



Women's Access to Land and Property Rights in the Plural Justice System of Timor-Leste

Centre of Studies for Peace and Development (CEPAD)
Timor-Leste

Research Report



Foreign Affairs, Trade and
Development Canada

Affaires étrangères, Commerce
et Développement Canada



Title: **Women's Access to Land and Property Rights in the Plural Justice System of Timor-Leste.**

Author: CEPAD (Centre of Studies for Peace and Development)

Date: November 2014

Published by: CEPAD / UN Women Timor-Leste
(C) CEPAD

All rights reserved

Produced and published in Timor-Leste

Cover image: FGD Bazartete Sub-District.

All photos contained in this report are credited to CEPAD.

The views expressed in this publication are those of the key stakeholders consulted and do not necessarily represent the views of the sponsors, UN Women, the United Nations or any of its affiliated organisations.

Reproduction of figures or short excerpts from this report is authorised free of charge and without formal written permission provided that the original source is properly acknowledged, with mention of the complete name of the report, the publisher and the numbering of the page(s) or the figure(s). Permission can only be granted to use the material exactly as it is in the report. Please be aware that figures cannot be altered in any way. For media use it is sufficient to cite the source while using the original graphic or figures.

About CEPAD

The Centre of Studies for Peace and Development (CEPAD) is an independent national non-government organisation constituted as an association under Timorese law.

In partnership with international peacebuilding organisation, Interpeace, CEPAD's Foundation Programme, the Programme of Research and Dialogue for Peace (PRDP) seeks to consolidate the democratisation process in Timor-Leste through the engagement of Timorese stakeholders countrywide to identify the most pressing obstacles to lasting peace, understand the origins and the dynamics of conflict, and to define the means to collectively address these in non-violent and sustainable ways.

Since 2007, CEPAD has engaged a broad cross-section of actors, ranging from citizens nationwide to the country's key decision-makers, in the search for new ways to address challenges and to promote a culture of democratic dialogue for peace. Since 2009, CEPAD has continued to address four key priorities for peace through participatory processes. The four priorities are:

1. The promotion of individual and party interests over the national interest.
2. The ineffective formal judicial system and the culture of impunity.
3. Conduct a thorough historical review of the resistance and the occupation.
4. Corruption, Collusion and Nepotism (KKN).

About UN Women

UN Women is the UN organization dedicated to gender equality and the empowerment of women. A global champion for women and girls, UN Women was established to accelerate progress on meeting their needs worldwide. UN Women supports UN Member States as they set global standards for achieving gender equality, and works with governments and civil society to design laws, policies, programmes and services needed to implement these standards. It stands behind women's equal participation in all aspects of life, focusing on five priority areas: increasing women's leadership and participation; ending violence against women; engaging women in all aspects of peace and security processes; enhancing women's economic empowerment; and making gender equality central to national development planning and budgeting. UN Women also coordinates and promotes the UN system's work in advancing gender equality.

Table of Contents

Acknowledgements	6
CEPAD Team	7
Glossary	8
Executive Summary	10
Introduction	14
Research Background	14
Rationale of the Study	18
Research Framework	21
Objectives and Research Questions	21
Scope and Limitations	23
Methodology.....	24
Research Team	24
Desk Research and National Meetings.....	25
Selection of Case Study Locations	25
Selection of Research Participants	26
Participatory Action Research	26
Ethics	30
National Validation	31
Conceptual Framework.....	32
Law and Legal Pluralism	32
Access to Justice	34
Legal Framework	36
National Applicable Laws	36
Justice Institutions and Actors.....	42
Customary Justice Framework	48
Intersection between State and Customary Systems	54
Findings.....	57

Women’s Conceptions of Justice.....	57
Women’s Access to Legal Knowledge	58
Women’s Legal Identity.....	61
Women’s Ownership and Control of Land and Property	62
Barriers and Enablers to Women’s Access to Justice	67
Conclusion.....	73
Recommendations	75
References	79
Annexes	82
Annex 1 Interview Question Guide	82
Annex 2 FGD Question Guide.....	83
Annex 3 National Validation Seminar Agenda	86
Annex 4 Interview Participants	87
Annex 5 Focus Group Discussion Participants	89
Annex 6 Interactive Dialogue Participants.....	91
Annex 7 National Validation Workshop Participants.....	93

Acknowledgements

The results presented here were possible only because of the women in Baucau, Bazartete and Betano who agreed to share their ideas, opinions and knowledge with CEPAD. Special thanks is given to the women from each location for presenting their recommendations at the National Validation Workshop; Dulce Santana, Etelvina Da Costa and Regina Da Conceição Amaral. Thanks goes also to others who participated in research activities including interviews and the National Validation Workshop.

CEPAD would also like to the three District Liaison Officers who organised the research activities in Baucau, Bazartete and Betano; Saturnina Freitas Belo, Ana Maria De J. Dos Santos and Quintão D. C. Massa.

CEPAD would like to thank the Asia Pacific Forum on Women, Law and Development (APWLD), the Institute of Development Studies (IDS at Sussex University, U.K.) and UN Women Regional Office for Asia and the Pacific for guidance throughout the research as part of the coordinating team at the regional level.

CEPAD is also grateful to fellow researchers from Thailand, Cambodia, Laos, Myanmar, Philippines, Indonesia and Vietnam who shared their ideas and the progress of their research into women's access to justice in plural legal systems during three regional workshops across the course of the project.

CEPAD is grateful to thank Rebecca Napier-Moore and Prof. Dr. Sulistyowati Irianto for their input on the research design and data collection methods and Anne Eyrignoux for comments on the final report.

CEPAD would like to thank the donors who made this research possible including UN Women Regional Office for Asia and the Pacific, the Department of Foreign Affairs, Trade and Development of the Canadian Government (DFATD) and Interpeace.

Finally CEPAD would like to thank UN Women Timor-Leste for ongoing support and cooperation as this research was designed, implemented and completed.

CEPAD Team

João Boavida	Executive Director
Ivonia Pinto Tsia	Lead Researcher
Alfredo da Conceição Isac	Research Assistant
Caitlin Leahy	Programme Officer (ARC AVID Programme)
Joana Maria Viegas	Lead Researcher
Lamberto Quintas Soares	Audio-Visual Researcher
Domingas Cardoso Martins	Audio Visual Camerawoman
Adelaide Lopes Sarmiento Soares	Research Assistant
Mario Alves	Peace House Coordinator
Dalia dos Santos	Research Assistant
Efigenia da Silva	Lead Researcher
Lalita Nott	HR Officer (ARC AVID Programme)
Sonia Ribeiro	Finance Officer
Josefina Martins	Finance Assistant
Ester Saldanha Cardoso	Administration Assistant
Doug Hosking	Finance Mentor
Roselyn Hosking	Administration Mentor
Alexandre Soares Pereira	Driver
Nicolau Mesquita da Silva	Driver
Miguel Magalhães	Security
Francisco Moniz Tavares	Security
Estevão Antonio	Security
Sarita Sobral	Centre Assistant

Glossary

Aldeia	Sub-village
ALFeLa	Asistência Legál ba Feto no Labarik, national women and children's legal aid service
APWLD	Asia Pacific Forum on Women, Law and Development
Bua malus	Beetle nut, shared between elders before commencing customary dispute resolution
CEDAW	United Nations Convention on the Elimination Of All Forms Of Discrimination Against Womem
CEPAD	Centro de Estudos para a Paz e Dezenvolvimento / Centre of Studies for Peace and Development
CLEP	Commission on Legal Empowerment of the Poor
Direitu	Right
DLO	District Liaison Officer
DNAJL	Diresaun Nasional Assesoria Juridika e Legislasaun/National Department of Legal Advisory and Legislation
DNTPSC	Direcção Nacional de Terras, Propriedade e Serviços Cadastrais / National Department of Land, Property and Cadastral Services
DTPSC	Direcção de Terras, Propriedade e Serviços Cadastrais refers to the district level offices of the DNTPSC
DV	Domestic Violence
ECM	Edukasaun Comunidade Matebian, a local legal aid organisation in Baucau District
Feto foun	'New woman' meaning a women who has married and come to live with her husband's family
Fetosan Umane	Refers to a complex set of rules, rights, and responsibilities defining the relationship between a groom's and a bride's family, a relationship between clans which may extend over generations.
FFSO	Fundasaun Fatu Sinai Oecusse, a local legal aid organisation in Oecusse District
FGD	Focus Group Discussion
fo sala malu	Giving compensation to each other
FPAR	Feminist Participatory Action Research
GDP	Gross Domestic Product
GEL	Gender Equality Law
GFP	Gender Focal Points
GMPTL	Grupu de Mulheres Parlamentar de Timor-Leste / Timor-Leste Women's Parliamentarians Caucus
HIV	Human Immunodeficiency Syndrome
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ID	Interactive Dialogue
IDP	Internally Displaced Persons

Ita Nia Rai	'Our land' also the name given to USAID-funded program 'Strengthening Property Rights in Timor-Leste' (2007-2012)
JSMP	Judicial System Monitoring Programme
LBH-Covalima	Lembaga Bantuan Hukum, a local legal aid in Suai District
Lia-lós	'True word' or the truth
Lia-nain	Literally 'owner of the story', traditional leader
Lisan/Adat	Tetun and Indonesian (respectively) terms used to refer to the customary justice system or culture more broadly
Liurai	'Surpassing the earth', term referring to local rulers
Lulik	Sacred
Nahe biti bot	Roll out the big mat (a traditional dispute resolution or decision making practice)
NGO	Non-Governmental Organisation
OPD	Office of the Public Defender
OPE	Office of the advisor on the Promotion of Equality
PAR	Participatory Action Research
PNTL	Polisia Nacional Timor-Leste / National Police of Timor-Leste
PRDP	Programme of Research and Dialogue for Peace (CEPAD's foundation programme)
RDTL	República Democrática de Timor-Leste / Democratic Republic of Timor-Leste
Rede ba Rai	'Land Network', local coalition of civil society organisations working on land rights issues
RTTL	Radio Televizaun Timor-Leste / Radio and Television Timor-Leste
SEPI	Secretario Estado Promoção de Igualdade / Secretary of State for the Promotion of Equality
Sorumutu	meeting or discussion
Suku	Village
Tais	Traditional Timorese woven fabric
Tarabandu	Customary law
Uma knua	Sacred family house
Uma lisan	Traditional or cultural house
Uma lulik	Sacred house
Uma Paz	'Peace House', also name given to women's shelter in Baucau District
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
UNDP	United Nation Development Programme
USAID	United States Agency for International Development
VPU	Vulnerable Persons Unit

Executive Summary

“We keep saying on the radio, through the media, on TV, there is equality for women, equality for women. However, in fact, what is supposed to be the most important for us as women representatives at the *suku* is to do nothing. Speaking about land issues, other participants may say it happened like this and like that, but for me, it is in the dark.”

(Woman participant, Baucau, FGD)

The Centre of Studies for Peace and Development (CEPAD) with support from UN Women, conducted participatory action research over a period of 12 months in order to examine women’s access to justice in the plural legal system of Timor-Leste with a focus on women’s rights to land and property. The interconnection between land, gender and justice in Timor-Leste is particularly important to examine in light of draft land legislation which is currently tabled in the National Parliament as well as a forthcoming law on customary justice and a forthcoming law on mediation which are in the drafting stages within the Ministry of Justice.¹ CEPAD hopes this research can make a contribution to the development and implementation of these pieces of legislation, as well as serving as a reference for justice actors in the state and customary systems.

This research has been conducted in three study locations across Timor-Leste: Baucau District, Bazartete Sub-District (in Liquiça District) and Betano *suku* (in Manufahi District) and various data collection techniques have been used to construct a picture of the situation, views and ideas of women as well as a range of other key stakeholders in the two justice systems. CEPAD has made considerable efforts to ensure that the participatory action research process has enabled women involved to articulate and define their positions and the action needed to improve their access to justice.

The research has found that a plural justice system exists in Timor-Leste and intersection, overlapping and clashing between these two systems often occurs. This situation leaves women with a choice between claiming rights to ownership and control of land or property on one hand and maintaining good relations with their families in order to be able to continue to access land, use and manage land and participate in the life of the family and community on the other hand.

Timor-Leste’s strong patriarchal culture is the key underlying barrier for women to claim rights to land and property. It is clear that customary justice processes are determined through this patriarchal culture, even in communities deemed matrilineal. State laws may determine ‘rights’ but the customary justice system actually determines ownership in practice. The most common methods of consultation and socialisation used by Government actors and supporting agencies fall short of allowing genuine understanding and effective implementation of legislation and procedures of the state justice system.

¹ This information was confirmed by the Vice-Minister of Justice, Sr. Ivo Jorge Valente, at CEPAD’s National Validation Workshop held in Dili, September 2, 2014.

With regard to land and property, the two justice systems overlap in key ways but most notably in regard to mediation. Mediation of land disputes and as a process of determining land claims could be an area in which the two systems interact productively, but only if the customary approach to mediation is regulated in order to ensure that women are not disadvantaged.

Women's ability, under draft land related legislation, to claim rights to own land and property will depend largely on the discussions and negotiations taking place within families. The ability of women to initiate those discussions and to negotiate their positions rests on their knowledge of their rights, their knowledge of laws and their understanding of the process of claiming rights. If women themselves are not able to access accurate information or understand this in the context of their daily lives, these discussions will be based on misinformation and misunderstanding or will not take place at all.

CEPAD has put forward the following recommendations to decision-makers and other key stakeholders as a result of this research.

1. Consultation and socialization of laws and policies concerning land and property rights should not be rushed and should be carried out throughout Timor-Leste using an interactive dialogue format:

“We just come, sit, be quiet then go home.”
(Young woman, Bazartete Sub-District)

- The **National Parliament** should open-up space for further public consultation regarding draft land legislation before debating the relevant bills. The consultation period should be expanded to address concerns that were not incorporated into the revised legislation by the Ministry of Justice.
- The **Ministry of Justice** should open up opportunities for nation-wide consultation to inform the development of a national land policy as a matter of priority.
- **Government** and **civil society** groups should work together to avoid top-down formats of delivery and should engage communities through dialogue to elicit concerns and discuss the impact of legislation on citizen's everyday lives. Key laws affecting women's rights and gender equality, particularly on issues of marriage, inheritance and land ownership, need to be thoroughly socialised outside the capital.
- During future land registration activities, the **DNTPSC** should hold community dialogues which make particular provisions for women, particularly in regard to joint-titling for couples. Women and communities should be made fully aware of the options for and importance of joint-titling.

2. Women in positions of local leadership and other relevant roles should be supported to participate in and monitor local mediation processes and provide accurate information to communities:

“If we intervene in the land resolution process
this might be perceived as ‘putting down man’s face.”

(Women representative on *Suku* Council, Betano)

- Government bodies such as **SEPI, Ministry of Justice** and **Ministry of State Administration** together with **civil society** organisations should better coordinate training and capacity building provided to women representatives on *Suku* Councils.
 - Training developed for women on *Suku* Councils should be targeted to the whole *Suku* Council in order to better clarify women’s roles, which have not yet been clearly defined in legislation.
 - Training for women community representatives should be properly targeted according to levels of knowledge and impacts of previous training, as well as whether the *suku* is located a rural, semi rural, urban or semi urban area.
 - Training methods should allow interactive discussions to better apply state laws to everyday lives so that accurate information can be shared with women at the community level.
 - The training content should focus on the ways that the state law challenges or compliments customary justice systems as applied in particular *sukus* and strategies to manage this should be discussed in depth.
- **Government** bodies, particularly the **Ministry of Justice** and **DNTPSC** together with **civil society** organizations should devise a tool to encourage and enable local authorities at the *suku* level, particularly women, to monitor customary mediation and land dispute resolution.
 - The roles of women on *suku* councils need to be clearly defined in the prospective ‘Law of the Sucos and their Election’ which is undergoing consultation as at October 2014.
 - The tool should be used to observe and document mediation processes and outcomes and to feed information back to the DNTPSC and civil society organisations.

3. Development of legislation concerning customary justice should be based on a thorough investigation of diverse customary justice processes and actors and should propose realistic and productive interactions between the state and customary justice systems.

“When we are trying to put a balance among every article that exist, first there should not be inequality or discrimination between men and women and secondly culture should be recognized as a part of Timor-Leste identity in the Constitution.

In relation to writing a law, there should be a balance, not to eliminate the cultural value or the Timorese identity, neither to diminish or put aside women as community member that do not have rights over land.”

(Vice-Minister of Justice, National Validation Workshop, 2 September 2014).

- As it continues to draft a law concerning customary justice, the **Ministry of Justice**, through the **DNAJL**, should attempt to understand the commonalities of *lisan* throughout Timor-Leste in regards to actors, infrastructure and sanctions, paying special attention to the elements that exclude and disadvantage vulnerable groups.
- In drafting the forthcoming law on customary justice **DNAJL** should give full consideration to the key human rights principles found in international conventions to which the RDTL is state-party to, particularly CEDAW (Convention on the Elimination of All Forms of Discrimination against Women), ICESCR (International Covenant on Economic, Social and Cultural Rights), and ICCPR (International Covenant on Civil and Political Rights).
- The **Ministry of Justice** and **development partners** should support local civil society and local research institutions to conduct research into the characteristics and impacts of customary justice to inform the development of the law. Such research should be conducted using roles as local leaders participatory methods.
- When drafting the forthcoming law on mediation, the **Ministry of Justice** and **DNAJL** should build in clear roles for women in positions of local leadership and other relevant positions (such as legal aid, MSS and civil society actors) to actively participate in local mediation processes.

Introduction

Research Background

Gender equality, although guaranteed in the constitutions of 139 countries and territories around the world, still has little impact on the daily lives of women due to vast implementation gaps.² Despite advances in international, regional and national legislation ensuring women's rights and entitlements, most women across the globe still experience poor service delivery and discrimination in justice systems, which in turn impacts on their ability to secure adequate standards of living and protection.

In plural legal systems where women are subject to more than one system of law and justice, women are often seeking justice through overlapping and contradictory processes as determined by tradition, custom, religion and the state.

Land and property rights are integral to ensuring an adequate standard of living for women, particularly in developing countries. As summarised by the Commission on Legal Empowerment of the Poor: "Women, who constitute half of the world's population, own very little of the world's property – as little as two percent in some countries. Rarely do they own more than 15 percent of it. Even when women do have legal property rights, their actual control of land may be tenuous, since men often mediate access."³

Use, control and ownership of land can allow women greater economic, social and political inclusion. As reported by UN Women: "Women's access to land and other productive resources is integrally linked to discussions around global food security, sustainable economic development, as well as the pressing fight against the HIV epidemic and prevention of and responses to gender-based violence."⁴ In this sense, an examination of women's rights to land and property is integral to determining not just their access to justice but their access to a broad range of other fundamental rights.

Following close to 500 years of foreign colonisation and occupation, women in Timor-Leste continue to struggle with the aftermath of widespread conflict and displacement. During the Indonesian occupation (1975-1999), many women were active resisters, taking part in a clandestine resistance movement. As stated by Milena Pires in 1999: "Women in East Timor have been catapulted out of traditional often passive roles as mothers, carers and nurturers to become fighters, spies and messengers."⁵ However, women were also often victims of rape and widespread violence, a legacy which continues to affect them in a highly masculinised society following the restoration of independence in 2002.

² UN Women (2012) 'Progress of the World's Women; In Pursuit of Justice', p.8.

³ CLEP (2008) 'Making the Law Work for Everyone', Volume I: Report of the Commission on Legal Empowerment of the Poor, New York, p.36

⁴ UN Women (2013) 'Realising Women's Rights to Land and Other Productive Resources', p. 2

⁵ Quote from Milena Pires, Timor-Leste Representative on the CEDAW Monitoring Committee, as reported in UNFPA, 2005, 'Gender-based violence in Timor-Leste; A Case Study', p. 5.

A third of all households in Timor-Leste rely exclusively on subsistence cultivation. Agriculture accounts for 20 percent of GDP and the sector's productivity is extremely low, with output per worker being less than one tenth of that in the industry and service sectors.⁶ Stagnation of the rural economy in Timor-Leste is a major cause of poverty and food shortages occur regularly in any given year. The last census conducted in Timor-Leste in 2010 indicated that 16 percent of households are female-headed.⁷ The UNDP's 2013 Human Development Report states that the population living below the national income poverty line in Timor-Leste is currently 49.9 percent and the population living below US\$1.25 per day is 37.4 percent.⁸

Government cash transfers to Internally Displaced Persons (IDPs), veterans and vulnerable households since 2006 have had some short-term positive impact on poverty levels, although the longer term effects of such measures are as yet undetermined.

Timor-Leste's population growth is increasing by 2.4 percent each year and the country possesses one of the highest birth rates in the world, resulting in a very young population.⁹ The 2009 – 2010 Demographic and Health Survey indicates that while there has been a decrease in the fertility rate from 2005 to 2009, the birth-rate remains at 5.7 births per woman. As such, UNDP estimated in 2011 that 45 percent of the population is younger than 15 years old.¹⁰

Building state institutions and establishing a liberal democratic framework for gender equality alone cannot guarantee women's access to justice in a context marked by plural justice systems: in Timor-Leste this is characterised by multiple overlapping state and non-state sources of authority within Timorese society, including traditional, customary and rational-legal influences. In the shadow of Portuguese colonization and Indonesian occupation, norms established throughout these periods continue to influence both formal and informal judicial processes¹¹, including the influential role occupied by the Catholic Church, particularly at the district and sub-district levels.

Nevertheless, Timorese traditional and cultural norms for dispute resolution have proven highly resilient to foreign influences, including liberal democracy, and continue to form the basis for socio-cultural organisation today.

Women face numerous challenges in accessing the formal justice system in Timor-Leste, including but not limited to: low literacy and numeracy levels; little or no knowledge of Portuguese, the official

⁶ UNDP (2011) Timor-Leste National Human Development Report, p. 19

⁷ National Statistics Directorate & United National Population Fund, 'Population and Housing Census of Timor-Leste, 2010; Volume 3 'Social and Economic Characteristics', p.xvi

⁸ UNDP (2013) Human Development Report, p.160

⁹ UNDP (2011) Timor-Leste National Human Development Report, p. 29

¹⁰ UNDP (2011) Timor-Leste National Human Development Report, p. 23

¹¹ For example, the RDTL Constitution was heavily based on the Portuguese equivalent. Similarly, several key pieces of legislation, including the RDTL Penal Code, were developed to reflect the Indonesian equivalent.

language of Timor-Leste and the working language in which legal proceedings take place; widespread poverty and an inability to pay for legal representation and/or transportation to district capitals to report cases; cultural and traditional limitations on reporting transgressions, for fear of attracting social stigma and disturbing social cohesion within and between communities; poor access to information, communication and services; the culture of impunity and a lack of confidence in the formal judicial system; lengthy formal judicial processes; and a lack of state representation beyond the capital, Dili, due to inadequate state resources, human and financial, in the formal justice sector.

A highly patriarchal society and traditional beliefs also contribute to the marginalisation of women in decision-making processes, including the lack of women's authoritative voice in traditional dispute resolution mechanisms at the national and district levels.

Over the past ten years, the Government of Timor-Leste (RDTL) has undertaken several measures to safeguard the interests and rights of women countrywide. Under Sections 16 (2) and 17, the RDTL Constitution states that there should be no discrimination against men or women.¹² The Government has also worked to implement gender quotas at the national and *suku* (village) levels through legislation guaranteeing women's representation in the National Parliament and on *Suku* Councils.

Out of the 65 seats in the National Parliament, women hold 25 which equates to 38 percent and there are currently more than 1300 women holding reserved seats on 442 *Suku* Councils across Timor-Leste. However only 11 women out of 422 hold the position of *Suku* Chief (2.48 percent)¹³ at the local governance level which means they often do not possess the avenues necessary to express their concerns as equal citizens.¹⁴ As such, the majority of Timorese women, particularly in rural areas where the majority live, remain not only removed but also indifferent to the importance of decision-making processes, which is reflected by their lack of access to adequate healthcare, education and formal justice processes.

This research has been conducted in three study locations across Timor-Leste: Baucau District, Bazartete Sub-District (in Liquiça District) and Betano *suku* (in Manufahi District). A summary of background information provides a picture of the setting of the research across these locations.

Baucau is located on the eastern part of the country, around 122 km from Dili. It is the second biggest city of the country with a population of 111,694 inhabitants and an area of 1.494 km². The capital of the district is also named Baucau and sub-districts include Baguia, Baucau, Laga, Quelicai, Vemasse and

¹² Section 16 (2) reads, "Do not discriminate against people on basis of skin, race, civil status, sex, ethnic origin, language, social or economic position, political views or ideology, religion, education, or physical or mental condition or disability;" Section 17 reads: "Women and men have the same rights and obligations in raising families, and in the cultural, societal, economic and political arenas." See RDTL Constitution, 2002, Dili, Timor-Leste.

¹³ Cummins, D. (2011) The problem of gender quotas: women's representatives on Timor-Leste's *Suku* Councils, *Development in Practice*, 21:1, p.86

¹⁴ CEPAD and Interpeace (2012) 'Situational Analysis: Supporting women's engagement in the consolidation of democracy', Dili, Timor-Leste, p.15

Venilale. In addition to Tetun language, the majority of the population speaks Macassae. Baucau communities consist mainly of Makassae, Waimua, and Tetun socio-ethno linguistic backgrounds and the predominant social system is patrilineal.

The District is predominantly Catholic (98 percent) and one of the three Bishops of Timor-Leste is based in the Diocese of Baucau. The main economic activity of Baucau is agriculture (corn, rice, peanut, coconut and horticultural crops) which suggests a high dependence on land for livelihoods. According to the 2010 Census, 18 percent of households in Baucau are female-headed and 18 percent of females aged between 5 and 29 have never attended school (this figure is the same for males in the same age range).

Given that Baucau is a semi-urban location and the largest centre outside of Dili, there are some key justice-related services available to its population. This includes the Baucau District Court (one of four in Timor-Leste) with a jurisdiction covering Baucau, Manatutu, Viqueque and Lautem Districts. The presence of the Court means that residents have some access to information and there are other related services available in Baucau including a legal aid service, and the National Police (PNTL) and community police.

Bazartete Sub-District is located in Liquica District, which is located on the northern coast of the country, approximately 32km from Dili. It borders Dili to the east. It has a population of 63,403 people and an area of 543 km². The capital of the district is Liquiça and there are three sub-districts (Bazartete, Liquiça and Maubara). In addition to Tetun language, the majority of the population speaks Todedede. Bazartete sub-district comprises of some *sukus* which are easily accessible from Liquiça capital but others which are located in the mountains are less accessible. Around 75 percent of households are engaged in agricultural production including maize, cassava, coffee, coconuts as well as animal rearing which suggests a high dependence on land for livelihoods.

According to the 2010 census, 13 percent of households in Bazartete Sub-District are female headed and 27 percent of females aged between 5 and 29 in Liquiça District have never attended school (this figure is the same for males in the same age range). Liquiça falls within the jurisdiction of the Dili District Court which is approximately 1.5 hours drive from Bazartete centre. There are some services in this semi-rural area including National Police but, in general, accessibility to general services is relatively low.

Betano *suku* is located in Same sub-district in Manufahi District which is located on the southern coast of Timor-Leste and geographically it is one of the most isolated districts in Timor-Leste. It is surrounded by two of the largest mountains in the country: Kablaki and Ramelau. It has 4 sub-districts (Same which is the capital, Fatuberlio, Alas, and Turisca) and covers a land area of 1.325 km² with a total population of 48,894¹⁵. Its ethno-linguistic groups include Bunak, Mambae, Tetum and Laklei. The 2010 Census

¹⁵National Statistics Directorate & United National Population Fund, 'Population and Housing Census of Timor-Leste, 2010; Volume 3 'Social and Economic Characteristics', p.24.

suggests that 12 percent of households in Betano *suku* are female headed and 19 percent of females aged between 5 and 29 in Manufahi District have never attended school. The 2010 Census suggests that 67 percent of households are engaged in crop production. The majority of the population live on subsistence farming.

Bunak is a matrilineal based community found in Fatukuak *aldeia* whereas Mambae, Tetum and Laklei communities have a patrilineal based social system (which applies in the 6 remaining *aldeias* in Betano *suku*). The co-existence of both matrilineal and patrilineal systems in Manufahi District has been the main reason behind the selection of Betano as a study location. The nearest Court is the Suai District Court based in the neighboring district of Cova Lima and it is a three to four hour drive to the west (with relatively poor road accessibility). Betano *suku* is isolated geographically and also in terms of access to justice related services, for example, there are National Police stationed in Same capital which is responsible for Betano *suku* but the community relies on volunteers to assist policy in the village.

Rationale of the Study

Based on CEPAD's ongoing participatory action research (PAR) since 2007, there is a growing sense of apathy among both men and women in Timor-Leste towards the formal justice sector¹⁶, amid a continued reliance on traditional modes of conflict mediation, often to the marginalization and discrimination of women. CEPAD has also observed widespread confusion among Timorese citizens over the meaning of democracy and 'gender', which in turns reflects a lack of understanding over the intersecting role and objectives of state and customary justice systems in Timor-Leste. Since the restoration of independence in 2002, 'gender equality' is often perceived in Timor-Leste as a foreign or introduced concept, which can be associated with disturbing social cohesion within and between communities, and exacerbating direct competition between men and women.

Furthermore, following extensive countrywide research undertaken by CEPAD from 2007 – 2009 on the major challenges to the consolidation of sustainable peace in Timor-Leste, over 900 Timorese men and women identified the "ineffective formal judicial system and the culture of impunity" as one of four priority issues responsible for promoting ongoing resentment, instability and perpetual crises within Timorese society.¹⁷

While some progress has been made in terms of developing policy agendas and frameworks to promote women's empowerment in Timor-Leste, it has been highly centralised in the capital, Dili, and opportunities for involvement beyond elite spheres remain underdeveloped. Women's priorities, rights

¹⁶ CEPAD and Interpeace (2009) 'Timor-Leste: Voices and Paths to Peace,' and CEPAD and Interpeace (2012) 'The people's voice against corruption in Timor-Leste: Transforming locally owned ideas into action'.

¹⁷ The four national priorities identified by participants through CEPAD's Programme of Research and Dialogue for Peace (PRDP) include: 1) the promotion of individual and party interests over the national interest; 2) the ineffective formal judicial system and the culture of impunity 3) the need for a common narrative of the history of the resistance and the occupation;; and 4) Corruption, Collusion and Nepotism (KKN).

and needs in general are often overlooked and their access to formal justice systems has been given inadequate attention, in turn reducing their overall participation in the process of democratisation and post-conflict reconciliation in their country.

Issues of land ownership in Timor-Leste are particularly complex. As stated in the 2010 report of the Matadalam ba Rai project¹⁸: “We all know that land is important, that land is fundamental for our lives. Today there are many changes happening to our land. There are new policies, new laws and many new influences. It is crucial that we the Timorese people speak up about our land, we need to tell our stories and explain our land so that all can understand it.”¹⁹ Land in Timor-Leste is particularly important for women. As stated by the Coordinator of local civil society land rights coalition, Rede ba Rai, at CEPAD’s National Validation Workshop for this research: “We see land as a social function that gives protection to women.”

The numerous political and legal regimes which have existed in Timor-Leste over the last 500 years have led to overlapping claims to land and property from Portuguese and Indonesian administrations. Mass displacement caused by conflicts has also led to considerable uncertainty around land and property rights. Major displacements during the Portuguese colonial period, the Indonesian occupation, the violence in the wake of the 1999 referendum and, in the post-Independence period, following the 2006 crisis period of civil conflict leading to further displacement and subsequent occupation of vacant properties have complicated any land claim systems in place.

The lack of land registry and property records as well as insufficient legal frameworks to ascertain property ownership only aggravates this situation, and unregistered transactions make it almost impossible to identify legitimate owners. According to the International Crisis Group: “Resolution of these uncertainties through new laws, regulations and policies is necessary to reduce conflict, diminish the risk of further instability and to provide a clear way to resolve past and future disputes.”²⁰ Attempts to legislate and regulate land ownership are outlined as follows.

The first Constitutional Government of Timor-Leste (2002-2007) succeeded in passing three laws relating to land between 2003 and 2005 which defined state property, outlined a process for registering land claims based on prior ownership and set up a leasing system for state and private property.²¹ As part of

¹⁸ Matadalam ba Rai is a programme of Huburas Foundation, a Timorese civil society organisation founded in 1998 and focusing on environmental issues in Timor Leste including environmental education, environmental advocacy and environmental management. The programme conducted consultations on land with communities in 7 *sukus* across Timor-Leste to produce the report ‘Community Voices of the Land’ in 2010.

¹⁹ Matadalam ba Rai & Haburas Foundation (2010), ‘Community Voices of the Land’, Dili, p.8.

²⁰ International Crisis Group (2010) ‘Managing Land Conflict in Timor-Leste’, Asia briefing No. 110, p.1

²¹ The laws are Parliamentary Law 1/2003, “Regime Jurídico dos Bens Imóveis, I Parte: Titularidade de Bens Imóveis”, 10 March 2003; Decree-Law 19/2004, “Regime Jurídico dos Bens Imóveis: Afectação Oficial e Arrendamento de Bens Imóveis do Domínio Privado do Estado”, 17 December 2004; and Parliamentary Law 12/2005, “Regime Jurídico dos Bens Imóveis - II Parte: Arrendamento entre Particulares”, 16 June 2005.

this, the National Directorate of Land, Property and Cadastral Services (DNTPSC) was established as a legal entity and its jurisdiction defined.²²

A package of three laws concerning land was passed by the National Parliament in 2012, only to be sent back to the Parliament by then President, Jose Ramos-Horta, for revision, one reason being that it did not incorporate the recognition of Indigenous land tenure. The revised Package is composed of three laws: the Special Regime for the Definition of Ownership of Immovable Property, the Expropriation Law, and the Real Estate Financial Fund and was approved by the Council of Ministers in July 2013. The Package is currently tabled for debate in the National Parliament (as at September 2014).

Many land disputes have been resolved or at least managed through informal mediation, a marker of the strength of customary understandings of land tenure and local communities. Yet some cases remain beyond the capacity of *suku* chiefs, local elders or religious leaders to fix. Others are pending in expectation of the new land law to clarify cases that have complex as well as undocumented historical roots.²³

The current lack of clarity on land and property issues in Timor-Leste creates obstacles to rural and economic development and especially affects women's economic prospects. Without any title to land, women who depend on land face great insecurity. Conflict and displacement have left many women as heads of households who are confronting changes in village boundaries, and the relocation of community hamlets or re-settlements to ancestral lands.

The 2007 initial periodic report to the CEDAW Committee from the Democratic Republic of Timor-Leste (RDTL) stated that there had been little discussion surrounding Timorese women's land rights in the national land debate.²⁴ "Women in the regional CEDAW consultations have emphatically stated that traditional land laws deny them their rights to own land and other resources thereby reinforcing their marginalization in a post-independence economy." The 2013 combined second and third periodic reports to the CEDAW Committee from RDTL stated that the land legislation underwent extensive revision from February to April 2013 after the establishment of a Gender and Land Law Sub-working Group. The focus was on ensuring women's participation during cadastral consultations, encouraging land titling in the names of both spouses, receiving/accessing equal compensation, and receiving special protection during expropriation processes.²⁵

As stated by UNDP, access to justice is "a key means to defend other rights" and "an enabling right" that allows individuals to enforce their substantive rights and obtain a remedy when these rights are

²² East Timor Land Law Programme (2004), 'Report on research findings, policy options and recommendations for a law on land rights and title restitutions', p.2

²³ As stated in International Crisis Group (2010) 'Managing Land Conflict in Timor-Leste', Asia briefing No. 110, p. 1

²⁴ Democratic Republic of Timor-Leste (2007) 'Initial Report: The Convention On The Elimination Of All Forms Of Discrimination Against Women (CEDAW)', CEDAW/C/TLS/1, p.136

²⁵ Democratic Republic of Timor-Leste (2013) 'Combined Second and Third Periodic Reports; The Convention On The Elimination Of All Forms Of Discrimination Against Women (CEDAW)' CEDAW/C/TLS/2-3, p.60.

violated. The enhancement of women's access to justice is critical in eliminating discrimination against women, in promoting substantive equality and in achieving the goals of the CEDAW Convention. It is clear that globally, barriers for women in accessing justice are numerous and varied. UNDP has called for "additional research on the particular obstacles faced by women and the manner in which they cope with injustice or resolve conflicts"²⁶ and this is a key pursuit of the research proposed here.

Research Framework

Objectives and Research Questions

This research project aims to achieve two key objectives. Firstly, to enable women in selected communities to identify their needs and the action that should be taken to enhance their access to justice in relation to land and property rights. Secondly, to enable community and religious leaders, and those involved in state and customary justice systems with regard to land and property to identify concrete needs and steps for action toward enhancing women's access to justice.

Women's perspectives should be the starting point of the analysis in any study of women's access to justice, and their active participation should be an essential component of the process of developing programs that seek to enhance their access to justice. For this reason, CEPAD has used a participatory action research approach with a feminist perspective to undertake this study into women's access to land and property rights.

Through this research, CEPAD is pursuing the following specific research objectives:

1. To determine what is justice to women in Timor-Leste and what is law to women in Timor-Leste as a starting point of analysis of women's access to justice in Timor-Leste.
2. To analyse the State's legal framework and procedures and customary laws and procedures in relation to women's land and property rights to determine substantive gender equality.
3. To identify and assess the barriers and enabling factors women face to access and control land and property.
4. To identify and assess the barriers and enabling factors for women to access remedies and claim land rights (through state and customary justice systems, showing the (possible) interactions between those systems).

²⁶ UNDP (2005), 'Programming for Justice, Access for All: A Practitioner's Guide to a Human Rights-based Approach to Access to Justice', Bangkok, p.161.

-
5. To develop recommendations for legislative and policy reform through a participatory and consensus driven process with women which can then be presented to key decision makers at the national level.

In order to achieve the research objectives stated above, the following research questions have guided the design and implementation of the study.

1. **What is justice and what is law for women in Timor-Leste?** CEPAD seeks to understand how women themselves conceive of justice as a basis to determining their access to justice. Understanding what resolution, remedy and restitution means in the local context assists with analysis of the effectiveness or otherwise of the state and customary justice systems and processes in Timor-Leste.
2. **Does the State's legal framework in relation to women's land rights support substantive gender equality? Does the customary normative framework in relation to women's land rights support substantive gender equality?** Determining substantive gender equality requires an analysis of legal frameworks in reference to how this is implemented at the local level and the experiences of women in understanding and interacting with it.
3. **What is the inter-connection between state law and customary law and practice in discrimination in land rights?** This research examines the ways in which the two justice systems interact to determine gaps and overlap as experienced by women.
4. **Do women have access to legal knowledge on land and property rights? Why? Why not?** Acknowledging that legal knowledge and awareness is the first step to claiming rights, this question seeks to determine the extent to which women are aware of key legislation and processes affecting their rights to land and property and the reasons for the level of their knowledge.
5. **Do women have access to legal identity on land and property rights? Why? Why not?** Researchers sought to discover what types of legal identity women possessed to compare this to the requirements for accessing justice processes and remedies.
6. **Do women have ownership and control over land in Timor-Leste? Why? Why not?** This central question led researchers seek responses of women to questions about use, management, ownership and control of land and property and their explanations behind responses.
7. **What is the ability of women to claim land rights? What are the barriers they face in seeking remedies?** Women were asked about their experiences of seeking remedies and claiming land rights in order to determine the key barriers and enabling factors and their own perceptions of these.

Scope and Limitations

It should be noted that the timeframe of the project and the delays associated with the need to coordinate the research framework at the regional level has impacted on the depth of research into these very complex issues in Timor-Leste, namely, women's access to justice in plural legal systems and land and property ownership. There has been a considerable amount of research conducted in Timor-Leste regarding women's access to justice, focussing particularly on issues of domestic, sexual and gender-based violence.²⁷

The complexity and variety of customary justice processes has also been acknowledged which leads to difficulties in describing and categorising these processes and their impacts. In this study, the attempts to describe customary justice processes were also somewhat hampered by the fact that, particularly in rural areas of Timor-Leste, participants are reluctant to speak about such matters as they are considered sacred.

A key consideration when conducting this research is that the focus on women's rights to land and property is affected by the status of current land-related legislation which has not yet been approved by the National Parliament or promulgated by the President of the Republic. This research cannot comment on the full extent of women's rights to land and property as determined under the state justice framework.

The report therefore seeks to provide insights on the processes used to consult with women, processes of registering land and recommendations for implementing the law once it comes into effect.

²⁷See reports by UNDP (2013), 'Breaking the Cycle of Domestic Violence', Dili; The Asia Foundation (2012) 'Looking to the Needs of Domestic Violence Victims', Dili and JSMP (2013) 'Overview of the Justice Sector', Dili.

Methodology

Research Team

The research team is comprised of a Lead Researcher (female) and Assistant Researcher (male) who are Timorese staff members of CEPAD and who work under the guidance of the CEPAD Executive Director (male) with support provided by an Australian volunteer recruited through the Australian Volunteers for International Development Programme (female). The research team members have professional backgrounds in anthropology, political science, public policy, psychology, English literature, international development, peacebuilding and community development.



Left to right; Lead Researcher Ivoina Pinto Tsia and Research Assistant, Alfredo da Conceição Isac

CEPAD worked closely with local communities through its network of district liaison officers (DLO) (2 female, 1 male) who were responsible for identifying participants, explaining the objectives of the research, issuing invitations and providing logistical support for research activities. The research team ensured that DLOs were well briefed on the research objectives and process and were able to use their local knowledge and good standing within communities to effectively recruit participants. All communication between the research team and the DLOs were conducted in Tetun language and Tetun was the language used during data collection activities.

This research has been guided by several actors including UN Women Timor-Leste, UN Women Regional Office for Asia and the Pacific, the Institute of Development Studies (Sussex University, U.K.) and the Asia Pacific Forum on Women, Law and Development (APWLD). A concerted effort has gone into applying feminist participatory methods in the implementation of the project in eight countries throughout Southeast Asia, using feminist participatory action research (FPAR). CEPAD has adapted several qualitative methods which most closely reflect its own approach to conducting research in Timor-Leste.

Desk Research and National Meetings

Document-based research has been undertaken in order to conduct a situational analysis around the key themes of gender equality, access to justice and rights to land and property in Timor-Leste. More specifically, a review of key documents has focused on international perspectives on women's access to justice and rights to land; relevant laws and policies in Timor-Leste; key state and customary justice institutions and processes and other relevant reports regarding women and land in Timor-Leste.

This component of the research draws heavily on reports and other studies conducted by national and international state and non-state organisations. Additionally, secondary data collection was conducted at the national level in the form of meetings with national non-government organisations (NGO) and key government officials which complemented document based research. Valuable information was also gathered from the team's participation in national workshops on relevant issues organised by government, national and international organisations.

Selection of Case Study Locations

Data collection for this study was conducted in three selected locations. The locations were selected based on the existence of both state and customary justice processes and some relevant characteristics deemed important. Practical and budgetary considerations also had some bearing on the selection. The three case studies included in this research are:

1. Betano *suku* in Same Sub-District, Manufahi District: selected due to considerable distance from nearest designated District Court (Suai), isolated rural setting, the presence of matrilineal inheritance systems, linguistic diversity, lack of access to information and services, and location in the central southern part of Timor-Leste.
2. Bazartete Sub-District in Liquiça District: selected due to proximity to nearest District Court (Dili), semi-rural setting, patrilineal inheritance systems, relative access to information and services related to justice and land rights and location in central-western part of Timor-Leste.
3. Baucau District capital: selected due to presence of District Court (Baucau), semi-urban setting, presence of strong traditional practices, strong patriarchal systems, good access to information and services related to justice and land rights and location in eastern part of Timor-Leste.

The three locations were assessed primarily using CEPAD's previous research projects which have established dialogue platforms in each of the 13 districts of Timor-Leste. From 2007-2009, CEPAD's Programme of Research and Dialogue for Peace (PRDP) led close to 1000 citizens through a participatory action research process to identify and prioritise the key barriers Timorese face in bringing about sustainable peace. This project and several key research projects conducted since have elicited considerable data on a wide variety of economic, social and political issues giving CEPAD a thorough understanding of the particular context of each district.

The three study locations chosen for this project also represent three regions of Timor-Leste as divided through CEPAD's PRDP research and CEPAD's Peace House programme which has seen physical dialogue spaces, or Peace Houses, constructed in four districts. Region one integrates Manatuto, Baucau, Viqueque and Lautem districts with a Peace House in Baucau villa. Region two integrates Dili, Aileu, Manufahi and Ainaro districts with a Peace House in Aileu villa. Region three consists of Oecussi, Cova Lima, Bobonaro, Ermera and Liquiça districts with a Peace House in Maliana, Bobonaro and Ermera.

The locations of other key studies on women's access to justice which have taken place in Timor-Leste were also taken into consideration in order to avoid duplication. CEPAD also consulted with UN Women Timor-Leste to make final decisions about the three locations.

Selection of Research Participants

Participants in the three locations were selected according to CEPAD's selection criteria which is based on principles of inclusiveness and representativeness which was adapted in line with the stated research objectives. CEPAD identified key informants in the three locations to provide valuable information and insights into women's access to justice and rights to land and property, elicited through semi-structured interviews. Categories of interviewees included traditional leaders, Church leaders, local authorities, local court system staff, lawyers, police, and local women's support services.

CEPAD applied a more focused criteria when deciding how best to understand experiences of women themselves. Approximately 15-20 women were selected in each of the three locations based on their roles in the community, age, residence, their status in regard to ownership of land and their marital status. CEPAD also included some women who had participated in previous research into women's participation in the process of consolidating democracy (conducted by CEPAD from 2011-2013) as part of an ongoing process of consolidating dialogue platforms throughout Timor-Leste which bring citizens together to discuss issues, raise concerns and become more informed about the policies and laws which impact on their lives. It should be noted that CEPAD had difficulty identifying specific cases of women claiming rights to land and property through registration processes which have taken place, and therefore drew on the general experiences of women and any observations available.

Participatory Action Research

The Participatory Action Research (PAR) method has been used by CEPAD since 2007 as a key tool for data collection because it aims to engage Timorese citizens in research processes which allow them to identify problems, design solutions and actively participate in the development of outcomes. The PAR approach also complements the traditional Timorese process of *nahe biti bot* and *sorumutu* (the laying down of the woven mat to meet together) which brings citizens together to discuss issues on common ground.

Researchers carried out data collection and stakeholder consultations in the form of key stakeholder interviews, focus group discussions (FGDs) and ‘Interactive Dialogues’ in three locations: Baucau District, Bazartete Sub-District and Betano *suku* in the months of November, December and January 2013 and March, May and June 2014.

Key Stakeholder Interviews



Interview with local mediator, Same, January 14, 2014.

Semi-structured interviews were held with six female and three male informants in Baucau (November 2013), four female and three male informants in Bazartete (December 2013) and two female and three male informants in Betano (January 2014) (see annex 4). The informants were selected based on the criteria described above and identified with the assistance of CEPAD’s DLOs, who also organised the interviews on behalf of the research team.

Interviews were carried out by CEPAD Lead Researcher and Research Assistant according to flexible guides (see annex 1) which allowed the interviewee significant control over the substance of the interview. Interviews assisted the researchers to develop a profile of the local community to back up desk research. As key local actors, informants also assisted researchers to identify the women participants for the next phases of the research.

Focus Group Discussions (FGD)

Focus group discussions (FGD) with women participants were held in each of the three locations during May and June 2014 and facilitated by CEPAD Lead Researcher and Research Assistant. The Bazartete Sub-District FGD was attended by 20 women participants, the Betano *suku* FGD was attended by 17 women participants while the Baucau FGD was attended by 12 women participants (see annex 5). The FGD questions were pre-tested in Dili prior to field visits (see annex 2). Some key tools were used by researchers to understand women’s situation and perspectives in relation to access to justice and rights to land and property.

A mapping exercise was used to understand how women use and control land and property on a daily basis, which was adapted from an activity used by the Ita Nia Rai programme²⁸. Women were divided into sub-groups according to their marital status and were asked to place picture cards of key resources into different categories of 'women use', 'men use', 'both women and men use'. The exercise was then repeated for categories of 'women own', 'men own' and 'both women and men own'. Items were also ranked according to value. Facilitators asked questions during the exercise to encourage insight and analysis. Results were captured on flip charts which were then presented to the larger group by a nominated group representative and space was opened for discussion. The activity gave the research team a good picture of women's management, control and ownership of land and property and through discussion, important factors and perspectives were drawn out.



Presenting back to the group, Bazartete Sub-District



Categorising resources, Betano Suku

Another mapping exercise was used to understand women's options for seeking justice for land disputes in which the facilitators assisted women participants through a drawing activity. A female figure was drawn in the centre of a flip chart and participants identified various options for seeing a remedy to be placed around the figure. Enablers and the barriers and explanations of such were described in the picture. This helped women to reflect on and share their personal experiences in using or not using state and customary justice mechanisms as well as the reasons behind their choices.

The FGDs were designed to help women to have an active and lively discussion. Facilitators guided the discussions to ensure that the focus was kept as much as possible on women's own experiences of seeking justice and claiming rights rather than broader issues such as disputes between families, *sukas* and citizens and the state.

²⁸ The researchers are grateful to Ita Nia Rai staff for sharing the resources for this activity.

Interactive Dialogues (ID)

In June 2014 the Research team conducted a second field visit to the three locations to carry out Interactive Dialogues with the aim of developing recommendations and discussing actions with women. The IDs were designed to provide a space for a two way of exchange of information and ideas between the research team and the women participants.

The Baucau District Interactive Dialogue was attended by 10 women participants, the Betano *Suku* Interactive Dialogue was attended by 15 women participants while the Bazartete Sub-District Interactive Dialogue was attended by 14 women participants (see annex 6).



Interactive Dialogue, Baucau District



Interactive Dialogue, Betano Suku

An activity called ‘estafeta game’²⁹ was used to explain key aspects of state laws to women, including relevant articles of the RDTL Constitution and the Law on the Special Regime for the Definition of Ownership of Immovable Property (land law), in which women were ‘taught’ the information by facilitators and were then guided through ‘teaching’ the same information to their fellow participants.

The research team adapted legal language and ensured that women understood the information through a process of correcting mistakes and filling knowledge gaps. It was integral that women understand the aspects of the laws which had the most bearing on their lives in order that they were in a more empowered position to develop recommendations and decide on action required.

²⁹ *Estafeta* is a term which arose from the period of United Nations peacekeeping operations in Timor-Leste, in which Timorese would receive instructions or information from UN personnel which were then ‘passed down the queue’. The term is now used to refer to a game in which messages are passed from person to person and the final message is often incorrect.

Barriers and enablers for accessing justice which had been identified in the initial FGDs were discussed in more detail and to encourage women participants to think about solutions and recommendations as well as women's own actions for change.

Tools proved to be effective in encouraging women's interest and engagement on issues of gender equality and land and property rights. During the 'estafeta game' women sought to understand the correct explanation of legal information, most not having access to this previously. The facilitator was often asked to help women relate the laws to the experiences and observations that women had identified in their communities which demonstrated an enthusiasm to understand legislation as it impacted on their daily lives.

In-depth Interviews of Selected Participants

Throughout FGDs and Interactive Dialogues, facilitators identified women to interview individually in order to compile several short case studies. Women whose experiences differed somewhat from the norm (for example, widows or women who had taken a more active approach to claiming rights) were chosen and a total of 6 interviews were conducted, two from each study location. Time limitations prevented the team from conducting more interviews, particularly as many women had travelled some distance to attend the activities and needed to return home. Aware of these limitations, researchers carefully selected women to interview in more depth. One follow-up phone call was conducted to clarify information with one of the interviewees.

Film

All components of the data collection were captured on film by CEPAD's audio-visual team as a record of proceedings from which to cross-check findings. The footage has also been developed in a short film depicting the research process, outcomes and recommendations. It is designed for a variety of audiences including research participants, donors, policy makers and justice actors. CEPAD encourages use of film and visual methods to convey complex issues and processes to low-literacy groups throughout Timor-Leste and has used film in all of its previous research projects, yielding positive outcomes for both participants and audiences.

Ethics

The research team cooperated closely with DLOs in order to ensure that participation was voluntary, well-targeted that participants were well informed. CEPAD's DLOs have a longstanding relationship with CEPAD and regularly assist to organise research activities on-the-ground. CEPAD staff briefed DLOs face-to-face, providing all relevant information about the project, target group and activities. CEPAD prepared invitations with clear information about the research objectives and process and indicated clearly that participation was voluntary and that through accepting invitations, participants were

consenting to have their input recorded through written notes, voice recording devices and film and that this would be published in a final report and film produced by CEPAD.

At the beginning of each research activity (FGD, interactive dialogue or interview), the research objectives and process was reiterated to participants by the CEPAD research team and verbal consent to participate was gained. For FGDs and interactive dialogues, CEPAD researchers opened each activity by reiterating the objectives and process of the research, the final outcomes and the way in which women's input would be used. The practice of *nahe biti bot* was used as a way to ensure that the space was neutral, safe and confidential. Women were invited to opt out of activities or indicate any reluctance to appear on film and could do so either during activities or afterwards by communicating with DLOs.

National Validation

A National Validation Workshop entitled 'Promoting Women's Access and Rights to Land and Property in Plural Legal Systems in Timor-Leste' was held on Tuesday 2 September in the capital, Dili, in order to present, develop and validate the research findings and recommendations (see annex 3 for the event agenda). The event was attended by 60 participants representing government, local civil society, international NGOs, academia, legal aid and media (see annex 7). Twelve women who had participated in the research also travelled from the three study locations to participate in the National Validation Workshop.

Opening addresses were given by CEPAD Executive Director, Dr João Boavida; UN Women Country Representative, Ms Janet Wong; The Vice-Minister of Justice, Mr Ivo Jorge Valente; Secretary of State for Land and Property, Mr Jaime Xavier Lopes and Coordinator of Rede ba Rai, Ms Santana Fernandes. This was followed by questions from the participants to which responses were provided by the panel.

Research findings were then presented by CEPAD Lead Researcher, Ms Ivonia Pinto Tsia, in the form of a short film depicting the research process and results. A second panel was then held, in which three women, each representing one study location, presented their recommendations and actions for change.

Participants were then divided into three sub-groups to examine key recommendations in more depth. Sub-groups comprised of representatives of government, civil society and women participants from Baucau, Bazartete and Betano. Sub-groups were facilitated by CEPAD and UN Women staff. Results of sub-group discussions were presented back in the final session and time for further questions was provided.

Conceptual Framework

Law and Legal Pluralism

Legal pluralism is generally defined as a situation in which two or more legal systems coexist in the same social field.³⁰ It exists whenever social actors identify more than one source of ‘law’ within a social arena.³¹ Defining law as ‘state law’ is now widely acknowledged as too narrow a definition to describe the total picture of law from a global perspective.³² The difficulty of defining ‘law’ for the purposes of examining legal pluralism is a fundamental conceptual problem which has plagued thinkers in this field for decades.

In the context of legal pluralism, a key conceptual problem revolves around the question posed by Merry in 1988: “where do we stop speaking of law and find ourselves simply describing social life?” This is an important question in the context of legal pluralism in Timor-Leste. The 450 years of Portuguese colonisation, followed by 24 years of Indonesian occupation, has had a significant impact on formal and non-formal legal systems and normative orders in Timor-Leste. The state has attempted to build up and consolidate a formal legal system (largely the result of Portuguese – European – influence) in the 12 years since Timor-Leste gained independence in 2002, however, despite making some gains, it is clear that the majority of the population feel more confident and comfortable with local justice systems.³³

These local justice systems are a key focus of this research, along with the formal justice system. The interaction between the two which is examined in light of Tamanaha’s statement that “it is not necessary to construct a social scientific conception of law in order to frame and study legal pluralism”.³⁴ It is clear that the Timorese identify more than one source of law and justice within their social arena.

Tamanaha sets out six categories of normative ordering as part of a framework for examining legal pluralism including: official legal systems; customary/cultural normative systems; religious/cultural normative systems; economic/capitalist normative systems; functional normative systems and community/cultural normative systems. The Tetun term for customary justice in Timor-Leste is *lisan* but is also often referred to by the Indonesian term of *adat*. Customary justice mechanisms are community-level systems led by various chiefs and community elders.

³⁰ Merry, S. E. (1988), ‘Legal Pluralism’, *Law & Society Review*, Vol. 22, No. 5, p. 870

³¹ Tamanaha, B. Z. (2007), ‘Understanding Legal Pluralism: Past to Present, Local to Global’, *Sydney Law Review*, Vol. 30, p.375-411.

³² Twining, W (2009) *General Jurisprudence; Understanding Law from a Global Perspective*, Cambridge University Press, New York.

³³ The Asia Foundation (2013), ‘Timor-Leste Law and Justice Survey 2013’, Dili, p.8

³⁴ Tamanaha, B. Z. (2007), ‘Understanding Legal Pluralism: Past to Present, Local to Global’, *Sydney Law Review*, Vol. 30, p.375-411.

Although customary justice practices are localised and vary from place to place, they are broadly based on a process in which resolution of matters moves in a hierarchy beginning at the family and ending with the *Suku* Chief. “These processes are premised on collective restorative justice to ensure community reconciliation, rather than retributive justice and individual rights.”³⁵

Tamanaha states that normative orders clash in pursuit of their claims to legitimacy and control over matters within their scope. The Constitution of the Democratic Republic of Timor-Leste (RDTL) states in Section 2 that: “The State shall recognise and value the norms and customs of East Timor that are not contrary to the Constitution and to any legislation dealing specifically with customary law.” The Ministry of Justice began drafting a customary law and mediation law in 2008 and this process is continuing, albeit slowly. It is as yet unclear whether this law will attempt to codify customary justice, regulate it or formally separate the jurisdictions of respective systems. Until this is clear, we are unable to determine the extent to which the state recognises customary justice as ‘law’ and which components might be determined as such. It is therefore necessary to understand the operation of local customary justice in selected case study areas in Timor-Leste and most importantly, the experiences of women to whom they apply.

This research will adopt the terms ‘customary justice system’ and ‘state justice system’ to describe the normative orders existing in Timor-Leste. The reason for this is that there are some factors which prevent us from using the term ‘non-state’ including the fact that the *Suku* Chief and the *Suku* Council constitute key actors in the customary justice system, yet are also representatives of the state at the local level. Although based on traditional mechanisms, this council and its chief have now been somewhat adopted into the state system.

The customary justice system we are referring to may also be termed ‘informal’ as this term can describe a system which overlaps with the state justice system, however, rather than use the terms: ‘formal’ and ‘informal’, ‘state’ and ‘customary’ adequately serve the purposes of this research.

The precise nature of the ‘clash’ between the justice systems in Timor-Leste is difficult to ascertain but will become clearer as proposed laws are developed. As Tamanaha explains: “The most commonly cited clashes surround the position and treatment of women, family related issues, and caste³⁶ related issues — including child marriages, arranged marriages, divorce rights, inheritance rights, property rights, treatment of low caste and religious imposed punishments.” The manner in which issues relating to women’s land and property rights are dealt with is the specific focus of this research, and this necessitates an exploration of the interaction of the justice systems in Timor-Leste.

³⁵ The Asia Foundation (2013), ‘Timor-Leste Law and Justice Survey 2013’, Dili, p.8

³⁶ ‘Caste’ is a term that refers to the system of dividing society into hereditary classes in Hindu societies. This system does not apply in Timor-Leste.

The following thought from Tamanaha is useful to keep in mind when conducting research into this conceptually challenging area: “The fact that the issue of ‘what is law’ cannot be resolved should not prevent those interested in law and society from studying legal pluralism – what matters most is framing situations in ways that allow observation and analysis of what is interesting and important.”³⁷

Access to Justice

As stated by UN Women: “plural legal systems pose challenges to the ideals of the rule of law for women as they often present overlapping and conflicting strands of law”.³⁸ In this context, this research seeks to use an access to justice approach to examine how women conceive of justice in relation to land and property rights.

As outlined by Francioni: “there are several ways of defining access to justice”.³⁹ In general terms, access to justice means the ability for an individual to bring a complaint before a court and to have the court adjudicate it. A more specific definition is that the court handles the lodged complaint in compliance with international human rights and fair trial standards. A third element is that the court makes free legal aid available to indigent complainants in cases where these individuals cannot afford to pay for legal representation in court; lawyers appointed by the court are called *ex officio* lawyers.

The United Nations Development Programme (UNDP) defines access to justice as: “the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards”.⁴⁰ This definition is more appropriate in the context of legal pluralism and as stated by UNDP, the meaning of access to justice is interpretive and contextual. Access to justice is part of a human rights approach to development, an approach which seeks to develop people’s capacity to demand accountability in two ways, firstly by defining a minimum scope of legitimate claims (human rights) and secondly by enhancing the accountability mechanisms and processes through which they protect these claims (justice systems). UNDP has outlined the following conceptual framework for access to justice:

1. *a normative framework*, consisting of “laws, procedures and administrative structures in place and understood by claim holders and duty bearers”;
2. *legal awareness*, which means that “claim holders are aware of the law and their rights under it and know what to do in case of a grievance”;

³⁷ Tamanaha, B. Z. (2007), ‘Understanding Legal Pluralism: Past to Present, Local to Global’, *Sydney Law Review*, Vol. 30, p.375-411.

³⁸ UN Women (2012) ‘Progress of the World’s Women; In Pursuit of Justice’, p.12

³⁹ Francioni, F. (2007), ‘The Rights of Access to Justice under Customary International Law’ in Francioni, F. *Access to Justice as a Human Right*, Oxford University Press, published online in March 2012.

⁴⁰ UNDP (2005), ‘Programming for Justice, Access for All: A Practitioner’s Guide to a Human Rights-based Approach to Access to Justice’, Bangkok, p.5

3. *access to appropriate forum*, which means that “claim holders seek remedies for grievances through appropriate mechanisms and grievances are received by duty bearers”;
4. *effective handling of a grievance*, which means that “duty bearers take necessary actions to provide remedies for a grievance”; and
5. *satisfactory remedy obtained*, which means that “claim holders receive appropriate remedies, in line with human rights standard”.⁴¹

Access to justice is not simply the active pursuit of claims/complaints and the subsequent remedies provided by justice systems, but it is also the state of having rights protected by law in letter or substance (whether it be customary or formal).

At this point, it is worth referring to the concept of legal empowerment as outlined by the Commission on Legal Empowerment of the Poor (CLEP) in its 2008 report. Legal empowerment and access to justice are inextricably linked. According to the CLEP, the definition of legal empowerment is: “a process of systemic change in which the poor and excluded become able to use the law, the legal system and legal services to protect and advance their rights and interests as citizens”.

Legal empowerment of disadvantaged people is necessary to complement access to justice activities under the areas of normative protection and capacity to provide justice remedies.⁴² The CLEP approach outlines four stages of legal empowerment: identity (legal status as a citizen, an asset holder, business owner, worker); voice (information, education, organisation and representation); rights (access to justice and rule of law, property rights, labour rights and business rights); and systemic change (improving access to justice, assets, work and markets).

The CLEP approach has come under criticism from Golub and others for defining legal empowerment in relation to livelihood-related rights (property, labour and business rights) rather than taking a broader approach to justice which could include, for example, issues of violence against women.⁴³

Taking elements of the CLEP approach as well as the UNDP framework of access to justice, this research defines the access to justice approach as the following:

⁴¹ Wojkowska, E. (2006) ‘Doing Justice: How informal justice systems can contribute’, UNDP-Oslo Governance Centre, p.30

⁴² UNDP (2005), ‘Programming for Justice, Access for All: A Practitioner’s Guide to a Human Rights-based Approach to Access to Justice’, Bangkok, chapt. 3.

⁴³ See Golub, S. (2009), ‘The Commission on Legal Empowerment of the Poor: One Big Step Forward and A Few Steps Back for Development Policy and Practice’, *Hague Journal on the Rule of Law*, 1: 101–116.

1. *access to “pro-poor/women” laws (formal or customary):* which position women in such a way as to ensure substantive gender equality; that is, that women are promoted and protected in the letter of the law and in the implementation of the law. For example, land-related legislation clearly specifies that women have the right to own land, and in practice, this is implemented correctly by relevant institutions and authorities;
2. *access to legal knowledge:* meaning women are aware of the law (formal or customary), their rights under it and they know which steps to follow in case they have a grievance;
3. *access to legal identity:* meaning women have a legal status as citizens, asset holders, workers, business owners; and
4. *access to legal aid and consultancy:* meaning that when women are faced with a dispute, they have access to free legal aid and legal advice if and where their economic situation is a barrier, in order to assist them to lodge their complaint in front of the justice systems available in their social arena.

Legal Framework

National Applicable Laws

Timor-Leste follows the civil law tradition and overarching legal rules and statutes can be found in the RDTL Constitution (adopted on May 20, 2002), the Penal Code (2009) and the Civil Code (2011).

Land Laws

The government of Timor-Leste has made it a priority to develop a land law that reconciles existing land rights from different eras and regimes into a single cohesive land rights system. The most recent law named ‘Special Regime for Determination of Ownership of Immovable Property’ was passed by the Council of Ministers on July 9, 2013 but is yet to be debated or approved by the National Parliament (as at September 2014).

The preamble to the law as it is currently, states that: “This law seeks to better clarify the legal situation in Timor-Leste regarding land ownerships, and to make the various dimensions of private property rights, as envisaged in article 54 (1) of the Constitution of the Democratic Republic of Timor-Leste.”⁴⁴ There are several key provisions of the law relevant to this study.

⁴⁴ Draft law ‘Special Regime For Definition Of Ownership Of Immovable Property’, English translation obtained from UN Women Office, Dili, preamble.

Article 4 ‘Equality of Rights’ states that: “Property rights are available to any national individuals, male or female, as well as legal entities and local communities.”⁴⁵ It further states that: “Immovable property rights shall be ensured under conditions of equality for men and women, and any forms of discrimination of property ownership, access, management, administration, enjoyment, transference or disposal are prohibited.”⁴⁶

Article 5 on ‘Special needs of minorities and vulnerable groups’ addresses the particular needs of certain groups in providing that: “The execution of this law must give consideration to the different special needs of minorities and vulnerable groups, and entities that enforce the law must take steps to guarantee appropriate information, consultation and participation of these groups, as a means of promoting equal rights and non-discrimination.”⁴⁷

Article 25 on ‘Protection’ addresses customary practices of land tenure and gender equality, setting out that in Community Protection Zones⁴⁸, the State is responsible to “Ensure that all customary practices conform to the Constitution and are participatory, non-discriminatory and respect gender equality.”⁴⁹

Chapter V entitled ‘Cadastral Survey’ outlines the role of the DNTPSC in establishing, managing and updating the national register of properties, comprised of a cadastral database and database of property records. The DNTPSC is responsible for conducting land register (cadastral) surveys and assigning each parcel of land a unique identification number.

Article 33 on ‘Statement of Ownership’ refers to the process by which claims to property are made. It states that the DNTPSC, responsible for conducting cadastral survey, collects statements of ownership regarding the immovable property in the collection areas along with copies of any evidence that claimants are able to provide. It states that no one may be prevented from submitting statements about plots they consider to be in their possession. Valid statements of ownership may result from “mediation or negotiation in which the parties have agreed on the final transfer of ownership of the

⁴⁵ Draft law ‘Special Regime For Definition Of Ownership Of Immovable Property’, English translation obtained from UN Women Office, Dili, Article 4 (1).

⁴⁶ Draft law ‘Special Regime For Definition Of Ownership Of Immovable Property’, English translation obtained from UN Women Office, Dili, Article 4 (2).

⁴⁷ Draft law ‘Special Regime For Definition Of Ownership Of Immovable Property’, English translation obtained from UN Women Office, Dili, Article 5.

⁴⁸ Community Protection Zones are areas protected by the State for the purpose of safeguarding common interests of local communities through the protection of residential areas, agricultural areas, either cultivated or fallow ground, forests, culturally relevant sites, pastures, water springs or areas with natural resources that are shared by the population and necessary for its subsistence. See draft law ‘Special Regime For Definition Of Ownership Of Immovable Property’, English translation obtained from UN Women Office, Dili, article 24 ‘Community Protection Zones.’

⁴⁹ Draft law ‘Special Regime For Definition Of Ownership Of Immovable Property’, English translation obtained from UN Women Office, Dili, Article 25 (1).

property”.⁵⁰ This article also provides that: “There must be an incentive for joint husband-wife declarations of ownership.”⁵¹

The Ministry of Justice revised the Land Law package after it was vetoed by former President Jose Ramos Horta and two more rounds of consultation were initiated in which written submissions were accepted. A first round of consultation was done between November 2012 and February 2013, wherein the Ministry of Justice held discussions with civil society and *Suku* Chiefs, and distributed copies of the draft law (in Portuguese) on compact disc (CD) to the districts.⁵² According to the Judicial System Monitoring Programme (JSMP), the method of consultation was inappropriate as Portuguese is not a language understood by many Timorese in rural areas and many citizens outside the capital are not able to access the technology required to play a CD.⁵³

Parliamentary Committee A provided an opportunity to civil society to make proposals in April 2013 and the Ministry of Justice sent the Land Law package to the Council of Ministers in May 2013. The Council of Ministers approved the Law on the Special Regime for Determination of Ownership of Immovable Property, the Real Estate Fund Law on 25 June and the Expropriation Law on 9 July.

According to Timorese NGO Lao Hamutuk, the Ministry of Justice has responded to some suggestions from civil society, including clarification of recognition of the *direitu anterior* (prior rights) holders' claims to own property previously administrated by the Portuguese and Indonesian governments; clarification of the hierarchy on property rights; addition of an important special protection for people being evicted; inclusion of protection of customary informal rights when there is a dispute between claimants who have been using a land for a long time without possessing certificates; inclusion of a clause allowing the government to expropriate private or public land to offer to people who occupy the land, particularly when it affects a lot of people, and clarification of the role of the Cadastral Commission.⁵⁴ However, there are still many areas of the draft package that civil society groups would like to see amended.

Timor-Leste still does not have a national land policy, and as far as this research found, no plan to develop one. There is yet to be a land commission established or any similar policy oversight mechanism. According to Rede ba Rai: “With no voice, no plan and no policy, it is likely that land policy will develop in an ad hoc manner and undemocratically.”⁵⁵

⁵⁰ Draft law ‘Special Regime For Definition Of Ownership Of Immovable Property’, English translation obtained from UN Women Office, Dili, Article 33 (5).

⁵¹ Draft law ‘Special Regime For Definition Of Ownership Of Immovable Property’, English translation obtained from UN Women Office, Dili, Article 33 (7).

⁵² Judicial Systems Monitoring Programme (2013) ‘Overview of the Justice Sector’ report, JSMP Timor-Leste, p.20.

⁵³ Judicial Systems Monitoring Programme (2013) ‘Overview of the Justice Sector’ report, JSMP Timor-Leste, p.20.

⁵⁴ Lao Hamutuk (2013) ‘Whom Will the Land Laws Empower?’, online article accessed at <http://www.laohamutuk.org/Bulletin/2013/Jul/bulletinv13n1en.html#land>

⁵⁵ Rede Ba Rai (2013) ‘Land Registration and Land Justice in Timor-Leste; Culture, Power and Justice’, May 2013, Timor-Leste p.64

Constitution

The RDTL Constitution establishes citizen's basic rights and it is worth highlighting the contents of Articles 2, 16, 17, 39 and 54 of the Constitution: Article 2 safeguards traditional customs that are in line with the Constitution and the laws of the country; Article 16 sets out the principles of equality and non-discrimination of all citizens of Timor-Leste who have the same rights and shall be subject to the same duties which means that women and men have the same rights and duties in all areas of family, political, economic, social and cultural life (RDTL Constitution, Article 17); Article 39 declares that marriage is based on free consent and upholds equality between spouses, and Article 54 allows for private ownership and transfer of ownership, but restricted this to citizens of Timor-Leste.⁵⁶

As stated in the 2013 State Party Submission to the CEDAW Committee, the principle of equality is integrated in a number of specific domestic laws in Timor-Leste, such as the Civil Code (Article 1559), the Labor Code (Article 6), the Election Law for National Parliament (Article 8), and the Law against Domestic Violence (Article 4). Since the adoption of these laws, discussions initiated by the Women Parliamentarians Caucus of Timor-Leste (Grupo de Mulheres Parlamentares de Timor-Leste – GMPTL) in 2008 regarding the development of a Gender Equality Law (GEL) have subsided, considering that key provisions of the draft GEL are included in the legislation listed above. Although as reported in the 2013 State Party Submission to the CEDAW Committee, GMPTL have more recently discussed reconsideration of the GEL. The status of this is as yet unclear.

Civil Code

The Timor-Leste Civil Code was adopted through Law no. 10/2011 of September 14, 2011. The law is available only in Portuguese and a Tetun version has not yet been produced (although the Civil Procedure Code which predated the Civil Code is available in both languages). There are some important provisions to take note of which are relevant to this study, particularly regarding matrimonial regimes and inheritance. According to article 1475 (1), "marriage is either civil, catholic or bride-price based monogamic".⁵⁷ Only people over the age of 16 with mental capacity may marry. A couple who intends to get married must publish written announcements (called 'banns') declaring their intention to marry so that people may alert authorities of potential problems with the marriage. Weddings must be performed in front of the proper authorities with consent declared by both spouses and the marriage must then be properly registered.

Article 1559 of the Civil Code outlines Equality Between Spouses declaring that marriage is based on equality of rights and duties between the spouses and the management of the family falls on both spouses, who shall agree as to the orientation of their life together, taking into account the best interests of the family and the interests of the other spouse. The Civil Code also sets out the duty of

⁵⁶ RDTL Constitution (2002) Dili, Timor-Leste.

⁵⁷ RDTL (2011), Timor-Leste Civil Code 1475 (1)

cooperation as an obligation of mutual help and assistance and a joint assumption of the responsibilities inherent to family life.⁵⁸ Couples must run their home and their family together; they must share the chores and duties that are necessary to maintaining a home and raising children.

Additionally, a duty of assistance is outlined as the obligation to supply food and to contribute to the responsibilities of family life.⁵⁹ This includes financial support and both spouses have the duty to contribute to the responsibilities of family life in line with their means. This contribution can be economic or housekeeping or child-rearing.⁶⁰

The Civil Code also outlines different Matrimonial Property Regimes and states that the regime preferred by the couple can be outlined in a pre-nuptial agreement, which is optional.⁶¹ If a pre-nuptial agreement is not signed, the default regime is Community of Property Acquired After Marriage⁶² which limits communal property to that acquired by the spouses during the marriage and the proceeds of the work of the spouses during the marriage.⁶³ For common property, both spouses can practice acts of ordinary management individually; however, bigger decisions need the consent of both spouses.

In a prenuptial agreement, couples can also name their heirs and choose one of three systems for how they wish to share their property: Legitimate Succession, Compulsory Succession, and Testamentary Succession. Alternatively, a testamentary will can be used to communicate the deceased's wishes after death. If the deceased does not leave a will behind, the Civil Code lists procedures for identifying who receives the inheritance according to principles of legitimate succession and even if the deceased leaves a will behind, the law guarantees that a certain portion of the inheritance will go to close family members according to principles of compulsory succession, with the spouse and descendants having the strongest right to the deceased's estate.⁶⁴

International Treaties

In December 2002, the RDTL state signed and ratified the following international treaties, which both directly and indirectly support the promotion of gender equality: Convention on the Elimination of all Forms of Racial Discrimination (1965); International Covenant on Civil and Political Rights (1966); International Covenant on Economic, Social and Cultural Rights (1966); Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984); Convention on the Rights of the Child

⁵⁸ RDTL (2011), Timor-Leste Civil Code 1562

⁵⁹ RDTL (2011), Timor-Leste Civil Code 1563

⁶⁰ RDTL (2011), Timor-Leste Civil Code 1564

⁶¹ RDTL (2011), Timor-Leste Civil Code 1591

⁶² RDTL (2011), Timor-Leste Civil Code 1610

⁶³ RDTL (2011), Timor-Leste Civil Code, article 1617

⁶⁴ RDTL (2011), Timor-Leste Civil Code article 2000

(1989); and Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (2000).⁶⁵

Regarding the legal status of international instruments over national legislation in Timor-Leste, Law No. 6/2010 on International Treaties was adopted in 2010 and states that “For solemn treaties, the binding of the Timorese State occurs with its ratification”. Article 9 (3) confirms that international norms have primacy over the domestic, and any domestic law contrary to the provisions of international conventions, treaties or agreements is invalid. The highest legal authority (being the Court of Appeals given that a Supreme Court is yet to be established in Timor-Leste) may receive constitutional appeals, and should be proactive in reviewing laws and regulations for constitutional violations.

CEDAW

The United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted in 1979 and is a legally binding international treaty ratified by 186 countries. Its Optional Protocol was adopted in 2000 and is ratified by 100 countries. The Convention defines discrimination against women as: “any act that has the ‘effect or purpose’ of impairing women’s equal enjoyment of their rights”.⁶⁶ As a State Party to both the Convention and the Optional Protocol, Timor-Leste is obliged to undertake a policy aiming at eliminating gender inequality by repealing discriminatory laws and ensuring that no action or practice of the state or any person, organisation or enterprise discriminates against women.⁶⁷

It bears noting that the state is thus responsible for the elimination of discrimination in customary justice systems operating within its territory. Timor-Leste is also obliged, according to the Convention, to report to the CEDAW Committee on its adherence to the Convention every four years. Timor-Leste provided an initial report to the CEDAW Committee in 2008 and a second report was submitted in 2013. The next report is required in 2016. Furthermore, according to the Optional Protocol, Timorese citizens have the right to make individual communications/submissions to the CEDAW Committee provided they have exhausted all legal remedies available to them within the national justice system; this is called the Communications procedure.

Gender discrimination is particularly relevant in relation to property rights. Article 16 of the CEDAW Convention provides that: “States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women that: “... the same rights are available for both spouses in respect of

⁶⁵ CEPAD (2012) ‘Situational Analysis; Supporting women’s engagement in the consolidation of democracy’, Dili, pg 9

⁶⁶ Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept. 3, 1981. CEDAW, Article 1

⁶⁷ Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept. 3, 1981. CEDAW, Article 2

the ownership, acquisition, management, administration, and enjoyment and disposition of property, whether free of charge or for a valuable consideration.”

Justice Institutions and Actors

Ministry of Justice

The Ministry of Justice is the Government body responsible for designing, implementing and coordinating the policy defined by the National Parliament and by the Council of Ministers for the areas of justice and law. It is responsible for maintaining good relations of the Government and the Courts, the Public Prosecution and the Superior Councils of the Judiciary, Prosecution Service and Office of the Public Defender, as well as with other agents in the area of justice and law.

Secretary of State for the Promotion of Equality

The Secretary of State for the Promotion of Equality (SEPI) was established under Decree Law No. 7/2007 to replace the Office of the Advisor on the Promotion of Equality (OPE), which was established by the First Constitutional Government in 2002. SEPI has been provided with the mandate to “design, execute, coordinate and assess” policies defined by the Council of Ministers in relation to the promotion of gender equality and women’s rights (pursuant to the principles of the Constitution). It should be noted that SEPI’s main role is to coordinate and oversee Government policies and functions and should not be confused with an “implementation agency,” as implementation is the responsibility of the Ministries.⁶⁸

SEPI’s Strategic Plan 2010 – 2015 outlines four goals to be streamlined in four key agencies: namely, Justice, Health, Education and Agriculture. The four goals include 1) Building SEPI’s Institutional Capacity; 2) Advocate for gender responsive policies and legislation in Government; 3) Reinforce the gender mainstreaming mechanism in Government institutions and state agencies; and 4) Raise the level of awareness among stakeholders and the general public at national and local levels.

In 2009 SEPI established “Gender Focal Points” (GFPs), now referred to as “SEPI Focal Points” on two levels: firstly, national level focal points were established within each Ministry and Secretary of State based in Dili and; secondly, focal points were nominated at the district level. Under the guidance, training and support from SEPI, focal points from both the national and district levels meet regularly to contribute to the integration of gender mainstreaming into the policies and activities of their respective Ministry, offices and districts.

⁶⁸ Democratic Republic of Timor-Leste (RDTL) (2009), ‘Secretary of State for the Promotion of Equality (SEPI); Annual Report 2009’, Dili, Timor-Leste, p. 9.

Gender quotas were introduced at both the parliamentary and *suku* levels in 2006. According to Decree Law 6/2006, political parties at the national level are required to nominate one woman for every group of four candidates. Decree Law 3/2009 also ensures a system of reserved seats, whereby two seats on every *Suku* Council must be reserved for women and two seats for youth representatives (one male, one female).

The Courts

Courts are sovereign bodies with full powers to administrate justice on behalf of the people and implement the law and its decisions. Court decisions are mandatory and prevail over all decisions issued by any other authorities. Court decisions are generally carried out in Timor-Leste by competent authorities including the National Police (PNTL), however the issue of a high number of suspended sentences issued by Courts has raised concern among civil society groups.⁶⁹ Courts are independent and are subject only to the Constitution and the law.

At present in Timor-Leste, there is a Court of Appeal and four district courts located in Baucau, Suai, Oecusse and Dili. A Supreme Court is yet to be established, and the number of courts is currently insufficient to meet demand and ensure access to justice for all citizens. The Ministry of Justice, with support from the Justice System Programme of UNDP, has a mobile court project in which mobile courts operate out of the four district courts in order to cover Timor-Leste's 13 districts although these still fall short of providing adequate services to meet the needs of those in more rural areas.

Prosecution and Criminal Investigation

The public prosecutors (under the Office of the Prosecutor General) are the legal representatives of the Timor-Leste State and have a responsibility to enforce the Constitution and other applicable laws, uphold democracy and the rule of law, promote justice and oppose injustice, remain independent and impartial, work with law enforcement, lead investigations and prosecute crime under the provisions of the Criminal Procedural Code.

The duties of prosecutors are outlined in the Statute of the Public Prosecution Service (Law No. 14/2005). The current size of the institution, when considering its mandate, is relatively small and there are still many challenges in terms of planning and management, development of competencies and other resources.

⁶⁹ See commentary from JSMP regarding use of suspended sentences in domestic violence cases in Timor-Leste: <http://jsmp.tl/en/seminariu-nasional-kona-ba-mekanizmu-kontrolu-suspensaun-ba-pena-prizaun-ih-kazu-violensia-domestika/>

Timor-Leste National Police Force (PNTL) and Vulnerable Persons Unit (VPU)

During the United Nations Administration, a special unit of the national police force was established to assist victims of sexual assault, domestic violence and child abuse. The Vulnerable Persons' Unit was established at both the national level (February 2001) and then at the district level (March 2001), with an office in every district's police headquarters. In the establishment of the Vulnerable Persons' Units there was an effort to ensure that most offices had at least one female officer on staff to facilitate interviews with female victims. Officers received 17 days of additional training to fulfil their special role.

Office of the Public Defender

The Office of the Public Defender (OPD), under the Ministry of Justice is the entity responsible for providing full legal, judicial and extra-judicial assistance, free of charge, to citizens most in need. It is also responsible for representing the absent, those whose whereabouts are unknown or who are incapacitated, substituting the Prosecution Service in the cases foreseen in the law. The Statute of the Office of the Public Defender was adopted in October 2008 and the institution operates in the four judicial districts.

According to the 2013 RDTL State Party submission to the CEDAW Committee, the OPD has been providing free legal aid to poor citizens since 2008. The OPD has been present in the districts since 2009 and is mandated to conduct interventions such as relevant legal awareness campaigns to increase citizens' awareness of formal justice and consequently their access to justice.

Legal Aid

Several legal aid organisations operate throughout Timor-Leste including Edukasaun Comunitade Matebian (ECM) which covers the Baucau Court jurisdiction; Fundasaun Fatu Sinai Oecusse (FFSO) which covers the Oecusse Court jurisdiction and LBH-Covalima which covers the Suai Court jurisdiction.

Additionally, the Judicial Systems Monitoring Programme (JSMP) created the Victims Support Service in recognition of the barriers women face in accessing justice and this became an independent organisation called Women and Children's Legal Aid (Asisténsia Legál ba Feto no Labarik – ALFeLa) in 2012. Currently, ALFeLa works in all 13 districts from offices in Dili, Baucau, Suai and Oecusse and has 25 staff with the primary aim of providing legal assistance to women and children to access the formal justice system. ALFeLa also conducts legal education and advocacy.⁷⁰ ALFeLa's district-based staff are generally recruitment from local area meaning they are able to communicate with clients in local languages, although language can present a barrier to service provision at times.

⁷⁰ See ALFeLa website at <http://www.alfela.tl/> for more information

DNTPSC (National Directorate of Land, Property and Cadastral Services) and Land Registration in Timor-Leste

The National Directorate of Land, Property and Cadastral Services (DNTPSC) is the service responsible for the creation and administration of a system of information concerning the use and ownership of property and implementation of an efficient management of State assets. Some relevant key competences include: promoting information and initiating the administrative procedures permitting settlement of conflicts of possession and ownership of real property; cooperating with the judicial authorities and institutions of alternative dispute resolution in resolving conflicts of possession and ownership of real property; creating a national registry of property and preparing land titles for subsequent inclusion in the Land Registry.

Work towards a national cadastral survey began in 2008, carried out chiefly by a USAID-funded program called 'Strengthening Property Rights in Timor-Leste' and later re-branded 'Ita Nia Rai' (Our Land). This was a 5 year (2007-2012), US\$10 million program contracted to Tetra Tech ARD. Decree law 229/2008 authorised DNTPSC and Ita Nia Rai to undertake nation-wide, systematic data collection in relation to registration of land parcels although, as reported by local land rights coalition, Rede ba Rai, the Ita Nia Rai program was set up as a parallel structure outside of DNTPSC.⁷¹

The main activities carried out under the program included public information and awareness; support for development of policy, laws and implementing regulations; support for a national land commission; land administration (cadastral, registration and land titling system) and dispute resolution, mediation and processes for managing competing claims to land.

Process of registering land claims through Ita Nia Rai occurred from 2008 – 2012 as follows⁷²:

- A collection area would be designated and the Ita Nia Rai team would aim to register all land parcels within that area⁷³.
- The registration of land certificates was a free process.
- Individuals, groups (including couples) or legal entities were able to register claims.
- Data collectors would visit each household in the collection area after community meetings were held to inform people about the claims process.

⁷¹ Rede Ba Rai (2013) 'Land Registration and Land Justice in Timor-Leste; Culture, Power and Justice', May 2013, Timor-Leste p.4.

⁷² This process is outlined in Rede Ba Rai (2013) 'Land Registration and Land Justice in Timor-Leste; Culture, Power and Justice', May 2013, Timor-Leste, p.26-28

⁷³ This differed to the former registration system under DNTPSC under which individual claims were received on an irregular basis (which also allowed opportunities for corruption to occur). Registering whole areas at once allowed people in a whole community to register at the same time. (See Rede Ba Rai (2013) 'Land Registration and Land Justice in Timor-Leste; Culture, Power and Justice', May 2013, Timor-Leste, p.26)

- Data collectors would help people fill out two forms, take a photo of the claimant and accept any other written evidence which the claimant may have (including receipts, letters, previous titles).
- In the absence of written evidence, the team would collect an audio testimony from neighbours to confirm the community's recognition of their land right. Neighbours were also encouraged to sign or fingerprint claims to confirm borders.
- The land would be surveyed and a rough sketch drawn of the borders with neighbours.
- Once the land claim was registered, people were given a piece of paper with their claim number, registration number, the date and place. These would then be filed and entered into the Ita Nia Rai database.
- Claimants could go to the Ita Nia Rai office to check their claim.
- Maps were then drawn up showing land claims and names and photos of claimants. The community was given 30 days to correct any claims after which new claims could not be made (although people could update their details or transfer land to others).

The records developed were planned to be used as the basis for processing titles once the law is in place. Land registration began in small areas of Liquiça and Manatuto in late 2008. This pilot program was then slowly rolled out to all districts, but was limited to urban and nearby peri-urban areas, leaving many rural land areas under customary governance un-registered (this was part of the project design⁷⁴). The Ita Nia Rai data collection teams collected claims in most of the 12 districts and from 2010, worked together with DNTPSC⁷⁵ officials, particularly in Dili and Viqueque districts.

If disputes over land were apparent, Ita Nia Rai encouraged people to resolve these first with their families or through local processes. People could then approach Ita Nia Rai for mediation support and the program trained local mediators and Head Office staff.⁷⁶ In October 2011, local NGO Belun, began a partnership with the DNTPSC to implement a Land Dispute Mediation and Resolution Programme. The program's aim was to address the growing list of land disputes being registered by the Government.⁷⁷ Disputed claims were to be adjudicated by a 'cadastral commission' as stipulated under the draft land law, however, due to delays in passing the draft law, the Minister of Justice passed a decree law in 2011⁷⁸ which allowed certificates to be given to those with undisputed land claims only.

⁷⁴ Rede Ba Rai (2013) 'Land Registration and Land Justice in Timor-Leste; Culture, Power and Justice', May 2013, Timor-Leste p.24

⁷⁵ At the District level, DNTPSC is called DTPSC however participants in this research study mostly referred to DNTPSC or 'DNPT' when referring to the land registration practices.

⁷⁶ Rede Ba Rai (2013) 'Land Registration and Land Justice in Timor-Leste; Culture, Power and Justice', May 2013, Timor-Leste p.27

⁷⁷ Belun website, 'Success History', accessed at <http://belun.tl/en/conflict-resolution/land-dispute-resolution-and-mediation/auto-draft/> (accessed 15 September 2014).

⁷⁸ Decree Law 27/2011 established the Regime of the Regularization of Ownership of Immovable Property in Undisputed Cases.

In January 2012 Ita Nia Rai figures showed that it had registered 54,558 land claims to over 50,614 land parcels.⁷⁹ Inputs were provided into the drafting of the pending package of land laws and a database for the national property cadastre was established. The project began handing over district offices to the DNTPSC in 2010 and the national-level handover began in 2011.

When the project came to a close in September 2012, it was incorporated into the structure of the Ministry of Justice under the DNTPSC. As reported by Rede Ba Rai in a 2013 report, weak relationships between Ita Nia Rai and key senior DNTPSC staff impacted on the handover process and have left it unclear and uncertain.⁸⁰

A gender assessment was conducted under the Ita Nia Rai project in April 2008 which concluded that women need to be actively involved in the titling process and may also require preferential treatment so that women's opportunities are increased. A presentation on 'Gender and Land Rights' given by Ita Nia Rai in February 2009 for a Sector Consultation Workshop on Customary Law/Local Justice stated that the project was to pay special attention to improving women's property rights.⁸¹

Analysis of land registration records by Rede Ba Rai show that there were some important changes in Ita Nia Rai processes which negatively impacted on women's ability to register joint couple claims to land alongside their husbands. In response to a failure to meet its targets, the project began paying their data collectors per parcel of land rather than a set monthly salary, which led to a sharp increase in the number of claims collected, but at the expense of encouraging the registration of couples' claims which took longer to complete.⁸² As joint couple claims decreased, individual male claims increased. For example, in Dili District, the ratio of male, female and couple claims showed couple claims at approximately 36 percent in December 2009 and by August 2011, this has dropped to approximately 15 percent.⁸³

Moreover, Ita Nia Rai did not record gender disaggregated statistics of disputes and dispute resolution processes used during registration so the extent to which such processes advantaged or disadvantaged

⁷⁹ As reported in Rede Ba Rai (2013) 'Land Registration and Land Justice in Timor-Leste; Culture, Power and Justice', May 2013, Timor-Leste p.26

⁸⁰ Rede Ba Rai (2013) 'Land Registration and Land Justice in Timor-Leste; Culture, Power and Justice', May 2013, Timor-Leste p.28

⁸¹ Huang, M. (2009) 'Gender and Land Rights' presentation on behalf of the Strengthening Property Rights in Timor-Leste (Ita Nia Rai) project, Dili, February 2009.

⁸² Rede Ba Rai (2013) 'Land Registration and Land Justice in Timor-Leste; Culture, Power and Justice', May 2013, Timor-Leste, pp. 34-35

⁸³ Rede Ba Rai (2013) 'Land Registration and Land Justice in Timor-Leste; Culture, Power and Justice', May 2013, Timor-Leste p.35

women is unknown.⁸⁴ Rede Ba Rai is concerned that women have not been given enough support to navigate dispute resolution processes.⁸⁵

Rede Ba Rai Civil Society Coalition

A local coalition of civil society organisations called Rede Ba Rai (Land Network) comprises 20 organisations who work on land rights issues in Timor-Leste. Rede Ba Rai sees guaranteeing access to land for all people as a fundamentally important part of protecting human rights and economic development as well as protecting the nation and its culture. According to the network's working vision there are four key pre-requisites to achieving this vision; fair distribution of power; the creation of fair, independent and expedient mechanisms for the solution of land disputes; that legislation and policies need to be designed specifically with the view of protecting land vulnerable groups and that all land processes, administration, legislation and policies in Timor-Leste must reflect the social, cultural, economic and ecological context of Timor-Leste. A key report published by Rede Ba Rai in 2013 is entitled 'Land Registration and Land Justice in Timor-Leste; Culture, Power and Justice' and outlines many important issues and perspectives on the land registration processes taking place in Timor-Leste.

The Haburas Foundation, one of the organisations within Rede ba Rai ran a two year land consultation process known as 'Matadalan ba Rai' which sought to highlight community voices and perspectives on land over 2 years. The project was run in seven districts and consulted with over 2,000 people. The final report of the consultation process 'Povu nia lian kona-ba Rai: Resultadu prosesu konsultasaan Matadalan ba Rai' was published in 2012.

Customary Justice Framework

The dominant features of Timor-Leste's pre-colonial justice system were retribution and reconciliation. Justice was most often administered by a *Lia Nain* (literally 'owner of the word') the local traditional who was the leader and conflict mediator, *Suku* Chiefs and *Liurais* (local kings). Most crimes were punished by requiring the perpetrator to pay compensation to the victim, and more serious crimes were sometimes punished by execution. Rites such as *nahe biti* (roll out the mat) were used, a widespread community conflict resolution practice involving the perpetrator and victim sitting on a mat together with the *Lia Nain* mediating to promote a settlement.⁸⁶ Many of these features remain prevalent in Timorese society today.

⁸⁴ Rede Ba Rai (2013) 'Land Registration and Land Justice in Timor-Leste; Culture, Power and Justice', May 2013, Timor-Leste p.67

⁸⁵ Rede Ba Rai (2013) 'Land Registration and Land Justice in Timor-Leste; Culture, Power and Justice', May 2013, Timor-Leste p.69

⁸⁶ USAID, The Asia Foundation & Timor-Leste Education Project (n.d.) 'Introduction to the Laws of Timor-Leste: Legal History and the Rule of Law in Timor-Leste' Timor-Leste, p.14

The customary justice system in Timor-Leste is not unified, and varies significantly from place to place, making an accurate general picture of customary justice difficult to produce. Practices of customary law and conflict resolution are mostly governed by tradition and local custom, known as *adat* (Indonesian term) or *lisan* as the Tetun term for various systems of local justice in Timor-Leste.⁸⁷ *Lisan* is a broad term encompassing not only local law and prohibitions, but also social norms and morality, art and rituals, as well as a system of community leadership and governance.⁸⁸

Traditional justice authorities have three main approaches despite variations from place to place. These include administration of justice based on the rules of *fetosan umane*⁸⁹ with the aim of reconciling relations between families and clans as parties to a conflict; administration of justice based on advice and prediction provided by *Matan Dook*⁹⁰ with aim at reconciling relations based on spiritual elements; and administration of justice based on the rules of *tara bandu*, a traditional practice of reconciling communities with focus on sanctions.⁹¹

Justice is administered by several key actors including the *Lia Nain*, *Matan Dook*, *Aldeia* Chief, *Suku* Chief, and Council of Elders and a number of other local authorities such as church representatives are also identified as involved in the local justice processes. The main aim of customary law and justice in present-day Timor-Leste is to facilitate community reconciliation and prevent crimes through certain retribution practices aiming at restoring the family name, preventing jail time and revenge so as to appease ancestors and to cover the feeling of shame experienced by the victim.⁹² Another common feature of customary law is the prioritisation of community and collective rights over individual rights, based on a concern to establish and maintain community harmony and stability.⁹³

As a result of the vast variations in the practice of customary justice, the ways in which women access local justice and the implications thereof vary from place to place, within single localities, and even from case to case depending on the nature and gravity. As local law is usually not written down or standardised, it is subject to the different personalities involved and their own interpretations of how justice should be administered with the effect that rulings may not be consistent.⁹⁴

⁸⁷ UNDP (2011), 'Customary Law and Domestic Violence in Timor-Leste: Approaches to Domestic Violence against Women in Timor-Leste: A Review and Critique', UNDP Justice System Programme Paper, Dili, Timor-Leste, p. 11

⁸⁸ UNDP (2011), 'Customary Law and Domestic Violence in Timor-Leste: Approaches to Domestic Violence against Women in Timor-Leste: A Review and Critique', UNDP Justice System Programme Paper, Dili, Timor-Leste.

⁸⁹ *Fetosan-umane* is a complex set of rules, rights, and responsibilities defining the relationship between a groom's and a bride's family, a relationship between clans which may extend over generations.

⁹⁰ *Matan Dook* means to 'see through'. These are individuals believed to have powers to read conflict situations and provide solutions based on their communication with the supernatural.

⁹¹ UNDP (2013) 'Breaking The Cycle Of Domestic Violence In Timor-Leste; Access To Justice Options, Barriers And Decision Making Processes In The Context Of Legal Pluralism', Dili, Timor-Leste, p.12.

⁹² UNDP (2013) 'Breaking The Cycle Of Domestic Violence In Timor-Leste; Access To Justice Options, Barriers And Decision Making Processes In The Context Of Legal Pluralism', Dili, Timor-Leste, p.11.

⁹³ UNDP (2011), 'Customary Law and Domestic Violence in Timor-Leste: Approaches to Domestic Violence against Women in Timor-Leste: A Review and Critique', UNDP Justice System Programme Paper, Dili, Timor-Leste.

⁹⁴ UNDP (2011), 'Customary Law and Domestic Violence in Timor-Leste: Approaches to Domestic Violence against Women in Timor-Leste: A Review and Critique', UNDP Justice System Programme Paper, Dili, Timor-Leste, p.11.

Customary Justice Framework and Land

A survey by USAID from 2005 estimates that up to 97 percent of land in Timor-Leste falls under the category of ‘customary systems of tenure’ where local traditional leaders have authority over land ownership and transactions.⁹⁵ Individuals may inherit usage rights in this system but don’t have statutory rights to land.

Customary land tenure systems have operated in Timor-Leste before and during the Portuguese colonial era. Local systems regulated the distribution, transfer and exploitation of land, and continue to do so. The Portuguese Administration removed criminal matters from the domain of customary law but its role in civil matters, including allocation and ownership of land, was to some extent left intact. When disputes over land arose, customary law and procedures would hold way in most cases.⁹⁶

According to many studies conducted on Timor-Leste, including that of Narciso, Henriques & Tilman⁹⁷, there are two different social systems which define the rules of customary property inheritance, patrilineal and matrilineal. The patrilineal system is a male-dominated social system that recognizes males as the head of the family and land and property is inherited from fathers or ancestors through the male line. This social system is widely applied throughout the country, and it does not allow for women to own and/or inherit properties including land.

The matrilineal system is a female-oriented social system that recognises females as the head of the family with rights to own and inherit properties including land from fathers and ancestors. The application of this social system is limited to communities with *Bunak*, *Tetum-Terik* and *Galoli* ethno-linguistic background.⁹⁸ It is estimated that these communities represent no more than 12 per cent of the total population. In other instances, women can only, in general, acquire land through marriage or through a male relative. Her rights to use and own land depend on the nature of agreements reached between relevant parties.⁹⁹

⁹⁵ Nixon, R. (2005), ‘Non-Customary Primary Industry Land Survey: Landholdings and Management’, published by USAID, June 2005.

⁹⁶ Du Plessis & Leckie (2000), ‘Property and Land Rights in East Timor: Proposals for an Effective Dispute Resolution and Claim Verification Mechanism’, UNCHS (Habitat), pg. 22

⁹⁷ See Narciso, Henriques, Tilman (ND), ‘Land and Gender in matrilineal Timor-Leste’, available online at <https://dspace.uevora.pt/rdpc/bitstream/10174/7097/1/LAND%20AND%20GENDER%20IN%20MATRILINEAL%20TIMOR-LESTE%20FINAL.pdf> (accessed 1 July 2014).

⁹⁸ Narciso, Henriques, Tilman (ND), ‘Land and Gender in matrilineal Timor-Leste’, available online at <https://dspace.uevora.pt/rdpc/bitstream/10174/7097/1/LAND%20AND%20GENDER%20IN%20MATRILINEAL%20TIMOR-LESTE%20FINAL.pdf> (accessed 1 July 2014), p.1.

⁹⁹ Narciso & Henriques (2010), ‘Women and Land in Timor-Leste: Issues in Gender and Development’, *Indian Journal of Gender Studies*, 17:49, p.62.

In present-day Timor-Leste, farmers still allocate land rights and interpret land claims using kinship-based norms and rules of inheritance. Therefore, traditional land use and management systems have an important role in the life and wellbeing of the rural population of Timor-Leste.¹⁰⁰ In most aspects *lisan* is a male-oriented practice which ensures that men have control over productive resources, in particular, the use of land. For example, it does not allow women to inherit land, and in some cases widows have to hand over their land to a male heir with no rights to participate in traditional decision-making processes.¹⁰¹

Customary Justice in Three Study Locations

Given that this study focuses on three locations in Timor-Leste it is important to outline some key characteristics of customary justice as applied to land and property in the three locations: Baucau District, Bazartete Sub-District and Betano *suku*. It is important to note at this point that in many respects, *lisan* is considered to be sacred, which sometimes prevents people from speaking openly about processes, meanings and outcomes. This was particularly evident in Betano where women participants were reluctant to explain the local customary justice framework to the research team. Information from Betano is therefore taken predominantly from interviews with one *Lia Nain* and several informal discussions with women after formal activities took place.

As summed up by a local mediator (customary justice actor) in Betano: “*Lisan* varies from one *suku* to another and even if they are close to each other, the treatment is not the same. But the culture is the same.” As reported by participants, the customary laws, dispute resolution processes and any sanctions or resolutions depend entirely on the particular ‘story’ (*istoria*) of each family. These stories have been passed down over generations and are understood and related by the *Lia Nain* who represents each family group.

The procedures of administration of local justice share a number of similarities throughout the three case study areas. In general, it was explained by women that there is a hierarchy of actors involved, beginning with the family where the issue discussed before it is brought to the *Lia Nain* who understands the ‘story’ of the family or families and he, with witnesses, tries to solve the problem. If the problem is not resolved, it is brought to the *Aldeia* Chief, then the *Suku* Council which includes the *Suku* Chief, the village level *Lia Nain* and the council members who will discuss the matter and try to find a solution.

¹⁰⁰ Narciso, Henriques & Tilman (n.d.), ‘Land and Gender in matrilineal Timor-Leste’, available online at <https://dspace.uevora.pt/rdpc/bitstream/10174/7097/1/LAND%20AND%20GENDER%20IN%20MATRILINEAL%20TIMOR-LESTE%20FINAL.pdf> (accessed 1 July 2014), p.4.

¹⁰¹ Narciso & Henriques (2010), ‘Women and Land in Timor-Leste: Issues in Gender and Development’, *Indian Journal of Gender Studies*, 17:49, p.56.

At this level, local legal aid and paralegal workers (where available), community police and DNTPSC officials may be called in to observe and provide input. The Court was generally seen as the last option in the three locations, although some examples of preferences for taking matter to court are outlined in the 'Findings' section below.

Traditional processes undertaken through *lisan* usually involve each of the parties providing statements of events in the presence of witnesses who may be relatives, neighbours or elders from each family's *uma knua* (sacred family house). The *Lia Nain* will mediate the process based on the story of the land from ancestors and provide a number of options to reach agreement between the two parties and guide a solution or resolution.

The punishment faced for actions and behaviour that destroy the harmony of the community, will be decided by the *Lia Nain*. Resolutions most commonly result in "*fo sala ba malu*" (giving compensation to each other) in the form of giving *tais*¹⁰² or animals among the two parties to restore the family's relationship based on rules of *fetosan umane*. This may include written undertakings to serve as proof of the decision agreed together. Where an agreement between the parties is reached, it is generally sealed by symbolic acts of reconciliation which most often involved drinking or eating together.

The *Lia Nain* may also call on the power of the ancestor spirits or God (in the Catholic sense) to enact the punishment depending on the seriousness of the offense and the effectiveness of solutions previously offered. People believe that the *Lia Nain* is accompanied by ancestors and God and the punishments issued as a result of this are seen by women to be much faster than any punishment given by the State or even the Church (in relation to people going to hell after committing a sin). In Betano one *Lia Nain* stated that: "when my third warning is ignored, I will offer them to the power of this land and the power of *lulik* [sacred power] as well as the power of God in which they will pay their mistake by their own body". Such punishments may include sickness, accidents, misfortune and even death.

The characteristic of customary justice which has the most influence over women's rights to land in the majority of Timor-Leste is the patrilineal practice of passing land and property to sons (or other male relatives if no sons were born) while daughters leave their family lands after marriage to live on the land of their husband's family. As described by a young woman in Baucau, "The land is ours as family but it is not the women's right to own the land. Instead my brother has all the right, because one day when I am married my brother will be the one to stay and have the right to live in this land."¹⁰³

One *Lia Nain* in Baucau explains further: "according to our culture, once a woman is married she needs to stay out, she has the right over her husband's land. Women can also access land when they have permission from their brothers, cousins or uncles as the ones who own the land."¹⁰⁴

¹⁰² A traditional woven fabric of Timor-Leste.

¹⁰³ (Woman participant, Baucau, FGD).

¹⁰⁴ (Duarte da Silva, Elder, Baucau, 19/11/2013).

In Betano *suku* one *aldeia* (Fatukuak) practices a matrilineal system of inheritance. A *Lia Nain* from Betano *suku* explains the difference between the two systems as he understands it: “There are two existing [inheritance] systems in Betano. Fatukuak *aldeia* is a matrilineal community which means after marriage, the wife won’t leave the house, but instead the husband will join her household.

In Fatukuak *aldeia*, the women is more entitled to inherit from her parents while men have less right. It depends on relations between siblings, and the understanding of women. If they have an interest in inheriting, they are able to maintain this right to land. The six remaining villages in Betano have patrilineal custom and women lose their right over inheritance of the family because she goes to live in the husband’s household after she is married. There are some certain things that the husband then needs to comply with such as presenting symbolic gifts or money to the house of the bride’s parents which will be received by the bride’s uncles. The father and uncles of the bride will make the decision with the husband’s family about the amount of money and types of these gifts.”

In regard to determining land boundaries and ownership, the absence of written certificates and maps means that *Lia Nains* are relied on to determine the customary processes. In Baucau, one female *Suku* Chief explained that: “previously our ancestors have divided their land as well as certain property to each relative by pointing at the big stone or a tree of that land as the limit border...our ancestors performed rituals when they divided their pieces of land such as killing animals and spreading the blood on stones or plants to serve as the land boundaries. Therefore those who want to take this land from the true owner will be followed by the spirit of the ancestors”.¹⁰⁵

Some examples of different kinds of laws in relation to marriage and cohabitation as dictated through the particular *lisan* that applies in various locations include this statement from a *Lia Nain* in Bazartete: “previously we were taught by our ancestors that people should marry a man or woman from the same *lisan* so that it ties this *lisan* together”.¹⁰⁶ Or from Betano *Suku* as stated by the *Lia Nain* in one *aldeia*: “We were taught by our ancestors that after marriage, whether it be a man or woman from our community, they should stay in this community ... during our ancestors’ time no one went out after the marriage, however there are changes. It changed because of the presence of people from thirteen districts that came into our land and some of our men or women are married to people from other districts. Considering this, I need to make some changes that fit with people’s situation.”¹⁰⁷ This demonstrates that *lisan* is subject to change depending on how the *Lia Nain* considers the current situation and land and property matters of the community.

¹⁰⁵ Interview with Francisca Monica, Suku chief, Baucau, 21/11/2013

¹⁰⁶ Interview with Rafael Alves, *Elder*, Bazartette, 12/12/2013

¹⁰⁷ Interview Hermenegildo, *Elder*, Aldeia Loro, Betano, 26/06/2014

Intersection between State and Customary Systems

As stated by the Secretary of State for Land and Property, Sr. Jaime Xavier at CEPAD's National Validation Workshop: "We all need to respect Constitution. The customary law might have existed already but we have sacrificed for our nation through the deaths of so many people, starting from innocent people, children and elders." This perspective captures the complex reality of legal pluralism in Timor-Leste and the process of establishing a democratic state.

The importance and deep influence of customary justice in Timor-Leste is acknowledged by the State, as indicated in the Constitution which states in Section 2, article 4 that: "The State shall recognize and value the norms and customs of East Timor that are not contrary to the Constitution and to any legislation dealing specifically with customary law." The Justice Sector Strategic Plan, adopted in 2010, established as one of its goals, the regulation and monitoring of customary law and community justice mechanisms. It recommends the regulation of the interaction between the formal and informal justice systems, with a specific aim that cases of sexual and gender-based violence be dealt with by the formal penal system.

As yet, a law which specifically addresses customary justice and its interaction with the state justice framework has not been completed, although the Ministry of Justice is reportedly drafting two laws, one concerning customary justice and one concerning mediation.

Until the draft land-related legislation is passed and implemented, it is difficult to determine the precise ways in which the two justice systems intersect, but there are some possible interactions between the two justice systems which may impact on women's rights to land and property. As stated by UNDP: "While the two systems have the potential to complement each other, the absence of a more formal link between the two systems has posed a great challenge to the rule-of-law in Timor-Leste."¹⁰⁸

As shown by the results of the Timor-Leste Law and Justice Survey conducted in 2013, 94 percent of respondents were confident in local justice mechanisms in comparison to 88 percent of respondents confident in formal justice mechanisms. Similarly, 92 percent were comfortable with customary systems, while 83 percent were comfortable with court resolutions.¹⁰⁹ This poses a considerable challenge for policy makers and legislators. In regard to land rights, many see this area as a matter for the community to be governed by local custom and not the law.¹¹⁰

¹⁰⁸ UNDP (2013) 'Breaking The Cycle Of Domestic Violence In Timor-Leste; Access To Justice Options, Barriers And Decision Making Processes In The Context Of Legal Pluralism', Dili, Timor-Leste, p.15

¹⁰⁹ The Asia Foundation (2013), 'Timor-Leste Law and Justice Survey 2013', Dili, p.8

¹¹⁰ International Crisis Group (2010) 'Managing Land Conflict in Timor-Leste', Asia briefing No. 110

Portuguese colonisation led to European influence over justice practices and systems. During the 400 year colonial period, the Portuguese civil law system (including land law) was applied in co-existence with customary laws. The Portuguese colonial government tended to allow customary justice to continue to be administered at the community level unless it impacted on Portuguese interests (mostly economic).¹¹¹

Following the Indonesian invasion of Timor-Leste in December 1975, Indonesian state law largely replaced Portuguese state law but customary law and practices continued to be applied in many areas, including land law in regard to land use.¹¹² The Indonesian justice system was seen as a tool of the occupation of Timor-Leste and was used against the Independence movement. Judges, lawyers, and police officers conspired to convict independence advocates of crimes in the judicial system and it was seen as highly corrupt.¹¹³ Thus throughout both Portuguese colonisation and Indonesian occupation customary law and traditional practices of conflict resolution continued to function at the community level.

At the local level, government representatives such as the *Suku* Chief and *Aldeia* Chief may participate in customary justice processes such as dispute mediation and development of *tarabandu* laws. Moreover, *Lia Nains* may at the same time sit on the local village council as well as administer customary justice. While the *Suku* is not part of the formal State structure, it is categorised as a 'community organisation' with the *Suku* Council providing a point of contact for government assistance and initiatives to reach down into villages.¹¹⁴

The *Suku* Council was first created in 2004 by Decree Law 5/2004 and reinforced in 2009 by Decree Law 3/2009. The legislation acknowledges the traditional foundations of such structures and states that its purpose is to recognize the important authority structures that already existed within local communities.¹¹⁵ It was also reported by interviewees in Baucau that paralegal workers may participate in customary dispute resolution processes.¹¹⁶ The roles these actors play in straddling the two systems has not yet been addressed through legislation.

¹¹¹ USAID, The Asia Foundation & Timor-Leste Education Project (n.d.) 'Introduction to the Laws of Timor-Leste: Legal History and the Rule of Law in Timor-Leste' Timor-Leste, p.32

¹¹² USAID, The Asia Foundation & Timor-Leste Education Project (n.d.) 'Introduction to the Laws of Timor-Leste: Legal History and the Rule of Law in Timor-Leste' Timor-Leste, p.21

¹¹³ Hohe, T. (2003), 'Justice without judiciary in East Timor' in *Conflict, Security and Development*, Vol. 3, iss. 3, p.338

¹¹⁴ Brown, M. A. (2012) 'Entanglement, Entangled worlds: Villages and political community in Timor-Leste' in *Local-Global: Identity, Security, Community*, Vol. 11: 54-71.

¹¹⁵ Cummins, D. (2011), 'The problem of gender quotas: women's representatives on Timor-Leste's *Suku* Council s', *Development in Practice*, Vol.21, no.1, February 2011.

¹¹⁶ for example, in Baucau it was reported by participants that ECM paralegal workers commonly witness customary mediation.

It is clear that mediation forms an important part of land registration and as stipulated in the draft law 'Special Regime for Definition of Ownership of Immovable Property': "Mediation or negotiation in which the parties have agreed on the final transfer of ownership of the property" may form valid statements of ownership.¹¹⁷ This goes some way towards recognising the role that customary justice does and can play in allocation and determination of land and property rights.

As described above, in practice, the Ita Nia Rai project actively encouraged land claim disputes to be resolved within families and through local dispute resolution processes before involving Ita Nia Rai and other mediators. Ita Nia Rai's mediation service would work with local authorities in each registration area and prepare a mediation plan (although these were often very general) before beginning land claim registrations.

If family or community dispute resolution was ineffective, the case would be registered in the Ita Nia Rai database and Ita Nia Rai would arrange mediation in which the disputant would be invited to nominate a preferred mediator. Up to three such sessions could be accessed by parties in dispute.¹¹⁸ In practice, only a very small number of claims (74) reached the Ita Nia Rai mediation service and according to Rede ba Rai, less than 4 percent of all disputed claims have been resolved.¹¹⁹

The draft land law also acknowledges the predominant role of customary land tenure systems in 'community protected zones' stating that: "the State is responsible to ensure that all customary practices conform to the Constitution and are participatory, non-discriminatory and respect gender equality"¹²⁰, which is one of several examples of legislation claiming to regulate customary justice processes without specifying how or by whom this is to be done. In terms of implementation of legal processes, as reported by Rede Ba Rai, a key gap in the Ita Nia Rai project design was its failure to address how land registration might interact with land use and practices under local laws and customs.¹²¹ This poses ongoing challenges to land regulation and land rights in Timor-Leste.

¹¹⁷ Draft law 'Special Regime For Definition Of Ownership Of Immovable Property', English translation obtained from UN Women Office, Dili, Article 33 (5)

¹¹⁸ Rede Ba Rai (2013) 'Land Registration and Land Justice in Timor-Leste; Culture, Power and Justice', Dili, Timor-Leste. p. 66

¹¹⁹ As at 2012 as reported by Rede Ba Rai (2013) 'Land Registration and Land Justice in Timor-Leste; Culture, Power and Justice', Dili, Timor-Leste, p.66

¹²⁰ Draft law 'Special Regime For Definition Of Ownership Of Immovable Property', English translation obtained from UN Women Office, Dili, Article 25 (1)

¹²¹ Rede Ba Rai (2013) 'Land Registration and Land Justice in Timor-Leste; Culture, Power and Justice', Dili, Timor-Leste, p.23

Findings

Women's Conceptions of Justice

Eliciting women's own understanding of justice is the starting point to assessing women's access to justice. Women in the three study locations (Baucau, Betano and Bazartete) described justice and law in various way according to their knowledge, experiences and perspectives.

Many of the local authorities interviewed in the three study locations defined justice as seeking truth or '*lia los*' meaning, 'true story'. One female *Suku* Chief in Baucau suggested that: "people want to know the truth".

Some women described justice as being that which is fair. A women participant in Baucau stated that: "Justice is fairness for all people regardless of their background and colour."¹²² Fairness was connected with treating people equally on all levels. One women in Baucau explained this perspective as follows: "When we talk about justice [*justisa*] it is rooted from the word just [*justu*] which means fair. One simple example happens in our house. When we deal with our children do we do so fairly or not? Do we treat each one differently? Sometimes they make demands and tell me 'Mother, you bought them some shoes but where are mine?' As a mother, do we think this is fair or not? This is the justice we are all talking about."

Justice was also described as cooperation between men and women, as stated by a woman in Betano: "when a man and woman are working together to manage our resources, it is justice".¹²³ This point is particularly relevant for understanding justice in relation to land and property rights. Another woman in Betano explained further in relation to everyday experiences: "In this world God formed man and woman to live together as family and therefore our main work in the gardens and rice fields is to be done together whether we are skilled or not. This is the justice that we know as small people¹²⁴ who live from our fields."

Justice was also seen as a solution to a problem and some examples were provided by women in relation to land. Particularly in Bazartete, women spoke of problems related to land which occur in the family when women try to claim rights to land and property which are denied by family members: "When the land is divided and it is taken back for no reason, even though we are family, we seek a solution to this problem."¹²⁵ In relation to a particular case of a land dispute between a woman and her

¹²² Interview with Francisca Monica, Suku chief, Baucau, 21/11/2013

¹²³ Woman participant, Betano, FGD

¹²⁴ In Tetun language, the term small people or '*ema kiik*' is often used to describe the majority population, poor people and those without positions of power.

¹²⁵ Woman participant, Bazartette, FGD

brothers in Bazartete, her sister in law explained that: “In my observation, until now there is no justice in my sister-in-law’s case, this is because there is no solution to this problem.”¹²⁶

In Baucau, one women explained justice as a solution in relation to state and customary processes: “When we talk about land, according to my observation, justice has not been implemented. Those occupying state property are referred to state law however, for community resolution, we use mediation and until now there is no solution.”¹²⁷

Justice was also described by women as a process, whether it be through the state system or the customary system. One police woman in Bazartete stated that: “In my opinion justice is a process, following this process will give us a result.” A young women in Baucau explained that: “Justice could be formal for which the process is going to court, and justice could be traditional for which the process is going through mediation. Justice as formal or traditional, it is a process.”¹²⁸

Many of the local authorities and justice actors interviewed and most of the women participants in the three locations used the word ‘right’ [*diretu*] when discussing the patrilineal practice of women, after marriage, moving from their family land to that of their husband. The use of the word ‘right’ is important to examine as it may be misinterpreted as women having equal ownership and control of their husband’s land. The common explanation was that, after marriage, women would then have the ‘right’ to their husband’s land, however as shown in the results of this research, women generally have little ownership or control over land in practice and only three women had registered their names through the land claims registration processes carried out in their districts. It is therefore worth considering that the term ‘right’ actually refers to the woman’s ability to live on and use the land of her husband.

It is clear that women define and comprehend justice in various ways and most commonly in relation to truth, fairness, cooperation, seeking solutions and also as a process, referring to both state and customary systems. It is interesting to note that particularly in Betano, women tend to speak of justice in relation to cooperation in every-day life, based on their experience as people living in a relatively isolated rural area and depending on land for subsistence. This perspective also explains the ideas of women in Betano about ownership and control of land and property which is described further below.

Women’s Access to Legal Knowledge

It is important to determine the level of knowledge of land-related legislation, policies and legal processes in order to understand the extent to which women are aware of their rights under state and customary systems. Particularly given the possible promulgation of a new land law which may have

¹²⁶ Woman participant, Bazartette, FGD

¹²⁷ Woman participant, Baucau, FGD

¹²⁸ Woman participant, Baucau, FGD

considerable impacts on women's rights to land and property, thorough consultation, dissemination and community training has been and will be crucial.

As determined through FGDs in the three study locations, some women had previously accessed information about the draft land law but most lacked an understanding of the provisions made in the law which will impact on their rights to land and property, which puts into question the effectiveness of recent strategies. All 12 of the women participants in Baucau stated that they knew there was a draft land law, three out of 20 women participants in Bazartete said they were aware of the new land law, and participants in Betano stated clearly that no one had any information or knowledge of a draft land law.

When asked about customary processes and laws related to land, most women in the three locations understood and could describe the processes used and actors involved in resolving land disputes. Women who had not been directly involved in a land dispute or had a close family member directly involved, could not describe the processes in as much detail. Women generally did not have clear information about types of land as designated under customary and state systems but all had clear information about customary inheritance practices.

Women who had knowledge of the draft land law had accessed information through activities organised through government and non-government programmes and also through media. However, concerns were raised by women about a lack of women's participation in general and a dominance of men over women at village-level events designed to inform and socialise citizens about the laws. Some reasons for this are outlined below.

One woman in Bazartete spoke of her involvement in a programme which invited citizens together with DNTPSC to explain the draft land law. She says: "If the objective was to socialize information about a draft law they should explain and put emphasis on the articles found in the law but they did not do that and when the participants raised questions they said that the law is not yet correct [*seidauk los*]. That is why the participants went home with the idea that since the law is not yet correct we can do whatever we want."¹²⁹

Some women had been involved in activities conducted by Ita Nia Rai, as one example given by a woman in Baucau demonstrates: "Before they [Ita Nia Rai] came to measure our land, they went to the *suku* to inform them, then together with the *suku* they went around to all *aldeias* to socialise the land laws, and explain the process of measuring different types of land and land ownership. After that, we were asked to go back home and talk with the neighbours about the borders of their land to prevent land disputes from happening. Once that is done, we may call the Ita Nia Rai to come and measure the land."¹³⁰ This account largely matches the official process of registering land claims as described above.

¹²⁹ Woman participant, Bazartete, FGD

¹³⁰ Woman participant, Baucau, FGD

Another woman in Bazartete explained her experience: “We do not yet know the articles of the law regarding land issues, however, there is the Ita Nia Rai programme in Liquiça District and they disseminate information on articles that speak about women having land rights too. So far, this is what we are aware of but for specific articles, we are yet to be informed.”¹³¹



Interactive Dialogue, Baucau District

One woman in Bazartete explained some other avenues to accessing information: “In my observation we are accessing information mostly through media, in the rural area of Liquiça we also have community radio and sometimes we access information through RTTL¹³² which gives information related to programmes on this matter. However, if we have to do some activities at home we miss some parts of the information so we do not follow the complete news.” She explained further that: “Aside from the media we also have access to information through some women’s organisations that exist in Liquiça, these organisations also provide training related to women’s issues.”¹³³

Many other women had not accessed information or participated in socialisation activities and various reasons were given for this as follows: “There was some socialisation in our *suku* and as we know, everyone can participate, however only a certain number of persons in the community were informed, invited and participated. It consequently leads to more men’s involvement than women themselves.”¹³⁴

Another woman in Bazartete explained that: “Most of the meetings at the *suku* level showed that there is a higher participation from men compared to women. DNTPSC needs to involve women in this socialisation because mostly women do not know the updated information about the new initiative on the land law.”¹³⁵

Two women in Bazartete explained that in their *suku*, it is difficult to encourage people to attend capacity-building sessions and training. Local authorities spread information about consultations and training, sometimes by telephone or by visiting people’s houses, but the level of participation at the events is still very low. These women suggest that the reason for this is that the event is usually in a seminar format in which the important people and leaders speak and the people just listen. Time limitations usually prevent people from asking questions. As summed up by one of the women: “We

¹³¹ Woman participant, Bazartete, FGD

¹³² Radio and Television Timor-Leste (RTTL) is the national broadcaster.

¹³³ Woman participant, Bazartete, FGD

¹³⁴ Woman participant, Bazartete, FGD

¹³⁵ Woman participant, Bazartete, FGD

just come, sit, be quiet then go home.”¹³⁶ This situation is also described by Rede ba Rai in its 2013 report, for which members monitored consultations on the draft land law which were conducted in each district capital.¹³⁷ In Liquiça District, 73 minutes was given for comments from citizens in which 1 woman and 2 men spoke.¹³⁸

In Betano *suku*, women admitted to having no information at all about the draft land law. One reason suggested for this by the participants was that when representatives of DNTPSC came to measure the land in Betano, the residents did not allow them to do so due to fears that others would come to occupy their land.

A 2010 Report from the Matadalam Ba Rai project described a case in Betano in which the RDTL Government targeted this area for the development of a heavy oil power plant. The community viewed the process of consulting about this project as illegal and closed, not involving the land owners. There was no information given to the community about the process of building the plant or the impacts for the people in the area.¹³⁹ This could explain why the women in Betano reported that the community had refused the attempts by DNTPSC to measure the land. In any case, the isolated position of Betano *suku* as compared with Baucau and to a lesser extent, Bazartete may explain this lack of information and access to services, however, the fact that the citizens have actively resisted the State’s land-related interventions make it difficult to draw a clear conclusion on this.

Despite the actions taken by the Ministry of Justice, the DNTPSC and others to socialise the draft land laws, it seems that women still face considerable barriers to accessing and understanding information, particularly those living outside district capitals. From the information and examples provided by women participants, these barriers are more acute for the poor and for women as opposed to men. Even where there are activities organised to inform or consult with citizens, information is delivered in a top-down manner and little effort is made to enter into a dialogue with citizens about the impact of legislation on their everyday lives. There are some positive initiatives on the part of non-governmental bodies, such as NGOs and the women’s groups mentioned by participants, to ensure that women are informed of their rights but there is much more that the Government can do.

Women’s Legal Identity

In order to register a land claim through the DNTPSC, citizens require an electoral card as a basic form of identification as well as any land certificates previously issued by Portuguese or Indonesian

¹³⁶ Woman participant, Bazartete, FGD

¹³⁷ Rede Ba Rai (2013) ‘Land Registration and Land Justice in Timor-Leste; Culture, Power and Justice’, Dili, Timor-Leste, p.63

¹³⁸ In Baucau, 90 minutes was allowed for questions or comments from citizens of Baucau in which 3 women spoke and 23 men spoke. In Manufahi District, 61 minutes was given for questions or comments from citizens of Manufahi in which 5 women and 22 men spoke. See Rede Ba Rai (2013) ‘Land Registration and Land Justice in Timor-Leste; Culture, Power and Justice’, Dili, Timor-Leste, p.63

¹³⁹ At the time of writing, the heavy oil power plant in Betano had not yet been developed. See Matadalam ba Rai & Haburas Foundation (2010), ‘Community Voices of the Land’, Dili, pp. 67-68.

administrations and witness statements (written or verbal) from neighbours about land borders. If a husband and wife want to place both their names on the certificate, DNTPSC requires the electoral cards of both the husband and wife as well as photographs. Marriage certificates are not usually required to register joint claims to land between spouses.¹⁴⁰ Most women in Baucau and Bazartete were aware of the basic requirements for registering a claim to land. In Betano, women were not aware of such requirements or the process of registering land claims.

All women participants owned some form of identity papers necessary to register a land claim, including election cards (all women had this) and marriage certificates were owned by some women who had been married in the Catholic Church. Of all the participants, three (two in Bazartete and one in Baucau) had registered claims to land through the Ita Nia Rai/DNTPSC process and could provide a reference number for this. All three were married women registering joint claims to land together with their husbands.

Overall, it can be said that women have the basic proof of legal identity required to make a land claim under the current registration system. However, as reported by some women, there are other documentation requirements that they may not be able to obtain and which are necessary for successfully claiming rights to land. These barriers are discussed below.

Women's Ownership and Control of Land and Property

The strong patriarchal culture throughout Timor-Leste was shown to be the strongest factor in determining women's rights to own and control land and property. The patriarchy that exists in Timorese society is summed up by one women in Baucau: "In our culture man occupies the highest level in our society, they used to say, 'I am the man in this family, I have more right and you are just a woman. When you are married you will leave the family, you will be there, not here."¹⁴¹ According to one police woman in Bazartete who had previously worked with the VPU and had recently been transferred to the community police, women generally accept these patriarchal norms: "According to my observation, when a woman is married she will go out and have the right over her husband's property, and it is evident that women in reality do not show concern over their parents' practice of discrimination in the division of inheritance."¹⁴² As presented here, the level of acceptance of discriminatory practices varied among the women in this study.

¹⁴⁰ Many Timorese undertake customary marriages due to the high costs associated with marriage in the Catholic Church. All married couples are required by law to obtain a marriage certificate but in reality, few couples married in the customary system do so. See JSMP, 'Submisaun JSMP atu Esbosu Lei Kódigu Sivil bele refleita sitasaun réal Timór Leste', 23 September 2010, accessed through <http://www.laohamutuk.org/Agri/land/civil/JSMPsubmissiondraftCivilCodePNTe.pdf>

¹⁴¹ Woman participant, Baucau, FGD

¹⁴² Woman participant, community Police, Bazartete, FGD

Patriarchy heavily dictates division of labour and inheritance practices. In key ways, this culture is supported by the customary justice system, particularly in relation to inheritance rights and dispute resolution. Despite the existence of key laws including the RDTL Constitution which contains provisions for equal rights between men and women, the reality is that customary laws and practices have a greater influence on the choices and rights available to women, as shown in the three study locations. This is particularly important to note when considering the implementation of the draft land laws currently before the National Parliament.

Until land-related legislation is finalised, it is difficult to determine the extent of women's actual ownership of land (as recognised through the State system) however the low number of women in this study (3) who have registered claims to land is an indication that women's claims to land and property rights under the new regime may be slow. It should be emphasised that citizens in Betano *suku* have not yet had the opportunity to register land claims in anticipation of the new law, partly because the DNTPSC attempts to survey the land were prevented by the community and also, the largest land registration process conducted by the Ita Nia Rai programme generally did not reach beyond district capitals, leaving rural lands under customary management unregistered.

As it stands, women may have rights to live on, use and manage land and many decisions may be made in consultation between women and men but women generally do not own the land they live on. A short case study from Baucau District demonstrates this reality. One widowed participant from Baucau explained her situation after her husband died, wherein she lives on her husband's land with her six daughters. As the customary law dictates, the land has been inherited through the male line so as daughter-in-law she has been allowed to use the land to continue running her bio-gas business. She takes care of the business and everything else required to look after her six daughters and she makes decisions related to this, but she makes many decisions in consultation with her husbands' brothers, asking for their support. She explains that they also ask for her permission when they need the animals she takes care of for family events. However, she knows that she will never become the owner of the land and the land will be shared between her brothers-in-law who have more right to occupy it. She says: "In the future, my daughters will marry and go out with their husbands and I will no longer automatically occupy this land because it belongs to the brothers."¹⁴³

This case demonstrates that although a woman may be permitted to live on and use land, even running a successful business on the property, she is fully aware that she doesn't have the right to decide over the future of the land and therefore must pass it and the assets it contains to her male relatives. The woman described here stated that she wasn't confident enough to pursue a formal claim to her husband's land, partly because the negotiations around the marriages of her daughters would be conducted by her brothers-in-law and would therefore very likely result in agreements being made for her daughters to leave the land and property that she inhabits.

¹⁴³ Woman participant, Baucau, FGD

Interestingly, the same women shared the experience of her husband's sister in law, which demonstrates the result for her rights when there is a lack of support from the husband's family: "...my husband's sister in law, who is also 'feto foun'¹⁴⁴ is from another district and married to a man in Baucau. When the husband died, just like mine, the brothers of her husband had their own interest and activities and they did not care for each other. So, after the passing of her husband, she took all her children with her because there was no one there, like a shady tree to gather them together, even though usually after your husband passes away, you and your children are still alive and can use the land. However, the woman didn't feel worthy so after her husband's death, she just left. Then she did not want to seek help from her husband's family because they would not accept her presence as the family relation was broken. She lost her hopes because nobody was there to her support her."¹⁴⁵ As far as this study found, this women then took her children back to her own family home and land where she currently resides.

As derived from the activity conducted with women in the three locations in which they placed a range of different resources related to land and property in different categories to show 'use of' and 'control of', women have clear ideas about their roles and rights. "As a wife I am helping my husband to take care of the vegetables and working in the rice fields and gardens."¹⁴⁶ Or: "In the land that I stay, I am growing the vegetables and fruit to be sold."¹⁴⁷



Focus group discussion, Bazartete Sub-District

When it comes to managing the land and daily activities, women report that there is a clear division of labour which is understood by all as follows: "In a family, the structure is already set and consists of husband as head, wife and children. So basically there is division of tasks according to everyone's responsibility. The husband is working outside the house and as the wife we need to take care of the work inside the house or to grow vegetables."¹⁴⁸ Another young woman from Baucau stated that "Women's job is for woman to do, man's job it is for man to do. There are men's jobs that woman can do and man can also do, but some of the men's jobs, woman cannot do automatically and she has to wait for man to do his job."¹⁴⁹

There were certain tasks or resources that women clearly indicated were for men to take care of. For example, a young woman in Bazartete reported that: "Through my observation in the mountains my

¹⁴⁴ *Fetofoun* (new woman) meaning she has come to live with her husband's family on their land.

¹⁴⁵ Woman participant, Baucau, FGD

¹⁴⁶ Woman participant, Baucau, FGD

¹⁴⁷ Woman participant, Bazartete, FGD

¹⁴⁸ Woman participant, Baucau, FGD

¹⁴⁹ Woman participant, Baucau, FGD

grandfather is the one that needs to bring the horse home, my grandma just accompanies him.”¹⁵⁰ The same young woman recounted a story given by an old man in a training event she was facilitating whereby: “This old man is selling vegetables that are grown by he and his wife working together, but this old man is the one selling and the whole price of the vegetables is \$20 but when he returned home he gave \$2-3 dollars to the wife. So in a case like this it depends on the man’s decision to share the income with the woman in the family.”¹⁵¹

Even in Betano *suku* where one *aldeia* follows a matrilineal system of inheritance, and therefore *lisan* is perceived as female oriented, women are considered the owner of the house but only inside the household: “The elders always said that inside the household, the bad or good woman knows better, but outside the household, it is the man’s job and he has more power to make decisions outside the household.”¹⁵²

The distinction between men’s and women’s work was particularly obvious in Betano. When asked to discuss this situation, one women summed up the view of the group that men own and control the resources of higher value because they do the heavy work associated with managing such resources: “Men always do the heavy work, while as a woman we cannot do the heavy work. The reason that men and women need to be together is because there is light and heavy work and woman are accountable for the light job and men for the heavy job.”¹⁵³ A concrete example of this was given by another woman in Betano: “My experience in reality in our family is that my husband is the one who takes care of the buffalo and he will be the one to tie the buffalo far from the house to get to the grass field. Because it is far from home, it needs a man to do it. Even if my husband is not around and I do not know to do that.”¹⁵⁴

This division in Betano also applied to decision-making and control. Women were asked to indicate which resources were of the highest value and largely marked these resources as being owned and controlled by men. Ownership and control of resources which were seen as having high economic value were discussed: “Coffee for instance it has a high price and it is usually men who are looking for buyers and negotiating about the coffee price.”¹⁵⁵ Another woman described the different types of decisions that are made: “At our house, as man and woman in our family, we all manage the household needs but to make big decisions such as painting the house or building the kitchen, it is man who decides because he knows how to do it.”¹⁵⁶

¹⁵⁰ Woman participant, Bazartete, FGD

¹⁵¹ Woman participant, Bazartette, FGD

¹⁵² Woman participant, Betano, FGD

¹⁵³ Woman participant, Betano, FGD

¹⁵⁴ Woman participant, Betano, FGD

¹⁵⁵ Woman participant, Betano, FGD

¹⁵⁶ Woman participant, Betano, FGD

Overall it seems that women predominantly do not have ownership and control over land and property, however, it is important to highlight the agency with which women make decisions and manage their activities. It was explained by a woman in Betano that buffalo, goats, pigs and other animals were managed together between men and women in that women take care of preparing the food but men know better what price to ask buyers for: “but mostly we inform each other to arrive at one decision”.¹⁵⁷ Rather than describing this division along gender lines as a problem or something that needs to be addressed, the women in Betano described their situation as calm and harmonious.¹⁵⁸

Another example is a case study referred to above which outlines the situation of a widowed woman in Baucau District who has six daughters and knows that she does not have the right to decide on the ownership of her husband’s land, but is nevertheless able to exercise agency in the manner in which she negotiates her position in order to care for her daughters and run a successful business. This brings in women’s ideas about equal rights, as explained by one woman in Baucau: “The equality of right is not the same as woman doing something and man does other things at the house, it is when woman together with man manage the needs at the house.”¹⁵⁹

Although the research shows clearly that women do not own and control land individually, it was also clear that most women had rights to use and manage land. This is described by many as her having the ‘right’ to her husband’s land and property and the importance of the right to use and live on land cannot be overlooked in the debate on gender equality and women’s rights. However, there were also notable examples of the insecure situation women can find themselves in because their rights are not formalised or protected.

The case from Baucau of a woman no longer having the right to live on her husband’s land after he had died, because she didn’t have a good relationship with her brothers-in-law is a good example of the effect of this lack of right. Furthermore, as explained by a women working in a women’s shelter in Baucau: “it is difficult for woman victims of DV [domestic violence] to continue with legal processes and decide to leave their abusive husband because if the final decision is to divorce then they have to leave their husband, their land and their house and they no longer have a place to stay. One option is to go back to their immediate family and often the shelter needs to consult with brothers to accept their sisters back to the family. Some accept them back because of their sentiment, not because they know it is the right of their sister or because the law says so.”¹⁶⁰

¹⁵⁷ Woman participant, Betano, FGD

¹⁵⁸ It should be stated that the project timeframe was not sufficient to explore these notions in-depth with women participants in Betano.

¹⁵⁹ Woman participant, Baucau, FGD

¹⁶⁰ Interview with Felismina Belo, female employee of ‘Uma Paz’, Baucau, 18/11/ 2013.

Barriers and Enablers to Women's Access to Justice

In discussion with women about seeking remedies and claiming land rights, it was clear that only a small number of women had been directly involved in land disputes related to their own rights claims. This is not surprising given the delay in the promulgation and implementation of a draft land law legislation and the relatively recent measures taken by Ita Nia Rai the DNTPSC to register land claims. Discussions therefore relied on women's observations of other cases involving friends and neighbours. Most of the cases the women had observed or been involved in were between *sukus*. Women did refer to disputes that might occur between brothers and sisters, but reported that very few of these are brought before a legal process (customary or State). The cases that did arise are described below.

The women in the three locations created maps of the process of taking action in the case of a land dispute or an attempt to claim land and property ownership. These maps showed the options that women feel are available for them to seek remedies. Various reasons were given for the choices made and the enabling factors as well as barriers were discussed. The maps showed similar options for women in the three locations. In Baucau, women included family, traditional house, *Lia Nain*, *Suku Council*, legal aid (ECM), police, DNTPSC, office of the prosecutor and court. In Bazartete, women included family, *Lia Nain*, local authorities (first at the *aldeia* level and then the *suku* level), police and courts. In Betano, women included family, *Lia Nain*, traditional house, local authorities (*Aldeia* Chief and *Suku* Chief), police and court. Women identified these options in relation to those that were the most accessible and the least accessible.

In general, it was explained by women that there is a hierarchy of actors involved, beginning with the family where the issue is discussed before it is brought to the *Lia Nain* who understands the 'story' of the family or families and he, with witnesses, tries to solve the problem. If the problem is not resolved, it is brought to the *Aldeia* Chief, then the *Suku* Council which includes the *Suku* Chief, the village level *Lia Nain* and the council members who will discuss the matter and try to find a solution. At this level, local legal aid (where available), community police and DNTPSC officials may be called in to witness and provide input. The Court was generally seen as the last option in the three locations, although some examples of preferences for taking matter to court are outlined below.

Women tended to categorize land disputes based on the seriousness of the matter and this influenced their views on seeking remedies. A small matter between families might be resolved by those closer to the family but offences involving criminal acts might require involvement of those higher up in the customary justice system and state justice actors. One woman explained that "When we talk about the land dispute we need to consider the level of the conflict. When it is not categorised as a crime, for sure, I will run to people who are near to me such as the elder that is trusted in my community, or *Aldeia* Chief and not even go to the *Suku* Chief. But when the dispute is getting worse and leading to acts of

violence or crimes, then I will not wait, I will directly go to the police without waiting to discuss this or find a solution among the families.”¹⁶¹

Local legal aid organisations and paralegal workers were seen as being part of facilitating access to justice: “In Baucau, don’t forget that as I have observed, we have NGOs here and they can work on facilitating mediation in the community when problems arise. They are ECM which often participate in resolution of cases in the village and they also observe.”¹⁶² However, their role in mediation was reported to be that of observer rather than active participant; as explained by a paralegal worker with ECM in Baucau: “I observe in land cases that have been consulted with us, here the land conflict is a long and complicated issue, mostly its solved between the families and when there is no solution in their *uma lisan* that is the time they are going to solve in *suku*. At the *suku* there will be presence from other entities such as, community police, previously the Ita Nia Rai and ECM. Since it is a civil case we are just there as they invited us to participate and we just observe, but if we notice it is a criminal case we will facilitate to accompany the victim to police, prosecutor office and the court.”¹⁶³

Women in Baucau and Bazartete reported that based on their experience and understanding of the National Directorate of Land, Property and Cadastral Services (DNTPSC), this is seen as an enabler for seeking justice in that, in the absence of the official law, DNTPSC advocates for women’s rights when conducting mediation at the village level. A woman in Baucau stated that: “Based on what I observed, the DNTP is a support because it follows norms that are based on the Constitution that women and men have the same rights.”¹⁶⁴ This observation makes sense considering that Liquiça was one of two districts that the Ita Nia Rai project covered in its entirety during the pilot phase of the project, before later speeding up the registration process.

The family is seen as an enabler for seeking solutions due to accessibility and the importance placed on family in Timorese culture. But women acknowledged that the support provided by families varies and families can also act as a barrier to seeking justice. One of the interviewees in Baucau emphasised that: “The benefit of the formal justice is to value the state laws that we have created however its deficiency is that it breaks the relationship between our families.”

Some married women in Baucau and Bazartete stated that they were encouraged by the DNTPSC and Ita Nia Rai project to register their names alongside their husbands. However, examples were given of the barriers faced in doing so. One woman in Baucau explained the family pressure preventing women from making claims to land owned by their husbands: “I am married to other people’s son, this son has many brothers...how can I put my name...I am brought into this family as daughter in law and I am not brave enough to say to them to put my name. I cannot say that I own the land because my husband has many brothers.”

¹⁶¹ Woman participant, Baucau, FGD

¹⁶² Woman participant, Baucau, FGD

¹⁶³ Interview with Aguida de Fatima, Edukasaun Comunidade Matebian (ECM), Baucau, 21/11/ 2013

¹⁶⁴ Woman participant, Baucau, ID

Another woman in Bazartete explains the custom that once a woman is married, it is assumed that she has the 'right' to her husband's land and therefore she doesn't need to register her name on any claim to land: "In Liquiça our *lisan* is male oriented and we live in a patriarchal society which believes that when we are married we have the right to our husband's land while our brothers have more rights to inherit the land from our parents."¹⁶⁵

One woman in Baucau explained a dispute currently taking place between her family and her uncle as follows: "We in my family believe that if we take our land dispute against my uncle to the state legal system we will gain justice and we will find out who is right and who is wrong, however until now neither us nor my uncle has an intention to bring this case to the state justice system. We prefer to take our case to our *Lia Nain* from our *lisan* because this is just between *fetosan umane*. So although the case has not yet been solved our relationship remains, compared to the state justice system where once our case is solved our family relationship is ended."¹⁶⁶

When a dispute involves what women deem to be criminal behavior, women are more likely to approach the state justice system, however, the following account shared by one of the participants in Bazartete demonstrates the barriers to doing so. She explains: "My sister in law filed a case to the police about my father-in-law's act of attempting to kill my sister-in-law with a dagger for building a fence which crossed the border of land determined by my father-in-law. When at the police, my sister in law stated that she would like to register this case to court because she considered this a criminal act. However the police responded by claiming that, 'it is just a threat, that dagger hasn't touched you yet', and advised her to solve it within the family. However my sister-in-law insisted and asked the police to write a report for her to file this case to public ministry. The police did not want to assist her, so she herself brought her case to the public prosecutor and the first hearing has taken place although it is not yet solved."¹⁶⁷

Women who were prepared to follow a state legal process to claim land rights also saw a lack of certain types of evidence as a barrier, for example, land certificates or documentation where a woman may have inherited land from her parents. In many cases such as this, the wishes of parents are expressed verbally and unless a woman can obtain witness statements, her chances of proving her right to land are slim. A paralegal worker in Baucau stated that "women come to consult with us at ECM but land disputes are quite long and we need evidence and testimonials to continue a legal process".¹⁶⁸

¹⁶⁵ Woman participant, Bazartete, FGD

¹⁶⁶ Interview with Santana, Baucau, 11/06/2014

¹⁶⁷ Woman participant, Bazartete, FGD

¹⁶⁸ Interview with Aguida de Fatima, ECM, Baucau, 21/11/ 2013

Although article 33, 'Statement of Ownership' in the draft land law states that no one may be prevented from submitting statements about plots they consider to be in their possession, this doesn't address the situation in which a woman is not supported by family, neighbours or community leaders to register a claim she knows she has the right to.

According to the draft law, and as put into practice through land registration processes, valid statements of ownership may be generated from "mediation or negotiation in which the parties have agreed on the final transfer of ownership of the property". According to women across the three locations, methods of mediation can be a barrier for women to claim their land rights when formal documents are absent. The witnesses that usually attend mediation are close relatives, commonly uncles, who may sometimes support women but can also prevent women from explaining their positions. One woman in Baucau gave an account of a mediation she witnessed, as a representative of the *Suku* Council: "I have observed a mediation process of a case between the siblings, where originally the land was given to the daughter, including the house and a rice field, however the brother wanted to take the rice field. The woman did not allow this and so they went to *suku* to hold a mediation. The witnesses present were mostly relatives, but from what I noticed the uncles do not support the woman to own the land and suggested that the brother take it all. Since the woman strongly presented her arguments, finally the decision was to divide the rice field and give half to the brother. I don't think this is right because what if it had happened to the woman, will this decision be made? After the mediation they formally registered it to DNTPSC to prevent future conflict between the siblings."¹⁶⁹

The lengthy process of taking cases to the state justice system and the financial costs involved was seen as a deterrent. A *Lia Nain* in Bazartete explains that "the state legal system uses a long process and often women decide not to continue even when they are half way through the process and some do not have the capacity to proceed due to financial concerns".¹⁷⁰ This is supported by a priest in Baucau who stated that: "some women have accessed the state justice system through police and some even get to court, however it is still difficult for women to get legal assistance as state institutions fail to give immediate responses to women's reported cases".¹⁷¹

With regard to justice which may be sought through the customary system, the interests and beliefs of customary actors are seen as a barrier. As explained by a participant in Baucau: "Some women do not go through the *suku* because some *Suku* Chiefs, while trying to solve the problem, force us with their own interests but we know that it is our land, there is a legal document which is under my name but considering that I am a woman, the *Suku* Chief says that you have problems with your brothers and your other family are also there. After you are married you leave and you have no right because your brothers have it."¹⁷² It is challenging for traditional leaders, who are most commonly called to facilitate dispute resolution, to apply the idea of equal rights for men and women in their decisions. As one *Lia*

¹⁶⁹ Woman participant, Baucau, ID

¹⁷⁰ Interview with Rafael Alves, elder, Bazartete, 12/12/2013

¹⁷¹ Interview with Pe. Justino, Priest, Baucau, 18/11/2013

¹⁷² Interview with Aguida de Fatima, ECM, Baucau, 21/11/2013

Nain in Bazartete explains: “I think that while women are still young, her brothers may give her land but if she has a husband, that is a different case. The majority of women here have to go out when they get married and they have no rights in their traditional house, but only have rights in the husband’s traditional house. It is one of the issues because it’s impossible have land in more than one traditional house so this is such a headache.”

Punishments and sanctions aim to restore family balance or harmony which usually means putting the rights of individuals (and often women) second. A community mediator in Baucau explains that: “We are using *lisan* as a mediation tool so that both parties will not lose but both will win.” Decisions often involve compensation paid to both parties, referred to as ‘*fo sala ba malu*’ which aims to restore dignity. This may involve killing animals as a ritual to restore the harmony that was destroyed.

An example of a case resolution which aimed to maintain harmony rather than protect a woman’s right was recounted by a female member of the *Suku Council* in Baucau. She explains: “There is a woman here that filed her land dispute case against her uncle who wished to take the land that was given by her father to her, as he [the uncle] preferred to give it to her brother. According to her uncle, she no longer had the right to own the land because she is now married. In our *suku* they use *lisan* to solve cases and this *lisan* gives more right to men to own the land. Therefore the piece of land that was given to her by her father has to be divided and to give a piece to her brother so that there will be no problem between this family.”¹⁷³ Despite the father’s wish to pass his land to his daughter, the wishes of her uncle and brother were prioritised through the customary process. Another woman in Baucau confirms this and explains further that: “Sometimes the parents decide to divide the land to their daughters however since there is no legal document issued, once the daughter is married she has to get out, she can only stay if she is single but she cannot make decisions like her brothers.”¹⁷⁴

Another barrier to women’s access to justice is that women are often not given space to participate and influence decision-making. For example, one female representative in the *Suku Council* in Baucau states that: “As the representative of women we were told that we do not know about this kind of problem. It is only the elder who knows this matter.”¹⁷⁵ Women who are involved in land conflicts might speak to provide information about the case, however the hearing is controlled by the elder who will give counsel based on the story of the *lisan* and provide options for the parties to decide. One woman in Baucau explains that: “Women who have experience and have undertaken training at some point can intervene in the decisions that are made however most of the time women can only talk at the back [of the proceedings].”

¹⁷³ Woman participant, Baucau, FGD

¹⁷⁴ Interview with Francisca Monica, Suku chief, Baucau, 21/11/2013

¹⁷⁵ Woman participant, Baucau, FGD

The rules and norms around participation are also dictated by the role assigned for women within the infrastructure where justice processes take place. A common characteristic through the three locations is that the *uma lisan* (traditional house) and the *uma lulik* (sacred house) often provide a physical space for proceedings as well as symbolising the spiritual or cultural sites of customary justice. One woman in Baucau stated that: “We place the traditional house first as having the highest cultural value. The decision made in traditional house will impact the lives of a family, for instance making decisions about marriage and dowry. Even when a woman is present she will not be accountable for decisions made, and those who sit and speak inside the traditional house and decide are all men.”¹⁷⁶

In Betano where some women inherit land and property through the matrilineal system, and therefore own traditional houses, they do not play an active role in decision making. As stated by a *Lia Nain* in Betano *suku*: “Women have a certain role when we have events in our *uma lisan* which is to prepare the food, prepare the *buu malu*¹⁷⁷, take care of the guests and other logistical matters as they are the owner of the house.”¹⁷⁸ Therefore, in a practical sense, women are often prevented from fully participating in justice processes.

Two women representatives on different *Suku* Councils attended the Interactive Dialogue in Baucau and a statement from one of the women sums up the key barrier women face in pursuing equal rights, which is as follows: “We keep saying on the radio, through the media, on TV, there is equality for women, equality for women. However, in fact, what is supposed to be the most important for us as women representatives at the *suku* is to do nothing. Speaking about land issues, other participants may say it happened like this and like that, but for me, it is in the dark. In the mediation that I have observed, each party is strongly determined, so how can we say that women have rights and men have rights too?”

The idea of equal rights between men and women is an area in which the two justice systems clash considerably. Although the Constitution and key state laws outline women’s rights in a range of areas including land, in practice, women are living within and abiding by customary law and processes. In regard to women’s rights to land, this is summed up by a local representative of the Ministry of Social Solidarity in Baucau District: “Our country currently promotes equal rights for men and women, and in my observation our brothers are in a position to remind our parents that women also have the right over land. In some cases, parents are willing to provide land to both sons and daughters and everyone agrees at first but at some point, if there are some problems, brothers get angry and evict their sisters, saying ‘you are a woman and have no right. I am the man, I have the right.’ There are some in rural areas who agree that women have no right over land and brothers won’t give authorization to their daughters or sisters to acquire land because they are in the opinion that after getting married, husbands have land and can sustain the wife’s needs. Therefore, you have the right but it is the man’s right.”

¹⁷⁶ Woman participant, Baucau, FGD

¹⁷⁷ Beetle nut, shared between elders before commencing customary dispute resolution.

¹⁷⁸ Interview Hermenegildo, Elder, Aldeia Loro, Betano, 26/06/2014

Conclusion

Women's ownership of land and property is integral to their security and livelihoods, however, in the Timorese context, women's use of land, access to land and sense of belonging within a family system is equally integral to their wellbeing in the Timorese context. The situation that has arisen in Timor-Leste through the emergence of a plural justice system in which intersection, overlapping and clashing often occurs, meaning that women may be faced with the choice between claiming their rights to ownership and control of land or property on one hand and maintaining good relations with their families in order to be able to continue to access land, use and manage land and participate in the life of the family and community on the other hand.

The patriarchal culture is the key underlying barrier for women to claim rights to land and property in Timor-Leste. It is clear that customary justice processes are determined through this patriarchal culture, even in communities deemed matrilineal, and rely heavily on particular individuals, most commonly *Lia Nains*. The idea that women and men have equal rights to own land and property is very challenging for these actors. It challenges the entire basis of the social and spiritual life of family and community in Timor-Leste. For this reason, customary justice cannot guarantee rights to land for women in Timor-Leste. Even where the customary system may interact in a complimentary way the State system, for example in the registering of land claims, women face many challenges in having their needs considered.

The most common methods of consultation and socialisation used by Government actors and supporting agencies fall short of allowing genuine understanding and effective implementation of legislation and procedures of the state justice system. The language, format and time provided is inappropriate and citizens feel frustrated at their inability to raise concerns and have these responded to adequately. This leads to a reluctance to participate, particularly among women and other marginalised groups. For this reason, key concepts, terms and provisions are left unexplained and misunderstood by citizens.

At a basic level, this research has found that the concept of 'right' is commonly misunderstood. The provision made in the RDTL Constitution that men and women both have the right to land and property, which is reiterated in the draft land law, leads to an expectation that women will receive land from the State. This misinterpretation of the land-related articles of the Constitution is also reported by Rede Ba Rai in their 2013 report: "Political leaders, civil society and others often refer to the constitutional right of 'a piece of land for all people', in fact the Constitutions only guarantees the right to private property."¹⁷⁹

¹⁷⁹ Rede Ba Rai (2013) 'Land Registration and Land Justice in Timor-Leste; Culture, Power and Justice', Timor-Leste p.18

The state laws may determine ‘rights’ but the customary justice system actually determines ownership in practice. On the other hand, in regard to customary laws, many participants in the study described the patrilineal practice of women relocating to live with her husband’s family after marriage as giving her the ‘right’ over her husband’s land, when in reality, both women and men acknowledge that this ‘right’ doesn’t equate to joint-ownership of his land and property.

This problem was also confirmed at CEPAD’s National Validation Workshop held in September 2014, where participants discussed the challenge that key provisions of the Constitution and draft land legislation which deal with equal rights have created confusion in communities because many customary laws and practices contradict state laws. Although the state laws may determine who has the right to own land, it is customary law which determines, in practice, who can actually own and control land, and in reality, it is men who are given land and property. The customary justice system in this respect is entirely contrary to state laws.

In order to minimise contradiction and confusion, participants at the National Validation Workshop asked the Minister of Justice and competent authorities to evaluate carefully the aspects of traditional practice that are deemed ‘illegal’ because they contradict the Constitution.

The true implications of the gap in implementation won’t be apparent until the draft land legislation is passed by the National Parliament and promulgated into law. At this point in time, it is the cases in which women have been separated from their husbands due to death, divorce or separation (often after domestic violence) that show clearly their inability to claim land rights. This research uncovered some cases falling into such a category. The research also elicited the views of women in regard to registering their names on land certificates, and revealed a reluctance to do so due to feelings of unease and intimidation from the husband’s extended family.

This study also uncovered cases of women successfully registering their names alongside their husbands’ on land claims with the DNTPSC which demonstrates that, for some, this is a realistic option depending on their ability to negotiate with their families. Moreover, in spite of a lack of legal basis in the customary justice system for women to claim ownership of land, it is important to recognise women’s ability in some instances to negotiate their management and use of land to ensure protection and livelihoods. The case of a widowed women in Baucau is a good example of the result of successful negotiation of land management with the men in her late husband’s family. For this reason, it is crucial that women are aware of their rights and the steps required to claim these rights, as a basis for negotiation and dialogue within families. The ability of customary and state norms to more realistically work in synchronicity rests on the ability of women and men, within families and communities, to discuss, reflect and come to mutual understanding.

This study, alongside other related studies conducted in Timor-Leste, shows that the majority of problems and issues affecting people's lives are discussed within families before being brought before customary or formal justice processes. Often, the matter will be resolved without involving outside actors. On matters of land and property, this practice very much holds true.

Despite a lack of ownership and control over land and property, women were found to be exercising agency in the manner in which they negotiate their use of such and their belonging on the land of their families which provides protection and secure livelihoods. That process of negotiation takes place between family members, within homes. For this reason, women's ability, under new land related legislation, to claim rights to own land and property will depend largely on these very discussions and negotiations within families. The ability of women to initiate those discussions and to negotiate their positions rests on their knowledge of their rights, their knowledge of laws and their understanding of the process of claiming rights. If women themselves are not able to access accurate information or understand this in the context of their daily lives, these discussions will be based on misinformation and misunderstanding or will not take place at all.

Recommendations

CEPAD has worked with women in three study locations to elicit their ideas for change and their recommendations for improving women's access to justice and rights to land and property. Women directed their recommendations to national leaders, local leaders and their own women peers and community members. Based on these discussions and analysis of the findings of the research project, CEPAD developed these recommendations for presentation to decision-makers, civil society and other key stakeholders at the national level at a National Validation Workshop in September 2014



Discussing recommendations, Betano Suku



National Validation Workshop Panel; CEPAD Executive Director, Dr João Boavida; UN Women Country Representative, Ms Janet Wong; Vice-Minister of Justice, Mr Ivo Jorge Valente; Secretary of State for Land and Property, Mr Jaime Xavier Lopes and Coordinator of Rede ba Rai, Ms Santana Fernandes.

Both the Vice-Minister of Justice and the Secretary of State for Land and Property, in their keynote addresses, invited the submission of CEPAD's research results and recommendations to the Government. The Vice-Minister of Justice stated that: "These researches are the sources to help law makers, especially the Ministry of Justice and National Parliament, to develop laws." The Secretary of State explained that: "During the resistance period we didn't think about writing laws, just how to get the enemy out of Timor-Leste. If there is a statement from CEPAD that information from research has discovered that the law is not consistent with Timor-Leste's conditions, present your findings to the relevant Ministry in order to refine the law. We need to move forward and there should be laws, otherwise we can't perform our roles well." The following recommendations therefore combine ideas from all of the stakeholders involved:

1. Consultation and socialization of laws and policies concerning land and property rights should not be rushed and should be carried out throughout Timor-Leste using an interactive dialogue format:

"We just come, sit, be quiet then go home."
(Young woman, Bazartete Sub-District)

- The **National Parliament** should open-up space for further public consultation regarding draft land legislation before debating the relevant bills. The consultation period should be expanded to address concerns that were not incorporated into the revised legislation by the Ministry of Justice.
- The **Ministry of Justice** should open up opportunities for nation-wide consultation to inform the development of a national land policy as a matter of priority.
- **Government** and **civil society** groups should work together to avoid top-down formats of delivery and should engage communities through dialogue to elicit concerns and discuss the impact of legislation on citizen's everyday lives. Key laws affecting women's rights and gender equality, particularly on issues of marriage, inheritance and land ownership, need to be thoroughly socialised outside the capital.
- During future land registration activities, the **DNTPSC** should hold community dialogues which make particular provisions for women, particularly in regard to joint-titling for couples. Women and communities should be made fully aware of the options for and importance of joint-titling.

2. Women in positions of local leadership and other relevant roles should be supported to participate in and monitor local mediation processes and provide accurate information to communities:

“If we intervene in the land resolution process
this might be perceived as ‘putting down man’s face.”

(Women representative on *Suku* Council, Betano)

- Government bodies such as **SEPI, Ministry of Justice** and **Ministry of State Administration** together with **civil society** organisations should better coordinate training and capacity building provided to women representatives on *Suku* Councils.
 - Training developed for women on *Suku* Councils should be targeted to the whole *Suku* Council in order to better clarify women’s roles, which have not yet been clearly defined in legislation.
 - Training for women community representatives should be properly targeted according to levels of knowledge and impacts of previous training, as well as whether the *suku* is located a rural, semi rural, urban or semi urban area.
 - Training methods should allow interactive discussions to better apply state laws to everyday lives so that accurate information can be shared with women at the community level.
 - The training content should focus on the ways that the state law challenges or compliments customary justice systems as applied in particular *sukus* and strategies to manage this should be discussed in depth.
- **Government** bodies, particularly the **Ministry of Justice** and **DNTPSC** together with **civil society** organizations should devise a tool to encourage and enable local authorities at the *suku* level, particularly women, to monitor customary mediation and land dispute resolution.
 - The roles of women on *suku* councils need to be clearly defined in the prospective ‘Law of the Sucos and their Election’ which is undergoing consultation as at October 2014.
 - The tool should be used to observe and document mediation processes and outcomes and to feed information back to the DNTPSC and civil society organisations.
- **Government** bodies, particularly the **Ministry of Justice** and **DNTPSC** together with **civil society** organizations should devise a tool to encourage and enable local authorities at the *suku* level, particularly women, to monitor customary mediation and land dispute resolution. The tool should be used to observe and document mediation processes and outcomes and to feed information back to the DNTPSC and civil society organisations.

3. Development of legislation concerning customary justice should be based on a thorough investigation of diverse customary justice processes and actors and should propose realistic and productive interactions between the state and customary justice systems.

“When we are trying to put a balance among every article that exist, first there should not be inequality or discrimination between men and women and secondly culture should be recognized as a part of Timor-Leste identity in the Constitution.

In relation to writing a law, there should be a balance, not to eliminate the cultural value or the Timorese identity, neither to diminish or put aside women as community member that do not have rights over land.”

(Vice-Minister of Justice, National Validation Workshop, 2 September 2014).

As it continues to draft a law concerning customary justice, the **Ministry of Justice**, through the **DNAJL**, should attempt to understand the commonalities of *lisan* throughout Timor-Leste in regards to actors, infrastructure and sanctions, paying special attention to the elements that exclude and disadvantage vulnerable groups.

- In drafting the forthcoming law on customary justice **DNAJL** should give full consideration to the key human rights principles found in international conventions to which the RDTL is state-party to, particularly CEDAW (Convention on the Elimination of All Forms of Discrimination against Women), ICESCR (International Covenant on Economic, Social and Cultural Rights), and ICCPR (International Covenant on Civil and Political Rights).
- The **Ministry of Justice** and **development partners** should support local civil society and local research institutions to conduct research into the characteristics and impacts of customary justice to inform the development of the law. Such research should be conducted using roles as local leaders participatory methods.
- When drafting the forthcoming law on mediation, the **Ministry of Justice** and **DNAJL** should build in clear roles for women in positions of local leadership and other relevant positions (such as legal aid, MSS and civil society actors) to actively participate in local mediation processes.

References

Books

Francioni, F. (2007), 'The Rights of Access to Justice under Customary International Law' in Francioni, F. *Access to Justice as a Human Right*, Oxford University Press, published online in March 2012

Twining, W (2009) *General Jurisprudence; Understanding Law from a Global Perspective*, Cambridge University Press, New York.

Journal articles

Brown, M. A. (2012) 'Entanglement, Entangled worlds: Villages and political community in Timor-Leste' in *Local-Global: Identity, Security, Community*, Vol. 11: 54-71.

Cummins, D. (2011) The problem of gender quotas: women's representatives on Timor-Leste's Suku Councils, *Development in Practice*, 21:1.

Golub, S. (2009), 'The Commission on Legal Empowerment of the Poor: One Big Step Forward and A Few Steps Back for Development Policy and Practice', *Hague Journal on the Rule of Law*, 1: 101–116.

Hohe, T. (2003), 'Justice without judiciary in East Timor' in *Conflict, Security and Development*, Vol. 3, iss. 3.

Merry, S. E. (1988), 'Legal Pluralism', *Law & Society Review*, Vol. 22, No. 5.

Narciso & Henriques (2010), 'Women and Land in Timor-Leste: Issues in Gender and Development', *Indian Journal of Gender Studies*, 17:49.

Tamanaha, B. Z. (2007), 'Understanding Legal Pluralism: Past to Present, Local to Global', *Sydney Law Review*, Vol. 30, p.375-411.

Reports

Commission on the Legal Empowerment of the Poor (2008) 'Making the Law Work for Everyone', Volume I: Report of the Commission on Legal Empowerment of the Poor, New York.

CEPAD and Interpeace (2012) 'Situational Analysis: Supporting women's engagement in the consolidation of democracy', Dili, Timor-Leste.

CEPAD and Interpeace (2012) 'The people's voice against corruption in Timor-Leste: Transforming locally owned ideas into action', Dili, Timor-Leste.

CEPAD and Interpeace (2009) 'Timor-Leste: Voices and Paths to Peace', Dili, Timor-Leste.

DuPlessis & Leckie (2000), 'Property and Land Rights in East Timor: Proposals for an Effective Dispute Resolution and Claim Verification Mechanism', UNCHS (Habitat).

East Timor Land Law Programme (2004), 'Report on research findings, policy options and recommendations for a law on land rights and title restitutions', Timor-Leste.

International Crisis Group (2010) 'Managing Land Conflict in Timor-Leste', Asia briefing No. 110.

Judicial Systems Monitoring Programme (2013) 'Overview of the Justice Sector' report, JSMP Timor-Leste.

Judicial Systems Monitoring Programme, 'Submissaun JSMP atu Esbosu Lei Kódigu Sivil bele refleita sitasaun reál Timór Leste', 23 September 2010, accessed through <http://www.laohamutuk.org/Agri/land/civil/JSMPsubmissiondraftCivilCodePNTe.pdf>

Lao Hamutuk (2013) 'Whom Will the Land Laws Empower?', online article accessed at <http://www.laohamutuk.org/Bulletin/2013/Jul/bulletinv13n1en.html#land>

Narciso, Henriques, Tilman (ND), 'Land and Gender in matrilineal Timor-Leste', online article at <https://dspace.uevora.pt/rdpc/bitstream/10174/7097/1/LAND%20AND%20GENDER%20IN%20MATRILINEAL%20TIMOR-LESTE%20FINAL.pdf>.

Nixon, R. (2005), 'Non-Customary Primary Industry Land Survey: Landholdings and Management', published by USAID, June 2005.

Rede Ba Rai (2013) 'Land Registration and Land Justice in Timor-Leste; Culture, Power and Justice', May 2013, Timor-Leste.

The Asia Foundation (2012) 'Looking to the Needs of Domestic Violence Victims', Dili, Timor-Leste.

The Asia Foundation (2013), 'Timor-Leste Law and Justice Survey 2013', Dili, Timor-Leste.

Wojkowska, E. (2006) 'Doing Justice: How informal justice systems can contribute', UNDP-Oslo Governance Centre.

UNDP (2005), 'Programming for Justice, Access for All: A Practitioner's Guide to a Human Rights-based Approach to Access to Justice', Bangkok.

UNDP (2013), 'Breaking the Cycle of Domestic Violence', Timor-Leste.

USAID, The Asia Foundation & Timor-Leste Education Project (n.d.) 'Introduction to the Laws of Timor-Leste: Legal History and the Rule of Law in Timor-Leste' Timor-Leste.

UNDP (2011), 'Customary Law and Domestic Violence in Timor-Leste: Approaches to Domestic Violence against Women in Timor-Leste: A Review and Critique', UNDP Justice System Programme Paper, Dili, Timor-Leste.

UN Women (2012) 'Progress of the World's Women; In Pursuit of Justice'

UN Women (2013) 'Realising Women's Rights to Land and Other Productive Resources'

UNFPA, 2005, 'Gender-based violence in Timor-Leste; A Case Study'

UNDP (2011) Timor-Leste National Human Development Report

UNDP (2013) Human Development Report

UNDP (2011) Timor-Leste National Human Development Report

RDTL Government documents

Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, *entered into force* Sept. 3, 1981. CEDAW.

Democratic Republic of Timor-Leste Constitution (2002), Dili, Timor-Leste.

Democratic Republic of Timor-Leste (2007) 'Initial Report: The Convention On The Elimination Of All Forms Of Discrimination Against Women (CEDAW)', CEDAW/C/TLS/1

Democratic Republic of Timor-Leste (RDTL) (2009), 'Secretary of State for the Promotion of Equality (SEPI); Annual Report 2009', Dili, Timor-Leste.

Democratic Republic of Timor-Leste (2011), Timor-Leste Civil Code, Dili, Timor-Leste.

Democratic Republic of Timor-Leste (2013) 'Combined Second and Third Periodic Reports; The Convention On The Elimination Of All Forms Of Discrimination Against Women (CEDAW)' CEDAW/C/TLS/2-3

Matadalam ba Rai & Haburas Foundation (2010), 'Community Voices of the Land', Dili, Timor-Leste.

National Statistics Directorate & United National Population Fund, 'Population and Housing Census of Timor-Leste, 2010; Volume 3 'Social and Economic Characteristics', Timor-Leste.

Decree Law 27/2011; 'Regime of the Regularization of Ownership of Immovable Property in Undisputed Cases.'

Draft law 'Special Regime For Definition Of Ownership Of Immovable Property', English translation obtained from UN Women Office, Dili, preamble.

Annexes

Annex 1 Interview Question Guide

Phase 1: Interview Questions

1. Through your work or observations, which cases do women tend to present in your community?
2. In the justice systems that exist in your community including formal justice (*xefi suku*, police, courts) and traditional justice (*lia nain*), according to your observation, when women experience domestic violence do they look for justice in the formal or traditional system? If formal, why? If traditional, why?
3. When women use traditional justice, what is the process? When women use formal justice, what is the process? How do women approach the *lia nain*, the *xefi suku*, the police and the court?
4. In the formal justice system we know that victims can speak and there needs to be an investigation with evidence. In the traditional justice system, who speaks and what is the process or who decides or resolves the conflict and how?
5. We see that the traditional system has advantages and disadvantages, so according to your opinion, do women have appropriate space to access justice?
6. As you observe, when women know their rights in the domestic violence law and that this is a public crime that they need to bring to court or not? If not, why not?
7. As you observe, what is the cause or root of domestic violence?
8. Through your work or role or from your observations in the community, have women become the land owners and are they making decisions about land? If not, why not?
9. With the law currently in parliament where they are also discussing women's rights to land and that women and men have equal rights in general and there should be no discrimination, what is your opinion? Look in particular at the our society or community that is dominated by a patriarchal system which means that when women marry, they leave their land to live with men?
10. In your opinion, if women have rights to control land do they have the ability to access justice or not?
11. In your opinion, what is justice?
12. What are your opinions or recommendations to promote women's access to justice?

Annex 2 FGD Question Guide

Session I What is Land?

- A short game on “a ball throwing” to answer to the three questions on what is your name, where you live, and with whom are you living with?
- What activities do you likely do in your land? Who are involved? If you earn some money from such activities, who has more the right to decide for the income?
- Who actually owns the land where your house is built upon?
- How do you define land? Or what does land mean to you?

Session II Use and Control of Land and What is Justice

Dividing the participants into two groups. Each group will be given two flipcharts, and small papers with varied pictures. Each flip chart will be divided up into three parts: Man, Woman and both together.

Activity I Use of Resource (Flipchart I)

The two questions below are asked to participants:

- What resource is mainly used by men? What resource do women mostly use? And which resources are jointly used by both, men and women? What resource is considered of high values?
- If the resource is of high value, who normally use them? Men or Women? Or both?

Activity II Control and Decision Making Over Resources

Referring to the flipchart I, which resources women are able to take a decision, men can take decision and both can take decision.

- Which resources are controlled by women? What resources do men control? And which resources do men and women together control?
- If the resource is of high value, who has the power to make a decision and control? Men or women? Or both?

Each group will choose one representative to Present back to the whole group

Justice (What is Justice for Women?)

- Considering the earlier activity, what did you observe?
- What is equality/ fairness in your perception?
- We are used by the phrase ‘justice for all’, indeed the government also has made a lot of efforts to assure justice for all. As citizens, we demand for justice, the word is not new for us. When you say or hear about the word ‘justice’ what comes across your mind? What exactly is Justice to you?

Session III What is law, Legal Knowledge and Legal identity?

- If we talk about Justice, then an important way of ensuring justice is LAW.
- What is Law to you?
- Do you know any law or regulation related to your land or women’s right to land?
- What regulation implemented in your community that is related to land and how women positioned in this regulation, is it written? By who? Who decides?
- Does in these regulations allow women to own land? (In this room do anyone of you have certificate on your name or inherited a land? If yes, how? If not why not?)
- What paper requires from you (who own land) to own land formally/legally?
- Do you have access to these requirements? If not why?
- To those who have no certificate under your name, do you have these papers/requirements?

Session IV Seeking for Remedy to Land Disputes

Sub-group Discussions

The participants will be divided into two groups based on their marital status (Married and Unmarried).

Afterward, each group will be represented by one participant to present the result of the discussion:

- Have you ever yet experienced in any land disputes?
- If you have, will it be okay if you share it? How does it occur? Involving who? What action did you take? Who do you approach?

If you don't have any experiences then:

- For Married women: if at any time for example your husband wants to sell your land and you do not want it, will you be able to prevent it?
- Unmarried women: If your family, brother or your uncle want to take or sell the land that you are occupying, and if you object it, will it be possible for you to prevent? And How?
- Who would you go first to ask for help? How do you get there? In case of your family, who to go to? What will they use to settle the problem?
- What do you think prevent you to go asking for the help? What enables you to reach there?
- What do you think may happen to your land in 50 years coming? (Imagine who is probably going to live on your land?)

Annex 3 National Validation Seminar Agenda

Agenda

Prompting Women's Access and Rights to Land and Property in the Plural Justice System

'National Component of Research into Women's Access to Justice in Plural Legal Systems.'

Tuesday , 2 September, 2014

Tower Conference Hall, Fatuhada, Dili, Timór-Leste

Time	Activity
8:30 – 9:00	Registration
9:00 – 9:30	Session 1 Welcome and Introduction <ol style="list-style-type: none"> 1. Introduction to the research project and link to CEPAD's key priorities - <i>João Boavida, Executive Director, CEPAD</i> 2. Overview of the research at the national and regional levels - <i>Janet Wong, Country Representative, UN Women</i>
9:30 – 10:20	Session 2 Panellists <ol style="list-style-type: none"> 1. Legal Mechanisms and policies from the Ministry of Justice which ensure women's rights to land and property in the plural justice system in Timor-Leste – <i>Ivo Jorge Valente, Vice Minister of Justice</i> 2. Perspectives from DNTP on the regulations and policies to ensure women's access and ownership of land; technical mechanisms for implementation on the ground - <i>Jaime Xavier, Secretary of State for Land and Property</i> 3. The importance of rights to land and property for women's access to justice in Timor-Leste – <i>Santina Fernandes, Coordinator of Rede Ba Rai</i>
10:20 – 10:45	Question and answer session
10:45 – 10:55	Coffee/tea break
10:55 – 11:10	Session 3 Presentation of research results - <i>Ivonia Pinto Tsia, Lead Researcher, CEPAD.</i>
11:10 – 12:00	Sesaun 4 Key recommendations; <i>women representatives from 3 Districts.</i>
12:00 – 13:00	Lunch
13:00 – 14:00	Session 5 Sub-group discussions <ul style="list-style-type: none"> • Sub-Group 1: Dissemination and socialisation of the land law • Sub- Group 2: Training for women representatives at the <i>suku</i> level • Sub- Group 3: Intersection between the formal and traditional justice systems
14:00 – 15:30	Session 6 Closing discussion
15:30 – 16:00	Tea/coffee break Close

Annex 4 Interview Participants

Baucau District - 13 November 2013

No	Gender	Position	Suco/Sub-district/District
1.	M	Priest	Baucau Villa
2.	M	Traditional Leader	Caisido
3.	M	Local Authority	Sub-District Office, Baucau Villa
4.	M	Community Police	Baucau Villa
5.	F	Assistant for Shelter House	Baucau Villa
6.	F	ECM Lawyer	Baucau Villa
7.	F	Vulnerable Police Unit (VPU) National Police Officer (PNTL)	Baucau Villa
8.	F	MSS Office for Referral Network	Baucau Villa
9.	F	Suco Chief	Laga

Liquica District - 13 December 2013

No	Gender	Position	Suco/Sub-district/District
1.	M	Traditional Leader	Maumeta
2.	M	Suco Chief	Lauhata
3.	F	A Women's Representative at Suco	Mota-Ulun
4.	M	Church Representative	Mota-Ulun
5.	F	A Women's Representative at Suco	Maumeta
6.	F	Community Police National Police officer (PNTL)	Lauhata
7.	F	VPU (Vulnerable Police Unit) National Police Officer (PNTL)	Lauhata

Manufahi District - 14 January 2014

No	Gender	Position	Suco/Sub-district/District
1.	M	Traditional Leader	Loro, Buifu
2.	F	A Women's Representative at Suco	Sisurai
3.	M	Dispute Mediator	Same Villa
4.	F	Vulnerable Police Unit (VPU) National Police officer (PNTL)	Same Villa
5.	M	Women Network for Justice Coordinator	Loro, Buifu

Annex 5 Focus Group Discussion Participants

FGD Baucau District - 8 May 2014

No	Gender	Marital Status	Suco/Sub-district/District
1.	F	Married	Baucau
2.	F	Married	Baucau
3.	F	Unmarried	Baucau
4.	F	Unmarried	Baucau
5.	F	Married	Trilolo
6.	F	Married	Baucau
7.	F	Unmarried	Baucau
8.	F	Married	Bahú
9.	F	Married	Tirilolo
10.	F	Married	Bahu
11.	F	Married	Baucau
12.	F	Married	Trilolo

FGD Bazartete Sub-District - 20 March 2014

No	Gender	Marital Status	Suco/Sub-district/District
1.	F	Unmarried	Maumeta
2.	F	Unmarried	Maumeta
3.	F	Unmarried	Maumeta
4.	F	Unmarried	Dato
5.	F	Unmarried	Dato
6.	F	Unmarried	Maumeta
7.	F	Married	Lau-hata
8.	F	Married	Lau-hata
9.	F	Married	Lau-hata
10.	F	Married	Lau-hata
11.	F	Married	Lau-hata
12.	F	Married	Maumeta
13.	F	Married	Maumeta
14.	F	Married	Lau-hata
15.	F	Married	Lau-hata

No	Gender	Marital Status	Suco/Sub-district/District
16.	F	Married	Lau-hata
17.	F	Married	Maumeta
18.	F	Married	Maumeta
19.	F	Married	Lauhata
20.	F	Married	Dato

FGD Betano *suku* - 22 May 2014

No	Gender	Marital Status	Suco/Sub-district/District
1.	F	Married	Loro
2.	F	Married	Loro
3.	F	Married	Loro
4.	F	Married	Loro
5.	F	Married	Loro
6.	F	Married	Loro
7.	F	Married	Loro
8.	F	Married	Loro
9.	F	Married	Loro
10.	F	Married	Loro
11.	F	Married	Loro
12.	F	Married	Loro
13.	F	Married	Leoai
14.	F	Married	Leoai
15.	F	Married	Leoai
16.	F	Married	Leoai
17.	F	Married	Sesurai

Annex 6 Interactive Dialogue Participants

Baucau District - 11 June 2014

No	Gender	Marital Status	Suco/Sub-district/District
1.	F	Married	Bahu
2.	F	Married	Bahu
3.	F	Married	Tirilolo
4.	F	Married	Tirilolo
5.	F	Married	Tirilolo
6.	F	Married	
7.	F	Married	
8.	F	Unmarried	Baucau DPR
9.	F	Unmarried	CCP Baucau
10.	F	Unmarried	Bahu

Bazartete Sub-District - 19 June 2014

No	Gender	Marital Status	Suco/Sub-district/District
1.	F	Unmarried	Dato
2.	F	Unmarried	Dato
3.	F	Unmarried	Mau-meta
4.	F	Unmarried	Lau-hata
5.	F	Married	Mau-meta
6.	F	Married	Mau-meta
7.	F	Married	Mau-Meta
8.	F	Married	Mau-Meta
9.	F	Married	Mau-Meta
10.	F	Married	Lau-hata
11.	F	Married	Lau-hata
12.	F	Married	Loidahar
13.	F	Married	Lauhata
14.	F	Married	Dato

Betano suku - 26 June 2014

No	Gender	Marital Status	Suco/Sub-district/District
1.	F	Married	Sesurai
2.	F	Married	Loro
3.	F	Married	Loro
4.	F	Married	Loro
5.	F	Married	Loro
6.	F	Married	Loro
7.	F	Married	Loro
8.	F	Married	Loro
9.	F	Married	Loro
10.	F	Married	Loro
11.	F	Married	Loro
12.	F	Married	Leo-ai
13.	F	Married	Loro
14.	F	Married	Leo-ai
15.	F	Married	Loro

Annex 7 National Validation Workshop Participants

No.	Gender	Name	Position / Organisation	District
1.	M	Ivo Jorge Valente	Vice Minister of Justice	Dili
2.	F	Jaime Xavier Lops	Secretary of State for Land and Property	Dili
3.	F	Janet Wong	Country Representatives of UN Women	Dili
4.	F	Santina Fernandes	Coordinator of <i>Rede ba Rai</i>	Dili
5.	F	Filomena Cárceres	District participant	Baucau
6.	F	Francisca Monica de F. Soares	Community Leader	Baucau
7.	F	Dulce Santana Belo	District participant	Baucau
8.	F	Santina X. Freitas	CEPAD DLO	Baucau
9.	F	Regina Da Conceição Amaral	District participant	Bazartete (Liquisa)
10.	F	Esmeralda Pinto	District participant	Bazartete (Liquisa)
11.	F	Eva Fatima Moreira	District participant	Bazartete (Liquisa)
12.	F	Ana Maria De J. Dos Santos	CEPAD DLO	Liquisa
13.	F	Etelvina Da Costa	District participant	Betano (Manufahi)
14.	F	Terciana Miranda Hornay	District participant	Betano (Manufahi)
15.	F	Leonor da Costa	District participant	Betano (Manufahi)
16.	M	Quintão D.C. Massa	CEPAD DLO	Manufahi
17.	F	Olivia Sarmiento	National Parliament	Dili
18.	M	Cristovão Pereira	National Parliament	Dili
19.	M	Armando Maia	Ministry of Justice	
20.	M	Napolião de Andrade Soares	SEPI	Dili
21.	M	Rosário de Araujo	Anti-Corruption Commission	Dili
22.	M	Dominggos Maia	Community Police	Dili
23.	F	Christina Yiannakis	UN Women	Dili
24.	F	Maria Agnes	UN Women	Dili
25.	F	Francelina Guterres	UN Women	Dili

No.	Gender	Name	Position / Organisation	District
26.	M	Hector Hill	Translator -UN Women	Dili
27.	F	Filomena Fuca	Rede Feto (NGO)	Dili
28.	M	Jose Amaral	FONGTIL (NGO Forum)	Dili
29.	M	Nicolau Lin	FONGTIL (NGO Forum)	Dili
30.	F	Lorena Dos Santos	ALFeLa (legal aid)	Dili
31.	F	Adelina Mota	The Asia Foundation	Dili
32.	F	Saturnina Freitas Belo	The Asia Foundation	Dili
33.	M	Mateus Xavier	JSMP (NGO)	Dili
34.	F	Aurelia Rodrigues	Haburas Foundation (NGO)	Dili
35.	M	Dominggos de Andrade	Rede ba Rai (NGO)	Dili
36.	M	Manuel Monteiro	Director Human Rights Association (NGO)	Dili
37.	FF	Zelia Fernandes	Forum Tau Matan (NGO)	Dili
38.	F	Maria Jose Guterres	Fokupers (NGO)	Dili
39.	F	Mavilra O. da Costa	Belun (NGO)	Dili
40.	F	Celestina de Almeida	ACbit (NGO)	Dili
41.	F	Juliana Yayu	Luta Hamutuk (NGO)	Dili
42.	F	Clotilde Pereira	Luta Hamutuk (NGO)	Dili
43.	F	Inês	La'ó Hamutuk (NGO)	Dili
44.	F	Ana Guterres	USAID	Dili
45.	M	Xisto Ximenes	UNPAZ student	Dili
46.	F	Ana Grecia Avelar da Silva	UNPAZ student	Dili
47.	M	Paulino Carmo	UNTL student	Dili
48.	F	Alexandrina de Rosa Das Neves	Peace Center (PC)	Dili
49.	M	Honório Dos Santos	GVMJ (Media)	Dili
50.	M	Pedro Ximenes	Coordinator of Business Timor (Media)	Dili
51.	F	Novenia M. Viegas	Timor Post (Media)	Dili
52.	F	Elizabeth do N. Cabral	Timor Post (Media)	Dili
53.	F	Novenia M. Viegas	Timor Post (Media)	Dili
54.	M	Timotio Gusmão	STL Corporation (Media)	Dili
55.	F	Qyka Araújo	RTTL (Media)	Dili
56.	M	Mateus da Costa	RTTL (Media)	Dili
57.	M	Jose Lobato	TVTL (Media)	Dili

No.	Gender	Name	Position / Organisation	District
58.	F	Natalicia Santos	TVTL (Media)	Dili
59.	F	Patricia da Costa	TVTL (Media)	Dili
60.	N	Aderito Manus	TVTL-Estajiadu (Media)	Dili

Centro de Estudos para a Paz e Desenvolvimento
Centre of Studies for Peace and Development
Sentru Estudus ba Dame no Dezenvolvimentu

Rua Humberto | Acadiru-Hun | Bidau | P O Box 88 Dili | Timor-Leste | Mobile: +670 7747 4218 | Email: cepad.tl@gmail.com | www.interpeace.org

