanding these continuing and difficult challenges, there has been progress, at both government and community levels. As of February 2011, the new DV law had been disseminated in six of the 13 districts, shelter houses and emergency services are being established, and a National Action Plan drafting process has commenced (Secretary of State for the Promotion of Equality, 2011). Community and local leaders are starting to understand the harmful consequences of domestic violence and the need to address the problem in a manner that respects and protects victims. Victims themselves are increasingly able to recognise domestic violence when they witness or experience it, and feel that there are better prospects to access justice to ensure perpetrator accountability, and safety for themselves and their children. Finally, education and training programs provided by JSMP and other NGOs as well as the government are clearly increasing health, medical and legal professionals' awareness of the law, their obligations to assist victims, and the various avenues which they can pursue to achieve this.

## **Conclusion**

Domestic violence has a long and entrenched history in East Timorese culture: attitudes within the community have proved difficult to change and the law has previously reflected the lack of acknowledgement of the harm and infringement of rights caused by domestic violence. The new legal framework is comprehensive and ambitious; its multi-disciplinary network of services and obligations reinforce the importance of a universal shift away from tolerance and a comprehensive solution involving diverse service providers. JSMP's training program effectively contributed to health and legal professional awareness of the new DV law, and the challenges faced by domestic violence victims in seeking assistance. Beyond educating the general population, there is a clear need to train relevant professionals about their obligations and role in confronting domestic violence. Finally, from VSS' experience, at every stage of the prosecution process there are a number of continuing practical obstacles to the attainment of justice and accountability for domestic violence perpetrators. Notwithstanding the long journey ahead for Timor-Leste

to combat domestic violence effectively, this new DV law is an important legal tool, and if accompanied by the necessary investment in resources and focus, could promote real positive change in the lives of domestic violence victims.

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