Domestic Violence in Timor-Leste: Beyond the Legal Framework

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6 May 2021

Indigenous women in Timor-Leste. Photo by Natacha Amora.
Since 2009, Timor-Leste has successfully enacted a solid legal framework aimed at fighting and preventing domestic violence, protecting and supporting victims, and reintegrating offenders. Since 2000, Rede Feto, a national network of local NGOs has been working to promote gender equality and women’s empowerment through advocacy, networking, and capacity building. Its member organisations include key players delivering services to implement the laws and policies, approved by the government and supported by international organisations and donors. However, the number of domestic violence crimes remains high. Both the Nabilan study and Timor-Leste Demographic and Health Survey irrefutably demonstrate that violence against women continues to be a serious issue (Nabilan, 2016; DGS, 2016). Customary justice, rituals, and traditional beliefs hinder change in a young country emerging from a violent conflict and 2002 independence.

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Background

In 2009, the Penal Code made domestic violence a public crime, i.e., a crime to be investigated and prosecuted by the state irrespective of a criminal complaint being filed by the victim (Kovar, 2011). In 2010, the National Parliament approved a law against domestic violence aiming to fight and prevent domestic violence, to protect women, and to rehabilitate perpetrators (RDTL, 2010). This law was one of the significant achievements of the 2010 parliament that comprised 38% female representatives, as a result of a quota system approved in 2007. This is the highest percentage of women representatives in the Asia-Pacific, and indeed one of the highest in the world (Niner, 2017). To implement the laws and policies, the government approved a National Action Plan on Domestic Violence (2017-2021) which established a multisectoral approach to address the problem through the joint involvement of government and civil society stakeholders (Guerry and Sjolin, 2018).

Despite these significant achievements, the most recent Demographic and Health Survey conducted by the Timor-Leste Government shows that 40% of ever-married women have experienced spousal violence whether physical, sexual, or emotional (DGS 2016). The 2015 Nabilan Health and Life Experiences Study and the survey on the Associations between Bride Price Stress and Intimate Partner Violence amongst Pregnant Women in Timor-Leste concluded that nearly 60% of women were victims of physical or sexual violence by their intimate partners (Nabilan 2016; Rees, 2017). Yet, all reports highlight that cases of domestic violence are deemed to be highly unreported in Timor-Leste. Women who seek help do it mainly within their families (DGS 2016) and, despite the legal framework prescribes that crimes such as domestic violence cannot be dealt with by traditional justice systems, community authorities as the Chefe de Suco (elected head of village), Chefe de aldeia (elected head of hamlet) and lian nain (customary authority) are the most common authorities approached to resolve domestic violence issues following customary rules and norms (Kovar, 2011).

Undermining of women through traditional justice

Traditional justice has the advantages of being accessible, more familiar to the population, and legitimate, but it is a system that lacks women’s participation as women do not have a role in the decision-making process which is entirely controlled by men. It prioritizes the community and collective rights over the rights of the individual, and addresses domestic violence as an offence against the community harmony and social relations between families rather than an offence against an individual (Kovar, 2011). Additionally, traditional justice tends to blame women for violence perpetrated against them, which is reflected in the 2016 Demographic and Health survey which showed that 74% of women and 53% of men agree that it is socially accepted that the husband uses violence against his wife in the case that she burns the food, argues with him, goes out without telling him, neglects the children, or refuses to have sex with him (DGS, 2016). The agreements reached within the customary justice typically include compensation between families, in order to maintain social arrangements established through the marriage system and payment of barlaque (bride price) (Guerry and Sjolin, 2018). Local authorities have little power to enforce their rulings and to protect the victims from further violence. Although the Constitution of Timor-Leste recognises and values the norms and customs of the country, there is no specific law or policy establishing a link between the customary justice and the formal justice to enforce the agreements.
Fragilities of the formal justice system

Formal justice is perceived as less accessible, less fair, less protective of rights, and less reflective of community values. Only 25% of victims report violence to the formal justice (Kovar, 2011). Of the cases reported to the police, only a small fraction of cases proceed to the court. This is partly due to the police and prosecutors referring cases back to the traditional justice system, considering domestic violence a small issue that should be addressed by the families. Economic dependence on perpetrators deters some women from complaining to justice authorities to avoid their husbands being jailed. Imprisonment of perpetrators most likely denies the victim's family compensation which is widely believed as a better option (Kovar, 2011). In addition, women also have little knowledge and understanding of legal procedures, particularly in rural areas and, as a result, they are more comfortable to seek traditional justice. For those women who seek formal justice, practical considerations like lack of transport and distance to the closest town where formal justice institutions are located act a deterrent to proceed with their cases. Likewise, women lack trust in the system due to its often outcome: suspended prison sentences, no rules of conduct imposed, and an inconsistent application of civil compensation.

Furthermore, organisations monitoring the justice system point out to the lack of training of health workers, police, and legal aid providers who not only barely understand the laws and their scope but also their own roles when implementing such laws (Guerry and Sjolin, 2018). The judicial system has been in place for less than 20 years and the continuous need of training and the lack of experience are visible. Some judges still use traditional beliefs to justify violence against women and the decision of not punishing the offenders (Guerry and Sjolin, 2018). The adoption of new laws alone is not sufficient to induce social change. This seems to be the biggest challenge to eliminate violence against women in Timor-Leste.

Recommendations

- **Effective training** of health workers, police, prosecutors, legal aid providers, and judges is crucial to change the perception about formal justice. If those who intervene in domestic violence cases understand their roles and provide effective protection and support to the victims, it will change the perception of the justice system and will increase confidence in it.

- **Women need to feel their needs are duly addressed** when seeking support from formal justice, which means that health workers and police should be able to collect evidence; legal aid should be accessible and aware of the mechanisms in place to support victims; offenders should be charged with the right types of crime; and courts should demonstrate through their decisions that domestic violence matters and women are taken seriously. Education, training, and funding are essential to achieve these goals.
• Traditional justice leaders need to understand the seriousness and consequences of violence against women, the importance of preventing violence and protecting victims. Women need to be heard and be actively involved in decision-making processes. Violence must be condemned at all times and the agreements settled must be enforceable by the authorities to end a generalised sense of impunity of the offenders. Tackling domestic violence requires an intervention into the structures, attitudes, and behaviours that perpetuate harmful constructions of masculinity to be able to change behaviours, beliefs, and structures that reinforce gender inequalities (Nabilan, 2016).

• Women need to be empowered to seek adequate support. It is crucial that opportunities are created for women to have alternative sources of income thus enabling them to complain against the perpetrators who are also the sole income-earner of the household. Women need also to be supported to not feel ashamed when leaving home and seek shelter away from their families/communities. Education is essential for women to understand the justice system and to trust the mechanisms put in place to protect them.

• Governmental funding for civil society organisations that have been primary forces in developing mechanisms and providing services to assist victims of violence, particularly in counselling and support (PRADET), shelter (Uma Mahon), medico-forensic services (Fatin Hakmatek), and legal assistance (ALFeLa) (Nabilan, 2016) is required. Such funding has been provided for by international organisations.
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