

SEMINAR REPORT

GENDER RESPONSIVE ALTERNATIVE DISPUTE RESOLUTION

DILI, 4-5 DECEMBER 2017



From
the people of Japan



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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.

UN Women's Project Enhancing women's meaningful leadership and participation in state building and development in Timor-Leste, generously funded by the Government of Japan, supports and complements the implementation and monitoring of the National Action Plan on Women, Peace and Security (NAP-WPS) in Timor-Leste. The Project promotes multi-dimensional strategies toward women's participation and leadership in decision-making (including at local levels), women's participation in security and justice sectors, as well as gender-responsive conflict prevention.

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Finally, we appreciate the financial support from the Government of Japan to UN Women's project, *Enhancing women's meaningful leadership and participation in state building and development in Timor-Leste*, through which the seminar was organized.

LIST OF ACRONYMS

ADR	Alternative Dispute Resolution
CEDAW	Convention on the Elimination of All Form of Discrimination Against Women
CEPAD	Centre of Studies for Peace and Development
DNPCC	National Directorate on Community Conflict Prevention
DNTPSC	National Directorate on Land and Property and Cadastral Services
DV	Domestic Violence
GBV	Gender-Based Violence
JSMP	Judicial System Monitoring Programme
LADV	Law against Domestic Violence
MoJ	Ministry of Justice
OPS	Village Police Officer
PDHJ	The Ombudsman for Human Rights and Justice
PNTL	National Police of Timor-Leste

I. Introduction

Since its independence, Timor-Leste has developed a strong legal framework underpinned by international conventions, where equal rights for women and men are guaranteed under the Constitution of Timor-Leste and through the ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

As the formal justice system grows to meet the needs of the population, many disputes and conflicts are resolved outside of the formal justice, whether by community leaders using customary processes or through semi-formal alternative dispute resolution (ADR), such as mediation or arbitration. Customary dispute resolution enjoys significant legitimacy at the local level, amongst both men and women. In the context of a formal legal system which is unable to deal effectively with their caseload, and results in delays, the operation of customary dispute resolution allows community members to expedite the justice process, restore balance to the community and avoid further pressure on the formal legal system. Traditional “trials” under the informal system are headed by cultural, family or other local leaders in the community, and involve a truth-telling system that is relatively informal in its organization. Often, the goal is reconciliation and community harmony over retribution. Similar to customary dispute resolution, other forms of mediation, arbitration or conciliation provided through the Government bodies or civil society work to remove strain from the formal justice system and bring harmony to the community.

The Ministry of Justice, recognizing the importance of ADR in accessing justice, is working on draft legislation related to informal justice processes and have received support from the Ministry of Justice in Japan in the process. The Legal Harmonization Commission has also submitted their report on the linkages between ADR and formal justice. The Ministry of Defence and Security, under the Community Conflict Prevention Directorate, is currently developing guidelines for their conflict mediators, to provide guidance on the process.

In support of these efforts the ADR seminar on the 4-5 December 2017 convened over 70 Government, civil society representatives, mediators, National Police (PNTL) and local leaders to discuss ADR mechanisms and how they can benefit women and men more equitably. Guest speakers from Cambodia and Japan provided insights into the interaction between formal and informal justice system and its impact from a gender perspective.

The seminar was organized by the Ministry of Justice, the Ministry of Defence and Security, in collaboration with UN Women and with generous funding from the Government of Japan.



From left to right: Flaviano Moniz (National Director for the Human Rights and Citizenship, Ministry of Justice, Timor-Leste), Dr. Horacio de Almeida (Vice-Provedor/Ombudsman), H.E. Hiroshi Minami (The Ambassador of Japan), Sunita Caminha (Head of UN Women Timor-Leste), H.E. Dra. Angela Carrascalão (Minister of Justice), Dr. Sergio Hornai (General Coordinator of Public Defender), Romao Guterres (National Director Land and Property, MoJ), Virgilio Correia (Legal Advisor, PNTL), Prof. Hiromichi Onishi, (Ministry of Justice, Japan), Dr. Nelinho Vital, (National Director for the Legal Advisory and Legislation). Photo: @ UNWomen/Felix Maia, 2017

II. Objective and Programme

The seminar on Gender Responsive Alternative Dispute Resolution had the **objective to contribute to the dialogue around alternative dispute resolution (ADR) in Timor-Leste, and more specifically to identify how ADR can be more responsive to the gender dynamics of the country and ensure equal access to justice for all.**

The seminar aimed to:

- provide an overview of the current progress on ADR in Timor-Leste;
- highlight what is known about the gender dimensions to ADR in Timor-Leste;
- consider different approaches to gender responsive ADR, discussing lessons learnt from other countries; and
- develop actionable recommendations to the Government for further ensuring human and women's rights are respected through ADR and in contribution to the Commission on the Status of Women 62 on rural women.

Scope of the seminar:

The seminar focused in the discussions on cases involving **land and inheritance and domestic violence**, covering both civil and criminal justice cases. These two types of cases were selected as they both have an existing legal framework which can be in contradiction with cultural practices in communities in Timor-Leste, to the disadvantage of women.

At one end of the spectrum are domestic violence cases as public crimes, that legally should be prosecuted through the formal justice system, but in which local leaders/community members often resolve via customary means.

At the other end of the spectrum are land disputes (in particular norms on inheritance), which are civil matters, but in which there are often differences between legal norms relating to gender equality, and customary norms where, in a patriarchal system, male family members inherit family property.

The seminar was organized over two days. Calling attention to the rationale behind the seminar, Sunita Caminha, Head of UN Women's Timor-Leste Office said:

“At present, alternative dispute resolution reflects the gendered discrimination that exists in society and does not benefit everyone equally. While significant efforts have been dedicated to strengthening the gender-responsiveness of the formal justice system, this seminar offers an opportunity to understand and encourage actions to improve alternative dispute resolution mechanisms toward more equitable outcomes for all”.

The first day was structured around panel presentations and participatory discussions on ADR and how it impacts women's access to justice, involving 12 panellists and presenters representing civil society, government

institutions, including justice sector actors. The second day was a closed-door session, with 25 key stakeholders (15 women and 10 men), jointly developing ideas on how to improve the existing ADR systems to ensure women and men can more equitably access justice.

This report provides an overview of the presentations and recommendations. The full programme for the two-days seminar is found in Annex 1.

Reminding the participants of the seminar's connection to broader development efforts, the Ambassador of Japan, H.E. Hiroshi Minami, recalled that ***“Two years ago in the General Assembly of the United Nations, the SDGs were adopted. Among 17 goals, Goal 5 on gender equality and women empowerment are widely supported by members of the United Nations as a cross-cutting theme”.***

“Article 17 of The Constitution of Timor-Leste clearly states that men and women have equal rights. Today, we see more women participating in politics and taking part in public lives. Unfortunately, until this moment, in our society, some women are still victims of domestic violence.”

H.E Dra. Angela Carrascalão,
Minister of Justice



III. Presentations and Discussion

SESSION 1: WOMEN'S ACCESS TO JUSTICE THROUGH ALTERNATIVE DISPUTE RESOLUTION

Panel and presentation:

Dr Horacio Almeida,
Vice-Ombudsman, (PDHJ): *What
are the key factors obstructing
women's access to formal justice*

**Dr Luis Oliveira, Director, Judicial
System Monitoring Programme
(JSMP):** *Linkages between formal
and informal justice*

**Dr Joao Boavida, Director, Centre of
Studies for Peace and Development
(CEPAD):** *Opportunities and
constraints for women in access to
justice in land dispute.*

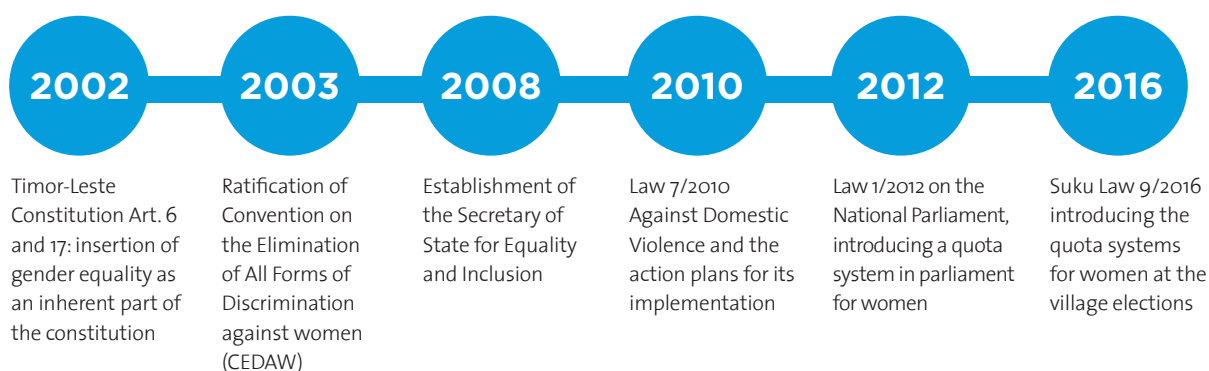
The first session comprised three perspectives of civil society and the Ombudsman of Timor-Leste, giving an overview of factors obstructing women's access to

formal justice, the linkages between formal and informal justice, and the opportunities and constraints for women in accessing justice in cases of land disputes.

Key factors obstructing women's access to formal justice

Dr Horacio Almeida, Vice-Ombudsman, (PDHJ)

Dr Almeida provided an overview of the current legal setting in Timor, reminding that the young country set-up since independence an array of legal frameworks to help protect human rights, including women's rights.



However, implementation of the legal framework is slow, with high levels of domestic violence and low levels of women's participation of in public and economic life, particularly visible at the municipal level.

A 2014 research from PDHJ identified challenges for women to access justice. The research showed that both in the formal and informal process, barriers existed to women's access to justice.

However, communities in general prefer to resolve disputes at the *Suku* (village) Level, through the *Suku* Chief, in part, as the processes are faster, and it is more accessible, including with use of local languages.

Challenges for Women's Access to Justice identified by PDHJ

Formal justice process	Traditional justice process
Lack of understanding of the formal justice	Women's economic dependency on their husband
Insufficient numbers of public defenders	Lack of security for women when reporting their case in the traditional fora
Lack of access to the services of public defenders especially in rural areas	Lack of acceptance of women speaking in the traditional process
Delay in processing the cases through the formal justice	
Lack of protection for women victims	
Gender bias in all legal process	

Ideas to improve women's access to justice

Engage women in conflict resolution

- Further research the socio-cultural aspects of customary practices;
- Promote women's participation in democratic process and in political and social life;
- Strengthen women's capacity in various aspects including, management, leadership etc, to participate more in conflict resolution

Develop legal framework that protects women's rights

- Create a mechanism that regulates informal justice;
- Create a legal framework for semi-traditional ADR as mediation and reconciliation and the agreement made by informal justice legalized by court;
- Law reform, especially for women's human rights;

Ensure implementation of legislation

- Address the burden caused because of bureaucratic processes, including the cases brought to PDHJ;
- Ensure that the State Budget integrates gender equality actions and ensure they are being implemented.

Linkages between formal and informal justice

Dr Luis de Oliveira Sampaio, Executive Director,
Judicial System Monitoring Programme (JSMP)

A JSMP research¹ on the linkages between the courts and community dispute resolution from May 2017 found that:

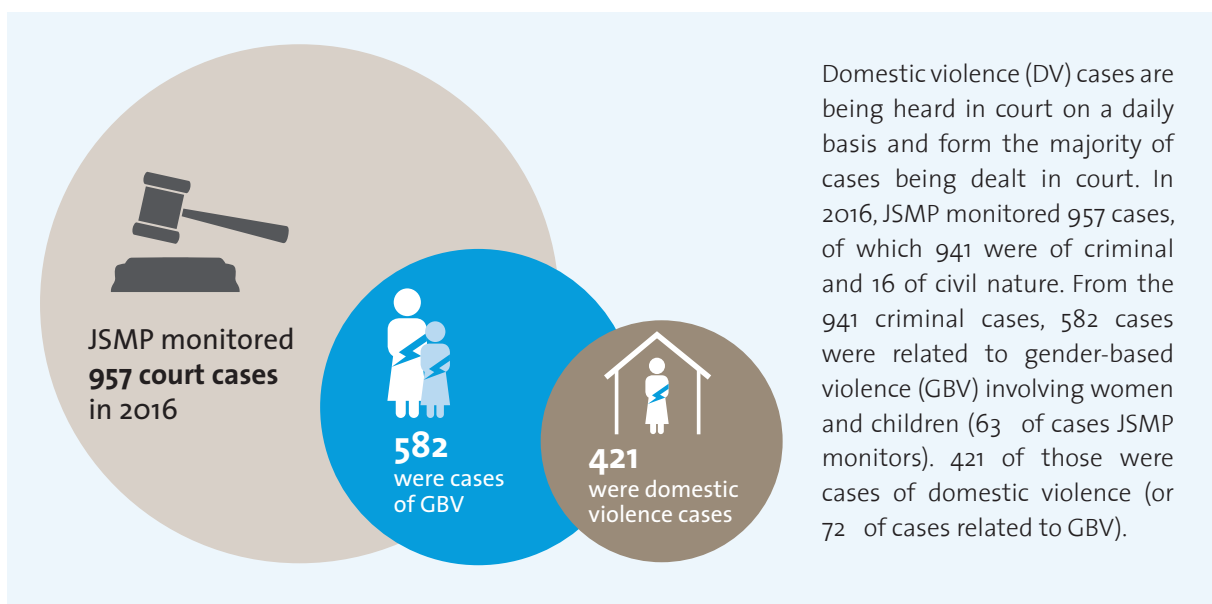
- community based resolution is used not only to resolve civil cases, but also, sometimes for criminal cases, including public and semi-public crimes.
- there is a complementary role between formal and informal justice. The formal justice system often considers community based dispute resolution that is directed and led by community leaders as

a mitigating factor (circumstances that reduce the penalty against the defendant) in judicial decisions.

- court-based conciliation is an important tool for reducing the burden on the court system.

Sometimes courts do not consider civil compensation made by the community, because it does not benefit the female victims but her family. In some cases, the amount of civil compensation is larger than the result of the criminal act.

Fig 1: Cases in courts monitored by JSMP in 2016



1. JSMP, The Courts and Alternative Dispute Resolution, 2017 (view on jsmp.tl)

What works in term of women's access to justice?

Some judges have **introduced CEDAW in their decisions related to GBV cases**. Dili District Court, for example, has applied civil compensation to cases related to *Mistreatment of a spouse*.² Judges in Dili and Baucau District Court started implementing “**rules of conduct**” (suspended prison sentences with conditions and rule of conduct) to perpetrators of domestic violence, for example, by requesting the perpetrator to report periodically to the court. The courts also started applying prison sentences when the perpetrator committed a crime during the suspended sentence.

What is not working in terms of women's access to justice?

The **majority of judges do not apply decisions in accordance with the law in cases of domestic violence**.

- Majority of DV cases are only prosecuted as ‘simple offences against physical integrity’ rather than ‘Mistreatment of a spouse’. This results in court decisions giving suspended sentences instead of a prison, fine or other sentence as per article 38 of Law against Domestic Violence (LADV).³
- The courts still lack familiarity with the provisions in the Law against Domestic Violence (*example: applying fine for a domestic violence case without considering the requirement as stated in article 38 of LADV*), and thus do not implement the requirements as needed.

- The Witness Law has not been implemented since it came into force in 2009.
- There is no monitoring mechanism for suspended cases.
- In cases where women are perpetrators of DV, there is no adequate legal representation and courts do not take into consideration mitigating circumstances related to self-defence.⁵

The lack of efficiency of the courts does not encourage women to further access formal justice in pursuing resolution to their cases.

Ideas from JSMP to improve access to justice in cases of Domestic Violence

Ensure formal system has capacity to implement LADV

- Develop indictment and sentencing guidelines for domestic violence cases;
- The guidelines need to follow requirements under the Penal Code and LADV;
- Continue training legal actors, especially on LADV and CEDAW, and gender equality.
- Along with suspended sentence, courts should issue other conditions (Rules of Conduct), for example, perpetrators to report periodically to the court or Prosecutor's office.

2. http://jsmp.tl/wp-content/uploads/2017/01/PrIndminazasaunSIVIL_ENGLISH.pdf

3. Article 38 LADV, Choice and determination of the sentence:

(1). The court may substitute the penalty of imprisonment with a penalty of a fine provided the prerequisites provided for in article 67 of the Criminal Code have been met, the security of the victim has been guaranteed, the perpetrator agrees to undergo treatment, or follow-up support services for the victim and such a measure would benefit the preservation of the family unit.
(2). The defendant may further be sentenced to an additional penalty prohibiting contact with the victim for a maximum period of 3 years whenever it is considered that the application of the principal penalty is insufficient to prevent the repetition of similar acts.

4. idem

5. Read more on the http://jsmp.tl/wp-content/uploads/2012/05/Battered-women_JSMP-report-2017_TETUM.pdf

Opportunities and constraints for women in access to justice in land disputes

Dr Joao Boavida, Executive Director, Centre of Studies for Peace and Development (CEPAD)

Dr Boavida presented results of the CEPAD research conducted jointly with UN Women in 2015 on women's access to land. The research analyses relevant aspects of formal law and customary law regarding women's rights to land and property.

Women's lack of access to land

Majority of Timorese live in rural areas (75% - Census 2015) and are dependent on their land for their daily livelihoods, making land a crucial asset for economic development. Even though women legally have the same rights to own and inherit land as men, the Timorese tradition impedes women to access or even demand their rights.

The Ministry of Justice has plans to assess the traditional practices, to identify aspects that are positive and could be used to complement formal law to promote women's rights to land and other aspects in social, political and economic sectors. **In the context of Timor Leste, traditional justice in the post-conflict situation plays an important role in peace-building.** However, it can also disproportionately benefit the interests of existing groups with power over the interests of individual women. **The current formal justice system** is also dealing with challenges in access and high case loads which make it difficult as a channel for resolving cases of land disputes.

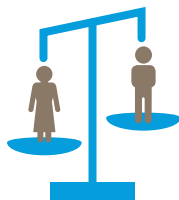


4 district
courts
for 1.2 million
Timorese



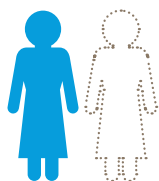
1 court
of Appeal

34 judges
(13 women
and 21 men)



Proceedings in Portuguese
while only **25%** of people
in rural areas are literate
in Portuguese

1 in 2 women
don't properly understand
the function of the court
nor how it works (CEPAD)



**94% of women
and men prefer
to use traditional law**

6. CEPAD, Women's Access to Land and Property Rights in the Plural Justice System of Timor-Leste, 2014 ([access here](#))

Factors influencing women and community's use of traditional systems:

- the availability of the service closer to the people's home
- the lower cost involved
- the faster processing of cases
- the familiarity of the process and judgements
- the use of local languages
- the high likelihood to come to a resolution of the issue
- achieves reconciliation with the other parties and the community

A consensus amongst participants is that, when they have need of 'justice', many of them turn to 'traditional justice' for the reason that they can achieve reconciliation between the two parties. From 'formal justice', they can obtain justice, but that does not mean that they achieve 'reconciliation' between the two parties.

Gender equality, or women's participation in family and community matters faces a range of obstacles in Timorese society where the patriarchal system dominates. This system includes many barriers that prevent women from obtaining the same opportunities as men, or to have the same level of authority as men to make various decisions.

Women are in vulnerable situations and often victims of domestic violence. This violence is based on the unequal power relations between men and women in the home, and in society. Various factors influence women's experiences of violence, including the limited agency

to negotiate their rights, especially at the community level. For example, the practice of *barlake* (brideprice) may sometimes be interpreted as justifying husband's use of force and violence if there are disagreements in the household, as the women's 'price has already been paid'. Child marriage of girls is another form of violence against women. Discussion of women's participation is often drawn to the quantity or numbers of women occupying influential positions. While numbers are important, it is often forgotten that in decision making processes, men have most authority and power, whether at the household level, within government or the national parliament.

The CEPAD research examined three different kinds of land ownerships: communal land, meaning land belonging to a community; customary land - where custom and tradition determine who the land belongs to, who can manage the land, and the customs and traditions to follow of the ancestors; private land which belongs to an individual. The right to use or to be the owner of land is very important for those living in rural areas, because their lives are very dependent on land.

The research looked at the concept of justice as perceived by the research respondents in three locations, sharing thoughts on what 'justice' means. Collectively, 'justice' means 'the truth'; solution of problems; women and men working together; a process. **Thus, 'formal justice' means the process of seeking the truth starting at the local level in accordance with the community's traditions and customs, and in the end maybe being decided in the court, if the truth is not found. 'Informal justice' means the process of seeking a solution in accordance with the community's customs and traditions, where if no solution is found, it moves to mediation and reconciliation as the solution.**

Justice as viewed by the research participants

	Formal justice process	Informal justice
Meaning	the process of seeking the truth starting at the local level in accordance with community traditions and customs, and in the end, being decided in court, if the truth is not found.	the process of seeking a solution in accordance with the community's customs and traditions, where if no solution is found in the end it moves to mediation and reconciliation as the solution.
Advantage	Enable them to determine the truth	Informal justice can give rise to solutions and proceed to reconciliation
Disadvantage	Might not achieve reconciliation, despite having determined the truth	solution can be found without 'truth' and the victim no longer has ownership of the problem nor of the solution. Their family has ownership of the entire process.

How people access to justice depends on several factors. As an example of matrilineal society in Betano when conflicts occur, the parties involved first, weigh up whether it is a small or large problem, if small it will be resolved within the family only and only if it is a large problem will it be taken to the *lia-na'in*. In the semi-rural society (Bazartete), when there are small problems, they are resolved within the family. Large problems will be taken to the Suku Council and the PNTL. But those who have more resources take the matter to the Court in Dili. In the semi-urban area of Baucau, with its system, depending on the type of problem, the cases will be solved at the family or court level. Participants and research respondents showed that 'formal justice' can enable them to determine the truth, but the two parties might not achieve reconciliation. 'Informal justice' can give rise to solutions and proceed to reconciliation

without determining the truth. 'The disadvantage is that there is no 'truth' and the victim no longer has ownership of the problem nor the solution. Their family has ownership of the entire process.

In the rural area of Betano in relation to land, women have rights and can use land for their livelihoods, but any decisions about land in relation to people from outside the community, are decided by men. In the traditional societies women have no right to own land, so often women are not involved in land-related issues. Many women want to seek the truth, but they are afraid to go to formal justice because they will not be able to achieve reconciliation to ensure their safety. Many people turn to informal justice because but there is a solution through reconciliation, even without 'truth' to enable them to live together.

Ideas from CEPAD to improve women's participation in ADR

Work with men and community at large to change ideas on gender equality

- the Ministry of Justice needs to provide information to the entire community to contribute to changing men's way of thinking in the patrilineal system considering the social authority they have so that they can support women to make progress.
- In relation to the problem of 'gender equality', any capacity building must also involve men as beneficiaries and recipients to increase men's understanding of gender equality.
- Customary law can contribute to peace-building in post-conflict situations.
- Further research how the traditional justice system can properly complement the formal justice system, so that 'truth' and 'reconciliation' can work together in any situations and problems.

In conclusion not only should all people have equal treatment before the law, but the law must be the same for all people.

Overview challenges in accessing to justice for women in Timor-Leste

Formal Justice (via the Court)	Informal Justice (via customary mechanisms and mediation)
<p>Lack of access to information and understanding of women's rights</p> <p>Lack of agency for women in patriarchal society</p> <p>Gender bias against women which blames women or does not recognize their equal rights</p> <p>The court (judges, prosecutors, public defenders and lawyers) are still not familiar with the provisions in the Law against Domestic Violence</p> <p>Weak monitoring mechanisms for suspended sentences</p> <p>Low implementation of legal framework to protect women's rights:</p> <ul style="list-style-type: none"> • Witness Law has not been implemented since it came into force in 2009. • Lack of appropriate sentencing according LADV <p>Courts are far away, under staffed, costly, and do not use local languages</p> <p>Formal justice does not guarantee reconciliation, which assures women's safety in the community.</p> <p>Judges use community conflict resolution of DV as mitigation factor in judicial decisions.</p> <p>Women charged as perpetrators of domestic violence often do not have adequate legal representation; the court does not always consider all circumstances related to self-defence.⁷</p>	<p>Traditional justice does not provide equal rights to women and men (for example in patrilineal society, women can use land, but cannot make decision regarding land)</p> <p>The two women representatives in the suku council can accompany the process, but cannot intervene in the discussion/ resolution.</p> <p>Women are not allowed to speak in traditional justice process.</p> <p>Women are involved in <i>teso lia</i> (arbitration) in land disputes, but not as the "owner of the problem" and do not have opportunity to make decisions.</p> <p>Access to justice (finding truth) is not as important as community reconciliation.</p> <p>It is not victim-driven: victim does not own the problem nor the solution. Their family has ownership of the entire process.</p>

7. See http://jsmp.tl/wp-content/uploads/2012/05/Battered-women_JSMP-report-2017_TETUM.pdf

SESSION 2. LEGISLATING IN PLURAL LEGAL SYSTEM IN TIMOR-LESTE

Panel and presentation:

Dr. Nelinho Vital, National Director for the Legal Advisory and Legislation on Ministry of Justice, Priorities for the Government of Timor-Leste on ADR

Professor Hiromichi Onishi, Ministry of Justice, Japan, Japan's support to Ministry of Justice on the Mediation Law

Mrs Nhean Sochetra, Director General, Ministry of Women's Affairs, Cambodia, Guidelines on Mediation in dealing with VAW in Cambodia

The session provided information for participants on the priorities of the Government regarding traditional justice and alternative dispute resolution, and challenges

in the development of a legal framework on ADR. It also provided an assessment on the linkages of ADR and the formal legal system in Japan and Cambodia.

Priorities for the Government of Timor-Leste on ADR

Dr Nelinho Vital, National Director for the Legal Advisory and Legislation, Ministry of Justice, Timor-Leste

The National Director for the Legal Advice and Legislation, Nelinho Vital, recognized the important role of ADR in supporting the formal justice sector. It can help clear the court case loads and provide easier access to justice in the community in three different ways: conciliation, arbitration and mediation.

The MoJ is considering development of an umbrella law for all ADR practices because the traditional justice system is being used in the community. Practices such as the “*nahe biti boot*”⁸ and others are considered a form of arbitration by the Ministry of Justice.

Concerns remain on guaranteeing women's rights and their participation in the traditional justice process of “*tesilia*”. Most women's victims do not have a voice during the process and compensation is not provided to the victim directly, but to her family (father, mother, uncles or brother).

Considering customary processes will continue, it is valuable to see how other countries have supported mediation to be gender-responsive (example of Japan over the page).

Arbitration is the settlement of a dispute by a person or persons chosen by the disputants to hear both sides and come to a decision. The arbitrator(s) determine the outcome of the case.

Conciliation is another dispute resolution procedure for the peaceful and just settlement of differences between parties through third-party investigation and recommendations, ordinarily not binding on the parties.

Mediation is a conflict resolution process in which a neutral third party facilitates communications and negotiations among parties to find a mutually acceptable resolution of a dispute. In some forms of mediation, the third party may engage in evaluative tasks, such as helping parties assess likely outcomes and exploring the strengths and weaknesses of the arguments presented.

source: <https://unterm.un.org>

8. Nahe Biti, literally meaning stretching the mat, is the equivalent of ‘reconciliation’ which embraces the notion of meeting, discussion and agreement in order to reach a consensus among opposing factions.

Timor's traditional justice mechanism has also seen some changes. Previously, once a decision for compensation was taken, payment had to be made immediately, but now it can be decided by the *lia-na'in* and if people do not accept the decision of the *lia-nain*, they can still go to court.

There are two key questions that remain to be decided: (1) how to integrate the informal system in the formal system, and (2) what penalties or punishments can be awarded through arbitration?

Ideas from Ministry of Justice

Create a framework for ADR that will allow better integration of informal and formal justice

- Set up a mandatory certification programme through the Legal Training Centre for national mediators.
- Continue the dialogue on how to integrate informal justice to formal justice processes
- Identify what kind of sanctions can be attributed through arbitration processes

Japan's support to Ministry of Justice on the Mediation Law

Professor Hiromichi Onishi, Ministry of Justice, Japan

The Japanese Ministry of Justice assisted Timor-Leste since 2008 with a focus on strengthening legislative capacity of the Ministry of Justice based on their requests. Specific support on drafting the mediation law was initiated in 2009. Other support included the drafting of the Law of Extradition, Drug Crime Control Law, and Juvenile Justice Law. The support is based on the bilateral relation between the Ministry of Justice in Timor-Leste and the Ministry of Justice in Japan.

Japan has a mediation system for non-criminal cases. It has a legal framework which is easy to use, with simple procedures, cost effective, speedy, confidential and mediation decisions have the same effect as court judgements. Domestic violence is not being dealt through mediation, however divorce and compensation for damages caused by domestic violence (DV) may be handled through mediation. This is called civil mediation or domestic mediation. The Ministry of Justice in Timor-Leste learnt from Japan's experience and conducted a study on their mechanism. They found that the system is very similar to the Timor-Leste traditional system, however women in Japan are familiar with the mechanism and better understand their rights under the law. Also in Japan, the person that acts as a mediator is specialized, for example on fisheries, or other topics and a background relevant to the issues being mediated. They do not provide mediation on all topics. Japan also faces challenges in the implementation of the agreement reached through arbitration or mediation because of the low legal enforcement.

Learnings from Japan's mediation system

- The mediation system operates for non-criminal cases
- Civil disputes caused by DV, such as divorce or compensation for damages, can go through mediation
- Mediators are specialized in certain topics and do not handle all cases
- Women have a better understanding of their rights under the law

Ideas from Ministry of Justice of Japan

Create a framework for ADR that will allow better integration of informal and formal justice

- Try to harmonize formal mechanism and tradition in establishing laws and systems;
- Respect politics, society and culture of the country;
- Listen to opinions of various relevant parties;
- Assist capacity-building to encourage ownership in the recipient country in establishing, operating or improving its own systems.
- Try to solve the gender issues in dispute resolution through a steady process, under leadership of Timorese.

Guidelines on Mediation in dealing with VAW in Cambodia

Mrs. Nhean Sochetra, Director General, Ministry of Women's Affairs, Cambodia

Mediation is a common method of conflict resolution in Cambodia and is practiced by local authorities, police, families, religious leaders and others in many settings. The country has the legal framework to conduct mediation in limited cases of violence against women: for the offenses that are **psychological or economic** acts of violence and minor misdemeanour or petty offenses.

As in Timor-Leste, people in Cambodia still favour the traditional justice system over the formal system, even in cases of domestic violence. This creates similar barriers for women to access justice. In an attempt to improve women's access to justice, the Ministry of Women's Affairs in Cambodia, with the support from UN Women, **developed guidelines in mediation in dealing with cases of violence against women (VAW).**

The guidelines were developed based on research to better understand the challenges women were facing in mediation:

1. In Cambodia, cultural norms place the responsibility for success of a marriage on the woman. As a result, many women are not willing to fully share the violence they are experiencing.
2. Perpetrators are not always willing to participate in the mediation process.

3. Repeat mediation is common, it implies the mediation process often does not work to end VAW;
4. Most mediators have little training on the practice of mediation and most use traditional methods based on their own knowledge, values and skills.
5. There is limited understanding of the dynamics of violence against women.
6. Physical violence is interpreted as a conflict between a man and woman (not a human rights violation or an abuse of power)
7. Victim blaming: Mediators might seek to find what the woman did wrong to cause the abuse. As a result, agreements are made to change her behaviour so she will not be hit.
8. Little concern is raised for the safety of the survivor.

With the findings of the research, Cambodia developed **minimum standards for mediation in cases of VAW (or mediation guidelines).** The guidelines put the rights of women and girls in the forefront, and defined **mediation as a victim-initiated, victim-led, and human rights-centred process** by which an independent and impartial third person, called a mediator, assists to resolve a conflict or dispute through the mutual agreement of the parties to the conflict or dispute.

MEDIATION

=

victim- initiated + victim-led + human rights-centered





The mediation must be led by fundamental principles to ensure that mediation considers the realities of VAW, respects, protects, and promotes the rights of victims and ensures that the mediation process and its outcomes are consistent with Cambodian law and international human rights law.

The mediation guidelines provide key guidance on all the fundamental steps of mediation, from the preparation, to the actual mediation and the monitoring of the outcome.

Fundamental principles of mediation:

Mediation must be legal	Mediation must be appropriate	Can victims' objectives be met?
Respect, protect and promote human rights	Consent and Voluntary Participation	Equal and Meaningful Participation
Autonomy and Self-Determination	Vulnerability	Safety and Protection
Empowerment	Independence and Impartiality	Mediators must have required knowledge

Mediation should not be conducted:

-  **If there is a history of repeated abuse against the victim by the same perpetrator.** In such a case, the practice of battering is well-established and the power and control of the perpetrator over the victim could result in retaliation and further harm to the victim;
-  If it is apparent or foreseeable that conducting or continuing with the mediation process will **compromise the victim's safety and security** or expose her to further violence;
-  Where there is a **threat against the victim that constrains her exercise of self-determination**;
-  Where the perpetrator is a **repeat offender** and there has been a previous mediation agreement that the perpetrator violated.

The Mediation Process

The guidelines provide a clear process for mediators to ensure that the principles of mediation are respected

and applied from the preparation to conducting the mediation and the monitoring process.

Preparing for the Mediation

- Provide advance information about mediation to both parties
- Ensure the victim has decided on mediation freely and voluntarily
- Ensure the perpetrator has decided on mediation freely and voluntarily
- Ensure the victim knows her rights prior to mediation
- Determine the victims objectives and if mediation will meet them
- Refer victims to helping organisations or individuals for psycho-social services

Conducting the Mediation

- **The procedure for conducting mediation is as important as its outcome.** The procedure could affect the mediation outcome and the compliance with any mediation agreement.
- Ensure venue is private
- Explain the process to the victim
- Explain the parties rights
- Explain mediation principles
- Ensure each party is given an opportunity to be heard
- Do not tolerate misbehavior (shouting, threatening)
- End the meeting if it is too stressful for victim
- Allow victim to speak freely
- Summarise what has been discussed
- Document the agreement and keep in a safe place
- Submit a copy of the agreement to the proper authorities

Post mediation

- **Ensuring the survivor has adequate protections, including:**
- Monitor Compliance with mediation agreements
- If agreements are violated refer to the proper authorities

Required Knowledge for Mediators in VAW

A mediator in VAW cases must have adequate and appropriate knowledge of the following:

- the nature of VAW, its causes and effects;
- the dynamics of power and violence in the context of VAW;
- the cycle of violence in domestic violence cases;
- the psychosocial consequences of victims, particularly of sexual violence;
- gender stereotypes and gender stereotyping;
- myths and misconceptions about VAW and victims;
- the Law on Domestic Violence and other VAW-related laws;
- the role and functions of mediators in VAW cases;
- the principles of gender-sensitive, gender-responsive, and human rights-centred mediation in VAW cases;
- the procedural guidelines in conducting gender-sensitive, gender-responsive, and human rights-centred mediation;
- the role and functions of mediation advocates, support persons, and other helping professionals in mediation.

Questions and comments session

There is a tendency to focus on formal justice as the only way to ensure that human rights are respected, and that justice can be provided in an impartial way. As said by one of the participants **“do not presume that *lisan** always contradicts the formal law. To move forward, identify what can be kept and what should be changed”**.

Natalia da Cunha from Fokupers⁹ said: *“Our law [against DV] is good. The problem is that the formal justice system takes too long to process the cases, which makes people*

weary and less interested to bring their case to courts”. Another participant from JSMP said that most people were satisfied with the Timorese legal system, however that the distance to courts makes it challenging for people as it costs money and time. Director Nelinho noted that Government research found that many people are still not satisfied with the court services. He said the majority of cases (civil and criminal) are still being solved through the traditional system, notwithstanding the Government’s efforts to address the issue of access and distance by establishing mobile court, justice clinics and increasing the number of judges.

SESSION 3. OPPORTUNITIES FOR TIMOR-LESTE ON ADR IN THE FUTURE, PANEL DISCUSSION

Panel and presentation:

Dr Jorge da Graça, Legal Advisor and former head of the Legal Revision Commission

Maria Soares, Ministry of Defence and Security, National Mediator, Bobonaro

Commander Antonio da Luz, Chief of Community Police

Dr Sergio da Costa Hornai, Public Defender’s General

Natalia de Jesus, Coordinator of Uma Mahon Fokupers, Maliana

The session provided information for participants on the priorities of the Government regarding traditional justice and alternative dispute resolution, and challenges in the development of a legal framework on ADR. It also provided an assessment on the linkages of ADR and the formal legal system in Japan and Cambodia.

This session was facilitated by Maria Agnes Bere, a legal expert with UN Women, and had the objective to discuss future opportunities for Timor-Leste on ADR.

Dr Jorge da Graça noted that TL has already developed and approved a strong legal framework including the Law Against Domestic Violence and highlighted that many issues persisted in getting them implemented.

For example, people’s perceptions, social relations and individual behaviours are evolving in relation to their understanding and ability to implement the principles and rules from the legislation. The potential for changing people’s minds and the reality to achieve what the Constitution and laws already foresee and demands is a process. ADR is one way to transform the community through dispute resolution, but if standing alone, it is not enough. ADR and formal justice are complementary. There is a need to establish ADR mechanisms as a part of a wider and inclusive justice public policy. It needs to be embedded in the Constitution and legal framework.

9. NGO providing services to survivors of domestic violence and GBV.

*traditional justice

He noted the importance of distinguishing arbitration, mediation and conciliation as ways of resolving disputes which differ from each other, although grouped under the ADR concept. A different ADR system for commercial disputes might also need to be considered from social or civil related disputes, including traditional ones, in the specific context of Timor-Leste. A proposal of a law on commercial dispute resolution through arbitration was approved in 2016 by the Government and submitted to the National Parliament, but was not approved by the latter within that same legislature or mandate. This will need to be reviewed by the following Government and National Parliament. He emphasized that any regulation by formal laws should not be intrusive or interfering in what concerns social relations, or disputes which are based on tradition and customary norms which the State recognizes and considers a community self-regulatory mechanism. In such a case, the formal law should only provide the enabling framework to facilitate the community purpose and ownership of traditional mechanisms is maintained. For instance, there is a need to reinforce human rights and gender dimensions in traditional mechanisms. Law should also define categories of situations which may be resolved or not resolved through traditional mechanisms.

Maria Soares, national mediator from the National Directorate of Community Conflict Prevention of the Ministry of Defence and Security, explained that as mediators they only facilitate the mediation process. The parties involved in the conflict make decisions and provide solutions for their problems. She said it is very difficult for women to access formal justice because of distance and the complexity of the process. For example, in Maliana the Court is in another municipality. For civil cases like land disputes, it is usually the Land and Property Directorate that facilitates mediation.

The Chief of Community Police, Commander Antonio da Luz clarified that the Police or Suku Police Officer cannot solve any community disputes. They can accompany the Suku Council while they resolve the case in the community, or they can only provide security and prevent further conflict or criminal act.

Dr. Sergio da Costa Hornai, Public Defender General, agreed that in some cases, conflict can be resolved through traditional mechanisms, if not contrary to the law. He noted the need to investigate the positive and negative aspects of the customary system. In addition, ADR doesn't block access to the formal system, the challenge is more about the coordination between the two systems. He also explained that, according to the new Statute of Public Defender, Decree Law No.10/2017, the Public Defender's competency includes the promotion of extrajudicial resolution, such as mediation, conciliation and arbitration, as well as community conflict resolution processes. Based on this new competency, the Public Defender Office started a Justice Clinic Program in Baucau and Covalima in March 2017. In collaboration with UNDP, Belun, JNJ Advokasia and Justice and Peace Commission, they resolved 80 cases through mediation, as well as shared information to the community on how to access justice.

Natalia da Cunha from Fokupers observed that because the perpetrator in suspended sentence is set free and no punishment is made, the community interprets domestic violence as not a criminal act or wrong. She noted that some women lose trust in the formal justice system due to the lack of monitoring mechanisms for suspended sentences. In some cases related to abandonment, the court required the husband to provide alimony/child maintenance with the amount of USD \$100/month, but if the husband does not follow this decision, there is no monitoring and enforcement mechanism of the court decision.

Ideas from the panel

- To make traditional justice gender responsive, change in mentalities is needed, and mediation is a potential entry-point for bringing this change
- ADR and formal justice are complementary. There is a need to establish ADR mechanisms as a part of a wider and inclusive justice public policy
- Different ADR systems may be required for commercial disputes compared to social or civil related disputes
- If a formal law on ADR is developed, it should only provide the enabling framework
- Conflict can be resolved through traditional mechanisms if not contrary to the law
- A monitoring mechanism should be implemented to ensure compliance to court rulings

SESSION 4: PRESENTATION OF PRELIMINARY FINDINGS FROM UN WOMEN GENDER ANALYSIS OF THE ALTERNATIVE DISPUTE RESOLUTION

Panel members

A smaller group of 30 Government, civil society, and justice actors convened the second day, with a discussion on UN Women research on the gender analysis of ADR processes.

Methodology

The research team looked at a combination of different ADR practices in the country, and focused primarily on the process of justice delivery, analysing whether those were addressing women's rights and assessing their links to the formal justice system. The research was qualitative, taking a process-driven approach that tracked women's experiences in seeking assistance across multiple forums – including ADR, and the formal justice system.

Fieldwork included a combination of 19 interviews (10 men and 9 women) and participatory FGDs with 22 women across the Municipalities of Baucau and Bobonaro, and the Special Region of Oecusse. It involved women complainants/victims, community leaders responsible for *tesu lia* (*xefe suku/xefe aldeia/*

lia-na'in), police (community police, KPK, and others), government officials responsible for mediation (DNTP, DNPCC, MSS), lawyers, court actors including judges, prosecutors and public defenders, and civil society representatives (including shelters) and local women's advocates.

The team examined women's and girls' experiences in seeking justice in three types of cases: (i) land, (ii) abandonment/child maintenance, and (iii) domestic violence. These three 'types' of cases were selected because they are common areas of concern for women, and because they represent a broad range of cases from civil disputes through to public crimes, with different links between customary processes, non-customary ADR and the formal justice system.

Legal Framework on ADR and gender equality in Timor-Leste:

Constitution: Article 2 (4) of the Constitution of the Democratic Republic of Timor-Leste (CRDTL) on sovereignty and constitutionality expressly recognizes and values the norms and customs of Timor-Leste that are not contrary to principles enshrined in the Constitution and other legislation. In particular, Article 123(5) of the Constitution emphasizes, the importance of community based dispute resolution mechanisms, including traditional dispute resolution, that have continued to exist as Timorese society has evolved.

Law against Domestic Violence, Law No 7/2010: The law against domestic violence, designates domestic violence (DV) as a public crime in conjunction with the Penal Code whose provisions apply in the definition, penalties, sentencing and other matters relevant to DV crimes and their prosecution. Under the Code, reconciliation between victim and perpetrator, which is a general mitigating circumstance, may decrease penalty; while reparations for loss or damage - an extraordinarily mitigating circumstance - may substitute prison sentence with fine if maximum penalty for the crime does not exceed 3 years.

Land Law: Article 4 defines “equality between women and men” and “prohibits any discrimination in respect to ownership, acquisition, management, administration, enjoyment, transfer and disposition. Furthermore, the law also stipulates that disputed cases that are not able to be settled by negotiation between the parties, by mediation or other forms of agreement, shall be resolved by administrative decision on the basis of the regime provided in this present law or by judicial decision.

CEDAW (Convention on the Elimination of all Forms of Discrimination Against Women): Timor-Leste as a party to CEDAW has an obligation to consider temporary special measures where these are necessary. Given historical, structural and existing discrimination faced by women in the law and other areas, to ensure that women enjoy substantive equality including in access to legal benefits, treatment under, and positive outcomes of legal recognition and its processes.

Preliminary results on the perceptions regarding the various pathways to justice

Timor-Leste has various pathways to access justice. Those include 1) *lisan* or customary law, 2) mediation through government institutions and civil society or 3) formal justice through the courts. The pathway they use depends only on the victim/disputants' preference. Often, victims/disputants try to use all three pathways. Sometimes the family chooses for women. Often, people first try the means available at the local level. Some women prefer to use the formal system because they have faith in the formal pathway.

For civil cases, in both Bobonaro and Oecusse, women chose the local traditional system to solve their issue because it is closer, faster and strengthens family and community relationships.

For criminal cases, there were differences between municipalities. In Oecusse, where a court exists in the municipality, the community and local leaders refer the cases to the formal justice system. Some women mentioned being afraid of the formal pathway, for example, they are afraid of being abandoned.

In Bobonaro, where there is no court in the municipality, families will choose *lisan* or customary law, or suku level mediation. Women said they experience many challenges with the formal law, however if accessible, they would prefer formal rather than customary law or *lisan*.

Through Focus Group Discussion in Bobonaro and Oecusse, women identified priorities as shown in the table below:

Priorities identified by the women in the Focus Group Discussions	
#FGD: Bobonaro <ol style="list-style-type: none"> 1. Community lack information regarding violence, DV, and the Law Against Domestic Violence 2. Judges don't make decisions based on the law and the woman's situation 3. NGOs/women's groups don't participate in the process of traditional hearings/ judgements. 4. There is no regulation regarding polygamy 5. There is no monitoring system for cases of abandonment. 6. Courts are far 7. Judges don't allow women to speak, don't listen to them. 8. Culture/customary law blames women 9. There is no process if a police officer perpetrates DV 	#FGD: Oecusse <ol style="list-style-type: none"> 1. Men need to accept responsibility for the needs of children 2. Prosecutors need to seek the in-depth story from victims 3. Need to examine the problems of alimony (financial support) if men are imprisoned and then abandon their wives 4. Need a group of women to provide accompaniment/support during traditional hearings/ judgements. 5. Need the community to be willing to act as witnesses 6. Victims need to properly understand the roles of justice institutions 7. Suku chiefs need to improve their approach (not imposing fines on women victims).

IV. Conclusion and Recommendations

Alternative Dispute Resolution (ADR) is important in Timor-Leste, complements formal legal system and its challenges. Communities, including women, tend to favour the traditional system, because they are more familiar with the proceedings, understand the language, it is less procedural and less time consuming. Traditional justice in the post-conflict situation plays an important role in peace-building as it endeavours to bring reconciliation in the community. However, the seminar showed that people's decisions to access the formal or informal system also depends on their level of understanding of the laws, partially influenced by their social and economic background, and the presence of courts nearby or not. Traditional and community leaders also accept to mediate cases depending on the perceived severity of the issue. Although community-based conflict resolution can be used for criminal cases, including public and semi-public crimes, many cases are referred to the formal justice, especially when courts are nearby. Civil cases, especially land disputes mainly use community conflict resolution.

ADR does not block access to the formal system. For example, if the issue cannot be solved at the community level, or if one of the parties is not satisfied with the result, the case can be taken to the formal court.

The seminar presentations showed how women face discrimination in accessing justice, formal or informal. Although it might be more visible in the customary systems, where traditional practices openly discriminate against women, for example in cases of land ownership, women often face the same challenges in the formal justice system. Even though Timor-Leste enjoys a legal framework guaranteeing equal rights for all, the reality of the patriarchal society is that judges often blame victims in cases of domestic violence, and court proceedings might not allow women to speak or adequately protect the victim. Women want to seek the truth (justice), but they are afraid to go to formal justice because it might not bring reconciliation, which is often needed to ensure women's safety. Many people turn to informal justice because there is a solution through reconciliation, which allows them to live together in harmony.



"In Oecusse we work closely with the Suku chiefs and make them understand the concerns around domestic violence and why it is important to ensure women have the opportunity to speak"

**Ramilah Da Costa,
Director NGO Maneo (Oecusse)**

It is worth noting that the formal justice system through the court often takes into consideration community resolution of domestic violence as a mitigating factor (circumstances that reduce the penalty against the defendant) in judicial decisions. Although some minor successes have been achieved where judges have used CEDAW in ruling cases of domestic violence, a majority of judges do not apply decisions according to the law in cases of domestic violence, leaving many perpetrators free.

Considering the tendency to see formal justice as the only approach to access justice, and the examples where customary resolutions are in line with the law, further research is needed on the traditional justice system and its link with the formal justice system. There is a need to find a balance for the 'truth' and 'reconciliation' to work together, while guaranteeing human rights are being protected.

The Government of Timor-Leste is working on a legal framework for ADR which would regulate what can and cannot be ruled and processed through ADR and would be an opportunity to ensure human rights are part of ADR principles. Examples from Japan or Cambodia offer insight on the way forward. Cambodia developed minimum standards for mediation in select DV cases, developing fundamental principles to ensure that mediation considers the realities of VAW, respects, protects, and promotes the rights of victims and

ensures that the mediation process and its outcomes are consistent with national laws and international human rights law.

Seminar participants also agreed that change will not come through a legal framework alone, and needs civic education, for community members and leaders to understand why human rights are important and to find solutions on how community conciliation and respect for human rights can work together.

Below are recommendations from the Seminar:

Engage women in conflict resolution and ADR	<ul style="list-style-type: none"> • Traditional Leaders to involve women and women's group in the customary process/<i>tesli lia</i>; involve women's groups/activists/civil society representatives so that women victims don't feel alone or scared to speak. • Government institutions to appoint more women mediators • Ministry of Justice to develop guidelines which give women opportunity to participate in the customary dispute resolution process;
Create legal framework/ regulations on ADR that would protect human rights	<p>Ministry of Justice to:</p> <ul style="list-style-type: none"> • define what issues may be subject to mediation, arbitration or conciliation. • create a thematic group involving legal experts, civil society, and technical advisors from Government to develop a ToR and work plan to continue discussion on the recommendations. • develop clear minimum standards on mediation processes that are gender-sensitive and tailored as required to cover all institutions that provide mediation services.
Engage local leaders responsible for customary dispute resolution to protect women's human rights	<ul style="list-style-type: none"> • Ministry of Justice to create dialogue with traditional and local leader to support prevention and conflict resolution with gender perspective • Ministry of Justice to and the Ministry of State Administration to provide training to all traditional leader on human rights, national laws, mediation practices and gender equality; • Ministry of Justice to promote use of <i>Tara Bandu</i> to ensure local justice is gender responsive • Government to provide appropriate civic education via trainings and other forms as theatre and films, to young people, etc
Improve access of service providers to ADR mechanism	<ul style="list-style-type: none"> • Ministry of Defense and Security and Ministry of Social Solidarity strengthen referral networks, and include mediators, <i>suku</i> councils and <i>lia-na'in</i> in meetings. • MoJ and MSS, strengthen coordination between institutions that work on gender-based violence and land.
Improve the linkage between formal and ADR system	<ul style="list-style-type: none"> • PDO to strengthen implementation of the new Statute on Public Defenders (2016) work, as a bridge between formal and informal justice provision. • MoJ to assess how other institutions that may act as a bridge, as the Provedor's Office (PDHJ), can consider the constitutionality of the customary/informal decisions. • The courts should develop a set of guidelines (on appropriate linkages) and monitor performance against guidelines.

	<ul style="list-style-type: none"> • MoJ and MOSA to encourage the application of <i>Suku</i> Law, which gives <i>xefe suku</i> the role of prevention of DV. • MOJ to create guidelines for accusing & sentencing processes. • Public Defender must invest state money to monitor the work of Public Defenders in the Municipalities, particularly those with limited access (eg. ensuring mobile courts work well)
Improve capacity of courts to implement LADV	<ul style="list-style-type: none"> • The prosecutor must use the appropriate basis for making criminal accusations (for DV cases, article 154 of the Penal Code) • Courts to have a separate waiting room for victims and accused when waiting for judgement. • The courts should notify parties, but must also ensure the process goes ahead (the judge should not just adjourn the case if the suspect does not attend court, and the courts should notify the victim if the suspect will not attend, so she does not need to travel long distances to no purpose.) • Judicial actors must be gender-sensitive and continue training for judges/ promote the practices of judges who are already gender-sensitive, to encourage other judges. <p>Courts to:</p> <ul style="list-style-type: none"> • ensure that regulations of conduct must be applied for suspended sentences. • correct the article under which the prosecutor makes an accusation if it is incompatible with the Criminal Code and the facts of the case (dealing with the issue that many prosecutors incorrectly consider DV and other cases as 'simple crimes'). • apply coercive measures (removing the suspect from the place of family residence), to protect the victim from further violence or intimidation. • strengthen jurisprudence, in relation to the interpretation of Article 125 of the Criminal Procedure Code. • develop a monitoring system for the implementation of court's decisions
Develop capacity of mediators to be more gender responsive	<ul style="list-style-type: none"> • Legal Training Centre (LTC) to develop a certification programme which will ensure that mediators have clear understanding on their roles and are mediating with respect for human rights and gender equality. • LTC should make publicly available the list of certificated mediators • LTC Integrate awareness on gender equality in the curriculum of training Centre; • Mediators should consider women's situation in the mediation process, look to whether the women are scared or free to talk during the mediation process, or if they are threatened. • Mediators should have capacity to assess context and to say when mediation should not go ahead. • Mediators should have specific understanding about gender-based violence cases. They should have specific training related to GBV cases and should know how to refer cases and facilitate mediation in a gender-sensitive manner. • Mediators should guarantee victims security (speak to victims separately and assess whether mediation can go ahead)

Annex 1: Agenda

Day 1: Monday 4 December 2017 – open session	
TIME	PROGRAMME
08:30-09:00	Registration
09:00-09:45	Opening Remarks (Followed by group Photo) <ul style="list-style-type: none"> Ms. Sunita Caminha, Head of Office, UN Women Timor-Leste H.E. Mr. Hiroshi Minami, Ambassador Extraordinary and Plenipotentiary of Japan H.E Ms. Dra. Angela Carrascalao, Minister of Justice
08:30-09:00	BREAK
10:00-12:00	Session 1: Women's Access to justice through ADR <ul style="list-style-type: none"> What are key factors obstructing women's access to formal justice, Dr. Horacio Almeida, PDHJ Linkages between formal and informal justice, Dr. Luis Oliveiro, JSMP Opportunities and constraints for women in access to justice in land disputes, Dr. Joao Boavida, CEPAD Discussion Learning Objectives: <ul style="list-style-type: none"> Be familiar with the international gender commitments and how they link to ADR Understanding the current situation of women in Timor-Leste to access to Justice in cases of land dispute and domestic violence
12:00-13:00	LUNCH
13:00-15:00	Session 2: Legislating in a pluri-legal environment. <ul style="list-style-type: none"> Priorities for the Government of Timor-Leste on ADR, Dr. Nelinho Vital, Ministry of Justice Japan's support to Ministry of Justice on the Mediation Law, Prof. Hiromichi Onishi, (Ministry of Justice, Japan) Guidelines on Mediation in dealing with VAW in Cambodia, Mrs. Nhean Sochetra, Director General, Ministry of Women's Affairs, Cambodia Discussion Learning objectives: <ul style="list-style-type: none"> Getting familiar with the priorities of the Government and the challenges in the development of legal framework on ADR. Understanding the linkages of ADR and formal legal system in other countries
15:00-15:15	BREAK
15:15 – 16:45	Session 3: Panel discussion <ul style="list-style-type: none"> Dr Jorge da Graça, Legal Advisor Maria Soares, National Mediator, Bobonaro Commander Antonio da Luz, Chief of Community Police Dr.Sergio da Costa Hornai, Public Defender General Natalia de Jesus, Uma Mahon Fokupers, Maliana Objectives: <ul style="list-style-type: none"> Discussing opportunities for Timor-Leste on ADR in the future.

Day 2: Tuesday 5 December 2017 (upon invitation only)	
TIME	PROGRAMME
09:00-10:00	Presentation of preliminary findings from UN Women research Question & answers
10:00-11:30	Session 4: What can be done to protect women's rights in cases resolved via lisan? <ul style="list-style-type: none"> • Recap day one discussions • Opportunities for programming options to improve women's access to justice in these cases • Recommendations.
11:30-11:45	BREAK
11.45- 12.30	Session 5: Improving women's access to justice via non-customary ADR. <ul style="list-style-type: none"> • Draft Mediation Law & other applicable laws & frameworks. • Function & opportunities for ADR in Timor-Leste. • Principles for making law & implementation gender-sensitive. • Recommendations.
12:30 – 13:30	LUNCH
13.30-14.15	Session 5 (continued) (break of 15 minutes)
14:30-15:30	Session 6: Improving linkages between informal & formal justice system. <ul style="list-style-type: none"> • Referring public crimes from suku. • Improve implementation linking community members with formal system. • Sentencing, consideration of agreement (akordu)& suspended sentences. • Recommendations.
15:30-15.45	Workshop Evaluation
15:45-16:00	Closing of Workshop <ul style="list-style-type: none"> • Ms.Camille Wauters, Specialist for Women, Peace And Security, UN Women Timor-Leste

Annex 2: List of Participants

Seminar on Gender Responsive Alternative Dispute Resolution

4 December 2017 Dili, Timor-Leste

No.	Gender	Institution	Address
1	F	SEIGIS	Caicoli, Dili
2	F	PRADET	Bidau, Dili
3	F	The Asia Foundation	Bebonuk, Dili
4	F	Ministry of women Affairs	Cambodia
5	M	Suku Chief	Bairro Pite, Dili
6	F	DNAJL, MoJ	Dili
7	M	Public Defender	Suai
8	F	DNAJL, MoJ	Dili
9	M	DNAJL, MoJ	Dili
10	M	DNAJL, MoJ	Dili
11	M	CEPAD	Bidau, Dili
12	M	Suku Chief	Villa-Verde
13	M	BELUN	
14	M	Media	Dili
15	M	Office of Prime Minister	Dili
16	M	Office of Prime Minister	Dili
17	F	DNAJL, MoJ	Dili
18	M	DNAJL, MoJ	Dili
19	M	MoJ	Japan
20	M	Interpreter	
21	M	PDHJ	Dili
22	M	Interpreter	Dili
23	F	Ministry of Defense and Security	Dili
24	M	DNPCC, MDS	Dili
25	F	DNPCC, MDS	Dili
26	M	PNTL	Dili
27	M	PNTL	Dili
28	F	DNPCC, MDS	Dili
29	M	DNPCC, MDS	Dili
30	M	DNPCC, MDS	Dili
31	F	Suku Gricenfor	Dili
32	M	BELUN	Dili
33	M	BELUN	Dili
34	M	BELUN	Baucau
35	M	BELUN	Dili
36	M	Embassy of Japan	Dili

No.	Gender	Institution	Address
37	F	Embassy of Japan	Dili
38	M	JSMP	Colmera, Dili
39	F	JSMP	Colmera, Dili
40	M	BELUN	Farol, Dili
41	F	Fokupers	Maliana
42	M	MDS	Dili
43	M	Legal Consultant	Dili
44	F	MAE	Dili
45	F	BELUN	Farol, Dili
46	F	PNTL	Dili
47	M	Public Defender	Dili
48	M	DNDHC, MoJ	Dili
49	F	Suku Chief	Bebonuk, Dili
50	F	MANEO	Oecusse
51	M	DGD	
52	F	BELUN	Farol, Dili
53	M	DNTPSC, MoJ	Bebora, Dili
54	M	DNTPSC, MoJ	Bebora, Dili
55	M	DNTPSC, MoJ	Bebora, Dili
56	M	DNTPSC, MoJ	Bebora, Dili
57	M	SEIGIS	Caicoli, Dili
58	M	Suku Comoro	Comoro, Dili
59	F	ACBIT	Dili
60	M	Rede ba Rai	Farol, Dili
61	M	MDS	Dili
62	F	Ba Futuru	Comoro, Dili
63	F	Suku	
64	F	The asia Foundation	Bebonuk, Dili
65	F	ALFELA	Villa-verde, Dili
66	F	Mediator, DNPCC	Bobonaro
67	F	PRADET	Bidau, Dili
68	F	UN Women	Caicoli, Dili
69	F	Bridging People	
70	F	UN Women (consultant)	

List of Participants

5 December 2017

No.	Gender	Institution	Position
1	M	DNPCC, MDS	Staff
2	M	DNPCC, MDS	Staff
3	F	Ba Futuru	Trainer
4	M	Belun	CPPS
5	F	MANEO	Director
6	F	DNPCC, MDS	National Mediator
7	F	Belun	Staff
8	M	DNPCC, MDS	Staff
9	F	DNPCC, MDS	Staff
10	F	Belun	Staff
11	M	MDS	Gender Officer
12	M	Belun	Programm Manager
13	M	Belun	Director
14	M	Office of Public Defender	Public Defender
15	M	PDHJ	Vice Provedor
16	F	Ministry of Women Affairs, Cambodia	Director General
17	F	UN Women	Consultant
18	M		Interpreter
19	F	Fokupers	Coordinator of Uma Mahon
20	F	JSMP	Staff
21	F	UN Women	WPS specialist
22	F	The Asia Foundation	Program Officer
23	F	The Asia Foundation	Program and Legal Officer
24	F	Bridging People	Director
25	F	UN Women	Consultant



From
the people of Japan

