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Legal Aid Lawyers and Paralegals: Promoting Access to Justice and Negotiating Hybridity in Timor-Leste

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Acronyms

ATJ – Used to refer to The Asia Foundation’s ‘Access to Justice’ programme

FECM - Fundacao Edukasaun Comunidade Matebian, legal aid organisation based in Baucau

FSSO - Fundacao Fatu Sinai Oecusse, legal aid organisation based in Oecusse

INGO – International non-governmental organisation

LADV - Law Against Domestic Violence

LAL – Legal aid lawyer

LBH – Legal aid organisation

NGO – Non-governmental organisation

INGO – International Non-governmental organisation

PNTL - *Polícia Nacional de Timor-Leste*

PL – Paralegal

the Foundation/TAF – The Asia Foundation

UN – United Nations

UNTAET - United Nations Transitional Administration in East Timor

Glossary

Adat - The Indonesian term for *lisan*.

Aldeia - Hamlet; smallest administrative unit in Timor-Leste.

Barlake - Bride price/dowry, given by grooms and their family to the bride's family.

Xefe de Suco - Elected head of the village.

Xefe de Aldeia - Elected head of the hamlet.

Conselho de Suco - Elected council made up of a small cross-section of the community, including youth and women, which assists the *Xefe de Suco* in his duties.

Lian Nain - Tetum term for the 'owner of words'; a customary authority often reported to deal with local disputes and to be in communication with the ancestors.

Lisan – Tetum term for localised understandings of economics, law, social norms, morality, art, custom, rituals, the spiritual world, and ideas of legitimate community leadership and governance. However none of these spheres should be understood as separate; they overlap and bleed into one another.

Liurai - Highest social class and hereditary political authority. Members of the liurai's house are often voted into the position of *Xefe de Suco* in local elections.

Suco - Village consisting of a number of hamlets; second smallest administrative unit in Timor-Leste.

Tetum - One of the two official languages of Timor-Leste.

Uma lulik - Sacred houses, often also used to signify local hierarchies of spiritual and political leaders.

Executive Summary

Scope and Purpose

- Access to justice is widely recognised as central to equitable development and peace in conflict-affected societies. Yet, for many, Timor-Leste's emerging justice system remains an area of concern.
- In support of the state's efforts to reform the justice sector, a number of local and international organisations work to aid the equitable and swift resolution of disputes at the district level.
- These efforts are deployed within a context within which a variety of state and non-state actors and institutions provide public goods, including justice.
- Although legal aid lawyers and paralegals stand at the crux of these processes little is known about how they fulfil their role.
- Nonetheless debates over their future continue, with policymakers variously advocating for their integration into the state's justice system, their outright abolishment or something in between.
- To inform these debates, this paper explores the work of legal aid lawyers and paralegals with respect to three issue areas; land disputes, paternity claims and domestic violence cases.

Methodology

- The paper is based on desk based research and two months of fieldwork in Timor-Leste.
- The first phase of the research consisted of analysis of the existing literature on access to justice in Timor-Leste and The Asia Foundation's internal programme documents, including training manuals and evaluations.
- The second phase consisted of semi-structured interviews and focus groups with three legal aid organisations.
- Interviews were also conducted with past and present staff from The Asia Foundation, and local and international stakeholders working on access to justice.

Key Findings

- Legal aid lawyers and paralegals improve the representation and participation of marginalised community members in local justice mechanisms, and challenge potentially harmful power imbalances and social norms.
- Their strong relationships with local authorities and communities allow them to understand the needs of individual clients.
- The term 'mediation' is used by legal aid lawyers and paralegals to refer to a range of processes for the resolution of disputes other than through litigation. This includes

arbitration, negotiation and, at times, mediation. However legal aid lawyers and paralegals do not always lead attempts at reconciliation. Rather they often play important advisory roles, help disputants see the range of possible paths to justice or accompany them in different justice mechanisms.

- With respect to domestic violence cases, legal aid lawyers and paralegals use their knowledge of non-state and state justice institutions to devise ‘practical hybrids’; strategies that draw upon social norms and practices from both institutions to fulfil their clients’ needs.
- Legal aid lawyers and paralegals perform many roles beyond aiding the resolution of disputes, including counselling victims, educating communities about their rights and upholding court rulings.

Implications for Policy and Research

- Stakeholders should capitalise on the monitoring ability of legal aid lawyers and paralegals by encouraging them to collect information on ‘hidden’ cases that are exclusively handled through local justice mechanisms.
- Programmes should combine efforts to increase communities’ awareness of available state and local justice mechanisms with realistic appraisals of the capacity of each service.
- Formalising and supporting the counselling activities of legal aid lawyers and paralegals, and strengthening their linkages to local stakeholders could further protect vulnerable groups.
- Programmes should acknowledge and work with hybridity to identify opportunities to introduce checks and balances to protect vulnerable groups and encourage wider rights-based discussions.

Table of Contents

Introduction	1
State-building in Timor-Leste	2
Overlooking a history of hybridity	3
Rule of Law programming in Timor-Leste	5
Legal Empowerment	6
Research Problems and Questions	7
Research Design	10
Research Findings	11
Litigation, mediation and Timorese understandings of justice	11
Land Disputes	15
Paternity claims	18
Domestic violence	20
Accountability	25
Legitimacy and state building	26
The needs of LALs and PLs	27
Conclusion: Negotiating Access to Justice	28
Bibliography	33
Appendix – List of Interviews	44

Legal Aid Lawyers and Paralegals: Promoting Access to Justice and Negotiating Hybridity in Timor-Leste

Tom Kirk¹

Introduction

With the overarching goal of instituting the rule of law, Timor-Leste's 2002 constitution laid the foundations for a court system, uniform access to justice and the right of the accused to the assistance of a lawyer.² These aims were initially supported by the peacekeeping troops and governance experts of the United Nations Transitional Administration in East Timor (UNTAET) that arrived following the nation's independence from Indonesia in 1999. Alongside UNTAET, various international and local organisations have also run justice programmes in Timor-Leste. Some have looked beyond drafting legislation, training the judiciary and building state institutions, and sought to engage non-state justice mechanisms. The worth and direction of these efforts remain fiercely debated among local stakeholders, development practitioners and academics.

Taking this debate as its starting point, this paper presents the results of two months of research on the role of paralegals (PLs) and legal aid lawyers (LALs) in Timor-Leste. Through an examination of their handling of three case types - land disputes, paternity claims and domestic violence - it argues that these actors use their local knowledge and training to negotiate Timor-Leste's emerging justice system. In doing so they help marginalised community members to realise their rights, challenge local power imbalances and mitigate obstacles to access to justice. Indeed, as they draw upon knowledge of both local norms and the state, PLs and LALs are uniquely placed to understand the needs of their clients. However, there remain many areas in which they require further training, assistance and support to improve and institutionalise their role.³ Such moves may help the state increase its presence at the sub-district level, deliver on its constitutional commitments and embed its institutions within popular understandings of authority and justice, goals that are vital to ongoing state-building efforts.

The next three sections provide background to Timor-Leste's experience with state building, explore the region's history and situate the emerging justice system within contemporary debates over reform programmes in conflict-affected and post-colonial societies. Following

¹ This research paper was undertaken in support of a wider collaboration between The Asia Foundation and the Justice and Security Research Programme based at the London School of Economics and Political Science. The collaboration is jointly funded by the United Kingdom's Department of International Development and The Asia Foundation.

² Section 16 of the Constitution of the Democratic Republic of Timor-Leste (RDTL 2002) states: 'All citizens are equal before the law, shall exercise the same rights and shall be subject to the same duties'. Section 26 provides: 'Access to courts is guaranteed to all for the defence of their legally protected rights and interests' and that 'Justice shall not be denied for insufficient economic means'. Section 48 provides: 'Every citizen has the right to submit, individually or jointly with others, petitions, complaints and claims to organs of sovereignty or any authority for the purpose of defending his or her rights, the Constitution, the law or general interests'. Section 38 also contains the provision that the accused have a right to a lawyer at all stages of proceedings.

³ While it is hoped this research can contribute to the debate, it is beyond the scope of this paper to concretely suggest how such actors may be accommodated within Timor-Leste's legal framework.

brief summaries of the research rationale and methodology, the findings are discussed. The paper concludes with recommendations for stakeholders and policymakers, and suggestions for further research.

State Building in Timor-Leste

UNTAET officials undertook a state-building project in Timor-Leste that has since been described as unique among experiments in transitional administration. Indeed, they set to their task without any internationally recognised competing claims to authority; a position that Chopra (2002:984) argues gave the administration a form of 'statehood'.⁴ By monopolising the power to approve legislation and overrule decisions of a consultative council of Timorese leaders, the top down character of this statehood was secured (Richmond and Franks 2008:188).⁵

However, as they prepared to retreat in 1999, Indonesian soldiers and militias killed some 2,000 Timorese and caused another 240,000 to flee their homes or relocate to Indonesian West Timor (CAVR 2005). This violence marked the end of twenty five years of occupation during which an estimated one third of the population were killed and local forms of political authority were forced underground (Kiernan 20007). Although UNTAET was quickly joined by a variety of bilateral and multilateral aid agencies, and domestic (NGOs) and international non-governmental organisations (INGOs), these atrocities left few trained personnel, little infrastructure and almost no formal institutions with which to implement the state builders' ideal of a liberal state.⁶

Championed by the UN, this ideal calls for the state's monopoly on the legitimate use of violence, the rule of law, democracy, and a bureaucracy able and willing to provide basic public goods such as security and justice (Schmeidl and Karohail 2009; Mac Ginty 2010).⁷ Anything less is taken as an indicator of a 'fragile' or 'failing' state, which are argued to threaten both the security of the international community and their own populations (Rotberg 2002; Di John 2008; Clunan and Trinkunas 2010). Thus interventionists urge the international community to use its vast resources to secure peace, build liberal institutions

⁴ It should be noted here that although no state or international body claimed sovereignty or rights over Timor-Leste (indeed Portugal had relinquished its legal claim to the territory in 1999), as we will see, this does not imply that there were no local claims to authority. In her search for empirical signifiers of UNTAET's statehood, former head of district administration for INTEAT, Jarat Chopra (2012:984) suggests that the World Bank's insistence on an international treaty between itself and UNTAET for involvement in Timor-Leste's Local Governance and Community Empowerment Project (CEP) proves that the transitional administration was a sovereign body.

⁵ The National Consultative Council was established in December 1999 by UNTAET REG 1999/2. Comprised of East Timorese political and community leaders, it was tasked with discussing UNTAET policy and advising Sergio Vieira de Mello.

⁶ This conclusion was reflected in Security Council Resolution 1272 (1999).

⁷ For Weber rational-legal authority denotes a belief 'in the legality of enacted rules and the right of those elevated to authority under such rule to issue commands' (Weber 1978:217-220). The term 'liberal peace' is also used in many of the, mostly critical, accounts of contemporary peacemaking, peace building, post-war reconstruction, state building and development literature (Duffield 2001; Pugh 2005; Fanthorpe 2006; Richmond and Franks 2009; Petersen 2009).

and fast track development. Despite significant criticisms, such prescriptions have driven interventions in, among others, Kosovo, Liberia, Afghanistan and Somalia.⁸

To support these efforts and institute the rule of law, Timor-Leste's troubled history dictated that state builders sow the beginnings of a legitimate state justice system. For some, the rule of law promotes economic development, while for others, it provides a means with which to check the power of abusive governments, instil democracy and enforce international human rights norms (Tondini 2008; Desai et al 2012).⁹ Yet whatever the rationale, most recent interventions have aimed to realise it by building a transparent, state-based legal system comprised of a police force, courts, an independent judiciary and codified laws. Timor-Leste was no different.

With the task of building a liberal state considered to be well on its way by 2005 the UN withdrew the majority of its military personnel. However blue helmets returned a year later when protests over the perceived discrimination of Timorese soldiers from the country's Western districts led to conflict between the police and army, and widespread communal violence.¹⁰ Following a period of stability, the UN once again withdrew its military presence in 2012. Throughout these episodes a variety of international aid agencies, UN advisors, INGOs and NGOs continued to support the development of the state, including its justice system.¹¹ Yet, as the next section argues, many of these efforts overlooked the practices that have long characterised the nation's governance arrangements.

Overlooking a History of Hybridity

Early observers criticised Timor-Leste's patchwork of state builders for creating a highly centralised governance apparatus and neglecting to institutionalise political participation below the national level or into rural districts (Beavais 2001; Chopra 2002; Gorjão 2002; Hohe 2002).¹² Furthermore, recent analysis argues that they largely ignored or purposely side-lined existing local governance institutions and social norms (Richmond and Franks 2008; Boege et al 2009; Brown and Gusmao 2009; Richmond and Mitchell 2011). For many,

⁸ Analysts have begun to explore the contradictions of 'liberal' peace and state-building interventions in supposedly fragile and failed states, and to place them in longer-term historical perspective (Call 2007; Collinson et al. 2010; Goodhand and Sedra 2010; Lothe and Peake 2010). For many the international community's recent interventions are a form of neo-imperialism, driven by the blending of security and development. For an overview of this literature; see Luckham and Kirk (2012).

⁹ Hence arguments that contemporary rule of law programming has two sides: a 'thin' emphasis on procedure and equality before the law, and a 'thick' concern for the promotion of human rights standards (Peerenboom 2004). For the UN's definition and purpose of the 'Rule of Law' in conflict affected states see: *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict societies* (UN 2004).

¹⁰ The new mission was named the United Nations Integrated Mission in Timor-Leste (UNMIT).

¹¹ The UN is currently represented through various development agencies overseen by a UNDP-based Resident Coordinator.

¹² The same criticism is often levied at contemporary and historical state building efforts in Afghanistan. For example see: (Barfield 2010). In the case of Timor-Leste, Beavais (2001:1108) argues UNTAET's mission began with a deep tension between its role as the governor of Timor-Leste and its need to prepare the population for democratic self-rule.

this has created a distance between the Timorese state and society that leaves the young nation ‘fragile’ (Mearns 2008; OECD 2011; Nixon 2012; World Bank 2013).¹³

Given these flaws, some suggest that Timor-Leste represents a missed opportunity to forge innovative mechanisms of state-society cooperation (Hohe and Nixon 2003:32; Brown and Gusmao 2009:63; Scheye 2009a:n38).¹⁴ This includes supporting ‘practical hybrids’ that accommodate both imported and existing social norms (Booth 2012:14). Indeed the idea of hybridity is increasingly used by academics and practitioners working on transitioning, post-colonial and conflict affected regions to explore interactions between traditional, personal, kin-based or clientelistic norms, and modern, imported or rational-actor norms (Hoffman and Kirk 2013:17-25). Given the right conditions, these interactions are argued to embed new practices in existing governance structures, legitimise claims to authority and institutionalise the provision of public goods, including justice and security.

In search of these conditions, many concentrate upon the so called ‘coping strategies’ of societies affected by distant, predatory, or absent states (Hoffman and Kirk 2013:20). As in the case of local courts jointly run by clan, religious and business leaders in Somalia, they show that societies often adapt existing norms and practices to create hybrid governance arrangements (Menkhaus 2006/7). Although such arrangements do not necessarily include the poor, marginalised or vulnerable, they can be more attuned with the population’s basic needs and norms than liberal models of statehood.¹⁵ Thus, it is argued, they can represent contextually sensitive responses to collective action problems and should be engaged by those seeking to improve the provision of public goods in difficult conditions (Clunan and Trinkunasm 2010:12; OECD 2011:25; Booth 2012:14).

Recent literature suggests that the Timorese have a long history of creating practical hybrids. For example, studies have uncovered how *sucos* (village or several hamlets) retained their sense of identity under colonialism by mobilising to elect those from royal bloodlines to local administrative positions, channelling important decisions through clandestine political structures and resolving disputes in accordance with *lisan* (customary norms of spirituality, economics, politics, and law) (Richmond and Mitchell 2011:108; Ospina and Hohe 2012; Cummins 2013:145). While others show how post-independence leaders have devised a number of strategies to fulfil both the requirements of procedural democracy and customary understandings of legitimate political authority that rely upon relationships to hierarchically

¹³ It has been argued that this distance failed to prepare the population for parliamentary and presidential elections in 2001 and 2002 respectively (Richmond and Franks 2008:191-194). Indeed it is questioned whether Timorese understandings of political authority, with their emphasis on hierarchies, unity, balance and agreement, could accommodate UNTAET’S rush towards procedural democracy (Brown and Gusmao 2009:64-65; Cummins and Leach 2012:94).

¹⁴ Although beyond the scope of this study, the contemporary use of the concept of hybridity by development practitioners and academics can be understood as ‘an attempt to counter the assumptions of the state fragility literature, including state-centric narratives of authority and public goods provision’ (Hoffman and Kirk 2013:18).

¹⁵ Indeed, given the ambiguity of governance processes in conflict affected and transitioning regions, Meagher (2012) reminds us that analysts and practitioners wishing to interpret or work with hybridity must empirically investigate each locality, carefully uncovering the institutions that enjoy legitimacy and those that mask oppression.

ordered *uma lulik* (sacred houses) (Cummins and Leach 2012; Santos and Silva 2012:214-218).¹⁶ The resulting practices can be understood as practical hybrids in the sense that they stem from creative interactions between local, personal, kin based and spiritual norms, and imported governance norms.¹⁷

A close reading of this literature suggests that the resilience and adaptation of Timorese social norms allows local leaders to accommodate and embed imported governance arrangements. Indeed practical hybrids have provided the Timorese a measure of agency and resistance in the face of cultural cleansing and authoritarianism. However, as the next section will argue, the narrow focus of liberal state-building efforts prevented programmers from harnessing these processes to support the creation of a legitimate justice system.

Rule of Law Programming in Timor-Leste

As of 2012, Timor-Leste's state justice system had 31 judges, 24 prosecutors and 22 public defenders for a population of almost 1.2 million (JSMP 2012). Together they service 4 district courts (Dili, Baucau, Suai and Oecusse), the Court of Appeal and a mobile courts initiative. They are instructed to use Portuguese, which is spoken by around 17% of the population, and operate within a context characterised by multifaceted poverty.¹⁸ According to the United States' aid agency (USAID 2007:6), cases that make it to court enter a judicial system 'plagued by unclear procedures in the law, unclear procedures in practice, and poor outreach and public education mechanisms'. Furthermore some of the legislation this system uses has been 'cut and pasted' by international experts from their own domestic laws, without sensitivity to Timorese culture and context (Ibid:5).

Citing many of these limitations, a comprehensive survey concluded that 'a large part of the population faces substantial obstacles in accessing the formal justice system', including 'barriers of awareness, cost, language and culture', and that 'the majority of all disputes in the country are resolved through customary law processes and alternative dispute resolution mechanisms' (UNMIT 2009:18). Recent investigations also point to interference in the independence of the judiciary and the perceived impunity of some of those responsible for violence in 1999 and 2006-2008 (UN/DPKO 2008:2; UNMIT 2009:55-58; ICG 2013:7). Yet, in perhaps the most indicative evidence of the distance between state justice institutions and Timorese society, a recent survey found that 86% of the population continue to view local

¹⁶ For one commentator, the adaptability and resilience of Timorese culture under pressure stems from the social bonds, ties of kinship and alliance networks negotiated within each community's *uma lulik* (McWilliam 2005). One recent study has also documented the rebuilding of *uma luliks* in the post-independence period (Brown and Gusmao 2009:66-68).

¹⁷ Indeed, as Boege et al (2009b:n4) acknowledge, terms such as 'customary' and 'traditional' are misleading as governance practices are never 'unchangeable and static', and always subject to external influences. At the risk of 'caveatititis', the paper's use of these words understands them to signify to fluid and changeable practices.

¹⁸ According to government figures, just under half the population lives below the international poverty line of USD 0.88 PPP per day (RDTL 2011:55). More generally, Timor-Leste ranks 120 out of 169 on the global Human Development Index (HDI= 0.502), placing it behind other East Asian and Pacific countries (with an average HDI of 0.650).

authorities (*Xefe de Aldeia*, *Xefe de Suco* and elders) as responsible for law and order, while just over half had heard of a court or felt able to access information about the state justice system when needed (TAF 2013:20).

Observers, therefore, have repeatedly highlighted the gulf between the reality of Timor-Leste's state justice system and the ambition of its architects (CSDG 2003; Grenfell 2009; UN 2012). By way of explanation, Hohe and Nixon (2003) argue that liberal state-building efforts and a failure to understand how political battles determine public goods provision has left programmers blind to the justice actors and institutions that exist at the local level. Similarly Grenfell (2009) suggests that the international community's narrow governance models struggle to look beyond state institutions and do not explore how people engage with imported notions of justice or human rights. As a result, most programmes do not work with local justice institutions and are unable to harness the legitimacy and reach many of them enjoy. Thus many conclude that mainstream rule of law programming has 'not made a significant impact on access to justice in Timor-Lest' (UNDP 2007:5).¹⁹ Yet, as we will see in the next section, such criticisms are not unique to the young state.

Legal Empowerment

Following perceived failures in contexts as diverse as Albania, Cambodia and Sierra Leone, many question the wisdom of mainstream rule of law programming in developmental contexts (Carothers 2006; Isser 2011; Armytage 2012). They cite an unwarranted technical focus on the drafting of complex legislation, building of courts and training of legal professionals, and argue that there is little evidence the rule of law means the same thing across cultures, is hampered by similar barriers, or is even causally connected to democracy and economic development (Carothers 2006:19; 2009:52; Goldston 2009:38-39; Desai et al 2012:57-58).²⁰ Instead they suggest programming should be premised upon knowledge of each society's politics, power structures, social and professional norms, and existing non-state justice institutions (Faundez 2000; 2009; Kleinfield 2012).

For these critics, understanding the local context is particularly important in countries such as Timor-Leste where 80-90% of disputes are believed to be resolved by customary or hybrid justice arrangements, and 49% of people suggest the laws that govern their everyday lives are made by local leaders (Wojkowska 2006:5; TAF 2013:23).²¹ Indeed, as with the coping

¹⁹ There are notable examples of UNTAET and state justice actors engaging customary justice mechanisms, however, unsupported by legislation, they have not taken place on scale, for any length of time or in any systematic manner (Mearns 2002; Hohe and Nixon 2003:45, 57-60; McAuliffe 2008; Grenfell 2009:227-228).

²⁰ For instance, in his influential edited volume, Carothers (2006) argues that the narrow focus of mainstream rule of law practitioners stems from a theoretical disagreement over whether justice emanates from state based legal institutions or from the socio-political relationships and norms unique to each society. A belief in the former encourages technical, top down reform programmes centred on institutional form and quantitative outcomes. While a belief in the latter requires uncovering local value systems, accounting for entrenched interests and understanding the production of legitimate authority.

²¹ The non-state or collaborative provision of public goods is sometimes referred to as the 'second state' (Scheye 2009b:19)

strategies discussed earlier, it is argued that ignoring, sidelining or abolishing these realities will directly affect the livelihoods of people living under limited states (Baker 2010:607). Furthermore an undue focus on the state may lead to unexpected clashes between local ideas of justice and those imported from elsewhere (Hohe and Nixon 2003:63-65). At best, these clashes may alienate vulnerable or marginalised groups from the state's justice system; at worst, they may provide predatory actors with opportunities (Berg 2012:19; Luckham and Kirk 2012).

Influenced by Sen's (1999) definition of poverty, academics and practitioners wishing to avoid these outcomes increasingly argue that rule of law programming should centre on the ability of individuals to realise their rights and gain control over the decisions that affect their lives. For instance, Golub (2009:63), Scheye (2009b:17) and Armytage (2012:125) urge programmers to embrace 'the distributive dimension of poverty alleviation through the exercise of rights' and to begin from the realities of how everyday justice is delivered.²² This requires both taking 'account of the political, cultural, economic, technological and other forces that shape whether and how people can gain greater control over their lives', and engaging in initiatives that look beyond the laws, lawyers and legal institutions of the state (Golub 2009:63).

While this appears a tall order, programmes working towards 'legal empowerment' are exploring innovative ways to realise these goals (CLEP/UNDP 2008; Maru 2009; Golub 2010; Ubink 2011).²³ Indeed they often engage non-state actors and institutions to help create a 'rule of law culture', introduce new legal norms and legitimise state justice institutions (Faundez 2010; Ubink 2011:32). Fundamental for many of them is a broad understanding of access to justice as the ability to resolve disputes in forums considered fair and legitimate by all concerned parties. Thus they approach non-state mechanisms as potentially vital components for contextually sensitive and needs focussed programming. As the remainder of the paper shows, recent legal aid and paralegal programmes aimed at improving access to justice in Timor-Leste provide a rich case study of such approaches to the rule of law.

Research Problem and Questions

Analysts argue that a number of overlapping fault lines threaten Timor-Leste's fragile peace (Brown and Gusmao 2009; Dolven et al 2012; Carapic and Jütersonke 2012; ICG 2013).²⁴

²² Quote is from Armytage (2012).

²³ The term 'legal empowerment' first arose in a report by The Asia Foundation for the Asian Development Bank (Golub and McQuay 2001). Also sometimes called 'second generation' reform efforts, legal empowerment encourages rule of law programming to embrace evolving arguments to abandon purely economic models of development in favour of a focus on opportunities, livelihoods and notions of equality. Legal empowerment's main architect even calls for the rule of law to be subsumed beneath a concentration on justice, with the former indicating a technical, top-down concentration on courts, other legal institutions, judges, laws and lawyers, and the latter referring to a broader focus on realising rights, fair treatment and fair results (Golub 2009).

²⁴ 'A *fault line* can be defined as an empirically observed or subjectively perceived societal (and usually more long-term) division along which the tensions among individuals and groups are structured and interests are defined' (Carapic and Jütersonke 2012:10).

These include tensions between the military and police; political leaders with roots in the 1975 civil war; those who left or stayed during the Indonesian occupation; regional interests; a small, increasingly liberal, urban elite and conservative rural majority; between families, communities and the government over land and resources; state and non-state governance institutions vying for political authority; those perceived to enjoy impunity and favouritism such as veterans of the resistance and the marginalised; growing income disparity between developmental hubs and those living in the country's peripheries; and continued widespread disenchantment with the delivery of public services.

Premised on the accepted wisdom that unresolved disputes and unfulfilled justice needs can intensify such fault lines, foreign agencies, INGOs and NGOs continue to implement justice reform programmes, with some adopting legal empowerment approaches.²⁵ Within this latter category, The Asia Foundation (the Foundation), a US-based INGO with offices in 18 Asian countries, started implementing its Access to Justice (ATJ) programme in Timor-Leste in 2002. In the words of one assessor, 'The ATJ programme identifies and seeks to address critical unmet community justice needs, being the provision of basic legal information and greater access to state and non-state based justice processes' (TAF 2011:6). Thus it includes initiatives that interface directly with state institutions in the capital Dili, as well as programmes implemented through local NGOs that engage wider society.

Although many NGOs have long deployed LALs, in 2008 the Foundation supported two local legal aid organizations (LBHs) to introduce pilot Paralegal (PL) programmes. The programmes were premised on the Foundation's deep understanding of justice needs in Timor-Leste. Indeed, the Foundation produces a range of research and has worked on a variety of programmes that give them a unique perspective on the challenges and obstacles to access to justice.²⁶ Thus ATJ programme staff interviewed for this paper confidently argued that the state's limited capacity, a heavy reliance on non-state justice mechanisms, and the population's limited knowledge of the state's justice system provides ideal ground for programmes supporting LALs and PLs.

LALs and PLs can be used to address a number of issues. In their most conservative form, LALs provide the poor with free or affordable legal advice and give those unable or unwilling to use state legal services an alternative source of representation. This is particularly important when state justice systems lack resources and when their independence is questioned. For their part, while they often lack the legal literacy of certified lawyers, PLs' relatively minor costs and quick training can provide a crucial bridge between the state's justice institutions and communities. These functions are enhanced when PLs are recruited

²⁵ As the Timorese state has matured, these efforts have turned to a wide range of issues including: the need for experts to build capacity in and monitor justice institutions; civil society participation in the drafting of legislation; the creation of training facilities and courses for justice actors; legal education and awareness for the wider public; support for the victims of overlooked crimes, including gender-based violence; and advocacy for the rights of vulnerable groups including women and children.

²⁶ With regard to formal justice provision, the Foundation was one of the early funders, through USAID-funds, of the Justice Systems Monitoring Project (JSMP), dating back to 2001. JSMP produces regular bulletins and annual reports on the performance of the state's justice institutions. The Foundation also produces a periodic survey of citizen awareness of, and attitudes towards, both state based and local justice provision (TAF 2004; 2008; 2013).

from within the communities in which they live and work , and when they are partnered with LBHs.²⁷ Within Timor-Leste, the Foundation has also encouraged the LBHs they support to engage non-state justice providers.²⁸ Thus LALs and PLs within their programme can act as mediators for certain categories of dispute or as advisors to local authorities and disputants using non-state justice mechanisms.²⁹ LALs and PLs compliment these roles with educational programmes designed to impart basic legal knowledge, including information on citizens' rights, to community members and local authorities.

Although the Foundation's ATJ programme ended in 2012, there are indicators that the Timorese government has, at times, seriously considered incorporating non-state justice providers, including LALs and PLs (Wallis 2012). This is illustrated by a draft Legal Aid Bill in 2011 that raised the possibility of the state funding LBHs (Swenson 2011); and rumours that in 2012 the Ministry of Justice began working on an Alternative Dispute Resolution Bill that proposes legislation certifying PLs' right to mediate minor disputes and receive a state salary (TAF 2012a:33). The Agricultural Department has also engaged local authorities to help manage forests and resolve land use disputes in Oecusse (Yoder 2007). Nonetheless it is notable that the current constitution only recognises the 'norms and customs' of Timor-Leste and is yet to systematise the role of customary legal mechanisms (DRTL 2002:2.4).

While these debates continue, there remains a lack of literature on why and when LALs and PLs refer cases to be resolved by local justice mechanisms, partake in mediations led by local authorities, lead mediations themselves or pursue litigation. Although an explanation can be found in the lack of capacity of state justice institutions, it ignores the agency and interests of the LALs, PLs, local authorities and disputants.³⁰ Indeed it is known that in cases of gender-based violence victims and local authorities may pro-actively work to keep disputes out of the state's justice system (Mearns 2002:41; Khan and Hyati 2012:46-49). Although rationales are given for this behaviour, including economic considerations, social shame, community harmony and mistrust of the formal system, evidence is not available for other types of case. Furthermore little is known about how the involvement of LALs and PLs may affect the decisions and opportunities open to those seeking justice; how, if at all, LALs and PLs are held accountable; and whether their work undermines local authorities or the state.

Any serious attempt to incorporate LALs and PLs into the state's justice system must be supported by thorough understandings of how these actors serve their clients. There is also a wider need to understand how their work contributes to the overall goals of state building, including the legitimacy of the state's justice system. These considerations are particularly

²⁷ Capturing this trait, Harper (2011b:38) terms such actors 'community paralegals'.

²⁸ The Foundation continues to engage the LBH its ATJ programme supported but it no longer provides core funding.

²⁹ Here and for the remainder of the paper, the term 'local authorities' does not refer to state officials. Instead it refers to community leaders such as the *Xefe de Aldeia*, *Xefe de Suco*, *Lian Nain* and elders. When referring to state authorities the prefixes 'state' or 'government' will be used. This acknowledges that community leaders are just as much authorities as state representatives.

³⁰ The need for information is somewhat evidenced by client surveys of those engaged by TAF's legal aid programs which shows despite 82% of clients in 2011 and 65.5% of clients in 2012 feeling the differences in non-state and state based justice processes were 'clearly' explained to them, the majority had their cases resolved through mediation rather than litigation (TAF 2012b:16).

important given Timor-Leste's fault lines, growing reports of marginalisation or impunity for particular individuals and groups, and the increasing recognition that justice provision by non-state actors is vital to the health of conflict affected and post-colonial states (ICG 2009).³¹ The recentness of the Foundation's ATJ programming provided an opportunity to explore many of these questions.

Research Design

The paper is based on one month of desk based research and two months of fieldwork in Timor-Leste. The first phase consisted of analysis of the existing literature on access to justice in Timor-Leste and internal Foundation documents, including training manuals and programme evaluations. The second phase comprised in-depth, semi-structured interviews and focus groups with three of the Foundation's partner LBHs; Fundacao Fatu Sinai Oecusse (FSSO) in Oecusse, Fundacao Edukasaun Comunidade Matebian (FECM) in Baucau and Liberta in Dili.³² A sample of LALs, PLs and their clients were interviewed from each LBH, with the exception of Liberta which does not employ paralegals. Insights were also gathered from informal chats between LBH staff and the researchers. To provide additional perspectives, past and present AJT staff and stakeholders, including staff of victims' support organisations, other NGOs and legal advisors, were also interviewed.

The LBHs were chosen for their long relationships with the Foundation, their participation in the PL programme and their geographical locations. With respect to the latter, Oecusse is a predominantly rural enclave in West Timor that avoided much of the violence before 1999 and is considered by many interviewees to have been somewhat less culturally affected by the last four decades of colonialism and conflict; although mountainous, Baucau to the east of the country contains Timor-Leste's second largest city and was a stronghold for resistance fighters during the Indonesian occupation; and Dili is the country's fast growing, centrally located, capital, home to roughly 22% of the population and many state institutions. The three research sites provide a spectrum of districts from rural and isolated to peri-urban and well connected (Carapic and Jütersonke 2012:14). Furthermore each has a district court.

The work of LALs and PLs was explored through three case types; land disputes, paternity claims and domestic violence cases. They represent both civic and criminal disputes. Interviews focussed on cases and experiences from 2009-12 as information on litigation rates was available for this period to aid the triangulation of research findings.

Limitations of the study and research considerations

Access to LALs and PLs was facilitated by the Foundation, which somewhat compromised the final selection of participants. Furthermore, at the time of the research two of the LBHs had no funding for their PL programmes, perhaps giving those interviewed an incentive to

³¹ See also: 'Impunity reigns: Little hope of justice for victims of the country's conflicts'. *The Economist*, April 2008. <http://www.economist.com/node/11016439> (10/04/13)

³² See Appendix. It should also be noted that FECM's staff also cover Los Palos, Latuem, and Manatuto.

portray their work as valuable. Similarly, as the selection of clients was undertaken by fixers hired from each of the LBHs, it is possible that those with positive case outcomes were chosen. To mitigate these possibilities, identified patterns were raised during stakeholder interviews.

Given the nature of the cases under research it was important to protect clients and steer interviews away from the details of violent or traumatic incidents. Thus, only cases that had been resolved at least twelve months earlier were included as potential interviewees. All interviews were conducted by the author and an interpreter, and in a language which was familiar to the interviewees. Great care was applied during the sessions to ensure participants were not re-victimised. This included halting sessions at any indication of distress or ongoing issues. This approach resulted in a reduced number of collected client interviews.

The identities of all participants, including stakeholders, were anonymised. This aimed to protect participants who wished to discuss sensitive cases or express personal views or opinions on local authorities, programme staff or the wider political context. To provide a discreet environment all interviews with clients were conducted in the offices of the participating LBHs. Although conducted away from LBH staff, it is recognised that this may have compromised participants' ability to be critical of the roles played by those that handled their cases.

Access to clients was circumscribed by their availability to meet the researchers, especially for those suffering from severe economic hardship. This was somewhat mitigated by covering transport costs.

Research Findings

This section presents case histories that explore the scope of Timor-Leste's LALs' and PLs' roles, and highlights the differences between, and barriers and obstacles to, successful dispute resolution through state and non-state justice mechanisms. Themes such as the accountability of LALs and PLs, their relationships with local and state authorities, and characteristics of justice provision in each research location are also discussed. The section concludes with a summary of LALs' and PLs' own thoughts on their evolving place with Timor-Leste's justice system.

Litigation, mediation and Timorese understandings of justice

The closing evaluation report for the Foundation's ATJ programme, 2009-2012, provided insights into case handling by the three LBHs (TAF 2012a). With the exception of FECM's LALs, it is apparent that the LBHs mediated the vast majority of their cases:

Justice Providers	Period	Total Cases	Civil	Criminal	Litigation	Mediation	Resolved
FECM: LALs	2009-10	242	144	98	152	90	45
	2011-12	321	220	101			
	2012 (first half)	133					
FFSO: LALs	2009-10	118	48	70	32	86	
	2011-12	122	16	106	3		
	2012 (first half - suspended)	22	1	21			
Liberta: LALs	2009-10 (began July)	57	29	28	30	27	
	2011-12	148	45	103			
	2012 (first half)	54	11	43			
FECM: PLs	2009-10 (Oct-Sep)	517	268	249	62	452	197(M)
	2010-11	423	212	211	91	332	5(L) 177(M)
	2011-12 (Oct-March)	248	145	103	33	215	11(L) 96(M)
FFSO: PLs	2009-10 (Oct-Sep)	325	279	46	3	332	209 (M)
	2010-11	316	302	14	2	303	1(L) 243(M)
	2011-12 (3 months - suspended)	82	80	2		66	66(M)

*Table compiled from internal document - *Final evaluation of Component One of the Access to Justice Program* (TAF 2012a).

The high rate of mediation may be partly attributable to the state justice system's lack of capacity or, as an earlier mid-term evaluation argues, to the LALs and PLs lack of confidence in bringing cases to litigation (TAF 2011:11). Yet Foundation staff suggested that these factors could not account for all of the mediations. Indeed the nuances of individual cases, preferences of different actors and contextual factors were all cited as potential influences on the eventual method of resolution. Furthermore programme managers revealed that during the period under investigation the LBHs were encouraged to increase their rates of litigation with limited success. The LBHs case management systems also made it difficult to know if cases marked as 'mediated' were resolved through local justice mechanisms or mediated by LALs

or PLs.³³ These insights and knowledge gaps provided an entry point for the field research into the work of LALs and PLs.

Beyond the limited capacity of the courts, the reason most often provided by participants for avoiding litigation was that courts create ‘winners and losers’, and that fines or sentences can lead to cycles of violence between disputants’ families. These findings accord with the literature on Timorese notions of justice which suggests reconciliation and the appeasement of the ancestors is the primary aim of local justice mechanisms, and that families are often intimately involved in their kin’s disputes (Hohe 2003:344; Babo-Soares 2004:4).

Within Timorese culture reconciliation can be understood as restoring the exchange, balance and circulation of values between individuals and families. Indeed different values are embodied in people and objects, with the centre of a dual socio-cosmic structure located in the relationship between those families that give wives - ‘wife-givers’ - and those that receive wives - ‘wife-takers’ (Hohe and Nixon 2003:11-16). When societal obligations, such as participation in customary rituals, marriage vows, and the respect of property or person, are broken, a reconciliation ceremony is required to restore the flow of values and avoid the misfortune, illness and, in the words of participants, ‘disunity’ that accompany the displeasure of the ancestors.³⁴ For most transgressions this involves the disputing parties negotiating the terms of reconciliation with the involvement of their extended families and, depending on the nature of the dispute, local authorities, including elders, the *Lian Nain* (spiritual authority), *Xefe de Aldiea* and/or *Xefe de Suco*.³⁵ When successful an exchange of promises, compensation and/or gifts will take place, and a reconciliation letter will often be signed.³⁶

While this notion of reconciliation was argued to be generalizable across the ethno-linguistically diverse research sites, LALs and PLs also claimed their clients have little knowledge of state jurisprudence and believe rumours regarding the courts’ operations. Some attribute this to the limited reach of rule of law socialisation programmes, the courts’ use of Portuguese as main language for proceedings and the reluctance of public defenders to leave their offices; while, for others, it is the speed with which new laws are made or the lack of previous contact with state authorities. Thus, given the option, most clients aim to avoid the confusing, unfamiliar and, in some cases, frightening procedures of the courts.³⁷ However it was also reported that most understand violent crimes to be the purview of the state. These findings may reflect a history of ‘indirect rule’ during which colonial authorities and the

³³ Interview with ATJ Staff.

³⁴ When queried, the word “disunity” was argued by participants to better reflect their immediate concern over inter-family violence, as opposed to social harmony.

³⁵ For some, this is encompassed within the idea of *nahe biti*, literally; *laying out the mat*. This process involves disputants and families coming together to talk through differences, reach an agreement and make commitments not to let the dispute affect the wider community.

³⁶ One stakeholder claimed that recent research suggests many more individuals were involved in the drive to restore socio-cosmic balance than suggested by the current literature. This includes a vast number of local elders and the *Matan Dook* (traditional doctor) who was reported to often be in the background of mediations, advising the *Xefe de Suco* on how to appease the ancestors. Interview with Stakeholder 10/06/13.

³⁷ As discussed later, one client, having never interacted with state authorities, declared that he considered running to the hills after he received a court summons. Focus group with male clients FSSO 16/05/13.

United Nations usually only involved themselves in serious violent crimes or disputes that could threaten their economic interests or peace (Hohe 2003:338-339).

As will be shown, with the exception of domestic violence cases, most LALs and PLs actively try to resolve disputes outside of court. For instance, with land disputes it is the policy of FECM and Liberta to attempt reconciliation three times before litigation. Moreover many clients, frustrated by court backlogs, reconcile while waiting for a hearing, so many LBH representatives continue to attempt to mediate cases even after they have been submitted for litigation.³⁸ However a small number of non-criminal cases proceed directly to court at the clients request or when LBH representative deem it is necessary.

Across all research locations the most common reported method of contacting LBHs was through local authorities such as the *Xefe de Suco*, a friend or relative. Indeed many clients came to know of the work of LBHs because neighbours or family members had been helped by them. Furthermore, as with FSSO, many interviewees trust LBHs because of previous roles as community human rights organisations or because staff members' belong to their community. These findings accord with arguments that despite urbanisation Timor-Leste remains a society built on personal relationships, with face-to-face interactions within a limited social circle providing the main avenue of social support (Carapic and Jütersonke 2012:3, 24-25). With this in mind, it was notable that the ratio of LALs and PLs to *sucos* differed among locations. For example, FSSO, which serves a rural population, is able to deploy one PL for every two *sucos*, while Liberta's LALs, who serve a peri-urban area, are often responsible for fifteen or more *sucos* (although the term indicates a village, it is still used to describe urban neighbourhoods).

For many observers of plural legal systems, a primary objection to supporting non-state mechanisms is the scope for "forum shopping"; the practice of disputants ignoring justice mechanisms that provide them with unfavourable outcomes and taking cases elsewhere (Benda-Beckmann and Benda-Beckmann 2006). Evidence suggests that forum shopping often allows the wealthy and connected to enjoy advantages over their rivals. In some contexts, the powerful may even use their mobility to systematically marginalise particular social groups. Indeed while it is arguable that a gradual marketization of dispute resolution mechanisms can offer disputants alternative livelihood strategies, encourage healthy competition between justice providers and instil a form of democratisation from below, it can also solidify exclusionary practices from above (Eckert 2006; Faundez 2010).

In the case of Timor-Leste, however, LALs and PLs argue that only the very wealthy prefer to go straight to courts where they can afford better representation or pay fines to avoid community sanctions. Instead across the research sites they described an informal, yet strict, hierarchy of justice mechanisms. It begins with attempts at resolutions between the disputants' families, often involving local *Lian Nains*; failing this cases may be brought before the *Xefe de Aldeia* or the *Xefe de Suco*; and finally to court.³⁹ As disputants move up

³⁸ Interview Liberta 28/05/13.

³⁹ For cases, particularly those involving disputes between communities or when local authorities were involved in the dispute, sub-district or district coordinators could act as mediators.

the hierarchy it is usual for all those involved in the stage before – including family members, local authorities, members of the *Conselho de Suco* (village council), the Polícia Nacional de Timor-Leste (PNTL), and/or local stakeholders such as representatives of women’s shelters – to move with them and attend subsequent attempts at resolution.⁴⁰ Given the practice of paying ‘cigarette money’ to local authorities, reconciliation ceremonies that require food and drink for all those involved, and the expense of travel, including missing a day’s work, interviewees suggested the majority of their clients (i.e. the poor) are reluctant to forum shop.⁴¹

It was reportedly common for several attempts at resolution to occur in each forum before changing mechanism. Repeated attempts at one level were also argued to allow a ‘cooling-off period’ in which feuding disputants might rethink incompatible positions and new evidence emerge.⁴² Indeed it was considered rare for disputes to reach court unless they turned violent or, as with domestic violence, were legally a public crime. Thus the main alternative for those using local justice mechanisms is to exit and allow the LAL and PL to mediate their case. Even then, it is argued, local authorities often continue to be present at LBH-led processes and play a central role in any resulting reconciliation. However to understand when and why different mechanisms are tried, the paper now closely examines the three case types studied.

Land disputes

A survey in 2008 found that 10 per cent of households had experienced land-related disputes in the preceding year (WB 2010:1). Of these, 40 per cent resulted in property damage and 10 per cent in personal injury. Although small in number, some commentators argue that unresolved disputes over access to, and ownership of, land contributed to the violence in 2006 (Harrington 2007; Carapic and Jütersonke 2012). Indeed, for many, the intensity of land disputes reflects Timor-Leste’s history of displacements, forced relocations, military occupation and conflicts over resources.⁴³ In part owing to this history, few Timorese have certificates of ownership and most claims to land rely on oral histories and/or customary practices. Furthermore, while the Timorese generally favour land titling schemes, the majority of disputants continue to turn to non-state justice mechanisms (WB 2010a:3; ICG 2012:33-34).⁴⁴

In support of this depiction, LALs and PLs handling land disputes across all three studied districts highlighted the necessity of close cooperation with local authorities. They suggested that although clients approach them when frustrated by local justice mechanisms, they still

⁴⁰ An elected body headed by the *Xefe de Suco*, members of the *Conselho de Suco* include each of the elected *Xefes de Aldeia* in the *suco* area, one elder, two women’s representatives, and two youth representatives, with the latter including one man and one woman (Cummins and Leach 2012:95).

⁴¹ However it should be noted that in one case a client argued that her recourse to court was designed to avoid paying the cigarette money. Focus Group with women clients Liberta 29/05/13.

⁴² Interview Liberta 28/05/13 and Interview FSSO 17/05/13.

⁴³ For a recent perspective: ‘Land disputes a continuing cause of violence in Timor-Leste’. *East Timor Law and Justice Bulletin*, June 2012. <http://easttimorlegal.blogspot.co.uk/2012/09/land-disputes-continuing-cause-of.html> (15/08/13)

⁴⁴ For instance, with respect to land disputes with another household, the majority of those that participated in the World Bank’s survey would prefer to take their cases to local authorities (WB 2010b:5)

resolve most land disputes outside of court and with the use of *lisan*.⁴⁵ However this considerably complicates the resolution of land disputes. For instance, *lisan*'s reported use within land disputes in Oecusse differed from its use in Baucau; in the former, *lisan* means oral testimonies of land use by local elders, while in the latter it refers to sacred boundary markers such as old trees. Furthermore in many *sucos* the use of *lisan* is complicated by local authorities' vested interests in the outcomes of cases. Accordingly, in both districts LBH staff work closely with local authorities to establish local customary practice, economic relations and lineage lines.

Despite clients' frustrations with local mechanisms, interviewed LALs and PLs admit preferring to act as advisors during reconciliation attempts led by local authorities. They argued that the propensity for land disputes to turn violent, the scarcity of physical evidence of ownership, and the long waits for cases to be heard in court discourages them from mediating disputes themselves or recommending litigation. Indeed the zero sum outcomes common to court rulings for land disputes are widely considered to increase the potential for violence. This claim is understandable when it is recognised that most Timorese remain dependent on subsistence farming for their basic needs.

Discussing obstacles to litigation, interviewees argued that judges often do not show up to hearings or adjourn on minor procedural infractions. They even reportedly dismiss cases on the grounds that the public defender's office should attempt further local settlements before referring them to a judge. These practices add to the already significant economic and logistical challenges attending court presents to clients with little money and/or from rural areas.⁴⁶ When advising local authorities, LBH staff explained that reconciliations are often only reached after they inform those involved of these practices and that the courts would likely delay a case's resolution by one to five years. Indeed, sharing information about the state justice system's slow pace is often cited as a primary tool for unlocking stale local disputes.⁴⁷

In contrast to the court's rulings, LALs and PLs suggested that they regularly devise unique settlements to peacefully reconcile parties. Two cases illustrate this: in the first, a contested plot of land was simply split between the quarrelling parties; while in the second, a squatter, citing the constitution's right to housing to justify his occupancy, was given compensation in return for moving out of a property.⁴⁸ Although by Western values it is strange for the property owner to compensate the squatter, upon hearing the advice of the LAL the property owner reasoned that taking the squatter to court would create further expenses for both parties. Indeed it was argued that because the squatter occupied the house during the confusion of 1999's independence, it would likely have required a lengthy court case to piece together evidence against him. Thus, given the limitations of the state's justice system and the inability of local authorities to enforce zero sum rulings of the type common to courts,

⁴⁵ When speaking of *lisan*, most research participants from Oecusse used the Indonesian term *adat*.

⁴⁶ Interview with Stakeholder 09/05/13.

⁴⁷ However one LAL argued that compared to PLs his legal training made him better able to explain the likely outcomes of different paths to justice. Perhaps recognising such limitations, PLs reported they often call on the assistance of LALs to help with difficult cases. Interview FECM 24/05/13.

⁴⁸ Interview FECM 21/05/13 and interview Liberta 29/05/13.

compensating the squatter can be understood as a pragmatic solution. Summing up the advantages of adopting participatory, case-by-case and contextually sensitive approaches to land disputes such as these, one interviewee remarked that while local justice mechanisms, LALs and PLs ‘use the clients to resolve disputes, the courts use the law’.⁴⁹

Regardless of the relative speed and flexibility of local justice mechanisms, interviewees reported a number of significant obstacles to successful resolutions. Most common are cases in which one party will simply not turn up to mediations, or threats of violence prevent witnesses from providing testimonies. Mediations can also be disrupted by shouting or heckling. In an attempt to mitigate such situations LALs and PLs occasionally involve the PNTL in mediations or request families not to attend. However both avenues require careful negotiation on the part of LBH staff, with many viewing violence as a sign to proceed to court.

Difficulties are also reported to arise during the interpretation of local customs and oral histories. In an illustrative case a family claimed their grandmother had lent land to another family three generations earlier.⁵⁰ In return, they argued *lisan* obliged the borrowers to gift items (food, wine, necklaces, swords) to the lending family during life ceremonies (births, deaths, marriages) as a way of maintaining the socio-cosmic balance. Although respected for several generations, the lending family claimed the borrowers had recently reneged on their obligations. In response they requested the return of the land upon which the borrowers had recently built a house. Denying such customs exist, the borrowers refused to return the land and challenged the lending family to prove their ownership. Unable to resolve the case through local mechanisms, the PL advised the clients to go to court where it now awaits hearing.

Such cases support interviewees’ suggestions that people do not necessarily attribute weight to *lisan*’s ability to guarantee a fair outcome or hold parties to their obligations. Indeed when asked if they put more faith in *lisan* than the courts to secure satisfactory resolutions, neither LBH staff nor their clients felt that the use of *lisan* guaranteed truthful testimonies. Moreover distinguishing between the present era and that of the *liurai* (kings), in which local authorities were argued to be feared, a *Xefe de Suco* suggested successful reconciliations mainly depend on the personalities of the disputants.⁵¹ At the same time it was argued that local interpretations and expectations of incomplete or rumoured state laws (it was well known that several land laws and titling schemes were being considered by legislators or trialled in different areas) can complicate the resolution of cases outside of court (ICG 2013:32). Indeed a *Xefe de Suco* suggested that the notion of people owning land often clashed with local beliefs that land belongs to individual *lulik*.⁵² LALs and PLs, therefore, have to approach each dispute on its own merits and cannot blindly rely on either system to help them elicit truthful testimonies and reach locally legitimate reconciliations.

⁴⁹ Interview FECM 20/05/13.

⁵⁰ Although the majority of Timor-Leste’s communities are patrilineal some, such as Bunaq in Bobonaro district, operate matrilineal social structures (Ospina and Hohe 2002:17).

⁵¹ Ibid.

⁵² Interview *Xefe de Suco* 21/05/13.

Client focus groups suggested local authorities, including *Xefe de Sucos*, sub-district administrators and PNTL officers, commonly frustrate a case's progress through different justice mechanisms.⁵³ For example, one client suspected that because he supported a different political party to his *Xefe de Suco* his case was repeatedly stalled at the local level and subsequently thrown out of court. There were also suggestions that some local authorities interfered in ongoing court cases between the state and local communities in order to derive rents from any compensation that may arise. It was argued that such practices are a reflection of the combative and underhand culture of national level politics.⁵⁴ Indeed one focus group highlighted the perceived impunity of national elites and argued that their manipulation of democratic principles shapes local authorities' attitudes.⁵⁵ Such perceptions are indicative of both land disputes' connection to the state's claims to legitimacy and wider issues of stability.

The possibility of political interference aside, LBH staff from more developed Baucau and Dili argued that decisions reached in court are binding, whereas those made through local authorities are easily broken. Furthermore they suggested that educated Timorese increasingly believe the courts to be impartial. The generality of these opinions, however, should be considered against evidence from a recent survey that found educational levels have no significant bearing on respondents' confidence in the formal justice system (TAF 2013:44). Thus they may simply reflect the views of LALs and PLs that often belong to a growing, mainly urban, middle class.

Paternity claims

Across all research sites, the handling of paternity disputes was considered to be a private matter, to be dealt with at the family level. The desire for privacy accords with social norms that confer shame upon and, in some cases, ostracise women who have children outside of stable relationships (TAF 2012c:8-10). At the same time, however, interviewed stakeholders suggested that paternity claims require consideration of the economic future of the mother and child, and accounting for the possible influence of domestic violence or other types of abuse. Thus tensions between prevailing social norms and power imbalances make resolving paternity cases particularly sensitive for LALs and PLs.

The managers of FSSO and Liberta both deal with a high number of paternity cases, the majority of which are resolved outside of the courts with local *Lian Nains* or *Xefe de Sucos* leading the efforts. To keep them discrete, cases are said to be brought to LBHs through members of the disputants' families or the *Xefe de Suco*. It was also suggested that by holding mediations in the offices of LBHs clients could resolve the dispute away from the rest of the community. Furthermore LALs and PLs reported that women, who are often not allowed to

⁵³ Focus group with male clients FECM 23/05/13.

⁵⁴ Alongside a number of high profile corruption cases, one stakeholder argued that the government's practice of mass evictions was much talked about and resented, especially in Dili where people had recently been cleared from land to build additional shopping centres. Also see – 'Mass executive evictions in Dili as government plans airport extension'. *East Timor Law and Justice Bulletin*, May 2013. <http://easttimorlegal.blogspot.co.uk/2013/05/mass-executive-evictions-in-dili-as.html> (13/08/13)

⁵⁵ Focus group with male clients FECM 23/05/13.

speak with local justice mechanisms, find the offices a neutral ground within which to voice their opinions and interests.⁵⁶

Alongside privacy, LBH staffs' preference for resolution at the level of the family or through local justice mechanisms was attributed to the type of compensation reconciliation ceremonies could confer. It was argued that a single substantial payment which often can be converted into lasting incomes is important for women who are often economically dependent on male family members. In one example this payment took the form of four buffaloes, while in another it consisted of a plot of land.⁵⁷ Such compensations were compared to the inability of the courts to force defendants to turn up to hearings or enforce regular child maintenance payments.⁵⁸ Indeed clients argued the presence of local authorities and PLs during mediations could persuade men to abide by reconciliation agreements.⁵⁹

As with land disputes, a common method used by LALs and PLs to unlock cases which have stalled is to communicate to clients the likely consequences of the state's involvement. On the one hand, it can be suggested to clients that the courts find it difficult to refute paternity claims without DNA evidence. While on the other, they may be reminded that taking cases to court would make the matter public and shame the concerned families. Such methods highlight the difficulties of addressing paternity cases through a state justice system with little capacity to respect community social norms. Furthermore they raise the possibility that women may feel trapped within the local arena.

However, one way in which LALs and PLs argued that they help to address the needs of women is through their ability to give them a forum in which to speak freely, particularly when males try to silence them through intimidation. Furthermore it was universally noted that when LBH staff uncover violence towards the women they have a duty to report those involved and to register the incident as a crime. This detection and referral ability is invaluable as paternity cases often involve an element of social stigma and/or hidden physical or sexual abuse; factors which can keep women locked in destructive relationships.⁶⁰ Regular communication between LBHs and the PNTL can also help prevent violence between the disputants' families. This consideration is underscored by a client focus group in which a participant claimed she was considering encouraging her brothers to harm the alleged father. By her own admission, LBH Liberta's timely inclusion of the PNTL in mediations avoided violence.⁶¹

As explained by several interviewees, the usual concern of local authorities and judges when dealing with paternity cases is keeping the matter private, imposing fines and, where possible, keeping the family unit together. However, as was argued by a LAL, during paternity cases

⁵⁶ Interview Liberta 28/05/13.

⁵⁷ Interviews FSSO 13/05/13 and 15/05/13.

⁵⁸ Liberta's policy is not to mediate cases themselves but to let local authorities lead.

⁵⁹ Focus group with women clients FSSO 15/05/13.

⁶⁰ When TAF piloted a DNA testing programme over 2011-12 the high number of negative results with no further accusations by the mother led some to suggest that incest may be more prevalent than believed. Interview with Stakeholder 05/07/13. During the course of the research a number of NGOs released a report into incest and attempted to promote a national dialogue on the subject.

⁶¹ Focus Group with women clients Liberta 29/05/13.

‘we should be talking about the baby’ above and beyond any concerns of privacy and family unity.⁶² Thus LBH staff members often encourage local authorities and judges to consider the long term welfare of the child. Alongside the terms of reconciliation payments, this often involves broaching the idea of an amicable split or preventing further contact between disputants. As argued by interviewees, avoiding conciliatory marriages can be the preferred option for cases in which young men, unprepared for the responsibility of bringing up a child, are the father. Using a subtler method, one LAL described how when local authorities will not address the welfare of the child directly he draws up reconciliation letters that do and works to get those involved in the case to sign them.⁶³ A further way in which LALs and PLs may secure the welfare of the child is by directing reconciliation payments to the mother, as opposed to the widespread practice of giving them to her family.⁶⁴ Directly and indirectly, therefore, LALs and PLs use their relationships with justice providers to secure the welfare of children and, in some instances, challenge potentially harmful social norms.⁶⁵

Domestic violence cases

The 2010 Law Against Domestic Violence (LADV) stipulates that it is a public crime that must be reported to state authorities and pursued through the courts (DRTL 2010).⁶⁶ This prevents LBH staff from overseeing local justice mechanisms dealing with incidents or leading mediations themselves.⁶⁷ Nonetheless the research revealed that in many instances LBH staff play important roles in addressing the needs of victims and the eventual resolution of cases. To understand why, it is necessary to grasp how authorities treat domestic violence and the socio-economic condition of Timorese women.

A survey from 2009-2010 found that 28 per cent of interviewed women had experienced violence in the preceding 12 months, and of those that were married, 74 per cent claimed a husband or partner was involved (NSD et al 2010:228). Yet only 24 per cent of women reported incidents to authorities and the vast majority of cases are believed to be dealt with at the family level or resolved through non-state justice mechanisms. In recent years, however, the state has used a mix of legislation, infrastructure and civil society support to address the high rate of domestic violence and make victims’ needs a priority. Indeed, the LADV was followed in 2012 by the National Action Plan on Gender-Based Violence.⁶⁸ It outlines the

⁶² Interview FECM 23/05/13.

⁶³ Ibid.

⁶⁴ Interview FSSO 13/05/13.

⁶⁵ In an extreme and localised example of norm challenging, a LAL from Liberta recounted how repeated paternity claims made them aware of a *suco* within which a large number of families were prostituting their daughters. Following educational programmes led by Liberta the LAL claimed this practice has now stopped. Interview Liberta 28/05/13.

⁶⁶ The LADV defines domestic violence as ‘any act or sequence of acts committed within a family context, with or without cohabitation, by a family member against any other member of that family ... which resulted, or may result, in physical, sexual or psychological injuries or suffering, economic abuse, including threats such as intimidating acts, bodily harm, aggression, coercion, harassment, or deprivation of freedom’ (DRTL 2010).

⁶⁷ Before this judges routinely prosecuted domestic violence cases as semi-public crimes which can only be charged following complaint of the victim (TAF 2010:note 2).

⁶⁸ See; ‘Adoption of the National Action Plan on Gender-Based Violence by the Council of Ministers’. *East Timor Law and Justice Bulletin*, June 2012. <http://easttimorlegal.blogspot.co.uk/2012/06/adoption-of-national-action-plan-on.html> (16/08/13)

responsibilities of different sectors of the government and the role of civil society in addressing gender-based violence through prevention, provision of services, prosecution and coordination. Although such efforts have increased the number of cases reaching the courts, there is little information on the proportion of total incidents they represent or how cases are handled (UNDP 2013:1).

Nonetheless a growing body of studies explore Timorese attitudes towards domestic violence and needs of victims (Khan and Hyati 2012; TAF 2012c). They depict a culture in which women are often blamed for causing domestic violence, have little voice during the handling of incidents, and suffer from a lack of enforcement of decisions by justice bodies (Kovar 2012:8; Swaine 2003:note54).⁶⁹ Furthermore, evidence suggests that many women remain unaware of their rights, live in communities that place family unity above their protection and consider all but serious harm as an private matter (TAF 2012c:11-14).

These cultural factors are compounded by the perceived dependence of most women on their male family members. This dependence encompasses both women's basic livelihoods and their voice in social arenas, including local justice mechanisms. As touched upon earlier, women are central to the exchange and flow of values in Timorese society, especially upon marriage when they become a member of a 'wife-taking' family.⁷⁰ At this time women usually exchange dependency upon their own family, for a dependency on their husband and his family.⁷¹ This shift in responsibility and values is symbolised by the families' exchange of bride-gifts, with the groom's family usually giving substantially costlier gifts.⁷² Thus for the majority of Timorese women, who receive less education than men, are employed at much lower rates, and marry at an early age, families are central to their welfare.

As with paternity cases, women that report domestic violence to state authorities risk being ostracised. Thus, victim's families often encourage them to resolve cases at the family level or through local justice mechanisms (TAF 2012c:13-14). For many Timorese this not only keeps the matter private, but also ensures women do not lose the support networks their husband's families provide.⁷³ Nonetheless the LADV requires LBH representatives to notify the PNTL of domestic violence cases, at which point the suspect is usually detained, testimonies are collected begins and the incident becomes a public matter.⁷⁴ Thus, confronted

⁶⁹ Despite this, it is notable that a survey conducted in 2008 reported 45% of police officers pointed to domestic violence as the most serious security problem in their community (Chinn and Everett 2008).

⁷⁰ Some commentators suggest Timorese social norms are not incompatible with notions of women's rights and gender equality (Woon 2012:48). Indeed one interviewee argued that the centrality of the smooth exchange of values and women's roles as child bearers may provide a fruitful place to begin conversations around gender violence and equality. Interview with Stakeholder 10/06/13.

⁷¹ Although there are Timorese communities in which the groom joins the bride's family, this description refers to the far more common practice of 'marrying-out' in which the bride joins the groom's family.

⁷² Although there are several types of bride-gifts, the most important and expensive for married-out couples is usually *barlake* (bride price) which is negotiated between the two families before the marriage and goes to the bride's family.

⁷³ Interview FSSO 13/05/13. Further research is need to explore what responsibility and support, if any, women's biological families offer after marriage.

⁷⁴ However interviewees also reported several instances when the PNTL and/or the public prosecutor's office would send cases back to communities for resolution at the local level. As another research report has suggested,

by the dependency of their clients, the work of LALs and PLs often extends beyond bringing the case to court.

During initial meetings, LBH staff and stakeholders often have to explain the LADV to victims. This includes informing them that they cannot have their cases resolved through family or local justice mechanisms. Participants argued this can be particularly difficult for victims as they fear protracted court processes or jail sentences will cause the community to ostracise them or husbands to pursue divorce. Many also resent that they have to seek protection with distant relatives or spend up to a year in secure women's shelters while they wait for a hearing. The difficulties for women caught between their basic needs, culture and the requirements of the law were summed up by a staff member at a women's shelter; 'victims become victims of the law'.⁷⁵

However, examining the perceived positives, both LBH staff and their clients argued that the LADV's reporting obligations prevent victims' cultural beliefs, fears and intimidation from keeping cases from being tried. Indeed it was suggested the LADV gives LBH staff a tool with which to challenge the widespread notion that domestic violence is a non-serious every day, 'spoon and plate', problem and transfers responsibility for reporting away from victims.⁷⁶ Although they do not prevent victims from changing their statements or downplaying the severity of the incident following pressure, reporting obligations provide those building a case with additional, third party, evidence.

Some LBH staff also argued the LADV has made discussions and debate around domestic violence within communities easier. This includes communities' reporting of domestic violence incidents, which are usually uncovered during LALs' and PLs' visits to *sucos* or brought to their attention by family members or local authorities. One PL even suggested that women increasingly approach him armed with knowledge of their rights before consulting local authorities.⁷⁷ Furthermore some participants argued that local authorities in areas with LALs or PLs understand that they can no longer resolve domestic violence cases themselves and must involve LBHs or the state.

Many compare this attitude to the era before the LADV in which local authorities would routinely dismiss domestic violence as a family matter or, in some instances, charge women for referrals to state authorities and social services.⁷⁸ The latter practice was attributed to local authorities' fears that they are losing influence and 'cigarette money' to the state and NGOs. However the presence of skilful LBH staff in communities can challenge these beliefs and give local authorities' a reporting role through which they can continue to fulfil their leadership obligations. Indeed, interviewed LBH staff often emphasised the close working relationship between themselves and local authorities, with one PL even sharing that his

the experiences of women who do not take their case to the state's justice system requires further exploration (TAF 2012c:12).

⁷⁵ Interview with Stakeholder 24/05/13.

⁷⁶ Interview FECM 20/05/13. The use of the term 'spoon and plate' highlights the difficulty of introducing foreign terms such as 'domestic violence' into societies that do not attached the same connotations to the act.

⁷⁷ Interview FSSO 15/05/13.

⁷⁸ For further evidence of this practice see TAF (2012c:14)

communities endearingly refer to him as the ‘*suco PL*’.⁷⁹ This suggests that LBH staff can become part of the *suco*’s justice system in a non-obtrusive and complementary manner.

LALs and PLs argued that it has traditionally been very difficult to sensitively pursue domestic violence cases, especially when the collection of testimonies would take place through local authorities. For example, one FSSO staff member highlighted the difficulty of a victim revealing in front of community members that she is beaten for refusing to have sex with her husband.⁸⁰ By contrast, LALs and PLs explained how, due to the LADV, contemporary evidence collection is often carried out with their help and the support of staff from local women’s shelters or the Vulnerable Persons Unit (VPU) in the PNTL.⁸¹ Moreover it can occur in private locations, allowing basic facts to be established and support mechanisms to be mobilised to address victims’ needs. Such changes were also attributed to the working relationships the LADV has encouraged between state and non-state stakeholders such as women’s shelters, LBHs and organisations focussed on the rehabilitation of victims.

LALs and PLs also play an important role in explaining state justice procedures to victims and sentences to perpetrators. Accordingly they often accompany clients to meetings with the police or public defenders, in some cases even attending court sessions. This can be particularly important to those who are illiterate or do not speak Portuguese. For example, a client revealed how a LAL explained to him the possible outcomes of his trial for hitting his wife.⁸² He revealed that prior to the meeting with the LAL he had considered running away because he could not read the court’s summons letter and had never encountered state authorities before. This explanatory role often extends to challenging clients’ misconceptions regarding state law and cultural practices. For instance, an LAL recounted explaining to his client that not only may he not beat his wife because she does not want him to take additional wives, but also that, while not illegal, Timorese and Catholic custom does not encourage polygamy.⁸³ Indeed the client was surprised to learn that the court was only interested in the former aspect of his case.

Interviews revealed that LALs and PLs often play more than an explanatory role in sentencing. For example, they can assist clients to submit reconciliation letters to persuade judges to give a suspended sentence or fine, allowing the offender to return to his family (prison sentences of less than 3 years can be suspended for between 1-5 years, provided the perpetrator does not commit any further crime).⁸⁴ Suspension is granted on a conditional basis, which typically involves disputants performing a reconciliation ceremony to which local authorities are invited, the perpetrator promises to change and, to symbolise the

⁷⁹ Ibid.

⁸⁰ Interview FSSO 17/05/13.

⁸¹ The Vulnerable Persons Unit (VPU) was created in 2001 by the United Nations Police and the PNTL. Mandated to investigate incidents and support victims, the VPU has jurisdiction over rape, attempted rape, domestic violence, child abuse, child neglect, missing persons, and sexual harassment.

⁸² Focus group with male clients FSSO 16/05/13.

⁸³ It should be noted that this is not strictly true; polygamy has long been a facet of Timorese culture (Martins and Kendall 2002).

⁸⁴ Recent research approaches suspended sentences with a view to what the courts can do to safeguard women (UNDP 2013).

restoration of the flow of values, gifts are exchanged. Afterwards the LBH representative will often assist the couple to draft a letter explaining the terms of the reconciliation agreement to the court. This letter is signed by all involved parties, including the couple's extended families and local authorities. However, so as to adhere to the LADV, most LALs and PLs stressed that they do not have any involvement in the reconciliation ceremony nor do they sign the letter themselves. Indeed they emphasised that the decision to reconcile had to be taken independently of LBHs.

Although this practice occurred before the LADV, interviewees indicated it was becoming increasingly common in response to the new legislation. They argued that the aim is to speed up court rulings and allow husbands, who are often the primary source of income, to return to their families. Furthermore a victims' support worker argued that the practice prevents the confusion caused when husbands are detained and sentenced three years after the crime is first reported due to court backlogs.⁸⁵ While many LALs and PLs were acutely aware of victims' dependency on those who abused them, they reasoned that Timorese attitudes towards domestic violence permit offences such as verbal abuse or slaps, and that the shame of incarceration can lead to divorce, leaving dependent women and children in difficult circumstances.⁸⁶ Moreover participants argued that the submission of a reconciliation letter is never suggested by LALs or PLs and is a practice designed by the community. Some even suggested that the practice could have been avoided if the LADV had been gradually introduced or local authorities had been allowed to resolve less serious cases, which were often defined as those that do not involve 'blood'.⁸⁷

It is arguable that the practice of submitting reconciliation letters allows customary social norms (in the form of reconciliation ceremonies) to enter into the court's decision-making and affords couples some measure of agency. The consideration of reconciliation letters in sentencing and the method through which local authorities, LBH staff and state officials work together to facilitate this process could, therefore, be interpreted as a locally owned practical hybrid. Indeed it involves the adaptation of, and interactions between, customary social norms and imported notions of justice, and can be seen as a reaction to top-down legislation created by a distant state.

Many LALs and PLs also reported working to address some of the obvious pitfalls of this practice. Firstly, some take the time to investigate the circumstances in which reconciliation ceremonies are performed. This involves asking members of the clients' community, including local authorities and neighbours, whether it occurred under duress. LALs and PLs also described 'counselling' clients through the process, which includes explaining the potential outcomes of submitting a resolution letter.⁸⁸ Secondly, many LALs and PLs described adopting a monitoring role following suspended sentences. Although argued to be difficult, this involves checking in with the victim and local authorities to see if the offender

⁸⁵ Interview with Stakeholder 24/05/13.

⁸⁶ It should be noted that the evidence for women's dependency is anecdotal at present, although the Foundation is currently researching this claim.

⁸⁷ Interview FECM 20/05/13. This idea was also voiced by a number of other stakeholders.

⁸⁸ Interview FECM 20/05/12.

is adhering to the sentence. They argued that local authorities, the PNTL and public defenders do not have the information on cases, or the resources and accountability necessary to do this. Thirdly, some reported that they explain to communities the meaning of the suspended sentence. This encourages them to monitor the perpetrator and prevents the common misconception that cases have been dismissed by the court as local or family matters.

In summary, although the LADV prevents LALs and PLs from overseeing local justice mechanisms or directly mediating domestic violence cases, they still play a valuable role in socialising the law, gathering evidence, protecting victims and guiding them through the state's justice system. Furthermore while the increasing practice of submitting reconciliation letters to the court accords with the letter of the law at the same time as it breaks its spirit, LALs and PLs have responded by positioning themselves to safeguard the interests of victims and ensure sentences are followed. Indeed, in all aspects of the prosecution of domestic violence cases, LALs and PLs use their knowledge of communities and working relationships with local stakeholders to identify the gaps in the state's apparatus and address the needs of victims.

Accountability

A concern for justice programmes is the possibility of setting up parallel justice providers that instead of complementing and improving existing state and non-state mechanisms, compete with them or are captured by local vested interests (Chirayath, Sage and Woolcock 2005). This can be particularly dangerous when introduced justice providers use their knowledge and power to favour a particular social group or extort clients for their own gain. These considerations raise issues of accountability which were discussed with research participants. There was, however, little evidence of abuse by LBH representatives. Indeed only one participant recounted an incident in which an LAL had asked for money from his clients in return for his help and was swiftly reported to FSSO by community members.⁸⁹ Yet issues of accountability should extend beyond such 'hard' concerns to focus on the quality and judgement of legal programming.

To explore this need, participants were asked who should judge and be responsible for the work of LALs and PLs. Some suggested that their direct managers within LBHs are responsible, while others, particularly LALs, suggested judges should oversee their efforts. However the most frequent answer, from LALs, PLs and their clients, was that the community is in the best position to judge them. Pressed on this belief many argued local authorities could assess their work, while others suggested that repeat requests for their assistance was an ongoing form of assessment. One participant even suggested that accountability is currently informally assured through a local network of stakeholders working on the same issues. This network included both civil society representatives, such as staff from a woman's shelter, and state authorities, such as the VPU and members of the public prosecutors' office.

⁸⁹ Interview FSSO 13/05/13.

Although all participants agreed that LALs and PLs should have some form of accountability, there was general support for increased competition between LBHs as a method of promoting it. At present and for the foreseeable future, however, Timor-Leste's few LBHs and the limited reach of state services could not be said to have created a competitive market for legal assistance. Indeed interviews suggest that each of the participating LBHs is approached because they are one of very few alternative services available for those seeking justice.

Legitimacy and state building

Many Timorese continue to view local authorities as responsible for law and order, and some have not even heard of a court (TAF 2013:8). The work of PLs and LALs often involves bridging these gaps and educating communities as to their rights. In some instances this requires challenging the power of local authorities, including their jurisdictional claims. In others it necessitates working closely with them to understand local social norms. And in others still it may be decided that a delicate negotiation using knowledge of both systems will speed a resolution and safeguard the rights of their clients. Yet whichever path to justice LALs and PLs choose they will be according power and legitimacy to one or another actor or institution. Indeed in conflict affected countries the ability to arbitrate disputes is increasingly recognised to be intimately bound to the politics of state building (Isser 2011). Thus research participants were asked if the work of LALs and PLs changes the way communities perceive state and non-state authorities.

Many LALs and PLs argued that due to close working relationships with local authorities, respect for them had not changed. At the same time, however, there was a general belief that communities no longer automatically assume local authorities to be the sole or best justice provider. One participant even suggested that because LBH representatives outline the full spectrum of possible paths to justice, communities are increasingly sceptical of local authorities' impartiality; something said to be shown by the number of clients that request LBHs to sit-in on mediations led by local authorities.⁹⁰

It was also suggested local authorities greatly value their working relationship with PLs and LALs as a way to stay relevant in changing times, even viewing themselves as referral agents for LBHs and local sources of knowledge of the state's justice system. Indeed local authorities often justify the terms of reconciliations by declaring they are delivering the same outcomes that the local LAL or PL would have recommended.⁹¹ While such claims deserve further research, they highlight the increasing symbiosis of justice providers at the local level.

A sense that as communities develop their knowledge of the state's laws and their rights they gain respect for both local and state based authorities sat alongside numerous suggestions that *lisan* continues to play an important role in securing justice. Indeed the use of by LALs and PLs was felt to be particularly important within rural communities which participants argued are closer to the ancestors.⁹² One even suggested that *lisan* teaches the basic values necessary

⁹⁰ Interview FSSO 13/05/13.

⁹¹ Interview FSSO 14/05/13.

⁹² Interview Liberta 28/05/13.

for justice, including the importance of community cohesion and strong family ties.⁹³ These findings suggest that customary notions of justice do not necessarily detract from the state's attempts to build a justice system. Indeed their use may actually encourage a rule of law culture.

However, in a sceptical analysis, a stakeholder argued that the work of LALs and PLs is helping community members to understand the difference between loyalty to family, which characterises justice practices at the *suco* level, and the supposed impartiality of the courts.⁹⁴ The implication was that the Timorese will gradually come to prefer the latter and drop the former. Yet during the research participants revealed the importance of *lisan* for reaching agreeable reconciliations both in and outside of the courtroom, and were comfortable with the system's apparent contradictions. Thus, at present, the dichotomy between the two should not be viewed as creating conflict within Timor-Leste's emerging justice system or for the country's wider state-building project. Nonetheless further research is needed to determine how communities and local authorities understand the use of customary norms in different justice forums, and whether they are incompatible with, or complementary to, the state's notion of justice.

The needs of LALs and PLs

Those working towards legal empowerment often encourage programmes to develop contextualised understandings of the challenges of justice provision. It is argued that such an approach will reveal the everyday social, economic and political obstacles to justice provision, and prevent foreign agendas from papering over local needs. With this in mind, participants were asked what LALs and PLs generally need to improve their ability to help clients.

Beyond funding and transportation, most suggested that further socialisation of new laws and the state's justice procedures remains necessary. This need was said to extend to local and state authorities. Pressed about specific client groups, some participants suggested that youth were the most difficult social group to help. Reasons for this varied from their lack of understanding of legal procedure, to their disrespect of local justice mechanisms and frequent use of alcohol. Beyond the aforementioned socialisation programmes, none of the participants had a remedy for these problems and most worried what they implied for the future.

As noted, several participants felt they should be allowed to resolve minor domestic violence cases through local justice mechanisms or by leading mediations themselves. The main reasons for this are the need to keep such matters private, keep families together and the limited capacity of the courts. Some LALs and PLs also suggested that they would benefit from being able to compare their own recommendations, on the amount reconciliation payments should be for example, with those of their peers in other areas of Timor-Leste. It was argued that this would help LBHs judge if their clients were receiving fair outcomes and

⁹³ Interview FECM 21/05/13.

⁹⁴ Interview with Stakeholder 31/05/13.

assure that justice practices in isolated areas do not fall out of step with the rest of the country.

Offering a wider and long-term perspective, some participants raised concerns that recent generations of lawyers view the profession purely as a money making enterprise. They argued that the amount of legal training necessary to practice, including that required by the Private Lawyers Bill, de-incentivises young lawyers to join or offer time to LBHs. A popular solution involved the state paying salaries to LBH representatives, although several warned that this would quickly erode their independence and that an independent body, funded by the state and donors, should be established to handle salaries. To achieve this, some participants requested advocacy training and repeatedly hoped that this research would reach policymakers.

Conclusion: Negotiating Access to Justice

A recent edited volume examines seven interventions designed to improve legal empowerment in conflict affected states by engaging and working with local justice providers (Harper 2011a). It concludes that although more case studies are needed to encourage comparative analysis, there are few transferable principles for those working across different contexts. Indeed it argues that what may have some measure of success in one country context is ‘situation-specific and contingent on a variety of factors, including social norms, the presence and strength of a rule of law culture, socio-economic realities, and national and geo-politics, among others’ (Harper, Wojkowska and Cunningham 2011:173).

Faced with such challenges, programmers are urged to develop in-depth knowledge of the countries in which they operate, including an understanding of the actors, interests and institutions shaping the justice landscape. Such knowledge, it is argued, can help them identify and negotiate entry points for interventions that start rights-based discussions, improve access to justice and impact the ability of people to take control of their own lives.

Premised upon the argument that LALs and PLs will continue to be an important part of Timor-Leste’s justice system, this section identifies four entry points for interventions that may further empower people to realise their rights through; i) an increased capacity to challenge power imbalances; ii) greater awareness of available justice mechanisms and services; iii) the exercise of choice over justice forums; and iv) resolutions that are considered fair and protect victims, yet do not contravene minimum rights standards.

Power

- Capitalise on the monitoring ability of LALs and PLs by enabling them to collect information on cases that are exclusively handled through local justice mechanisms.
- Feed this information back to local authorities during regular review and discussion sessions with LALs and PLs or with localised independent bodies.

The monitoring of local justice mechanisms by third parties can work to address power imbalances, particularly for marginalised groups that may have little or no voice in local forums. The research findings suggest that monitoring by PLs and LALs gives them opportunities to encourage local justice providers to adhere to minimum rights standards and consider the needs of vulnerable groups. This was most evident for paternity claims in which interviewees reported persuading local authorities to look beyond cultural norms for privacy and to consider the long-term welfare of children. It was also demonstrated by cases within which the presence of LBH representatives or the threatened involvement of the PNTL mitigated coercion and prevented violence.

In many examples monitoring by LALs and PLs introduces an element of threat for uncooperative disputants or local authorities who derive power and legitimate their authority through their stewardship of justice mechanisms. Indeed in a review of his own programme Vivek Maru (2005), co-founder of Sierra Leone's 'Timap for Justice', stresses that the threat of pursuing litigation by PLs carries significant weight, and is able to move stale mated cases closer to resolution or influence the behaviour of abusive local authorities. Thus the ever present possibility of exiting local justice mechanisms or involving other state actors often allows LBHs to maintain programmes 'whose promotion of rights has teeth' (Maru 2005:542).

While the LBH staff's monitoring of local justice mechanisms is valuable, many unseen cases remain. Indeed there is a need to gain knowledge of the number, type and outcomes of cases that are resolved through local justice mechanisms without the assistance of LBH staff or the state. On the one hand, such knowledge could provide researchers with evidence of the impact and reach of justice programming. While on the other, it may bring the social pressure and threat implicit in cases that LALs and PLs are directly involved in to bear on those they are not. Information could be continually collected from communities and local authorities by respected LALs and PLs, with regular feedback sessions to discuss the handling of cases, including how authorities approach gender sensitivities, economic dependency and power imbalances.

This task could be combined with regular visits to communities. Alternatively, in order to capitalise on collective social pressure, LBHs could encourage marginalised groups, such as women, to fulfil this role within their own communities. However, considering Timorese norms governing the involvement of women or members of lineages that do not hold customary authority over such matters, instituting a localised monitoring body would require careful negotiation.

Awareness of justice mechanisms and services

- Combine efforts to increase communities' awareness of available justice mechanisms and services with realistic appraisals of the capacity of different services.
- Formalise and support the counselling activities of PLs and LALs, and strengthen linkages to stakeholders working on similar issues.

Awareness of the variety of justice mechanisms and legal services helps people challenge power imbalances and secure their rights. Timor-Leste's PLs and LALs play an important part in promoting such awareness, both for state and non-state justice mechanisms. This includes letting clients know the limits of local authorities' jurisdictions and keeping communities abreast of legislation. Furthermore they often find themselves working to reverse a culture of rumours and fear born from years of occupation and colonialism.

It is crucial, however, to understand how increased awareness changes the expectations of communities. Indeed, as was reported to be the case with several land disputes, encouraging disputants to approach the courts and pursue litigation when their capacity is extremely limited can have long-term negative impacts for perceptions of courts and the wider legitimacy of the state. Similarly, educating clients to expect rights from local justice mechanisms that they cannot hope to uphold may cause communities to lose faith in local authorities. Avoiding both outcomes requires increasing awareness of the actual capacity of the entire justice system, rather than providing information on what it *ought* to be.

This consideration is particularly important for a country in which justice programming suffers from a gulf between the reality of services and the ambition of its architects. On the one hand, successive governments largely fail to acknowledge the flaws in the state's justice system and ignore the front line role of local justice mechanisms. While, on the other, donor organisations, often promoting liberal agendas, have aimed to educate people as to their rights, promote a rule of law culture and challenge a widespread reliance on local justice providers. Thus, regular and realistic appraisals of the likely outcomes of pursuing resolutions through different mechanisms must be combined with encouragement to honestly inform clients about the best routes to resolution, rather than those desired by donors or the state. Such information could be gained from regular syntheses of the Judicial Systems Monitoring Programme's reports and LBH's own case monitoring systems.

LALs' and PLs' counselling of victims of domestic violence, including relationships with service providers such as women's shelters or the VPU, provides an important safety net at the local level. However the significance of these roles was often underplayed by interviewees, suggesting that they do not see them as a core part of their work. Reversing this perception and formalising such roles through further training and increased linkages between stakeholders (e.g. LBHs, VPUs, women's shelters, justice monitoring NGOs etc.), would not only encourage them to value such services, but also go some way towards addressing obstacles to addressing victim's needs, collecting timely evidence and prosecuting cases free of third party interference.

Choice and mobility

- Conduct further research into the effects of LALs and PLs offering mediation services for those unwilling to pursue cases through local justice mechanisms or litigation.

The ability of individuals to make and act on informed choices as to which justice mechanism or service they wish to access is central to legal empowerment. Assessments of justice systems cannot assume that because the majority of cases are being resolved in one or the

other forum, then disputants are accessing their preferred forums. This is particularly important in Timor-Leste where the majority of people use local justice mechanisms to resolve disputes, yet ultimately remain constrained as to which forum they can approach by economic, cultural and political barriers. This was highlighted by clients for whom the practice of giving ‘cigarette money’ to local authorities and providing food for reconciliation ceremonies presented an economic obstacle to moving up the informal hierarchy of dispute resolution forums. Furthermore, as was seen with paternity claims and domestic violence cases, choice can be limited by cultural norms that prevent marginalised groups from taking certain types of disputes to public forums. Political barriers also present themselves within cases where the presiding local authority has a vested interest in the outcome.

While free legal services provided by LALs and PLs somewhat mitigate economic obstacles for those approaching state justice mechanisms, further research is needed to understand how they address the cultural and political barriers preventing choice of justice mechanisms.

Protection and Human Rights

- Acknowledge and work with hybrid practices to introduce checks and balances to protect women and encourage wider rights-based discussions, including considerations to ‘do no harm’.⁹⁵

A primary concern for programming that engages local justice mechanisms is that the methods used and decisions handed out may not always protect the vulnerable, be consistent with human rights standards or, in some instances, lead to unintended harm. However local justice practices often evolve to address everyday needs, including context-specific cultural, socio-economic and political considerations. Indeed LALs and PLs that facilitate the submission of reconciliation letters to courts hearing domestic violence cases arguably do so to address tensions between the desire to keep such matters private and the need to safeguard the long-term welfare of women accessing an emerging state justice system that is largely unable to address their dependency on those that abuse them.

Nonetheless such practices must be unpicked and, where they are found wanting, challenged in order to accord with minimum rights standards. Such an approach is necessary where programmers conclude that they are unlikely, at least in the short-term, to overcome the wider factors that give rise to practical hybrids. As well as subscribing to international best practices such as the ‘do no harm’ principle, programmers could concentrate on identifying entry points for interventions that promote rights-based discussions and prioritise the protection of vulnerable groups. For example, the research revealed several possibilities, for those who may consider this approach to the practice of submitting reconciliation letters.

First, many LBH representatives argued that before they help submit a letter they try to ascertain whether reconciliation ceremonies are performed under coercion. Although difficult, encouraging LALs and PLs to aggressively fulfil this role could provide additional

⁹⁵ A full treatment of the ‘do no harm’ principle and the debates surrounding it is out of the scope of this paper, but a good starting point is offered by the OECD (2010) and for a more focussed discussion on justice programming see Harper (2011a).

checks and balances. Indeed, rather than avoiding reconciliation ceremonies for fear of being accused of resolving a crime outside of court, they could be encouraged to attend in a monitoring role. Limits could also be set on the number of counselling sessions they, or other stakeholders, complete with victims before the submission of letters. Furthermore the practice of involving numerous local authorities, including the PNTL, in the signing of reconciliation agreements could be formalised. Such efforts would go some way towards bringing the practice out of the private realm and place stronger social pressures on offenders to keep their word. In all steps, however, the attention should be on the victim, especially allowing them the time and space to communicate their desires or report coercion.

Second, as the research findings suggested, PLs and LALs are acutely aware that the state is not able to regularly monitor suspended sentences to assure perpetrators are not re-offending. Thus they often fulfil this role themselves or encourage local authorities to do so. Although generally happy to do this, participants suggested that they work within communities that believe such matters to be private and perceive suspended sentences to be an indication that the matter is closed. Thus many LALs and PLs argued their work could benefit from further socialisation of the courts' sentencing decisions, both among community members and local authorities. Furthermore, many suggested that a public element to suspended sentencing could be introduced, with local authorities made partly responsible for the subsequent behaviour of offenders. This could work to demystify such sentences at the same time as it encourages local authorities to take an interest in the welfare of women. Although this suggestion may go against existing social norms and would have to be carefully negotiated, some research participants even suggested that reconciliation ceremonies include provisions that offenders must agree to regular monitoring by local authorities or LBH representatives. Indeed it was argued that judges already informally ask local authorities to monitor suspended sentences. These findings strongly suggest that by engaging practical hybrids PLs, LALs and authorities could challenge harmful norms, protect women and encourage wider rights-based discussions.

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Appendix – List of Interviews

Participant	Date
LAL FSSO	13/05/2013
LAL FSSO	13/05/2013
LAL FSSO	13/05/2013
LAL FSSO	14/05/2013
PL FSSO	14/05/2013
PL FSSO	14/05/2013
PL FSSO	14/05/2013
Focus Group Women (4)	15/05/2013
Focus Group Men (3)	15/05/2013
LAL Alfela	16/05/2013
Manager Women's Shelter	17/05/2013
LAL FSSO	17/05/2013

Participant	Date
LAL FECM	20/05/2013
LAL FECM	20/05/2013
PL FECM	21/05/2013
PL FECM	21/05/2013
PL FECM	21/05/2013
LAL FECM	21/05/2013
Xefe de <i>Suco</i>	22/05/2013
Focus Group Women (4)	23/05/2013
Focus Group Men (4)	23/05/2013
LAL FECM	23/05/2013
Manager Women's Shelter	24/05/2013
LAL FECM	24/05/2013

Participant	Date
LAL Liberta	29/05/2013
LAL Liberta	29/05/2013
LAL Liberta	29/05/2013
Focus Group Women (3)	30/05/2013
LAL Liberta	30/05/2013
LAL Liberta	30/05/2013

Participant	Date
Manager NGO	31/05/2013
Former foreign Legal Advisor	31/05/2013
TAF AtJ Staff	31/05/2013
Former INGO legal advisor	06/06/2013
TAF AtJ Staff	27/05/2013
Justice Advisor to Government	19/05/2013
Former AtJ Staff	09/05/2013
Legal Advisor NGO	09/05/2013
Legal Advisor INGO	11/05/2013
Former AtJ Staff	05/05/2013



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- World Peace Foundation, Tufts University (USA)

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