

**POLICY PAPER FOR THE
DRAFT LAW ON
DOMESTIC VIOLENCE**

Dili, November 2002

I. INTRODUCTION

A. BACKGROUND

Various types of domestic violence against vulnerable groups such as women, children, elderly and difable¹ can happen anywhere, in public sphere and private sphere or domestic relations. Compared to other violence, however, domestic violence is a more complicated case since it happens and relates to unequal gender and social relationship that were constructed by cultural and traditional as well as religious interpretation. These are mainly caused by the inequality relations between husband and wives, between parents and children, between parents in laws and daughter in laws.

As it happened universally, domestic violence in Timor Leste is not only committed to women and lower middle class or uneducated people, it also happens in other vulnerable groups such as children and the elderly and educated society. In the context of Timor, as it is mentioned above, root causes of domestic violence are mainly from culture, tradition and religious interpretation such as gender roles, "barlaque" (dowry), polygamy, corporal punishment as the way to educate children. In the legal context, domestic violence is one of the most difficult cases to handle, either for the legal enforcers or for the victims, since it is not easy for the wives (victims) to report their violent husbands to the police, while at the same time, they have to depend on the husbands economically.

Legal enforcers who have been interviewed stated that domestic violence is the most difficult cases compared to other cases that are reported to their desk. One of the prosecutors stated that:

" ... Domestic violence case is the most difficult case when compared to others...."

Vicente Fernandes, Head of Suai Prosecutor' office²

He mentioned some main reasons why domestic violence is categorized as the most difficult case: such as victims in domestic violence case often intend to revoke their cases although they have been seriously injured. He said that the victims' (mainly wives) economic dependency regarding the offenders (husbands) made it more difficult to let the police and prosecutors proceed with the case. In fact, domestic violence cases in Timor-Leste are quite high, i.e. 45-50 % out of crimes that are reported to the police and the prosecutors. In the year 2001, UNMISSET recorded there were 504 violence cases committed against vulnerable group whereas 376 cases were domestic violence, while Prosecutors' office in Dili district received 11 domestic violence cases out of 44 cases that were reported to them. In the year 2002 (January – August), VPU (Vulnerable Persons Unit) in Dili District received 352 cases whereas 274 cases are domestic violence and 60 % of it was being settled by mediation.

Another complicated problem of domestic violence is that it has been considered as a private matter that cannot be intervened either by the public or by the legal enforcers. Therefore, in

¹ *Difable* is the abbreviation of *Different Able* or people who have "different ability". This term is a term which used to mention those who were mentioned as "disable". Furthermore, throughout the policy page of this paper, the term "difable" will be used to substitute the term "disable".

² Interview with Head of Suai's Prosecutor Office conducted in Dili, 3 October 2002.

Timor, domestic violence often has been said as “bikan ho knuru mak baku malu” or as fork and spoon that always touch each other; even worse, the Civilian Police of Timor-Leste also considers domestic violence as private matter³.

There are also problems in legal context i.e. Criminal Code, Criminal Procedures and Civil Code. Based on the cases that are reported to the police and service providers, articles that relate to domestic violence in Criminal Code cannot be applied to all types of domestic violence. Criminal code has no adequate articles that deal with crimes related with psychological, economical and some sexual impacts of domestic violence. Also, there is no article in criminal procedures that gives protection to victims and witnesses of domestic violence nor any other procedures and mechanism. Problems with the legal enforcers, in terms of qualitative and quantitative, also contribute to domestic violence problems in legal context. The numbers of the police, prosecutors and Judges in Timor-Leste are insufficient to deal with crime cases including domestic violence cases. They also lack of specific knowledge and skills in interpreting the criminal code and criminal procedures and deal with domestic violence cases.

There are 3 chapters in criminal code that can be applied for domestic violence, i.e., chapter XIV on “crimes against decency”, chapter XIX on “crimes against life” and chapter XX on “crimes against maltreatment”. Article 352 and 356 mention clearly that maltreatment against wives, fathers, mothers and children as well as servants in household will be enhanced 1/3 of the sentence. In general, criminal code is only focused on domestic violence that harms victims physically as mentioned in the three chapters. This is also underlined by article 89 and 90 that defines violence and serious injury as only a “physical impact”.

Chapter XIV on “crimes against decency” categorized all kinds of sexual violence that is insufficient to handle domestic violence cases effectively. Article 281 is usually applied by legal enforcers to handle “sexual harassment” in public sphere, so it cannot be applied to sexual harassment that is committed in private sphere. Article 285 on rape has been ineffective in handling domestic violence cases since it defines rape in a restrictive way. It requires “penetration” and should be committed outside marriage context in order to be categorized as rape. Therefore, it cannot be applied for marital rape that is often committed in the context of domestic violence (marriage relationship). Article 287 and 288 defines rape against children (under age) or limited statutory rape, but in fact, the application of the article is also very limited and has to be in line with article 285 (required penetration).

Article 301 categorizes crimes for neglecting children and child exploitation as using them for begging and carrying out begging and also for performing dangerous feat or dangerous labor, detrimental to health. In reality, there are many children that are used and ordered by the parents to work in not dangerous or bad conditions, but certainly causes children to lose much time for education and recreation.

The brief picture above shows us that criminal code regulates various types of domestic violence that harms victims physically, in other words, criminal code only focused on physical

³ Dr David Mearns. Uniformity within a theme: Power Coalition in Timor-Leste: A report about local and national judicial systems as bases settling the conflict. Australian Legal Resource International (ALRI). Without year. Page. 8

impact in the context of domestic violence. Other types and impacts of domestic violence such as psychological, economic and sexual violence cannot be handled by the code. For example, some articles, particularly related to sexual violence, even cannot be applied for domestic violence cases. Therefore, future regulation for anti domestic violence cases should meet and fill these "gaps".

On the other hand, criminal procedures have yet to provide articles to protect victims of domestic violence such as interim protection and protection of victims while the case is still in trial. Maintenance and the using of common property while the case is in court and or the suspect in jail have to be arranged in the future regulation of domestic violence. Also, government should provide facilities for victims' recovery in the context of domestic violence.

The government of Timor-Leste should focus its concern on domestic violence issues. This is in fact the obligation of the state to provide protection and create the laws and provide facilities to assist in domestic violence cases. The state's obligation is in line with Universal Declaration of Human Rights that states that everyone has the right to life, rights of liberty and security of persons as also highlighted in article 29 and 30 of Timor Leste Constitution. It particularly states the guarantee of equality between men and women, child protection, protection for elderly and difable citizen as mentioned in articles below:

Article 17

(Equality for women and men)

Women and men shall have the same rights and duties in all areas of family life, and political, economic, social, cultural.

Article 18

(Child protection)

1. Children shall be entitled to special protection by the family, the community and the state, particularly against all forms of abandonment, discrimination, violence, oppression, sexual abuse and exploitation;
2. Children shall enjoy all rights that are universally recognized, as well as all those that enshrined in international conventions normally ratified or approved by the state;
3. Every child born inside or outside the wedlock shall enjoy the same rights and social protection.

Article 20

(Old Age)

1. Every senior citizen has the right to special protection by the state;
2. The old age policy entails measures of economic, social and cultural nature designed to provide the elderly with opportunities for personal achievement through active and dignifying participation in the community.

Article 21

(Disabled citizen)

1. A disabled citizen shall enjoy the same rights and shall be subject to the same duties as all other citizens, except for the rights and duties which he or she is unable to exercise or fulfill due to his or her disability;

2. The state shall promote the protection of disabled citizens as may be practicable and in accordance with the law.

Declaration on the elimination of violence against women in Wina, at 1993, was calling at the countries to have commitment to undertake efforts to eliminate violence against women. As in line with UNTAET regulation No.1 Year 1999, Government of Timor-Leste should implement International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). It means that Government of Timor-Leste should have enacted the law to eliminate domestic violence since most of victims of domestic violence are women.

Departed at the reasons and facts of domestic violence above, a Round Table to formulate the ideas of domestic violence issues was held in Dili, November 2001. There were international experts, legal enforcers, public, government and NGOs to share ideas and experience in the meeting. In the end, the meeting agreed that Timor-Leste should have a particular law on Domestic Violence to complete the criminal code and procedures in handling domestic violence cases. They also defined the vision of domestic violence legislation in Timor-Leste. It should give and provide protection for victims of domestic violence.

B. Objective

The objectives of the Policy Paper:

1. Provide background, data and information as the basic arguments to create a regulation on domestic violence in Timor-Leste;
2. Provide legal basis and principles that will be framework for future regulation on anti domestic violence law in Timor Leste;
3. Provide framework for legal substance and legal procedure for future domestic violence drafting process.

C. Writing Process

The policy paper was prepared by the Legislation Team that was formed at the Round Table Meeting, 13 – 15 November 2001. The policy paper was drafted through a simultaneous discussion among legal enforcers, service providers and women's organizations in Dili. There are technical assistants working for the team to collect additional data and information for the policy paper. They also supported the team to organize meetings and prepared discussion materials' and conducting additional focus group discussion (FGD) among the survivors of domestic violence as well as interviews with the judicial sectors.

II. ANALYSIS OF SOCIAL AND LEGAL FACT

A. ANALYSIS OF SOCIAL FACT

“Domestic violence”: is not only committed against wives and in uneducated society

Domestic violence is often being understood as a violence that happened in domestic relation within marriage context or husband-wife relations. Until now, most people will consider domestic violence is only limited to violence which is committed by husband to his wife, perhaps, it is because of public often using terms of “violence in house-hold” rather than domestic violence. In fact, domestic violence also happens with children and other family members such as daughter-in-law and parent-in-law or those who work for the family (servant). In the context of Timor Leste, relatives like uncles can be the offenders of domestic violence against their niece. This is often committed in relation to dowry (“barlaque”) where the uncle sometimes becomes the determinant factor to decide on the amount of dowry. In Timor-Leste, domestic violence also happens outside of marital relations like in dating relationship or serious loving- relationship. Many couples in the dating-relations often commit violence on the partner either in the physical form or other types of violence.

A women’s organization in Dili mentioned several domestic violence cases which were committed by parents against children and that were reported to police. According to the cultural context of Timor Leste there are various cases of violence against children that were committed by the parents, as follow:

- o *There was a girl who was to be matched with a boy chosen by her parents. But since the girl rejected the arrangement, she was tied on her bed and she was not given food for several days. When she finally escape, she reported the case to the police;*
- o *A girl was matched by her mother with the son from her godmother, but the girl disagreed and preferred to have her own partner. The mother was mad and one night insisted to have “virginity test” made to the girl by putting an areca nut to her vagina. As a result, the girl could not walk and she reported the case to the police. Ironically, when her case started to be investigated, the girl revoked the report and went back to living with her mother.*
- o *In general, most of the parents in Timor Leste are very “light-handed” against the children. Therefore, it is easily seen in the market or in various public places, parents that are not reluctant to spank the head of the children just because of small “mistakes”*

On the other hand, universally one of the myths that exists very strongly about domestic violence is that domestic violence is only committed in the lower middle class society. In other words, people assume that domestic violence is committed because of the offender’s lack of education. Therefore, public still considered that domestic violence does not exist in the upper-middle class society who has better education. However, in less than a year of its independence, Timor Leste has recorded several domestic violence cases whereas the offenders are qualified (upper-middle class) such as medical doctors and judges. It attracted so much attention from the public, NGOs

and women's organizations. It also became the main reason why Timor-Leste needs to have better regulation to address domestic violence issues.

Two prominent domestic violence cases below committed by educated people in Dili:

Case X: Legal Immunity and the Principle of Opportunity

X is a health officer who works for the government and he committed domestic violence to his wife for years. This case attracted the public not only because of his profession, but also because of the type of violence that was committed against the wife. For example, in the year of 1989 and 1990 X beat his wife with his hand, in the year 1994 his wife has to be brought to hospital because of the injuries. In the year 1995, X bumped her head to the wall and beat her head with shoes and wire. Several times the victim tried to leave X and went hiding for 2 years, however, because of the children, she had to go back to her house. The climax was when X found the victim. X not only beat the victim on the head with a piece of wood, but also injected some liquid to the victims' back which made her half-conscious. When the case was being reported to the police, he was not arrested let alone detained. Even the investigating judge did not order the police to arrest and detain him, the police officer only asked X to report 2 times a week. But this was not respected by the suspect that even went abroad. Until now, nothing has been heard about the case, none of the legal enforcers is taking initiative to proceed with the case.

Case A: Conspiracy among Legal Enforcers

In the Indonesia era, A was a civil servant at a government's department. But, now he became a judge in the tribunal in one of the districts in Timor-Leste. A committed violence to his wife, such as beating and throwing out her belongings. But when she reported the case to the police and the prosecutors, none of them has had the courage to arrest him. Even though, the victim always pushed the police and the prosecutor to proceed and investigate the case. Finally because of her efforts, she heard that A would be fired. But then, she was advised by a government's ministry to drop the case.

Root Causes of Domestic Violence in Timor-Leste

The police and women's organization recorded various causes of domestic violence. However, there are some causes of violence that can be said as root causes of domestic violence:

Patriarchal Society and Gender Roles

Timorese is a patriarchal society whereas men dominate social stance have fully control on any social conditions, in other words, men decide and define anything in social life. They have also got more privileges such as in education. The male position in Timor is also strengthened by formal law, for example through marriage law and in the context of cultural and religious practice.

Perceptions on gender roles among Timorese, inter alia, as follows:

1. Men (husband) is the head of family (*chefe de familia*) who controls and decides everything in the family. In contrary, women (wife) is the house wife and undertake the domestic role;
2. Men (husband) is breadwinner and women (wife) become housewife and economically dependent to men (husband);
3. Men, either children or adult, have privilege either in education or in other cultural practices. For example the son will be the first who obtains education compared to the daughter;
4. In terms of inheritance, men receive more than those women, with assumption that men will be the main breadwinners for his future family.
5. Most of the head of village is male. Therefore, all the decisions that are made, mainly give less advantages for women.

Therefore, in daily basis, Timor-Leste's women mostly take the domestic role. In several traditional societies in Timor-Leste, as it usually happens in Baucau and various district in Timor Leste, when they hold certain traditional ceremony, the female from various family assigned particularly to work in the kitchen. They should be ready in the kitchen all the time and even must leave the children and families. In Timor Leste, although women play important roles to manage natural resources and agriculture, they are placed in a lowered position compared to the boys.

Women political participation and their social and economic status are very low. The representation of women in various government positions is imbalanced and insignificant. Female do not have various access such as to health services, on the other hand, 2/3 of Timor-Leste society can not read and write. Therefore, it can be said that most of the Timorese women cannot read and write⁴.

The Role of Religion

Religious leaders very much give emphasis on family unity and harmony in whatever situation and condition. It has been expressed by when they receive domestic violence complaints. According to some observations, the religious leader when facing violence against women cases (including domestic violence) even expressed that "... *violence against women as other suffers, is the women's cross...*". Therefore, women should face violence and be patience when facing those experiences. Although religious leaders play significant roles, they have yet to adequate deliver services for (women) victims of violence. Religious leaders have yet to consider divorce as one of the way out of domestic violence within the marriage context.

The role of the religion in Timor Leste's society is very important. It is not only because of 90 % of the Timorese Society are catholics, but also because of long history of violence. In Indonesian times and until now, the role of the church has always been significant. Therefore, church and religious leaders are potential to become an institution that can deliver services for domestic violence's victims or at least giving support in the service for domestic violence based on their capacities.

⁴ Dili Planning Commission, Report on State Condition. April 2002, page. 5-6.

Culture and Tradition in Timor-Leste

Timorese's tradition is a picture of a patriarchal society and this can be seen on various traditions that contribute to domestic violence in Timor:

1. *Dowry*;

One of the root causes of violence against women (also domestic violence) that is often mentioned is Dowry. Dowry is the process giving material goods that is given by the man, which wants to engage with a girl as his wife. The family on the women's side determines the Dowry amount. Normally the demanded dowry is huge and varies such as cows or goats. The process of giving dowry is just like men buying women. The amount of dowry is usually determined by the uncle of the women's family and not the parents of the women or by the women herself. Sometimes the uncle determines how many cows and goats and how large the land is wanted.

According to information collected from society, dowry that is still applied has declined from the initial intention and objective. It was meant as unifying symbol of two families that get into marriage and as symbol to set the women as housewife and mother of the children. However, Dowry at the moment is defined as process of "buying" women (bride), so once dowry is paid, the women become the possession of men (husband) and men's family. Therefore, if the husband dies, the wife will still be possession of the husband's family. This was also expressed by a man which felt that he had bought a wife from his brother that had died⁵ :

This (widow) is my second wife, she should stay with us, work and serve us because I have paid for it (meaning dowry has been paid).

The fact that the husband has bought his wife through the dowry process, makes him feel that he can do what he wants to do with the wife as she fully belongs to him. This matter becomes one of the causes of the domestic violence within the context of marriage or husband-wife relationship.

2. Settling the case according to tradition;

Timor has a model of traditional justice that is still being applied until today. It is also being applied for domestic violence cases as well as other violence against women cases. However, most women said that this mechanism cannot deliver justice for women victims of violence as their voices are often not considered by the parties involved, mainly by the traditional leaders (suco and aldeia).

⁵This story was expressed by Venilale Parish Priest, Fr. Paloma SDB, which in his life live with the population in East zone. He told story that experienced by the widow that lives there where the mentioned widow have various difficulties within the family. At that moment Priest beg those who live with that widow, wherein which answered was one man which in fact is the brother of widow's husband which have died.

If cases of violence against women happen, for example domestic violence that happens to a woman or wife, the families may enter into negotiation which is normally led by the head of the village (which is also normally a relative of one of the families, either men's family or women's family). In the negotiation, normally women victims of violence are not always involved; but the father and brother is usually involved. So the voice of the victim isn't heard within the process of solving cases according to tradition. Because of that, if the compensation takes place, also the voice of victim (women) will not be heard; males determine everything.

3. Adultery and Polygamy

Adultery and Polygamy within the cultural context of Timor Leste are also the main causes why the wife experiences domestic violence. The impact of adultery is often that the husbands do not provide and share maintenance with wife and children. Also when the husbands have mistresses, they usually became more violent towards their wives and children. From the campaign and the dissemination of domestic violence issues that was actively done by UNFPA in collaboration with OPMT it was indicated that polygamy serves as one of the root causes of domestic violence in Timor-Leste⁶. Socialization that was done in Ermera District, Dili city and Railaco Sub district also indicated that polygamy is the root cause of domestic violence. Public opinion, mainly women, stated that they do not know how to stop polygamy.

From the group discussion with survivors of domestic violence that was held in Dili⁷ and Liquica⁸ it was indicated that adultery and polygamy not only encouraged the suspect (Father and Husband) to commit violence against wife and children, but wives and children become the target of second wife or father's or husband's mistress. One of this type of violence cases happened in Liquica, as stated by Mana RDC, Liquica:

"...My husband impregnated several women at the same time. Therefore, women as well as their family asked for piece of land as compensation. They (the women victim of Mana RDC's husband and family) attacked Mana RDC, husband and her children by destroying and throwing stones at the house..."

4. Drink, gambling and cock fighting ;

Drinking, gambling and cock fighting also causes men or husband to commit violence in the family, as for example, they will not give maintenance to the family. Further, often, they easily get angry and beat their wives and children.

⁶ Information from Paula, UNFPA, which execute socialization to several district together with women's organization OPMT.

⁷ Focus Group Discussion (FGD) with 4 survivor girls of domestic violence case. FGD executed in FOKUPERS, Dili, 4 October 2002;

⁸ Focus Group Discussion (FGD) with 5 survivor girls of domestic violence case. FGD executed in RATE LAEK, Liquica, 10 October 2002;

5. Wife or husband incapable of having children;

In Timor, children are very important for the family dignity. Therefore, it is almost impossible to meet a husband or a wife that does not have a child. Women with husband will have pressure from family to fulfill their duty as mothers; the same thing with the men (husband).

6. Family Intervention in the Marriage

Family intervention in marriage in Timor Leste still happens and normally it is mostly addressed to the woman or wife, so many women or wives suffer external pressure on their marriage. Various reasons cause family intervention. In Timor Leste it is frequent for the family to intervene if the wife cannot have children. This will become another cause for domestic violence in the family.

7. Violence as education for children;

Parents and teachers in Timor are well known for being very strict regarding children's education. They still think that a strong and if necessary violent enforcement of education is good for the children's future.

8. Corporal punishment for Children

Corporal punishment in Timor is something very common. Therefore, it is very easy to see children being beaten in the street by family or neighbors.

History and Culture of Violence

The history of Indonesia's era has created a culture of violence in Timor Leste. We can consider that because Timorese experienced massive violence, they are now very desensitized with violence, including domestic violence. Therefore, for Timorese, domestic violence is generally considered as a private matter where legal enforcers have no right to intervene. On the other hand, Portuguese and Indonesia's occupation gave a heritage of feudalism to Timorese's culture. This can be seen when the husbands beat the wives and children and call it as "education" and "love". Also, because of the culture of violence, women and children victims of violence have stopped caring so much for the violence that is inflicted upon them and considered it as "normal".

Interestingly, however, figures and numbers that exist from various sources like from VPU (Vulnerable Person Unit) in Dili indicated that total domestic violence cases are higher than other sexual violence cases⁹. It shows that domestic violence cases would be more and more reported, as the victims are unable to continue to face the experience of violence. In other words, women victims of violence will report to the police if they cannot endure the violence any longer.

Public Opinion

⁹ Obtained from the interview result with 3 VPU officer Dili, 2 October 2002.

Most of the Timorese think that domestic relation (husband -wife) and also domestic violence is a private matter (*"Plate and spoon that touches each other"*), which does not have to be intervened by the public let alone by the legal enforcers. This perception also affects legal enforcers opinion as they also think the same. Several domestic violence cases that happened in public corroborated this opinion:

On Sunday, 22 September 2002, in Dili¹⁰ a husband beat his wife. The beaten wife was trying to commit suicide by throwing herself into drainage. The neighbor did not do anything and they only watched her. Even the police who passed by also did not do anything. When asked, the two police officers which were present answered "... we will act if the victim submits her complain..".

The experience above indicates that within domestic violence, the public and the legal enforcers are reluctant even only to respond the case. The same perception happens when the traditional leaders handle domestic violence. Most traditional leaders cannot understand that domestic violence should be handled differently.

Domestic violence, Social Condition and other Factors

Universally, it is indicated that domestic violence is not an independent violence. Several countries that carried out intensive research about domestic violence noticed that there is a correlation between the domestic violence and social condition. Some correlations between domestic violence and social conditions are:

1. Domestic violence is not only committed in a peaceful situation;

It has been noticed that the number of domestic violence cases increased in conflict areas. The place where the number of IDPs is very high, domestic violence also high as it happened in some places in Indonesia¹¹. The tension condition in the conflict area caused husband to easily beat wives and children, economic exploitation against wives and children.

2. Domestic Violence and Public Health;

In general, domestic violence is very much related to public health issues. Therefore, government should have sufficient health officers who are able to provide services for victims of violence (and domestic violence). At the moment, Timor-Leste desperately needs many health officers such as doctors who are experts in DNA and capable of doing forensic examination and any other medical supports. Government also should create health service providers in the community where the vulnerable groups live.

¹⁰ This matter presented by Lito(Assistant Team with Anti-domestic violence Legislate Team) which witness domestic violence on Saturday, date 21 September 2002, in Dili.

¹¹ This information is presented by the volunteers that work with refugees in Kalimantan, Atambua, Aceh dan Maluku.

Some countries have been considering violence against women and domestic violence as public health issues¹². The government of Nicaragua, for instance, has committed to improve the quality of service providers around the country. Meanwhile, various health department with Ministry of Women affairs in some countries also have created protocols to give services for women and other vulnerable group. Health department and Ministry of Justice, Governor Office, together with the service center for victims in Puerto Rico in May 1998 have adopted "Protocol for Intervention with Survivors of Domestic Violence"

3. Domestic violence and various forms of social violence;

Several countries in Latin America, that have conducted research, stated that there is a clear correlation between domestic violence and social violence. High percentage of unemployment, inadequate house to live, lack of social and health services, using of drugs and alcoholism contribute to increase the number of domestic violence cases.

More than half of population in most of countries in the world are women. It means that governments in the world should address all various kinds of social violence, since it will cause domestic violence against vulnerable groups.

B. ANALYSIS OF LEGAL FACT.

Agencies and institutions in Timor-Leste either the United Nations (UN), government or legal enforcers such as police noted that domestic violence cases always reach the highest number compared with various types of sexual violence against vulnerable groups like rape and sexual harassment. These can be seen from various data below:

Data from UNMISSET (United Nation Mission of Support of Timor-Leste)

Types of Crime	2001	2002
Attack	-	70
Attempt to attack	-	16
Domestic Violence	376	260
Child detention	-	3
Violations	87	43
Sexual assault	41	17
Sexual harassment	-	7
Threat	-	16
Family conflict	-	9

¹² Government in several countries Latin America like Nicaragua, its Health Minister has formally stated that violence against women as public health issue..

Parents conflict	-	2
Violence against children	-	5

Case reported to Dili District Prosecutors Office

Types of Cases	2000	2001	2002
Attempted rape	18	6	10
Rape	33	25	35
Adultery	10	2	2
Domestic Violence	18	11	40

Cases in Dili District Prosecutors Office

Types of Cases	2000		2001		2002*	
	Cases reported	Cases done	Cases reported	Cases done	Cases reported	Cases done
Attempted rape	18	18	6	6	10	6
Rape	33	33	25	20	35	17
Adultery	10	10	2	2	2	1
Domestic Violence	18	18	11	11	40	17

* As of June 2002

Data from Dili District VPU

Month	Domestic Violence	Rape, attempted rape & sexual attack	Sexual Harassment	Violence and maltreatment against children
January 2002				
Court	9	5	1	-
Mediation	11	-	1	1
Suspended	5	4	-	-
Violence not found	1	1	-	2
February 2002				
Court	8	4	1	-
Mediation	18	1	-	-

Suspended	12	-	-	-
Violence not found	7	1	-	-
March 2002				
Court	10	5	-	-
Mediation	26	1	-	-
Suspended	6	-	-	-
Violence not found	3	-	-	-
April 2002				
Court	4	2	2	-
Mediation	22	-	-	-
Suspended	-	-	-	-
Violence not found	2	1	-	-
May 2002				
Court	2	2	1	-
Mediation	32	-	-	-
Suspended	-	-	-	-
Violence not found	5	-	-	-
June 2002				
Court	6	2	2	1
Mediation	25	-	-	-
Suspended	-	-	-	-
Violence not found	4	1	-	-
July 2002				
Court	7	1	-	-
Mediation	21	-	1	-
Suspended	2	-	-	-
Violence not found	2	1	-	-
August 2002				
Court	6	1	-	-
Mediation	17	1	-	-
Suspended	1	1	-	-
Violence not found	-	-	-	-

Until now, there is no nation-wide data collecting available on domestic violence cases. However, the numbers and figures that are collected by each institution above represent various types of violence against vulnerable groups such as women and children particularly in domestic violence cases.

Problems can be seen from the numbers above as follow:

1. Most of gender based violence cases that are received by the judicial sectors is domestic violence followed by other sexual assault cases such as rape and sexual harassment;
2. 60 % of domestic violence cases that are reported to the police are handled through a mediation process. Mostly, the VPU officers were conducting the mediation but some mediation is also conducted by the prosecutors.
3. There are quite a few of domestic violence cases as stated by Dili District Police (VPU) that cannot be proceeded since the initial evidence of crime cannot be found. Therefore, it cannot be sufficiently said as crime.

Women organizations who provides direct services for women victims of violence, particularly domestic violence, indicated various legal problems either legal substance or problems with the legal enforcers in handling domestic violence cases. The procedures in handling domestic violence cases which have yet to deliver justice for the victims indicated that Timor-Leste is not only in need of a particular regulation on Anti-Domestic Violence, but the legal enforcers who handle the case also need to be trained. Aside from that, it is necessary to create various protocols, mechanism and standard operating procedures for the police and other legal enforcers so they will be able to provide services and deliver justice for the victims of violence especially domestic violence.

Several legal problems in handling domestic violence i.e. legal substance and legal enforcers are identified as follows:

A. Laws related to Domestic Violence Cases in Timor-Leste;

1. CRIMINAL CODE

a. Definition of Domestic Violence

The term domestic violence cannot be found in Criminal Code or other laws in Timor. Definition of domestic violence comes from discussions and comparison with various countries that have Anti-Domestic Violence Regulations such as Malaysia and Fiji.

Aside from that, definition of domestic violence has also been obtained from the various experiences of women's organization and service providers such as FOKUPERS in handling violence against women cases. Discussions on the Round Table Meeting about domestic violence in the year 2001 have also contributed to terms and definition on Domestic Violence in Timor-Leste.

The Criminal Code that has been the legacy of Indonesia era categorized several types of domestic violence as can be found in Chapter XX on "Maltreatment", Chapter XIX about "Crime against Life" and Chapter XIV about "Crimes against Decency".

These chapters, however, only focus on domestic violence that caused physical injuries to the victims and or caused minor injury or serious injury unto death. Articles within Criminal Code cannot be applied for other types of domestic violence that have psychological, sexual and economic impacts on the victims.

b. Articles related to Domestic Violence.

o Article 89

"The commission of violence is identified with bringing a person in a state of unconsciousness or helplessness"

The article defined violence for all articles in the Code. Therefore, the violence that is categorized and defined in the code and within Timor-Leste's Criminal context will be based on the definition which determined according to article 89 of the Code.

Based on the experience in handling domestic violence cases that are being done by service providers, problems arise when the definition of article 89 is used to handle domestic violence cases in particular or violence against women in general as follows:

1. The category of violence in article 89 is too general, since it means that violence can be conducted by anyone. The term of violence is not suitable and cannot be applied for all kinds of violence cases, mainly for domestic violence cases. Criminal Code also does not mention domestic violence particularly or a definition of domestic violence. Therefore, a there should be a definition for domestic violence in the future regulation.
2. The impact of violence in article 89 is too restrictive because it only focuses on physical violence. The impact of violence mentioned in article 89 is also limited to persons who are left in a state of unconsciousness or helplessness meaning that violence should be very serious.
3. The definition cannot be applied for domestic violence that harms psychologically, economically and sexually to the victims. On the other hand, the cause of domestic violence normally varies, ranging from physical, sexual, psychological to economics or within category ranging from minor up to serious category, which causes death to the victims.

o Article 90:

"Serious physical injury" denote: illness or injury which does not leave any prospect of complete recovery or through which danger of life exists; continuous incompetence for performing official and professional activities; loss of the use of a sense of organ; mutilation; paralysis; disturbance of the intellectual capabilities which lasted for more than four weeks; removal or death of the womb of a women"

Article 90 does not provide definition of serious injury although this article mentions several kinds of serious injuries. Therefore, it is left to the judge to categorize serious injury out of categories mentioned in this article as long as it affects victims physically¹³.

In line with article 89 that provides definition of violence very narrow, limited and only focused on physical injury, article 90 also provides very limited kinds of serious injuries. However, if it is applied to domestic violence cases, these categories are not always relevant.

Some problems are identified when article 90 is applied for domestic violence cases as follows:

1. Various kinds of serious injuries defined in article 90 are very limited and cannot be applied for various domestic violence cases especially that have non-physical impact;
 2. Types of various injuries do not include serious injuries that harms future generation (children);
- o Chapter XX on Maltreatment (Article 351 – 356 Criminal Code);

Article 351-356

1. Article 351

- (1) *Maltreatment shall be punished by a maximum imprisonment of two years and eight months or a maximum fine of three hundred rupiahs.*
- (2) *If the act results in a serious physical injury, the offender shall be punished with a maximum imprisonment of five years.*
- (3) *If the fact results in death, he shall be punished by a maximum imprisonment of seven years.*
- (4) *With maltreatment shall be identified intentional injury to the health.*
- (5) *Attempt to this crime shall not be punished.*

2. Article 352

- (1) *Except for articles 353 and 356 maltreatment that does not result in an illness or obstacle in the performance of official or professional activities, shall, as light maltreatment, be punished by a maximum fine imprisonment of three months or a maximum fine of three hundred rupiahs. This sentence may be enhanced with one third in respect of the offender, who commits the crime against a person who is in service with him or who is his subordinate.*
- (2) *Attempt to this crime shall not be punished.*

3. Article. 353

¹³ HoogeRaad (HR) Interpretation 23 October 1923, as quoted in Indonesian Criminal Code and Indonesia Criminal Procedures which was written by Soenarto Soerodibroto, SH.

- (1) *Maltreatment committed with premeditation shall be punished with a maximum imprisonment of four years.*
 - (2) *If the fact results in a serious physical injury, the offender shall be punished by a maximum imprisonment of seven years.*
 - (3) *If the fact results in death, he shall be punished by a maximum imprisonment of nine years.*
4. Article 354
- (1) *The person who deliberately causes to another serious physical injury shall, being guilty of serious maltreatment, be punished by a maximum imprisonment of eight years.*
 - (2) *If the fact results in death, the offender shall be punished by a maximum imprisonment of ten years.*
5. Article 355
- (1) *Serious maltreatment committed with premeditation shall be punished by a maximum imprisonment of twelve years.*
 - (2) *If the fact results in death, the offender shall be punished with a maximum imprisonment of fifteen years.*
6. Article 356
- The punishment lay down in articles 351, 353, 354 and 355 may be enhanced with one third;*
- First, in respect of offender who commits the crime against her mother, his lawful father, he spouse or his children.*
- Secondly, if the crime is committed against an official during or on account of the lawful exercise of his office.*
- Thirdly, if the crime is committed by administering any substances injurious to life or to health*

In handling domestic violence cases, most of legal enforcers apply articles in chapter XX on Maltreatment for various physical injuries, ranging from minor up to serious injuries. If these maltreatment (article 351, 353, 354 and 353) is committed against mothers, fathers, wives and children, the sentence will be enhanced by 1/3. However, if maltreatment is committed against the servants, the sentence as mentioned in article 352 will be also enhanced with 1/3.

Problems identified when these articles applied for domestic violence cases, as follows:

1. Articles on maltreatment only focused on physical violence. Therefore, maltreatment that harms victims psychologically and economically cannot be sentenced by these articles;
2. Attempt to commit maltreatment cannot be sentenced. This is a very serious problem since victims of violence can be very traumatized even by an attempt to commit maltreatment;

o Chapter XIX on Crime against Life

Article 338

The person who with deliberated intent to take the life of other person, shall, being guilty of manslaughter, be punished by a maximum imprisonment of fifteen years.

Article 339

Manslaughter followed accompanied to preceded by a punishable fact and committed with intent to prepare or facilitate the execution of said fact for being taken in the fact, to secure oneself or other accomplices to said fact or either impunity or possession of the unlawfully acquired object, shall be punished by live imprisonment or a maximum imprisonment of twenty years.

Article 340

The person who with the deliberate intent and with premeditation takes the life of another person, shall, being guilty of murder, be punished by capital punishment of life imprisonment or a maximum imprisonment of twenty years.

This article is used for domestic violence that causes death to victims, although it is explained neutrally or can apply to other various kinds of violence.

o Chapter XIV on Crime against Decency

Article 281

By a maximum imprisonment of two years and eight months or a maximum fine of three thousand rupiah shall be punished:

1st any person who with deliberated intent publicly offends against decency:

2nd-ly, the person who with deliberated intent offends decency whereby another person is present in spite of himself.

This article is not really clear in governing the violation of morality, but it is normally used to handle sexual harassment that is committed in public sphere. Therefore, the article cannot be applied for sexual harassment in domestic relation (husband-wife relationship and in dating relationship).

Article 285

Any person who by using force or threat of force forces the woman to have sexual intercourse with him out of marriage, shall, being guilty of rape, be punished by a maximum imprisonment of twelve years.

Article 286

Any person who out of marriage has carnal knowledge of a woman of whom he knows that she is unconscious or helpless, shall be punished by a maximum imprisonment of nine years;

Article 287

- (1) *Any person who out of marriage has carnal knowledge of a woman whom he knows or reasonably should presume that she has not yet reached the age of fifteen years or if it is not obvious from her age, that she is not yet marriageable, shall be punished by a maximum imprisonment of nine years*
- (2) *A prosecution shall be instituted only by complaint, unless the woman has not yet reached the age of twelve or one of the cases of articles 291 and 294 is present.*

Article 288

- (1) *any person who in a marriage has carnal knowledge of a woman of whom he knows or reasonably should presume that she has not yet marriageable age, shall, if the act results in bodily harm, be punished by a maximum imprisonment of four years.*
- (2) *If the act results in serious physical injury, a maximum imprisonment of eight years shall be imposed.*
- (3) *If the act results in death, a maximum imprisonment of twelve years shall be imposed.*

In applying the three articles mentioned above, several problems are identified:

1. The category of rape is defined very restrictively and limited since in order to be categorized as rape, it is required penetration of penis into vagina. This will be a problem since in many cases rape is not always committed by penetrating penis into vagina but can also occur using other tools like egg or hand¹⁴.
2. The article of rape can only be applied for those who are outside of marriage relationship. Therefore, marital-rape cannot be handled by these articles in criminal code.
3. Rape against child within marriage is very limitedly regulated in these articles.

Article 289

Any person who by using force or threat of force forces someone to commit or tolerate obscene acts, shall, being guilty or factual assault of the chastity, be punished by a maximum imprisonment of nine years.

In reality, article on adultery is similar with "bins", therefore all kinds of sexual assaults that cannot be covered by other articles in the code, should be handled by it. This especially cannot deliver justice for domestic violence victims.

Article 294

- (1) *Any person who commits any obscene act with his under age child, step-child or foster-child, his pupil, a minor entrusted to his care, education or vigilance*

¹⁴ This problem is also being shared by police officers from 13 districts in police training in handling domestic violence cases which was organized by UNFPA in Dili from date 30 Oct – 7 Nov 2002.

or his under age servant or subordinate, shall be punished by a maximum imprisonment of seven years.

(2) *By the same punishment shall be punished :*

1st , the official who...its any obscene act with a person who is officiallyhim or has been entrusted or recommended to his

2nd-ly. the executive, physician, teacher, official, overseer, or attendant at a prison, labor institution of the country, educational institution, orphanage, hospital, lunatic, asylum or charity institution who commits any obscene act with a person admitted thereto

Article 295

(1) *any person shall be punished*

1st, by a maximum imprisonment of five years, if he with deliberated intend cause or facilitates the commission of any obscene act by his under age child, step-child or foster-child, his pupil, a minor entrusted to his, care , education or vigilance or his under age servant or subordinate, with a third party.

2nd-by, by a maximum imprisonment of four years, if he except the cases enumerated under 1st with deliberated intent causes or facilitates the commission of any obscene act by a minor, whose minority he knows or must reasonably suspect, with a third party.

(2) *if the offender makes an occupation or a habit of the commission of the crime, the punishments may enhanced with one third.*

Criminal code strictly regulates rape or any other sexual assault against children, therefore if incest is committed with children, article 294 on obscenity against children will be applied. In domestic relations, incest or sexual assaults against children is committed frequently. The policy maker especially for the future domestic violence act should also focus on this issue.

Article 301

The person who surrenders to leave a child under the age twelve years who is under his legal authority, to another person, knowing that he/she will be used for begging or carrying out begging, for performing dangerous feat or dangerous labor detrimental to the health, shall be punished by a imprisonment maximum of four years.

According to article 301 above, it is prohibited using children for begging or carrying out begging and for performing dangerous feats or dangerous labour that detriment their health. Children are working to support the family's incomes although they are not always working in bad condition as required above.

Article 304

The person who deliberated brings or leaves someone, to whose sustenance, nursing or care he is obliged by virtue of the law applicable to him or by virtue of an agreement, in a helpless state, shall be punished by a maximum imprisonment of two years and eight month or a maximum fine of three hundred rupiahs.

The article can be applied for those who neglecting people who should be nursed and cared. Even though this article does not categorize the legal subjects clearly, it should also be applied for parents who neglect their children or the other way around, children who neglect the parents (elderly).

Article 305

Any person who expose a child under the age of seven years or, with intent to get rid of it, abandons the child, shall be punished by a maximum imprisonment of five years and six month.

Article 308

If the mother, driven by fear or discovery of the birth of her child, expose the child soon after the birth or, with intent to get rid of it, abandons the child, the maximum of the sentences mentioned in articles 305 and 306 shall be mitigated with one half.

This section can be used to deceive the parents who neglect their children and are irresponsible regarding the growth of their children who have yet to reach age of 7. Article 308 particularly deceives mother's behavior who leave her child after giving birth.

2. CRIMINAL PROCEDURES

UNTAET regulation No.25 Year 2001 is the criminal procedure that is in force in Timor-Leste. Several limitations and weaknesses are identified when it is applied on domestic violence cases as follows:

- a. No procedure for victim and witness protections are available under this regulation;
- b. According to Criminal Procedure (UNTAET Regulation No.25 Year 2001) if sexual violence is committed (also in the context of domestic violence), victims' statements is sufficient. However, Judges still need additional evidence especially DNA since Judges considered that victims' statements will be denied by the suspects.
- c. Often, domestic violence cases are "terminated" some times after and before the 72 hours hearing process. Police officers frequently release the suspect and do not inform the victims and their families.
- d. Legal procedure does not provide opportunity for lawyers and counselors to present and accompany their clients in court. Judges usually underlined that "law does not allow lawyers and counselors to be present and accompany victims in court". On the other hand, judges assumed that according to law, the prosecutors represent the victims in courts.

3. CIVIL CODE

The Civil Code rules domestic relationship within marriage context. So if domestic violence is committed, that are some legal actions that can be taken by wives or husbands as follows:

- o Article 209
Reasons that can be basis for divorce are only as follows:
 - 1e. Adultery
 - 2e. Leave the place together with bad intention.
 - 3e. Sentenced with jail sentence of 5 years duration or sentence which is serious, which was stated after the marriage.
 - 4e. Serious wound or maltreatment, done by husband toward wife or wife toward husband, such this, so endanger the life which is injured and maltreated, or causes wounds that endanger...

- o Article 233
 "In terms of existing events which can be used as reasons to demand marriage divorce, husband and wife have the right to demand table and bed separation. The demand for separation which is such may advance based on actions which goes beyond limit, maltreatment and rude hostility, done by one party toward other party"

There are problems identified in the context of Domestic Violence:

1. Civil Code only rules domestic relation within marriage and problems happening in the relation. Therefore, for example, Civil Code does not regulate domestic relation outside marriage context such as dating relationship.
 2. Civil Code only regulates divorce and table and bed separation if domestic violence is committed within marriage relationship. It does not regulate maintenance for wives, husbands and children if domestic violence is committed. It also does not regulate common property between husband and wives in domestic violence context.
 3. Civil Code does not regulate the relationship between husband and wife with their children in the marriage in case of domestic violence being committed.
4. Law No.1 Year 1974 about Marriage and its Government Regulation No.9 Year 1975

Marriage Law regulates about the possibility of divorce between husbands and wives. Whereas article 19 of government regulation of Marriage Law No.1 Year 1974 regulates conditions required to divorce:

Article 19

Divorce can be filed by wives or husbands with reasons below:

- a. *One party committed adultery or has drinking behavior, gambling behavior, and so on;*
- b. *One party leaves other party during 2 (two) years consecutively without permission of other party and no legal reason or because of other things beyond his capacity;*
- c. *One party got 5 (five) years sentenced or other serious sentence after marriage;*
- d. *One party committed serious maltreatment which endangered other party;*
- e. *One party got paralyzed or suffers disease that causes impossibility to execute his/her obligations as husband and wife;*
- f. *If there are conflicts between husband and wife whereas no hope for reunion and living in harmony.*

5. Criminal Procedure

Reporting Mechanism

There are problems in reporting mechanism in the police:

- a. No SOP (*Standard Operating Procedure*) for dealing with domestic violence cases and victims are available in Timorese Police Service. Therefore, each VPU has their own mechanism to deal with the case and the victims.
- b. At the moment, the police officers in VPU have taken initiative to deliver victims to hospitals. However, there should be a network among the police, hospital, social services and any other service providers.

Victims of domestic violence revoke their case

Due to various reasons, victims often revoke their cases either in the police or in the prosecutors' stage. From interviews held with the police and the prosecutors, it was said that victims revoked their case due to their economic dependency regarding the offenders. Ironically, police officers and prosecutors allowed the victims to do that. Police and prosecutors said that often the victims were crying and begging to release the suspect and further revoke the case. Victims do not have choices if the offender is in jail, no one will be the breadwinner of the family, and children cannot go to school among many other reasons.

There are problems identified from this experience as follows:

1. Domestic violence cases have yet to be categorized as "crime", so that the reported cases are considered as "complaint" that can be revoked by the victims;
2. There is no procedure and protocol for dealing with "light maltreatment" or alternatives sentences or procedures. Therefore, all kinds of cases ranging from "light maltreatment" to "serious maltreatment" will be handled by the same procedures.
3. There should be a special unit for victims of violence that provide program to strengthen victims economically and psychologically. This will support the victims when they have to take decisions on their case;

Cases Record for Domestic Violence

As stated above, there is no nationwide record system available for domestic violence especially in the police station in Timor-Leste, which causes problems to victims, counselors and family as follows:

1. Victims, victims' family, lawyers and counselors have difficulty in monitoring domestic violence cases that are handled by the judicial sectors whether in the police, in the prosecutors or in courts;
2. The documentation of cases has yet to be arranged systematically and methodologically. This causes other officers as well as victims, family, lawyers and counselors to have less access to the case.

3. The rotating system, mainly in the police station is very high. Therefore, the officers who handle the case usually have to interview the victims repeatedly.

Arrest and Suspect Detention Problem

Some problems identified in arrest and detention as follows:

1. Because of various reasons, suspects are not always being arrested and detained. Sometimes important positions occupied by them are the reasons pointed out in the cases for this to occur, even in situations where the suspects' behavior is threatening the victims' life.
2. Many offenders received some privileges from the legal enforcers. They often got substitutive measures from the legal enforcers which are a threaten to the victims and the family;
3. Whether the police or the prosecutors do not always inform the victims and their family regarding the decisions taken. For example, the police releases the suspect and do not inform the victims and family nor the investigating judge.

6. Mediation

Women's organizations and service providers found out that there are quite a lot of domestic violence cases being settled by mediation in the police and or the prosecution office. In other words, many domestic violence cases were settled by agreement made by the parties (victims and suspects). This is mediated by the police and the prosecutors although they now that there is no legal basis for conducting mediation.

From interviews made to VPU officers in Dili District, it was revealed that most of the cases that are reported to them are settled by mediation. Data from various Districts' Prosecutors office in Timor-Leste shows us as follows:

Domestic Violence Cases reported to Prosecutors office in Timor-Leste

District	2000	2001	2002
Dili	13 case	21 case	54 case
Ermera	NA	1 case	2 case
Liquica	NA	1 case	9 case
Ainaro	NA	1 case	4 case
Maliana	NA	NA	13 case
Aileu	NA	NA	3 case

Process of the case	NA	Settled with mediation: 16 cases Transferred to court: 5 cases Verdict by District Court: 3 cases	Settled with mediation: 50 cases Transferred to court: 7 cases Verdict by District Court: 2 cases Verdict by Prosecutor: 5 cases In Civ -Pol: 11 Cases
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Some reasons advanced by VPU for conducting mediation in domestic violence cases are as follows:

- a. The case is categorized as “light maltreatment” and are a first time aggression committed by the offender;
- b. The victim would like to revoke the case due to the fact that if the offenders are arrested, no one will be the breadwinner in family.

Several Problems identified in Mediation are as follows:

1. No legal basis and procedure to conduct mediations for domestic violence as categorized above;
2. Although the police do not conduct the mediation by their initiative, they often receive “order” from the prosecutors office to conduct the mediations;
3. The victims’ will to solve the case by mediation is usually due to pressure from the offenders and the family and or victims’ economic dependency regarding the offender;
4. In fact, mediation cannot always be used as the best last resort to settle the case;

It is certain that mediation can be an alternative to settle the “light maltreatment” in domestic violence cases. However, there should be standard procedure provided to conduct mediation so that victims are not re-victimized in a domestic violence case.

7. Civil Procedure

The civil code regulates divorce and table and bed separation that is caused by domestic violence committed in relations within husband and wife. Still the Law has yet to regulate maintenance for the victims of domestic violence when committed in husband-wife relation. This should be included in the future anti domestic violence regulation since it will give protection to victims and victims’ family of violence. On the other hand, law also should regulate the common property between husband and wife.

D. Problems with the Legal Enforcers;

2. The insensitivity of legal enforcers in handling domestic violence case.

Most of victims of domestic violence are vulnerable groups such as women, children, elderly and dif-able. Therefore, legal enforcers should understand how to deal with

vulnerable groups victims like them. Services that are provided by the legal enforcers should be able to deliver justice and sensitive to the victims. For this reason, legal enforcers, mainly police and prosecutors should networking with the health, social and general service providers in public.

3. Lack of initiative and not responsive

Most of legal enforcers, mainly police, generally lack of initiative and are not responsive in handling the case, as can be seen below:

- a. Most of police officers are waiting for and depending on a complaint from the victims. If there is no complaint, they cannot start the investigation.
- b. Law states clearly that anyone can report to the police or prosecutors on domestic violence case. However, some police officers do not want to process the case if the victims themselves do not submit the complaint.
- c. Although public and police officers themselves may have witnessed domestic violence being committed, still police officers are not always taking initiative to investigate these cases.
- d. Police officers and prosecutors often release the suspect, some times before 72 hours before the hearing process, which could threaten the victims and the family.

4. Lack of support from units or focal points at various institutions of legal enforcers.

At the moment, there is a VPU or Vulnerable Persons Unit in the police station in Timor that is in charge of vulnerable persons (vulnerable victims) such as women and children. However, VPU cannot deliver better services if it is not supported by units and/or focal points from other institutions, such as prosecutor's office, hospital, social services, and other institutions. The Chief of Dili District Prosecutor's Office stated that there should be a unit in the prosecutor office with similar functions of VPU in the police station.

5. Lacking of legal enforcers in quantity and quality

The total number of police officers (ETPS) in Timor-Leste is only 1300 personnel who have to serve around 820.000 Timorese people (51% are women), according to the estimation of total population in the year 2002. The number of police officers is not sufficient to deliver services to the public. On the other hand, the number of policewomen should be increased in order to deliver better services to vulnerable groups.

The number of prosecutors and judges in Timor also is not enough to give services for victims of crimes. Lack of legal enforcers causes many domestic violence cases to be settled by mediation and cannot proceed to the next step or to the court. In some cases, with the same reasons, legal enforcers refer the cases that they handle to the traditional justice. There are also problems with facilities that should support legal enforcers in accomplish their duties. As a result, many legal enforcers are obstructing justice since they lack capacity in dealing with the case.

The lack of capacity from legal enforcers causes the following problems:

- a. Legal enforcers have yet to categorize domestic violence as a crime, so the police have to receive complaint from the victims before they investigate the case.
- b. The investigation report is inaccurate and lacks information related to the crime such as description of the crime and facts of the crime. Often, it lacks information about identities of the offenders and the victims, and lacks statements from victims and witnesses. Therefore, the data and information cannot meet the element of the crime that is mentioned in the criminal code.
- c. Investigators whether the police or the prosecutors, often, ignore significant evidence that relates to the crimes
- d. Prosecutors and Judges extend the detention of the suspects without a hearing process, they do it only by letter. They also do not send the copy of the letter to the victims and suspect's family. This causes victims, suspects and their family as well as counselors and lawyers not to have access to the case;
- e. Legal enforcers are not capable enough to interpret the laws, so the trial process is not really effective and leaves the deliver of justice to the parties (victims and suspects). For example, it is very rare for the police to apply article 44 in criminal procedure on "expedited trial".

E. The Role of Traditional Justice;

Traditional justice in Timor has a great and significant role as mentioned by women's survivors of domestic violence¹⁵. Most of women's survivors who mainly live outside Dili District had their cases settled by chefe de sucos and chefe de aldeia (chief of villages).

Timorese and often legal enforcers believe that traditional justice has significant role in handling various crimes committed in public including domestic violence. Traditional justice is not only applied by de aldeia and de suco for "light cases" and civil cases but also for serious cases and crimes cases.

If traditional justice is applied, the following problems can be identified¹⁶:

1. The system to settle the case is not in line with human rights value and standard mainly for various violence against women cases. Often, women victims of violence would not be involved in settlement process and reparation process (compensation, rehabilitation and restitution). Generally, it can be said that there is no victims' voice in the reparation process.
2. People at local level still do not understand and differentiate between crime cases and civil cases that can be handled by the traditional justice.
3. On the other hand, often, chiefs of traditional justice are the relatives of the parties that cannot decide the case objectively.

¹⁵ Focus Group Discussion (FGD) in Dili and Liquica.

¹⁶ Obtained from several interview which done with the survivors and law upholders as well as research result from ALRI (Australian Legal Resource International) about "Local and National System Court as bases for Solving Conflict".

F. Public's Perception on Legal System in Timor-Leste.

Some of the reasons that make most of Timorese, mainly women, to be reluctant in reporting their case to the police¹⁷:

1. Since there are cases referred to traditional justice (also gender-based violence), public has more difficulty in believing and trusting formal justice as provided by the state (law);
2. Generally, in Timor context, if the victims report the case to the police, it means that the victims cannot take the violence any longer. Moreover, victims do not really like to go to formal justice which expensive and lengthy;
3. During Indonesia occupation, the Judicial System was very corrupt. This caused victims of crimes, generally, not to want to deal with the formal justice. Some victims revealed that they should pay ranging from US\$ 200 to US\$ 1000¹⁸.
4. Public needs legal information, mainly regarding their rights, in order to go to the formal justice.

C. THE IMPACT OF DOMESTIC VIOLENCE

Domestic violence harms victims physically, psychologically, sexually and economically the individuals and also the states. Several countries, like countries in Latin America, have been seriously doing research and survey about the impact of domestic violence that happens not only to individuals or directly to victims, but also to the state¹⁹.

Several reports from various countries in the world indicate that the percentage of domestic violence could reach as high as²⁰:

- o Latin America: 25 – 50 % women experience domestic violence.
- o ¼ total women in the world experience violence in their own house;
- o Egypt: 35 % women population experience violence within marriage;
- o USA: 28 % women at least experience violence committed by her partner;
- o India: 45 % husband beat his wife;
- o Uganda: 41 % women have been beaten by his partner.

In Timor-Leste alone, 45 – 50 % cases received by various institutions and legal enforcers are domestic violence cases²¹.

Below is various types of impact of domestic violence to individual and to states:

A. Impact against individuals

1. Economic Impact

¹⁷ Ibid.

¹⁸ Information from FOKUPERS staff.

¹⁹ Susana Chairoti Boero, *General picture about Violence against women in Latin America and Karibia*. Jogjakarta, 2 September 2002.

²⁰ Data from the paper above and UNICEF Report year 1995.

²¹ This matter can be seen its detail at the analysis part of judicial fact within this policy paper.

Domestic violence occurs in the situation where women or wife's access towards family economics' sources are limited by the husband. Often, wives are prohibited to go to work or on the contrary, children cannot go to school since they have to support their family incomes by working in the streets. In the world, data indicates that one out of five days, women are absent from the work place as impact of domestic violence.

Inter American Development Bank (IADB, 1997) concluded from the research that was conducted in Santiago (Chile) and Managua (Nicaragua) that each working women experienced physical, psychological and sexual violence from her partner. In general, their income are lower than those working women who do not experience domestic violence.

In general, economics' impact of domestic violence is:

- Women's income become very low
- Women's access towards family economics' sources becomes very low.
- Tight control towards access of family incomes;

2. Physical Impact

Most of domestic violence harms physically the victims, women, children, elderly and or difable. Also, laws regulate most of physical types and impacts of domestic violence. There are various form of physical impact in domestic violence: blindness, deafness, injuries, broken bone, and so on. Health officers at the hospital must be able to pay attention to various injuries either experienced by women, children or other vulnerable groups.

3. Impact on mental health

Domestic violence that is committed psychologically causes impacts on mental health, for example:

- Psychological trauma;
The victims of domestic violence, either those who experienced physical, psychological, sexual or economics' violence will experience psychological trauma.
- Victim become unproductive;
Victims also became unproductive, in terms of works. The children who witnessed violence also tend to become unproductive in schools.
- No hope for the future.
Many victims feel that they will have no future when they experience domestic violence. They feel depressed, powerless and unable to fight against the trauma.

4. Impact on women's reproductive health

Women who experienced domestic violence often experienced abortion, miscarriage and infertility. This should concern health officers who receive women who experience these problems. Since victims usually don't always want to reveal the violence, in contrary, health officers should pay more attention on the injuries and other health problems. For example, a hospital in Mimika, Papua, found that there were 12 women who had their spleen leaked since the husbands beat them.

5. Impact on children (the future generation)

There should be more attention on impact of domestic violence on children since they will be the future of a nation. There are various types of impact of domestic violence on children.:

- a. Psychological trauma on children;
- b. Children who witnessed domestic violence tend to become the offender when they grow-up.

B. Impact against the state

1. Economy;

In general, the decreased of working productivity of domestic violence victims in workplace affects the country's economic development.

2. Development;

For developing countries, the financial loss because of domestic violence will affect the countries development.

3. State Expenditure;

Latin America countries that conducted research and surveys on domestic violence are able to show various numbers and figures on state's financial loss caused by domestic violence²²:

- a. Expenditure for various domestic violence cases caused countries to loose 14,2% of GDP (Gross Domestic Product) or around US\$ 170 million on victims' medical treatment, judicial system and budget for legal enforcers' training and also due to the decrease of productivity.
- b. A study that was being done in Columbia indicated that domestic violence reduced 2% of the overall GDP each year;
- c. IADB estimated that Latin America countries expend 1.6 – 2 % of their GDP for various budgets for domestic violence issues .

4. The future of the nation and state.

Since domestic violence also happens to children and causes death, it means that domestic violence issue will affect the future of a nation. In Uruguay, every nine days, one woman is killed by the husband or partner. This number is not including other kinds of "serious incidence" in the household that are allegedly done by the husband or partner or the parents. Many unclear incidents happened towards children and wives in the household and are only discovered by health officers in hospitals.

²² pagel.11

D. ROLE OF COMMUNITY

The community where the victims live can also play a significant role since when violence occurs victims often come to the community or the community witnesses and hears the violence. Therefore, in the context of domestic violence, roles of community are very important.

In Timor-Leste, cultural and religious communities have significant roles in daily life and also when domestic violence occurs. It can be seen from the roles of chefe de suco and de aldeia in handling domestic violence as well as other of violence cases in community. Their roles are different in each community and districts.

In Liquica²³ for instance, head of the village is very influential in mediating various domestic violence cases committed in the community. Head of town and head of village are very considered by local community mainly when the police cannot handle cases. From several discussions and interviews conducted in various district, quite a lot of "break a promise"²⁴ cases were settled by head of the town. This break a promise case is a case where one man impregnated his partner (out of the marriage either according to religion, state and tradition) and is reluctant to acknowledge or to take the responsibility. Case like this if it is reported to the police is very difficult to be settled and is normally handled through negotiation or mediation, due to the fact that this case is identified under civil category. Therefore, there are a lot of victims of break a promise case that brings their case to the level of the head of the town.

From the discussion had, normally the head of town (chefe de aldeia) is a relative of the parties that have the dispute, and if the head of town is the relative of men normally the decision will be more advantageous for men. The participants (all were women either survivors or not) in Los Palos stated clearly that they disagree with the mediation process, which is being done between families like the one the head of town did, because it is only giving advantages for men. Decisions from mediation with the head of town mostly did not satisfy victim, particularly, women victim. The church in this matter also deliver great contribution as sometimes the church becomes the place for lamentation and complain of the victims of domestic violence. Church assumed its role by providing counseling, deliver victims to the hospital and police and there are churches that provide shelter or temporary accommodation for victims of domestic violence²⁵. Therefore, community around victim, either the community or the church is very potential to create a collective system to provide assistance and support for the victim of domestic violence.

²³ Interview with survivors.

²⁴ In eastern society whereas virginity is still something very much important, sexual intimacy should be occurred within a marriage context. However, men usually push women to have sex with them with the promise that they are going to get married. Therefore, the women usually agreed with the proposal and they had sex and caused women pregnant. But then, the men breaking the promises and doesn't want to marry the women. There is no article in the criminal code that categorize it as crime. It became one of the most difficult case to be handled.

²⁵ This matter being done by one church in Los Palos, like that which expressed by sister in Los Palos in an interview Monday, 4 November 2002.

E. EXPERIENCE OF SERVICE PROVIDERS IN HANDLING DOMESTIC VIOLENCE CASES

In Timor-Leste there is no sufficient organization either women's organization, legal aid institution and human rights organization in general that provides direct assistance (direct services) for the victims of domestic violence. The biggest Women's Organization in Timor-Leste, FOKUPERS, can be said one of the pilot of service providers for victims of domestic violence mainly women, children and adults. There are also various organizations at the community level out of Dili and also church that provides direct services for the victims of domestic violence. However, because of their capacity, there is still many of them that refer domestic violence cases to FOKUPERS.

Various service providers indicated various problems in handling domestic violence case, as below:

1. The capacity of legal enforcer in handling case;
Service providers found many obstacles with the legal enforcers mainly lack of professionalism in handling cases. This matter is seen from several problems below:
 - a. Recording and case data gathering in police that is not systematic;
Service provider organization often found out that police body did not record case systematically, therefore causing difficulties to the victim, assistant and family that wants to monitor the case handled.
 - b. Insufficient Legal Interpretation and implementations;
Sometimes it happens that the interpretations about articles is not in accordance with the case that is reported or there are still a lot of law enforcers that do not refer to articles and procedure that exist optimally, which should make the handling of the case more efficient and effective.
 - c. Release the suspect without providing information to the victim and family member.
 - d. Conduct mediation without taking into account victim situation and the impact of the case that is experienced;
Mediation becomes one of the great obstacle which is faced by not only victim and assistant, but also law enforcers themselves mainly police body.
 - e. The duration of settling case for a length of time and overdue time which determined by the existing law;
A lot of domestic violence cases where suspect has already been released but the case stops and do not proceed.
2. Mechanism and procedures at the police;
Non-existing mechanism to handle the case at the police causes VPU body (Vulnerable Persons Unit) at various districts in Timor-Leste to handle cases according to each own mechanism. This matter also makes law enforcers to easily make interpretations against domestic violence cases if for instance it makes it easier to solve by mediation, even in cases that should not be handled through it;
3. Coordination among legal enforcers and service provider.
Coordination among legal enforcers and service provider either health service or social worker are still insufficient. Good coordination among law enforcers and other service provider centers like hospital and social worker will provide services more effective and efficient for the victims of domestic violence.

4. Legal enforcer rotation
At the moment, still a lot of Timor-Leste police assisted and supported by the International Police, which came from various countries. However their permanence here is very brief - that between 3 – 8 months, which is really disturbing the handling of domestic violence cases. Because of the short time of work here, it made that quite a lot of cases of domestic violence were cut-off in amidst way and is difficult to monitor and proceed it, because files are not found. According to the Timor-Leste police officer, up to the present time there is no effective rotation mechanism yet.
5. Additional Evidence Issue (DNA)
According to UNTAET regulation No.25 year 2001 about Criminal Procedures in Timor-Leste, the statement from one of the sexual violence victim (also within the context of domestic violence) is sufficient, but often judges request additional evidence like DNA. In reality, endeavor to look for DNA causes the case to be suspended and sometimes the case is not settled even after DNA is obtained.

III. PROPOSAL FRAMEWORK

PRINCIPLES

The Law that is proposed should have certain spirit that inspires the whole articles that exist. From various discussions held and the practice regarding domestic violence case in Timor-Leste, this domestic violence regulation framework must contain several principles such as:

1. Gender equality and justice;

Gender is a concept, which is based on the social relationship system that differentiates the role of women and men within the society that is built or constructed socially or culturally. Therefore, for example, culturally women (wife) is given the domestic role as house wife and men (husband) assume his role as the head of the family. These roles do not exist by it, but have been created by humankind culture for centuries.

The role of gender that is given by the humankind culture raises power gap on one hand, which is the men so that the men have a dominant role compared with women. This gap on the role of gender should be debated because it later becomes one of the main causes for domestic violence. So in order that the future anti-domestic violence legislation becomes more effective in eliminating various forms of domestic violence it has promote gender balance and justice.

Gender balance is a situation where women and men enjoy the same status and live in the same condition to fully promote rights and its potentialities in all areas of life.

2. Unequal Social Relationship

The gap that becomes the cause in domestic violence does not only come from gender but it is also a gap within social relationship, like the relationship which is built between the boss or the

host with domestic helper, relation between children and parents, parent-in-law with son/daughter-in-law. So, it is better if the law of domestic violence also reflects certain social relationship justice spirit. Social relationship justice is a condition which strives for creating justice among groups within society particularly in domestic relationship which have no balance position, namely children and parents, employer and helper, and so on.

3. Protection and enforcing of fundamental human rights such as the right to life, right to liberty, and right to security.

Anti domestic violence law in Timor-Leste must be based by the spirit to fulfill basic rights/fundamental human rights like right to life, right to liberty, right to security. Anti domestic violence legislation should be made as an effort to free people of Timor-Leste from various forms of domestic violence and for the fulfilment of fundamental rights.

THE OBJECTIVE OF ANTI DOMESTIC VIOLENCE LAW

It is agreed that there are several main purposes of making anti domestic violence law in Timor-Leste that is to:

1. Highlighting that domestic violence is a crime;

The main purpose of Anti domestic violence regulation is to resolute that domestic violence is a crime, so the law upholders mainly police have no reason anymore not to report and processing report that enters. Domestic violence must be assumed as one of the most important crime, non-private and needs government and society attention.

In the eyes of legal enforcers, there is still assumption that if the victim does not like to report the case to police so domestic violence cannot be seen as a crime. Aside from that, if domestic violence is categorized as a crime, the legal enforcers will not so easily refer the case of domestic violence to women organization giver of service like FOKUPERS to solve it.

2. Enforcing the Victims Right

This domestic violence regulation is also aimed to enforce victims right that is the right to obtain truth, justice and reparation. Victims right includes for example: emergency service, law assistance, right to obtain counseling, and so on.

3. Elimination of domestic violence for vulnerable groups within domestic relationship.

Anti domestic violence law is not only addressed to women victim that is in the domestic relationship with the suspect, but also several other vulnerable groups like child, domestic helper, elderly and different able or disable. For that, endeavor to eliminate domestic violence serve as state commitment and government, according to the law mandate as well as declaration and international conventions.

SUBSTANCE OR STRUCTURE

Based on the various analysis and problems recorded in handling domestic violence case in Timor-Leste, we suggest a structure of law design for anti domestic violence as follows:

Scope and Definition

Definition: Domestic violence is various forms of violence, that is intentionally committed, physically/mentally, economic and sexual and that takes place in a domestic relationship either inside or outside marriage relationship.

Scope or domestic relationship is:

1. Couples within the context of marriage according to state, religion, and tradition (according to local society definition);

According to the law of Timor-Leste, each person has the right to establish and live in a family. Aside from that section 39 Timor-Leste law "Marriage shall be based upon free consent by the parties and on terms of full equality of rights between spouses, in accordance with the law".

However according to traditional context and its culture, most of the people of Timor-Leste marry traditionally. So, to protect women and the born children, traditional marriage also should be acknowledged and become concern of the law of anti domestic violence later.

Marriage according to state is a legal marriage according to Marriage Law that is made by the state. Marriage according to religion is a legal marriage if it is done according to religion which is agreed by both parties and in front of their religious leader. Whereas marriage according to tradition is when the parents and each parent have agreed the relationship of both parties. This traditional marriage is not always done in front of the head of the village or head of town. However this traditional marriage can be different in each Timor-Leste's district according to the tradition that each believe in.

2. Couples within the dating and serious love relationship context;

Considering many domestic violence cases that takes place within the dating and serious love relationship context, so this policy paper and future anti domestic violence regulation need to pay attention to couples within the dating relationship. For that there are several things that need to be considered to evaluate domestic relationship within dating relationship like for how long both parties have lived under one roof, and so on.

3. Parties within family;

Parties within family is: relationship between parents and children, relationship between parent-in-law and son/daughter in law, uncle and niece, and so on.

4. People who work in the family (Domestic Worker);

That is domestic helper who works in a house.

Like it has been discussed in the Round Table Meeting dated 13-15 November 2001, so which is mentioned with suspect/suspect and victim of domestic violence is as follows:

1. Husband
2. Wife
3. Cousins
4. Child (own child, step child, adopted child live in one house for longer duration)
5. Step Father and mother
6. Parent-in-law
7. Brother-in-law
8. Grandfather and grandmother
9. Guardianship
10. Employer
11. Domestic worker
12. Couples that lives together without legal marriage(live together but not yet marry according to tradition, church and civil)

The role and the responsibility of state

Main obligations of Government are:

- a. Prevent domestic violence from happening
Government should make educational curriculum about Human Rights in high schools. Government should give Human Rights Education and various forms of domestic violence to the law upholders (police, prosecutor, judge and lawyer) that handle cases.
- b. Protect domestic violence victim
Government should build facilities for handling domestic violence cases either in the law upholder institution, hospital and communities. Government must also strengthen social services for various cases which its victims are susceptible groups like women, children, elderly, and disabled persons (difiable). The skills of law upholders in handling domestic violence cases also need to be strengthened, not only with trainings but various service facilities.
- c. Fulfill and implementing the rights of vulnerable groups like women and children within the context of domestic violence.
Government must enforce the rights of vulnerable groups by providing policies for their rights fulfillment, make action plan as well as implementing various plan mentioned.

The role of the Community

According to the context of Timor-Leste, societal environment where the suspect/suspect and victim live are possible to give assistance and support for the victims of domestic violence. So it should be proposed and be built a service model that is community based that can be

accessed by victim or community itself either to obtain services or just to obtain information about domestic violence in particular. The existent system and head of village and town leadership enable community to build service center that is community based in their own environment.

Maintenance and Property Issues

As domestic violence cases mostly happen within the marriage context, the issue of maintenance and common property should also be anti domestic violence regulation concern:

1. The common property can not be sold without the permission of both parties;
2. On the divorce case, common property ownership goes to victim;
3. If the suspect is unable to pay for maintenance, the victim can use, rent, or sell common property;
4. Suspect's salary must be given to wife and children with each total 1/3 half of the salary. In a case where the couples have no children, therefore ½ of the suspect salary must be given to victim.

Victim recovery

Restoration in certain domestic violence case is very crucial to be facilitated by the government. For that, government should undertake the following steps:

1. Government must provide sufficient restoration facilities for the victims of domestic violence either in the form of physical , psychological, sexual and economical restoration.
2. Law upholder in this sense must also assist facilitates in this restoration process.
3. Need to be formed restoration service which is community and religion based so that is easy to be accessed by the people at the district level which live far away from the police office.

The role of legal enforcer and service provider

Obligations of Legal Enforcers

In every domestic violence case that is reported the legal enforcer is obliged to:

- a. Accept report about domestic violence and do the investigation;
- b. Obey Criminal Code;
- c. Guarantee victim's and witness safety;
- d. Put domestic violence case as priority to be handled;
- e. Do not release the suspect without very clear reason as well as not endanger the victim;
- f. Protect wealth issues.

The role and the task of Police

In domestic violence case police officer must do:

1. Police must accept the domestic violence report soon (verbally either directly or through telephone and in written), asking assistance about domestic violence case and asking for protection from anybody;
2. Police must act if receives notice or witnesses domestic violence either with or without victim's agreement;
3. After receiving report, police officer must go right away to incident place where domestic violence took place mainly if:
 - a. The reporter said that the domestic violence is going on;
 - b. Reporter said domestic violence has been committed;
4. At the moment receiving report, the police must:
 - a. Interview (suspect and victim) and witness mainly children in a separated room so that they can talk freely;
 - b. Make report note in detail;
 - c. Inform victim's right;
 - d. Documenting domestic violence report note according to SOP and law that exists;
 - e. Contact with parties that can provide assistance and support for victim, that is Hospital, women's organization service provider, *social workers*, provider service organization that is community based, organization service that is religious based;
 - f. Consulting actions that will be taken against victim (mainly vulnerable victim like women and children) for example to move victim and separate victim from suspect, for social worker, health officer, mental health officer and officer from service provider organization;

Multi-sector Services

Main purpose of this multi-sector services is to deliver service which is solid, pleasant, efficient and effective for the victim of domestic violence. For that, we need cooperation with various service providers, which comprise legal enforcer (police), service provider organization (for women and children or general), community based service provider organization, and religion based service provider organization.

Aside from that, this multi-sector service is also aimed that the victim feels self-trust in giving report and express her case. On the other hand, victim should be needless to repeat violence case which she experienced, so that it will not add any trauma from what she experienced.

Several main things within multi-sector service that can be implemented in delivering service are:

1. For the purpose this multi-sector service provider, therefore the parties that cooperates comprises police, health officer, mental health officer, social worker, NGO service provider (for women, children, public), community based service provider organization, religion based service provider organization;
2. Necessary to make a Standard Operating Procedure (SOP) for the purpose of cooperation and deliver service;

3. Central (vocal point) from this multi-sector service stay in police (VPU). Meaning, if there is case or victim come VPU so VPU will be the one to contact other service provider organization. So that service being delivered will be more efficient and effective and gives pleasant feeling for victim;
4. To strengthen more the service delivery process, each district must have one main vocal point which can monitor the implementation of this multi-sector service;
5. VPU in the national level must build system to strengthening and the existence of multi-sector service which centered in the police.

Government in this sense must assist and support the existence of this multi-sector for example with:

1. Facilitating the building up of cooperation forum between multi-sector service provider and building up various service mechanisms mainly for vulnerable groups like women and children;
2. Provides skills training for the service provider officer like police officer, health officer in hospital, mental health officer, social worker, and so on;
3. Building up various service center like crises center, shelters, safety house, and so on;
4. Facilitating monitoring process for multi-sector service;
5. Assist or subsidized various facilities which is needed in the multi-sector service.

Criminal and civil procedure

Criminal Procedure

In a criminal case as well as in a domestic violence case, report or complaint from victim of violence is not required. Anyone who witnessed or heard an incident of domestic violence being committed may report it to the police or to the office of prosecutor. According to UNTAET REGULATION No. 25 year 2001, the report can be done anywhere and should have cooperation between legal enforcers handling the case.

Report Mechanism

Anybody (victim, witness, social worker, health officer, and so on) can report domestic violence cases. There are domestic violence report case mechanisms, according to UNTAET No.25 year 2001 about Criminal procedure and several additional proposals are as follows:

1. Anybody can report the domestic violence case either verbally or written to the police or to the office of prosecutor;
2. If the domestic violence case is reported to the office of prosecutors, this office should make a brief note and must right away refer the case to the police (VPU);
3. When receiving the domestic violence case, police officer must right away call and inform the parties that join together in the multi-sector service that is hospital, women organization service provider or community based service provider organization or religion based service provider organization about domestic violence event, so that the parties together

- listen to the victim and take required action, for instance in relation to the medical care, forensic or counseling psychology and law;
4. If the case has been noted, victim cannot revoke the violence report from the police or from the office of the prosecutor;
 5. After receiving the report, police right away deliver one copy of the documents to the competent office of prosecutor, in order to have investigation soon. But if urgent, police may take certain action to initiate investigation at the incident place. Police can arrest the suspect right away and visit the incident place so that evidences cannot be destroyed, changed or lost before the investigation is done by the prosecutor;
 6. The prosecutors then start to do the investigation. For the purpose of investigation, prosecutor can ask the police to take certain actions;

Protection Order

To deliver protection for victims of domestic violence we need to have a mechanism on protection, namely protection order on which procedure is as follows:

Interim Protection Order

The purpose of interim protection order is to avoid violence from being further committed against victim and his children. For that, the procedure of temporary protection order should be issued according to the following steps:

1. The police body is the one that has authority to issue or deliver interim protection order;
2. The police body is the one that issues interim protection order for the first 3 times 24 hours (72 hours);
3. This interim protection order must be issued as soon as possible mainly on cases where domestic violence is still happening;
4. If police body delivers interim protection order, the police body should deliver one file of the document to the prosecutor and one file for the judge. File of delivering interim protection will become enclosed within the BAP which is produced by police;
5. The procedure of delivering temporary protection order can happen within the context of multi-sector services. Meaning, when the victim report her case and are given interim protection, (emergency) wherein service provider organization like women and children, community based service provider organization or religion based service provider organization which have shelters can come together with the police to provide protection and accommodate victims, family member and the witnesses;
6. Victim mostly women and child can move to shelter, safe house and other places like private property, public autonomy, or government;
7. Decision to move victim, mainly children, must be taken by social workers and not by the police only;

Content of interim protection order

Content of interim protection order is :

1. Deliver protection order to victim so that suspect will not continue to commit violence against the victim;
2. Deliver protection to victim family members for instance children so that suspect does not continue to commit violence;
3. Deliver protection to victim and family member so that suspect does not ask other person to commit violence against victim and her family members.

Extension of interim protection order

Interim protection order can be extended according to the following steps:

1. After 72 hours, interim protection order will be reviewed by the investigating judge and considered necessary to extended or not;
2. In the process of evaluation, investigating judge will appoint one curator (which cannot be the lawyer of the parties) to deal with maintenance and use of common property;
3. The agreed Curator will consider on the use of the common property and deliver report to the court (or registry) about the adequate use of property;
4. File of interim protection order and report on the use of property from the curator should be attached to the court documents;
5. Regulating relations towards children can be submitted through victim's prosecutor or lawyer to the judge.

Protection Order

Its purpose is deliver extended protection to victim and victim's family member. Steps of protection order are as follows:

1. Protection order will be delivered and issued by judge within court session by reviewing the extension of interim protection order which is delivered by the investigating judge;
2. Protection order should be issued together with regulation of relations with children, maintenance for victims and children or family as well as the use of property;
3. This protection order is delivered within the consideration of the judge and should be enclosed within the verdict.

The content of protection order:

Contents of protection order:

1. Deliver rights to victim to live in the common property although it belongs or is rented by the suspect or jointly owned or rented. This will be given as a way of prohibiting the offender to enter in the place that has been ordered by the judge;

2. Prohibiting or limiting the suspect to visit or enter the workplace of the victim, victim school or other places normally attended by the victim. It is also to avoid the suspect to communicate or meet with the victim, except under the court officer supervision as ordered by the judge;
3. Prohibition to enter the place of victim as it is mentioned in No. 1 except if victim is being protected by court officer or legal enforcers;
4. Prohibition for suspect to write letters or make personal calls to victim except if permitted by the court officer or legal enforcer.

Violations against protection order

In order that the parties respect the two kinds of protection order mentioned above, it should be regulated as following:

1. If the suspect intentionally violates the protection order, judge can detain the suspect;
2. If the suspect intentionally violates the protection order by using violence against victim which is being given protection, the judge can detain the suspect and the sentence can be enhanced in 1/3;

Prosecutors' discretion

This Anti Domestic Violence Regulation also needs to give special attention to prosecutor's discretion in handling domestic violence. This departs from the mediation problems that are usually conducted by the police and prosecutors. Therefore, there should be limited discretion for prosecutors when handling domestic violence cases. The mechanism can be:

- a. There should be criteria for level of violence for example: a first time offense and categorized as "light"
- b. Police or prosecutors have to record the case;
- c. Based on the criteria of the case, then the prosecutors can decide whether the case should proceeded or be terminated;
- d. Proceeding should not depend on the victims' will;
- e. In this case, Prosecutors' discretion will be limited to proceed or stop the case;

SOP (Standard Operating Procedure)

When handling domestic violence cases it should be required *Standard Operating Procedures* → SOP in delivering service particularly regarding to police. This can be as follows:

1. Handling domestic violence cases in the police;
2. Delivering services for victims of domestic violence;
3. Protection to witness and victims within domestic violence case;
4. Delivering interim protection for victim;
5. Coordination among institution, which provide services like police, hospital, service provider organization (women's organization, child, community based, religion based), social worker, mental health officer.

Civil Procedure

o Maintenance to victim and victim's children

In a case where the suspect of domestic violence is arrested or detained and should be separated from victims, the regulations should provide opportunity so that the suspect can fulfill the maintenance of victim and victim's children. As can be seen from Timor-Leste criminal procedure, regulated by UNTAET Regulation No. 25 year 2001 as well as in line with the discussion within Legislation Team, maintenance and common property can be regulated as follows:

1. Principally, in handling domestic violence case, the suspect must permanently provide maintenance for victim and victim's family (for instance: children). Meaning, in a situation where suspect has been arrested, detained and separated from victim in trial process, suspect must provide maintenance.
2. Therefore, maintenance has to be regulated and determined by:
 - a. Investigating Judge (for emergency cases)
 - Investigating Judge will give decision that victim and his/her children will be maintained during the 72 hours hearing process;
 - Order of providing temporary maintenance for victim and children can be met within the extension of providing interim protection for victim and victim's children.
 - The order to provide temporary maintenance starts from the hearing process until the case is in trial
 - In cases when the suspect is arrested and no longer has source of income the investigating judge will evaluate whether the common properties is adequate to provide maintenance for victims and children;
 - If in fact the common property is not sufficient the suspect's family will be responsible to fulfill the victims' maintenance and his children;
 - If the family of suspect cannot fulfill the order of maintenance, this responsibility should be transferred to the state.
 - b. Judge in the Trial Session
 - The judge will renew providing maintenance to victim and children until the verdict.
 - However, if in fact within the trial process the suspect must remain in jail, the judge should consider whether the suspect and victim common properties can be used to assure maintenance for the victim and her children while suspect is detained.
 - If it is not possible, state must provide sufficient allowance for victim and her children.

- Common properties

When the domestic violence case is being handled common property should be regulated as follows:

1. During the domestic violence trial, common property should be frozen. Parties (suspect, victim, other family members) should inform the curator if they want to proceed with legal action.
2. In using the common property when domestic violence case is in trial the following steps should be followed:

- a. Investigating Judge;

- In the hearing process, Investigating Judge can decide about the use of common property.
- When the Investigating Judge evaluates and decide to extend interim protection order, simultaneously the Investigating Judge should decide to freeze the use of common property.
- Investigating Judge can appoint common property curator agreed by both parties to regulate the common property.
- The use of common property should be reported to the court registry.

- b. Judge in Trial;

When the suspect is detained the judge will decide on the use of common property for victims' and children maintenance.

- c. The use of common property and maintenance for victim and victim's children;

As mentioned above, common property can be used to fulfill victim and victim's maintenance if suspect is detained and cannot provide it. The Judge will decide this matter.

IV. CONCLUSION AND RECOMMENDATION

A. CONCLUSION

1. Domestic violence is categorized as crime and constitutes the highest number of cases reported to legal enforcers (police and prosecutors) in Timor-Leste;
2. Domestic violence is a crime that is related to other social factors.
3. Criminal Code and Procedures cannot be applied for all types of domestic violence cases. The Criminal Code mostly focuses only on physical maltreatment and criminal procedures do not provide protection for victims of domestic violence, neither for maintenance or the use of property;
4. Timor-Leste lacks legal enforcers in number and quality. Therefore, there are many domestic violence cases that are settled through mediation or do not proceed.
5. Government has yet to play effective roles in the elimination of domestic violence;
6. Generally, public and even legal enforcers still consider domestic violence as private matter (Plate and spoon that touches each other);
7. There is close-relation between culture and tradition within various domestic violence cases that were committed in Timor;
8. Timorese society has capacity to support and also provide community and religious based services to domestic violence victims.
9. Universally, prevention for domestic violence victims can be less expensive than the curative effort;

B. RECOMMENDATIONS

1. There should be research and surveys on domestic violence in Timor mainly in Districts and Sub District outside Dili;
2. There should be a research on social instruments such as culture and tradition as well as religion that is able to support and deliver service for domestic violence cases;
3. There should be efforts to strengthen the capacity of the judicial sectors mainly in handling domestic violence cases;
4. Government needs to promote human rights education in schools;
5. Government must actively provide information about domestic violence to public in Timor-Leste;
6. Government has to provide facilities that can deliver services to the victims of domestic violence in terms of health, social and other facilities as well as legal aid;
7. A legislation team to draft the law on anti domestic violence should be in place immediately.