

Local justice in Timor-Leste:
**Barriers to access at the
community level**

2023



Authors: Megan Hirst (Consultant for PASK) and Eurosia de Almeida (Legal Researcher, Judicial System Monitoring Programme)

Design: Elzemiek Zinstok

Cover photo: Gibrael Dias Soares Caroch, "Loro Sa'e Daudaun" 2022

This report was produced by The Asia Foundation's Community Security and Justice Program (*Programa Apoio Seguransa Komunitade*, PASK). For more information contact Heidi Arbuckle, Team Leader, PASK.

The Asia Foundation acknowledges the generous support of the New Zealand Ministry of Foreign Affairs and Trade (MFAT).

About Judicial System Monitoring Program

Judicial System Monitoring Program (JSMP) was established in 2001 to monitor the processes of the Ad Hoc Human Rights Tribunal in Jakarta, Indonesia, and the Special Panels for Serious Crimes in Timor-Leste. JSMP now exists as a Timorese led not-for-profit organization working to improve the judicial and legislative systems in Timor-Leste, through advocacy to promote legality, transparency, accountability, and the rule of law.

About The Asia Foundation

The Asia Foundation is a nonprofit international development organization committed to improving lives and expanding opportunities across Asia and the Pacific. Informed by decades of experience and deep local expertise, our work across the region is focused on good governance, women's empowerment and gender equality, inclusive economic growth, environment and climate action, and regional and international relations. In Timor-Leste the Foundation is currently focused on strengthening governance and policy, ending violence against women, developing inclusive tourism, and promoting peace and justice.

The Asia Foundation's Community Security and Justice Program (*Programa Apoio Seguransa Komunitade*, PASK) is funded by the New Zealand Ministry of Foreign Affairs and Trade (MFAT). PASK aims to build inclusive and equitable access to security and justice services for women, youth and vulnerable groups in order to promote trust, social cohesion, and economic prosperity in Timorese communities.

Executive Summary

In 2022, The Asia Foundation's *Programa Apoio Seguransa Komunitade* ("PASK") commissioned an Options Paper identifying programs that it could implement to improve access to justice within Timorese communities. We undertook qualitative research for that purpose. In the resulting PASK Options Paper, we set out recommendations for programming, as well as the research findings which underpinned those recommendations. The present report is a shortened version of that paper, omitting discussions about programming options, but making our main research findings publicly accessible.

The most important findings of our research were:

1. Many people continue to believe that they must choose between using the courts and accessing local justice mechanisms. There is limited understanding that these processes can run in parallel. The relationship between local dispute resolution and court proceedings is poorly understood, as is the relevance of whether a crime is "public" or "semi-public".
2. Written *tara-bandu* or *suku* regulations are often not faithfully implemented and their contents are sometimes not well-known, even to community leaders. In some cases, questions also arise as to the conformity of these local regulations with national law. Although many such documents provide for regular community review and revision, these processes are underutilised.
3. Although community justice is faster and more understandable to most people than court proceedings, important barriers still limit access to local justice. The clearest barrier is the cost of justice at the community level. Costs can be substantial and fall even on victims of crimes.
4. Where cases are reported to the police, victims and communities usually receive no ongoing information about the progress of the case and have significant difficulties accessing that information when they want it. They are also unlikely to be told of the outcome of a case once a trial has concluded.
5. Even where information is received about case outcomes, it is poorly understood. Suspended sentences are sometimes perceived as acquittals, or sometimes as the court having sent a case back for resolution within the community. Convicted persons might also not understand that they have been sanctioned, or what the suspension of a prison sentence means. As a result, it is likely that suspended sentences fail to apply social pressure for behaviour change, and their violation is also likely to go unreported.
6. State institutions are failing to respond to these challenges at the community level. Systems have not been established for making case information accessible; no functional institution exists to oversee non-custodial sentences; there is insufficient training and outreach for communities and their leaders about laws and legal processes; and community police need better resourcing and support in order to achieve their potential to increase access to justice within communities.

Table of Contents



Glossary

4

Acknowledgments

5

1. Introduction

6

1.1 Background to this report

6

1.2 Research undertaken

6

1.3 Terminology

8

2. The community justice context in Timor-Leste

9

2.1 Overview of community justice in Timor-Leste

9

2.2 Research and writing on community justice in Timor-Leste

11

2.3 Current and past programming on community justice and related issues

14

3. Key findings from this research

17

3.1 Local justice and the courts are seen as alternatives

17

3.2 Written *tara-bandu* require revision and ongoing socialisation

18

3.3 Barriers exist which can prevent access to local justice and also to courts

20

3.4 Victims and communities are disconnected from court proceedings

22

3.5 Even where known, outcomes of court cases are not understood

24

3.6 State mechanisms to engage with communities on justice processes are weak

26

4. Conclusions

28

Glossary

<i>Aldeia</i>	The smallest administrative unit in Timor-Leste. A number of aldeias together form a <i>suku</i> .
CLR	<i>Comissão para a Reforma Legislativa e do Sector da Justiça</i> (Commission on Legislative Reform and the Justice Sector)
CPSP	Community Policing Support Programme, the previous iteration of PASK
DHPHKS	<i>Departamentu Harii Pás no Hametin Koezaun Sosiál</i> (Department of Peace-Building and Social Cohesion)
DNAAS	<i>Diresaun Nasional Apoio Administrasaun Suku</i> (National Directorate for <i>Suku</i> Administration Support)
DNPCK	<i>Diresaun Nasional Prevensaun Konflitu Komunitaria</i> (National Directorate for Community Conflict Prevention)
<i>Eskada</i>	Literally stairs or ladder, in the context of community justice it refers to a system whereby the resolution of a dispute is first to be dealt with at the lowest level, then progressively escalated if necessary.
KPK	<i>Konsellu Polísiamentu Komunitáriu</i> (Community Policing Council)
LGBTQIA+	Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual and others
<i>Lia-na'in</i>	Originally, a community leader with authority on matters of <i>lisan</i> who leads ceremonies and resolves disputes. In the present day, also an appointed member of the <i>Suku</i> Council, who may be someone holding this role in its original sense, or another respected community member.
<i>Lisan</i>	Indigenous customs and customary law
<i>Liurai</i>	Indigenous king or ruler with hereditary status
MRLRPA	<i>Ministériu Reforma Lejislativa no Asuntus Parlamentares</i> (Ministry of Legislative Reform and Parliamentary Affairs)
MSS	<i>Ministériu Solidaridade Sosiál</i> (Ministry of Social Solidarity), the former name of MSSI
MSSI	<i>Ministériu Solidaridade Sosiál no Inkluzoan</i> (Ministry of Social Solidarity and Inclusion)
OPS	<i>Ofisiál Polísia Suku</i> (<i>Suku</i> Police Officer)
PASK	<i>Programa Apoio Seguransa Komunitade</i> , The Asia Foundation's Community Security and Justice Program
PNTL	<i>Polísia Nasional Timor-Leste</i> (National Police of Timor-Leste)
<i>Suku</i>	The second smallest administrative unit in Timor-Leste. It comprises a geographical area which may include a number of small villages, or form part of a larger town. Each <i>suku</i> includes two or more <i>aldeias</i> .
<i>tara-bandu</i>	Local regulations, oral or written. They are generally based at least in part on <i>lisan</i> . However, at least when codified in writing, they also often incorporate additional secular principles and procedures.
UNDP	United Nations Development Programme
USAID	United State Agency for International Development

Acknowledgments

The authors wish to acknowledge and thank all of our interviewees. They included local leaders, civil society workers, police officers, court actors, and government officials whom we know are in most cases already very busy with their roles and who are frequently imposed on for research interviews. We are extremely grateful for your patience and your generosity in giving us your time.

We especially want to recognise the community leaders in the following *sukus*, who spoke with us over many hours and welcomed us into their communities:

Suku Dare, Dili Municipality

Suku Samalete, Ermera Municipality

Suku Uma-Ana-Ulu, Baucau Municipality

Suku Soba, Baucau Municipality

Suku Fahisoi, Aileu Municipality

Suku Oguês, Covalima Municipality

Suku Matai, Covalima Municipality

Suku Lifau, Oe-cusse Ambeno Special Administrative Region

Suku Lalisuk, Oe-cusse Ambeno Special Administrative Region



1. Introduction

1.1 Background to this report

1. In 2022, The Asia Foundation's *Programa Apoio Seguransa Komunidade* ("PASK") commissioned a study to identify programs which might improve access to justice at the community level. The Judicial System Monitoring Program ("JSMP") and an international consultant undertook research in four *sukus*, as well as with national and international actors. An Options Paper based on this research was presented to PASK in August 2022 ("PASK Options Paper"). It explained key findings from the research and analysed these for the purpose of recommending programs for PASK to consider implementing.
2. The PASK Options Paper was directed at PASK (and the New Zealand Government, which funds it). However, it also contained research findings which could be of relevance to a wider audience. For this reason, PASK and JSMP have decided to publish this report. It sets out a shortened version of the PASK Options Paper, without those parts specifically relevant to PASK.

1.2 Research undertaken

3. Following a literature review, primary research was carried out through semi-structured interviews. Interviewees fell into two main categories: (i) community leaders and police; and (ii) other actors with relevant knowledge, mostly working at the national level.

- i. **Interviews with community leaders and police:** Interviews were conducted in nine *sukus* with a total of 73 interviewees. Initially, for the purpose of producing the PASK Options Paper, interviews were held in five *sukus*¹ with 38 interviewees. Following the completion of the PASK Options Paper, JSMP continued research in a further four *sukus*,² meeting with 35 interviewees. These nine *sukus* were not intended to be representative. They were selected based on their possible potential to eventually become locations for PASK pilot programs.³ In each of the *sukus*, contact was made with the *Suku* Chief who also arranged for meetings with six to eight other persons with experience of dispute resolution. In each *suku* the interviewees included the *Suku* Police Officer (*Ofisiál Polísia Suku* or "OPS").

In each *suku*, interviews were carried out over two to four days. Interviews were held individually⁴ to avoid interviewees being influenced by each other's responses. This proved useful, as interviewees frequently gave some apparently conflicting answers, in response to which we could ask further questions to try to understand the discrepancy (or apparent discrepancy). This would have been difficult in a group setting, as it was apparent that some interviewees were concerned not to be seen as contradicting other community leaders. Particularly on some topics (for example domestic violence, martial arts groups) it is evident that there is a perceived "right" answer to provide to development agencies.

- ii. **Interviews with other actors:** A further 31 interviews were held with key individuals or organisations with knowledge of justice practices at the community level. These included actors from the courts, government, and civil society, as well as individual technical experts.

1. *Suku* Dare (Dili Municipality), *Suku* Samalete (Ermera Municipality), *Suku* Uma-Ana-Ulu, (Baucau Municipality), *Suku* Soba (Baucau Municipality) and *Suku* Fahisoi (Aileu Municipality).

2. *Suku* Oguês (Covalima Municipality), *Suku* Matai (Covalima Municipality), *Suku* Lifau (Oe-cusse Ambeno Special Administrative Region) and *Suku* Lalisuk (Oe-cusse Ambeno Special Administrative Region).

3. We considered factors including: physical accessibility, population size and number of aldeias, existence of a Community Policing Council, presence of an OPS living in the *suku*, having a female *Suku* Chief, and having a written *tara-bandu* (the concept of *tara-bandu* is explained below in paragraph 33).

4. Except in one instance where time limitations required speaking with two final community leaders together.

4. It is recognised that this research had some important limitations.
 - i. In the time available it was not possible to meet with all of those working at the national level with relevant knowledge or experience.
 - ii. More significantly, it was also not possible to visit a large number of *sukus*. The nine which we visited amount to only around 2% of Timor's *sukus*. Given the diversity of language groups and customs, it is certain that many local justice practices were not captured through this research. Nevertheless, the research revealed not only diversity but also a surprising amount of consistency. We therefore consider that our findings may be indicative of some wider patterns. This is especially so regarding matters which arise not from community practices themselves but from weak linkages between national institutions and the local level. However, unless supported by other research, it must be acknowledged that findings from these *sukus* cannot necessarily be generalised to other locations.
 - iii. Thirdly, a key limitation of the research is that *suku* interviews focused on community leaders rather than community members. This means that we mostly collected the views and experiences of the *providers* of justice services, rather than the recipients (or potential recipients) of those services. It also means that we did not hear directly from those who might be marginalised from community justice processes, such as children, persons with disabilities, and LGBTQIA+ people. We recognise the drawbacks of this approach. However, we considered this the best way to meet our research objectives in a limited timeframe. This was especially because our goals included identifying *sukus* for pilot programs, requiring us to develop a sense of each *suku's* leaders. We ultimately recommended that PASK should undertake future research with community members to address this limitation.

5. More generally, our research was principally intended to enable program recommendations for PASK. Our focus was not primarily on identifying barriers to justice. Many of these are well-known already and were apparent from a literature review. Rather, our focus was on assessing potential interventions at the community level which might address these barriers, including considering whether such interventions were practically implementable, likely to be impactful, and unlikely to cause harm. As a result, much of what we heard about barriers to justice was not new. In this document, we aim to highlight only those conclusions which we think build on existing knowledge. An overview of that existing knowledge, and references to the extensive body of literature on Timorese community justice, is contained in Section 2.2.

Our focus was on assessing potential interventions at the community level which might address these barriers, including considering whether such interventions were practically implementable, likely to be impactful, and unlikely to cause harm.

1.3 Terminology

6. In writing the PASK Options Paper, as well as this public report, we deliberately chose to use some terms, and to avoid others.
7. It is sometimes assumed that all community justice practices in Timor-Leste are based on traditional customs. However, research has shown that diverse approaches are used, which purport to derive from sacred or traditional practices to varying degrees.⁵ That conclusion was confirmed by the research carried out for this paper. To give one example: some communities are consciously seeking to follow the “PARA” dispute resolution framework taught to them by PASK and its predecessors.⁶ That framework is not based on *lisan* (customary law). However, communities using the PARA approach mix that framework with elements of pre-existing practice.
8. In any event, identifying the contours of what constitutes tradition or custom is itself an exercise fraught with difficulties.⁷ Traditions and customs are themselves evolving.⁸ For these reasons, we have generally avoided the terms “traditional” or “customary” when referring to community dispute resolution. Where these terms are used, this is deliberate, with the intention of referring to practices which consciously profess to reflect *lisan*.
9. An alternative terminology which is often used draws a dichotomy between “formal” justice (which takes place in the courts and associated institutions) and “informal” justice (which occurs outside them, most often in local communities). However, as one interviewee noted during our research, the use of this terminology belies the nature of local justice processes. They can involve considerable “formality”, even if that formality takes forms different from those seen in the courts. Communities may use rituals (as do the courts), may make use of particular clothing (as do court actors), and may even rely on formally worded written *tara-bandu*.
10. This paper therefore generally uses the terms “local” or “community” to describe justice processes occurring within Timorese families and communities. In contrast, processes which occur through the police, prosecution and courts are referred as “national”, or by reference to “court” proceedings.



2. The community justice context in Timor-Leste

2.1 Overview of community justice in Timor-Leste

11. Since the UN Transitional Administration and throughout the independent period, development efforts in the area of justice have focused predominantly on the national court system and related actors and agencies. Those include the Prosecution Service, Public Defenders’ Office,⁹ private lawyers and paralegals, the Judicial Training Centre, the prospective Bar Association,¹⁰ and the police.
12. However, it is frequently acknowledged that disputes and even criminal behaviour very often do not reach that national court system, and are instead dealt with by other means. Most are handled within local communities. This local or community justice can involve secular and/or customary practices, with ritual and tradition incorporated to varying degrees. Various actors are involved, and these local actors also often play a role in the referral of disputes or crimes to the police or the Prosecution Service.
13. Many of those most involved in justice at the local level are leaders within families or clans or larger communities. They may be respected simply as elders, or may have a particular status according to custom, such as clan chief, *lia-na’in*¹¹ or *liurai*.¹²
14. Local justice is also implemented by people holding positions within *sukus* and *aldeias*,¹³ which are the two lowest levels of Timor-Leste’s administrative structures. There are currently 452 *sukus*, each including two or more *aldeias*. *Sukus* and *aldeias* pre-date Timorese independence but are now regulated by law and supported by the state. Each *suku* has a *Suku* Chief, and a *Suku* Council. The *Suku* Council is composed of the *Suku* Chief, a *lia-na’in*, two youth representatives (one female and one male), and three representatives of each *aldeias* within the *suku* (these are the Aldeia Chief, a female delegate and a male delegate).¹⁴ Most of these positions are filled through elections¹⁵ which are regulated by national law and supported by the national government, and the incumbents carry out functions for the public interest. Despite this, they are (somewhat confusingly¹⁶) not considered officials of the state under Timorese law.¹⁷ Rather, *sukus* have the status of “public association”.¹⁸ *Sukus* and some of their officials receive resources from the state but are paid “subsidies” rather than salaries.

9. Timor-Leste’s prosecuting institution is known as the *Ministériu Públiku* (Tetun) or *Ministério Público* (Portuguese). In this document we use the term “Prosecution Service” since “Public Ministry” is not a term with obvious meaning in English.

10. Legislation for the establishment of a bar association remains pending with the National Parliament.

11. Originally, the *lia-na’in* is a community leader with authority on matters of *lisan* and who leads ceremonies and resolves disputes. Under present-day national law, each *Suku* Council also include a *lia-na’in*, chosen by elected members of the *Suku* Council. In practice, the latter position is sometimes filled by a traditional *lia-na’in*, and in other cases is filled by another respected community member.

12. Often translated as “king”, this term originally referred to a small number of rulers who are thought to have reigned over the whole island of Timor, but whose ruling structures were disrupted and fragmented by colonisation. A larger number of *liurai* have continued to be recognised since then as indigenous leaders with hereditary status.

13. *Aldeia* is often translated as “hamlet” and *suku* as “village”. In reality these are areas of administration rather than discrete settlements. *Sukus* in rural areas can include several discrete small settlements, while *sukus* in urban locations are usually one area of a larger town.

14. Law No. 9/2016 on *Sukus*, 8 July 2016, article 10.

15. The exceptions are *suku* youth representatives and *lia-na’ins*, who are not directly elected, but are chosen by the elected members of the *suku* council.

16. *Suku* Chiefs are also provided with uniforms, giving them an appearance of officialdom. Others have previously remarked that the status and powers of *sukus* and *Suku* Chiefs are a source of confusion: see eg Watugari Coelho Consultants, *Tesi Lian and the Law*, Summary Report, July 2020, pp15-16, 20.

17. Court of Appeal, Proc. No. 02/Const/2009/TR, 7 July 2009 (*Jornal da República*, Série I, No.28, 5 August 2009, pp3388-3399).

18. Law No. 9/2016 on *Sukus*, 8 July 2016, article 4.

5. See e.g.: The Asia Foundation, *Timor-Leste Safety, Security and Justice Perceptions Survey*, 2022, p27.

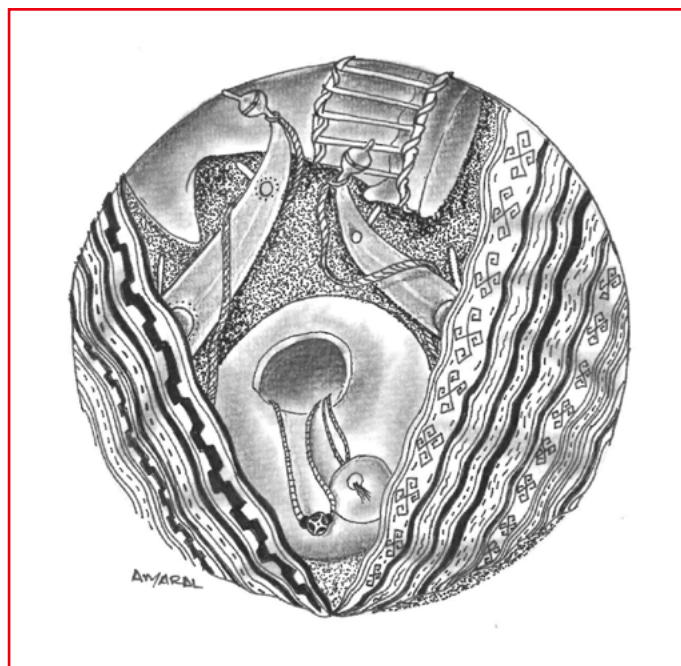
6. “PARA” is a framework for dispute resolution which stands for *Peskiza* (Research), *Analiza* (Analyse), *Responde* (Respond), *Avaliasaun* (Evaluation). See further below at paragraph 30.

7. Commission on Legislative Reform and the Justice Sector, *Para Uma Justiça de Matriz Timorense: o contributo das justiças comunitárias*, July 2017, p53.

8. Community leaders we interviewed for this research expressed various views on this question. However, we agree with others writing on this subject that customary practices and traditions change over time: see e.g. D. Mearns, “Variations on a Theme: Coalitions of Authority in East Timor” in *Looking Both Ways: Models of Justice in East Timor*, 2002, pp30-32; C. Graydon, *Valuing Women in Timor-Leste: the need to address domestic violence by reforming customary law approaches while improving state justice*, 2016 (PhD Thesis, University of Melbourne), p123; *Visit to Timor-Leste: Report of the Special Rapporteur on the rights of indigenous peoples*, A/HRC/42/37/Add.2, 2 August 2019, para.36; Watugari Coelho Consultants, *Tesi Lian and the Law*, Summary Report, July 2020, pp9, 13, 18, 19.

15. Additionally, every *suku* has an OPS. He or she is the member of the national police force (*Polísia Nasional Timor-Leste* or "PNTL") responsible for community policing in that *suku*. OPS are usually not members of the community in the *suku* they are assigned to, but might come from a nearby *suku*, because consideration is given to knowledge of local language. There is no fixed period for the assignment of an OPS to a *suku*, and in practice OPS can spend many years working in a given *suku*, thereby developing considerable familiarity with the community. However, many OPS do not live in their assigned *suku*, because housing is usually not provided there.¹⁹ The amount of time OPS spend in their *suku* can also be limited by transport challenges and the requirement to concurrently carry out other functions in the PNTL.²⁰
16. These various components of the community justice structures are closely linked with each other. Some people may fall into both of the first two categories: having both a social/traditional status and an elected or appointed role in the *suku* structure. In any event the various individuals collaborate closely when dealing with disputes or crimes which occur. Sometimes they work together within the context of a semi-formalised local structure. For example, in some *sukus* there are Community Policing Councils (*Konsellu Polísiamentu Komunitáriu*, or "KPKs"),²¹ which are bodies encompassing members of the *Suku* Council, OPS, and volunteer members of the community. A similar group of local leaders (but without the OPS) may work together as part of a committee established under a *tara-bandu*. These overlapping and interconnected roles mean that it is not always possible to clearly distinguish the functions played by these different bodies, or to identify in which capacity a person is acting when playing a role in local justice.

Overlapping and interconnected roles held by particular community leaders in different local structures mean that it is not always possible to clearly distinguish the functions played by these different bodies, or to identify in which capacity a person is acting when playing a role in local justice.



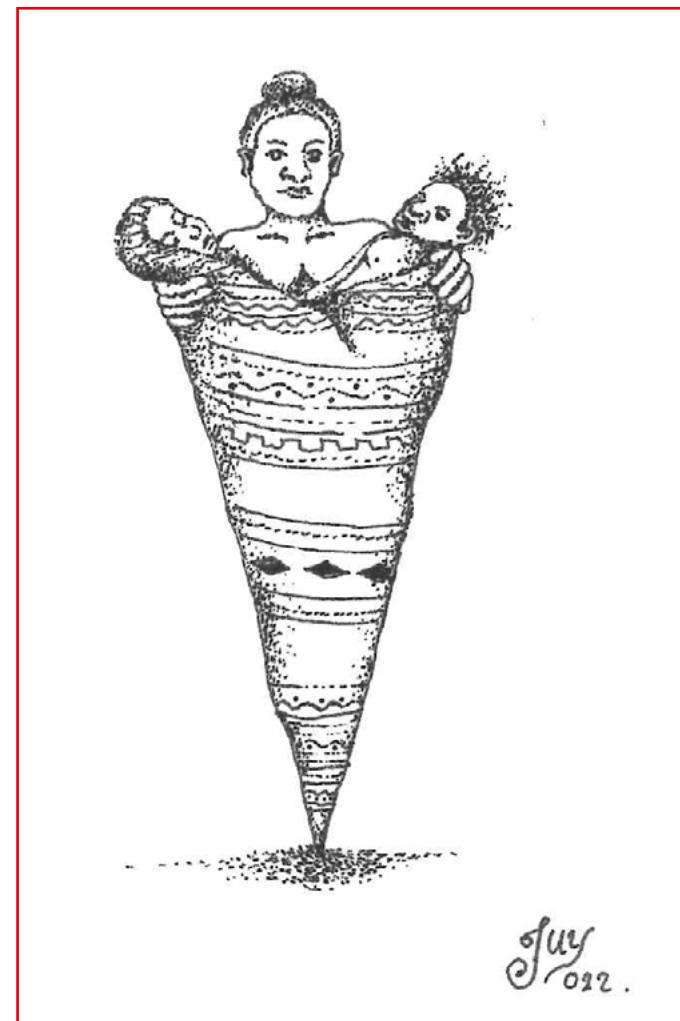
19. In 14 *sukus*, the New Zealand government supported construction of houses for OPS so that they could live close to the communities they are working with. However, despite calls for the PNTL to expand this approach to other *sukus*, that has not yet occurred. See Fundasaun Mahein and Hau Meni Associates, *Evaluation PNTL Suku Policing Service (OPS) August-October 2018: Final Report*, April 2019, pp3, 11, 13-14, 22, 24.

20. *Ibid.*, pp3, 11, 14-15, 19.

21. KPKs have not been formally established by law, although discussions about doing so have begun. However, the PNTL has issued Organisation and Procedure Norms (*Norma sira ba Organizasaun no Prosedimentu*, or "NOPs") to regulate them. Our research revealed considerable variation among the roles being undertaken by KPKs and their current levels of activity. Some are said to be inactive because of lack of funds. Those which are active perform functions which vary among *sukus* but include: holding meetings to share information between police and community about issues of concern and to coordinate on forthcoming events; intervening in problems in the community or going to a community member's aid where the OPS is not immediately available to do so; and convening or leading mediations to resolve disputes. Because many KPK members are also *Suku* Council members there is often conflation between which tasks are undertaken by the *Suku* Council and which by the KPK.

2.2 Research and writing on community justice in Timor-Leste

17. An abundance of writing exists on the subject of local, community and traditional justice mechanisms in Timor-Leste.²² Much of this writing sets out the general nature of local dispute resolution. For example, it is well-recognised that procedures for local dispute resolution are flexible and vary to some extent between different communities.²³ However, it is also well documented that across Timor-Leste community disputes are gradually escalated through an "eskada", or step process, which begins at the level of a family or clan, and (in the event that a matter is not resolved) proceeds upwards through *aldeia* and *suku* levels.²⁴
18. It is often observed that the courts and local justice serve different functions or are directed at different objectives. While the courts offer punishment (and potentially compensation) in order to address wrongdoing between *individuals*, community justice is seen as restoring harmony



22. For example: see eg D. Mearns, *Looking Both Ways: Models of Justice in East Timor*, 2002; T. Hohe and R. Nixon, *Reconciling Justice: "Traditional" Law and State Judiciary in East Timor*, United States Institute of Peace, January 2003; A. Swaine, *Traditional Justice and Gender Based Violence*, International Rescue Committee, August 2003; D. Babo-Soares, "Nahe Biti: the Philosophy and Process of Grassroots Reconciliation (and Justice) in East Timor", *The Asia Pacific Journal of Anthropology*, April 2004, vol.5, no.1, pp15-33; L. Grenfell, "Legal pluralism and the rule of law in Timor-Leste", *Leiden Journal of International Law*, 2006, vol. 19, no.2, pp305-337; A. Senior, "Traditional Justice as Transitional Justice: A Comparative Case Study of Rwanda and East Timor", *Praxis*, 2008, vol.28, pp67-88; A. Kovar, *Customary Law and Domestic Violence in Timor-Leste: Approaches to Domestic Violence Against Women in Timor-Leste: A Review and Critique*, UNDP Timor-Leste, January 2011; R. Clarke, *Customary Legal Empowerment: Towards a More Critical Approach*, IDLO, 2011, pp18-26; D. Cummins (for The Asia Foundation), "Ami Sei Vitima Beibeik": *Looking to the needs of domestic violence victims*, 2012; R. Nixon, *Justice and Governance in East Timor: Indigenous approaches and the "New Subsistence State"* (Routledge, 2012), pp164-201; A. Kovacs and A. Harrington, *Breaking the Cycle of Domestic Violence in Timor-Leste. Access to Justice Options, Barriers and Decision-Making Processes in the Context of Legal Pluralism*, 2013; T. Kirk, *Legal Aid Lawyers and Paralegals: Promoting Access to Justice and Negotiating Hybridity in Timor-Leste*, JSRP and The Asia Foundation, June 2014; T. Kirk, "Taking Local Agency Seriously: Practical Hybrids and Domestic Violence in Timor-Leste", *International Journal on Minority and Group Rights*, 2015, vol. 22, 435-458; C. Graydon, *Valuing Women in Timor-Leste: the need to address domestic violence by reforming customary law approaches while improving state justice*, 2016 (PhD Thesis, University of Melbourne); A. D. Costa, S. Irianto and M. Siscawati, "Women's position in *tara-bandu* customary law: Case study on violence against women in Suco Tibar, Liquiça municipality, Timor-Leste", in I. Rukminto Adi and R. Achwan (eds), *Competition and Cooperation in Social and Political Sciences* (2018, Taylor & Francis), pp251-257.

23. C. Graydon, *Valuing Women in Timor-Leste: the need to address domestic violence by reforming customary law approaches while improving state justice*, 2016 (PhD Thesis, University of Melbourne), pp122-123; Commission on Legislative Reform and the Justice Sector, *Para Uma Justiça de Matriz Timorense: o contributo das justiças comunitárias*, July 2017, p63; L. Grenfell, "Legal pluralism and the rule of law in Timor-Leste", *Leiden Journal of International Law*, 2006, vol. 19, no.2, pp305-337, p316; D. Cummins, *Women's Multiple Pathways to Justice: Alternative Dispute Resolution and the impact on women in Timor-Leste*, 2018, p20.

24. D. Mearns, "Variations on a Theme: Coalitions of Authority in East Timor" in *Looking Both Ways: Models of Justice in East Timor*, 2002, p39; L. Grenfell, "Legal pluralism and the rule of law in Timor-Leste", *Leiden Journal of International Law*, 2006, vol. 19, no.2, pp305-337, p317; R. Dixon, *Justice and Governance in East Timor: Indigenous Approaches and the 'New Subsistence State'*, (Taylor & Francis, 2011), p175; A. Kovacs and A. Harrington, *Breaking the Cycle of Domestic Violence in Timor-Leste. Access to Justice Options, Barriers and Decision-Making Processes in the Context of Legal Pluralism*, 2013, p24; C. Graydon, *Valuing Women in Timor-Leste: the need to address domestic violence by reforming customary law approaches while improving state justice*, 2016 (PhD Thesis, University of Melbourne), pp122-123; D. Cummins, *Women's Multiple Pathways to Justice: Alternative Dispute Resolution and the impact on women in Timor-Leste*, 2018, p18; Commission on Legislative Reform and the Justice Sector, *Para Uma Justiça de Matriz Timorense: o contributo das justiças comunitárias*, July 2017, p53; Watugari Coelho Consultants, *Tesi Lian and the Law*, Summary Report, July 2020, pp15-16, 22; D. Cummins (for Counterpart International) *Suku Councils' Role in Effective Local Governance: Review, Considerations and Recommendations*, (undated), p12.

more broadly, between families, clans or the community, and as being concerned with conflict *prevention*.²⁵

19. Community-level justice has frequently been recognised as important because of its accessibility.²⁶ Most obviously, local justice mechanisms are familiar and therefore significantly easier for most people to understand than court proceedings which are arcane and may occur at least partly in Portuguese. Local justice also occurs much more quickly than court proceedings. And at least some community members (though perhaps not women or children) are likely to feel as though they have much greater latitude to be heard in a community process. Some have additionally asserted that community justice is also *cheaper* than accessing the courts,²⁷ and this does appear to be a prevalent belief among communities also.²⁸ We return to this question below in section 3.3.
20. The suggestion is also occasionally made that community justice results in greater levels of compliance, or lower recidivism, than court proceedings.²⁹ This is postulated as linked to spiritual beliefs, a sense of community, or the risk of adverse social consequences. However, others have questioned levels of compliance with outcomes agreed or imposed through community justice.³⁰ To date, no research appears to have been directed specifically at this question.
21. As against these perceived benefits, the main concern expressed about community justice is that women and girls can be excluded or disempowered by it.³¹ This concern takes in not only the content of some customary laws (for example, the widely followed rule in patrilineal communities that property is passed by inheritance to sons rather than to daughters) but also procedures by which disputes are settled (which may not provide women with genuine opportunities to be heard). Concerns are also expressed about the practice of resolving disputes publicly, which is problematic if no exception is made for cases involving sensitive personal matters.³²
22. Despite the volume of writing on local justice, many papers focus on the same generalities, with few significant contributions being made to the literature in recent years. Regular surveys on community

25. *Visit to Timor-Leste: Report of the Special Rapporteur on the rights of indigenous peoples*, A/HRC/42/37/Add.2, 2 August 2019, para. 28; Commission on Legislative Reform and the Justice Sector, *Para Uma Justiça de Matriz Timorense: o contributo das justiças comunitárias*, July 2017, p49; A. Kovacs and A. Harrington, *Breaking the Cycle of Domestic Violence in Timor-Leste. Access to Justice Options, Barriers and Decision-Making Processes in the Context of Legal Pluralism*, 2013, pp12-13; T. Hohe and R. Nixon, *Reconciling Justice: "Traditional" Law and State Judiciary in East Timor*, United States Institute of Peace, January 2003, pp17-18; C. Graydon, *Valuing Women in Timor-Leste: the need to address domestic violence by reforming customary law approaches while improving state justice*, 2016 (PhD Thesis, University of Melbourne), pp131-134; Watugari Coelho Consultants, *Tesi Lian and the Law*, Summary Report, July 2020, pp10, 18.

26. D. Mearns, "Variations on a Theme: Coalitions of Authority in East Timor" in *Looking Both Ways: Models of Justice in East Timor*, 2002, pp39-40; L. Grenfell, "Legal pluralism and the rule of law in Timor-Leste", *Leiden Journal of International Law*, 2006, vol. 19, no.2, pp305-337, p318; R. Dixon, *Justice and Governance in East Timor: Indigenous Approaches and the 'New Subsistence State'*, (Taylor & Francis, 2011), p183-184; *Visit to Timor-Leste: Report of the Special Rapporteur on the rights of indigenous peoples*, A/HRC/42/37/Add.2, 2 August 2019, para. 29.

27. See eg JSMP, *Findings and Recommendations: Workshop on Formal and Local Justice Systems in East Timor*, July 2002, p6; *Visit to Timor-Leste: Report of the Special Rapporteur on the rights of indigenous peoples*, A/HRC/42/37/Add.2, 2 August 2019, para. 32. But contrast Kovacs and Harrington, who identify the costs involved in community dispute resolution and their potential to serve as a barrier: A. Kovacs and A. Harrington, *Breaking the Cycle of Domestic Violence in Timor-Leste. Access to Justice Options, Barriers and Decision-Making Processes in the Context of Legal Pluralism*, 2013, p33-34.

28. R. Dixon, *Justice and Governance in East Timor: Indigenous Approaches and the 'New Subsistence State'*, (Taylor & Francis, 2011), p183.

29. See eg: *Visit to Timor-Leste: Report of the Special Rapporteur on the rights of indigenous peoples*, A/HRC/42/37/Add.2, 2 August 2019, para. 29.

30. L. Grenfell, "Legal pluralism and the rule of law in Timor-Leste", *Leiden Journal of International Law*, 2006, vol. 19, no.2, pp305-337, pp319-320.

31. See for example: JSMP, *Findings and Recommendations: Workshop on Formal and Local Justice Systems in East Timor*, July 2002; L. Grenfell, "Legal pluralism and the rule of law in Timor-Leste", *Leiden Journal of International Law*, 2006, vol. 19, no.2, pp305-337, pp320-321; D. Cummins, *Women's Multiple Pathways to Justice: Alternative Dispute Resolution and the impact on women in Timor-Leste*, 2018; Commission on Legislative Reform and the Justice Sector, *Para Uma Justiça de Matriz Timorense: o contributo das justiças comunitárias*, July 2017, p101.

32. See eg: *Visit to Timor-Leste: Report of the Special Rapporteur on the rights of indigenous peoples*, A/HRC/42/37/Add.2, 2 August 2019, para. 31.

perceptions of security³³ which have been carried out by PASK and its predecessor (the Community Policing Support Programme, or "CPSP"), as well as The Asia Foundation's earlier surveys on Law and Justice,³⁴ have demonstrated some important patterns in local dispute resolution, but without significant surprises regarding community justice.

23. In recent years, two major research projects were initiated by the state in this area: firstly, by the Commission on Legislative Reform and the Justice Sector ("CLR"),³⁵ and secondly by the Ministry of Legislative Reform and Parliamentary Affairs ("MLRPA").³⁶ Both processes largely confirmed existing knowledge.
24. Against this backdrop, particular reference is made to two reports of particular relevance to this paper. They are the result of previous research by the authors of the current paper and focus on the specific issue which is also particularly of interest in the present report: namely the interaction between community justice and national justice systems.
25. The first is a 2016 report commissioned by USAID project *Ba Distrito* from Belun and one of the authors of the present report, which analysed community justice from a human rights perspective.³⁷ It concluded, *inter alia*, that:
 - There are significant misunderstandings within communities about what role national law permits them to play in resolving disputes. Concepts such as civil and criminal disputes, or public and semi-public crimes are not well understood. One consequence of this is that persons are often punished at the local level, possibly in contravention of national law. In other instances, when a criminal case proceeds to the courts, the opportunity for civil matters (and interpersonal or family grievances) to be settled in parallel within the community is missed, even though permitted by law.³⁸
 - Although local dispute resolution has a valuable potential to enhance access to justice, there is also a risk that it can serve as a barrier to the courts or provide a forum which is not truly fair for participants.³⁹
 - Care is needed to ensure that the use of local regulations or "*tara-bandu*" do not violate human rights guarantees, especially fair trial rights relating to criminal proceedings.⁴⁰
26. That report was followed by a JSMP report, also supported by *Ba Distrito*,⁴¹ based on monitoring of how the courts and prosecution dealt with local justice practices.⁴² JSMP observed that:
 - The courts interpret articles 55(2)(g) and 56(2)(c) of the Penal Code as permitting them to take into account as mitigation a dispute resolution which has occurred at the community level.⁴³ This is also possible in cases involving public crimes. Indeed, of 26 cases JSMP monitored where

33. Most recently: The Asia Foundation, *Timor-Leste Safety, Security and Justice Perceptions Survey*, 2022. Previously: The Asia Foundation, *Community Police Perceptions Survey: Summary of Key Findings*, 2018; The Asia Foundation, *A Survey of Community-Police Perceptions in Timor-Leste*, 2015; The Asia Foundation, *A Survey of Community-Police Perceptions in Timor-Leste*, 2013; The Asia Foundation, *A Survey of Community Police Perceptions in Timor-Leste*, 2008.

34. The Asia Foundation, *Timor-Leste Law and Justice Survey 2013*; The Asia Foundation, *Law and Justice in Timor-Leste: A Survey of Citizen Awareness and Attitudes Regarding Law and Justice*, 2008.

35. Commission on Legislative Reform and the Justice Sector, *Para Uma Justiça de Matriz Timorense: o contributo das justiças comunitárias*, July 2017.

36. As explained below in paragraph 28, a final report from this process was never published. The summary report is: Watugari Coelho Consultants, *Tesi Lian and the Law*, Summary Report, July 2020.

37. Megan Hirst, *Community Dispute Resolution in Timor-Leste: A Legal and Human Rights Analysis*, September 2016.

38. *Ibid.*, pp11-13.

39. *Ibid.*, pp15-17

40. *Ibid.*, pp17-19.

41. Later renamed as "*Mai Municipiu*".

42. JSMP, *The Courts and Alternative Dispute Resolution*, July 2017.

43. *Ibid.*, pp 14, 22

a community resolution had already been reached before a court verdict, 21 concerned public crimes (17 involved domestic violence).⁴⁴

- There is a lack of clarity about what, if any, relevance the courts should give to community resolutions when determining civil compensation within a criminal case, particularly considering that payments and exchanges made in a local process may be between families rather than between the individual perpetrator and victim.⁴⁵
- In cases involving semi-public crimes, before proceeding to trial the courts first ask the parties to seek conciliation under article 262 of the Criminal Procedure Code.⁴⁶ In the vast majority of cases monitored (74 out of 82 cases), the dispute had either already been resolved locally (7 cases) or was able to be resolved by conciliation at court (67 cases), avoiding the need for a trial.⁴⁷
- Despite these positive findings regarding the possibility to resolve matters without recourse to the courts, questions of fairness arose from the fact that victims are very often unrepresented and have not received sufficient information and advice before conciliation.⁴⁸

2.3 Current and past programming on community justice and related issues

27. Despite extensive research and writing on the subject of community justice mechanisms, few programs have been implemented in this area by government or development agencies.
28. For some years (from around 2009 to 2014) UNDP and the Ministry of Justice attempted to produce a framework law which would regulate local justice processes.⁴⁹ That approach was later abandoned. Subsequent plans for a law regulating alternative dispute resolution (including commercial matters) have at times been proposed as potentially incorporating community mechanisms,⁵⁰ however, to date this legislation has not been finalised. In 2015 the question of how to engage with community justice was passed to the CLR. It made a number of findings⁵¹ and recommendations,⁵² but these do not appear to have been progressed. In 2019 the Timorese Government invited the UN Special Rapporteur on the rights of indigenous peoples to visit Timor-Leste.⁵³ The (then) MLRPA also initiated an almost nationwide public consultation on traditional justice, involving around 1400 participants.⁵⁴ This study was intended to look more deeply into, and to clarify, questions from the CLR's report, with the intention of supporting legislative action in the area of community justice.⁵⁵ A summary report⁵⁶ submitted by consultants contracted for the MLRPA project made recommendations including for institutional adaptations through legislative action.⁵⁷ However, these recommendations have not been implemented. No specific law has been enacted on local justice mechanisms. As a result, commu-

Despite extensive research and writing on the subject of community justice mechanisms, few programs have been implemented in this area by government or development agencies.

44. *Ibid.*, pp18-19.

45. *Ibid.*, pp24-25

46. *Ibid.*, pp10-11, 12

47. *Ibid.*, pp18, 25

48. *Ibid.*, pp28-30.

49. Megan Hirst, *Community Dispute Resolution in Timor-Leste: A Legal and Human Rights Analysis*, September 2016, p20.

50. See eg Megan Hirst, *Community Dispute Resolution in Timor-Leste: A Legal and Human Rights Analysis*, September 2016, p21; Fidelis Manuel Leite Magalhães, *Relatório ba Mandatu Ministru Reforma Lejislativa no Asuntus Parlamentares*, June 2018-May 2020, Annex 15.

51. Commission on Legislative Reform and the Justice Sector, *Para Uma Justiça de Matriz Timorense: o contributo das justiças comunitárias*, July 2017.

52. Commission on Legislative Reform and the Justice Sector, *Política e Estratégia da Reforma Legislativa e do Setor da Justiça em Timor-Leste: Proposta*, August 2017.

53. *Visit to Timor-Leste: Report of the Special Rapporteur on the rights of indigenous peoples*, A/HRC/42/37/Add.2, 2 August 2019.

54. Fidelis Manuel Leite Magalhães, *Relatório ba Mandatu Ministru Reforma Lejislativa no Asuntus Parlamentares*, June 2018-May 2020, pp35, 36-37, and Annex 13.

55. *Ibid.*, pp35, 36-37.

56. Government sources confirmed that the full report of the MLRPA consultation has not been published.

57. Watugari Coelho Consultants, *Tesi Lian and the Law*, Summary Report, July 2020.

nity justice is still mostly regulated by laws which are primarily directed to broader objectives, and in particular the Criminal Procedure Code and the *Suku* Law.⁵⁸

29. Government support for communities is led by the Ministry for State Administration, especially its *Diresaun Nasional Apoio Administrasaun Suku* ("DNAAS"). DNAAS provides facilities and funds which support the functioning of *Suku* Councils, including their members from the *aldeia* level. *Sukus* are provided with a headquarters building, computer and printer, and monthly funds for administrative needs and fuel. *Suku* Chiefs receive a motorbike and a monthly "subsidy", and smaller subsidies are also provided to some other *suku* council members. No funds are specifically allocated for community justice work (for example, to travel to disputants' locations, or to convene community meetings for the purpose of dispute resolution), but general administrative and fuel payments could be used for this purpose if they are sufficient.
30. A small number of programs have focused more specifically on dispute resolution procedures in communities. PASK and CPSP have worked with KPK members on community dispute resolution, using a standardised mediation approach referred to as PARA.⁵⁹ Between 2017 and 2019, UNDP supported "Access to Justice Clinics" based in Baucau and Suai, and implemented by two civil society organisations and a law firm⁶⁰ operating under the Public Defenders' Office. The clinics provided mediation services as well as legal education and paralegal support within communities.
31. Some government departments have also provided forms of mediation at the community level. Following the 2006 crisis, the (then) Ministry of Social Solidarity ("MSS")⁶¹ established "Dialogue Teams" to resolve community disputes. The work was initially focused on the reintegration of displaced persons. It made use of familiar practices central to Timorese community dispute resolution, but with facilitation from MSS officials and at times other national leaders. The process was considered a success. Consequently, after the displacement crisis was resolved, MSS established the *Departментu Harii Pás no Hametin Koezaun Sosial* ("DHPHK"). DHPHK has continued to do peacebuilding work in communities, including leading dialogues when asked to do so by communities. Meanwhile, in 2008 the Ministry of the Interior established its *Diresaun Nasional Prevençsaun Konfliktu Komunitaria* ("DNPCK"). Over time DNPCK has surpassed DHPHK's team in terms of funding, and therefore also in the extent of activities undertaken. DNPCK's mandate has been set out in the Organic Law of the Ministry of the Interior as including (among other things) developing a national strategy for resolving community disputes and training community mediators.⁶² DNPCK has a small number of mediators based in each municipality. They respond to requests to assist in dispute resolution. In recent years DNPCK has received support from UN Women and has adopted a focus on "gender responsive mediation", including through a detailed set of mediation guidelines.⁶³ DNPCK has also provided some training to others involved in dispute resolution – including community police – but this work has been limited by

Programs initiated by NGOs, development agencies and international organisations are also typically short-term and implemented in a relatively small number of sukus, and without inter-agency coordination.

58. Detail on how these laws regulate community justice are set out in Megan Hirst, *Community Dispute Resolution in Timor-Leste: A Legal and Human Rights Analysis*, September 2016, pp10-13.

59. See footnote 7 above.

60. Belun, Justice and Peace Commission Baucau, and JNJ Advocacy.

61. Now MSS: *Ministériu Solidaridade Sosiál no Inklusaun* (Ministry of Social Solidarity and Inclusion).

62. Decree Law No. 47/2020, 7 October 2020, article 20.

63. National Directorate for the Prevention of Community Conflicts, *Mediation Guidelines*, December 2020. See also Ministerial Diploma No. 96 of 2020 of 20 October, approving Directives for the Mediation of Community Conflicts by the National Directorate for the Prevention of Community Conflicts of the Ministry of the Interior.

resource constraints. Concerns have also been raised about the utility of having two separate government departments undertaking such similar work.⁶⁴

32. Although community programs on dispute resolution have not been common, *suku* and *aldeia* leaders have frequently been trained on other subjects. Some parts of government routinely provide training to community leaders, and numerous non-governmental organizations (NGOs), development agencies and international organisations have also given trainings. These trainings have included some topics which are relevant to community disputes, particularly domestic violence and land law. Dispute resolution, the law and referrals to the courts, however, are not prominent among the subjects covered. Another limitation is that most programs focus on officeholders within the *suku* and *aldeia* structures (as opposed to leaders outside those structures whose authority comes from family, clan or *lisan*). More training is provided for *Suku* Chiefs than for *aldeia* leaders. Programs initiated by NGOs, development agencies and international organisations are also typically short-term and implemented in a relatively small number of *sukus*, and without inter-agency coordination.
33. Separately, various actors have provided support to communities to develop and codify their “*tara-bandu*”. The term *tara-bandu* has its origins in a practice of hanging markers to indicate bans on land use or other practices in given areas. Today the term is used more broadly, and most commonly refers to a set of community rules. These will involve elements of *lisan*, however they are also able to incorporate new rules. Most *tara-bandu* involve a considerable focus on natural resource management, although it is also common for *tara-bandu* to deal with various other matters: regulation of family and sexual matters, prohibitions on certain types of behaviour, and controls on ceremonial practices such as funerals and *kore-metan*.⁶⁵ Historically, *tara-bandu* existed as systems for community regulation without written form. Since independence, there has been a movement to codify these principles in written documents. A number of agencies – including NGOs, international donors, and public officials – have been involved in supporting communities to develop and record their *tara-bandu*. It is noteworthy that many of these actors work in the agriculture sector and appear to have seen *tara-bandu* primarily as a tool for land use or livestock management. There does not appear to have been any substantial involvement in this work from agencies focused on family or criminal law or gender-based violence although such topics are frequently included in the written *tara-bandu* which are produced.
34. Finally, a range of other programs implemented within communities have a potential bearing on community justice, albeit less directly. For example, various programs (including CPSP and PASK) have supported community police. Community-level programs aimed at long-term domestic violence prevention or at empowering vulnerable young women are also likely to impact on community justice.

Many of the actors involved in developing tara-bandu work in the agriculture sector appear to have seen tara-bandu primarily as a tool for land use or livestock management. There does not appear to have been any substantial involvement in this work from agencies focused on family or criminal law or gender-based violence although such topics are frequently included in the written tara-bandu which are produced.

64. Fundasaun Mahein, *Different Institutions Working on the Same Issue: DNP, DHPKS, and Community Police Department*, Mahein's Voice No. 50, 25 April 2013.

65. A *kore-metan* is held to mark the end of a year of mourning following a person's death.

3. Key findings from this research

35. As explained above (see paragraph 5), in many areas the research we conducted for the PASK Options Paper confirmed matters which are well known from previous research. Rather than repeating those matters, we will highlight only those findings which differ or build on established knowledge, or which are relevant for understanding our other conclusions.

3.1 Local justice and the courts are seen as alternatives

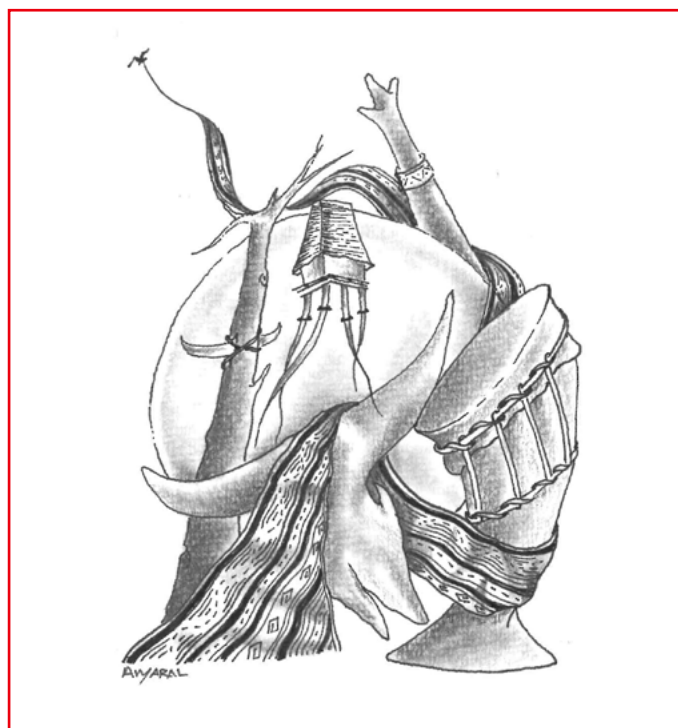
36. As identified in some earlier writing,⁶⁶ community justice and the courts need not be seen as incompatible. A victim or disputant does not need to choose one or the other. Rather, where a crime is thought to have occurred, it is legally permitted (and practically possible) for a local resolution to run in parallel to court proceedings. Moreover, because local justice and court proceedings are aimed at slightly different goals, there could be good reason for them to coexist. Where the two systems work in parallel, both goals (individual accountability, as well as family or community harmony and prevention of further crimes) could be advanced.
37. In a case where the criminal proceedings involve a semi-public crime, the matter can either be withdrawn from the courts after local resolution, or continued, depending on the victim's wish. Where a public crime is involved, the case must proceed to trial. Where a trial occurs, the fact that a local resolution has occurred does not shield the accused from criminal responsibility. However, if he or she is convicted, the judge(s) can take into account the local resolution as part of deciding on sentencing (and potentially also compensation).
38. Despite this, in the *sukus* we visited, many people seemed to believe that any kind of crime or dispute is to be resolved *either* locally or through the courts. This is significant because it means that in practice, the choice of one of these options is seen as closing the door to the other. Interviews suggested that this is not so in every case: sometimes matters will be dealt with in the community after being reported to police (and this is also made clear by the results of the JSMP research set out in paragraph 26 above). However, it seemed that this is usually done in the belief (whether correct or not) that the case can and will be withdrawn from the court system if local resolution succeeds.
39. Community leaders mostly spoke of cases being referred to police or the courts in one of two ways: One way is for the case to proceed through the *eskada*, beginning with attempted resolution at the “lowest” level, and proceeding until efforts to resolve the dispute have failed at each level, after which the case is referred to the police. The second way occurs where the matter is

Community justice and the courts need not be seen as incompatible. A victim or disputant does not need to choose one or the other.

In the sukus we visited, many people seemed to believe that any kind of crime or dispute is to be resolved either locally or through the courts. This is significant because it means that in practice, the choice of one of these options is seen as closing the door to the other.

66. Especially: Megan Hirst, *Community Dispute Resolution in Timor-Leste: A Legal and Human Rights Analysis*, September 2016; and JSMP, *The Courts and Alternative Dispute Resolution*, July 2017.

deemed sufficiently serious⁶⁷ to refer directly to the police, although it is still usually expected that the issue will be first brought to local leaders, who would contact the OPS.



40. Processing a case through the whole *eska-da* is not only time-consuming, but can also be very costly, for reasons elaborated below in Section 3.3. The question of which cases are deemed sufficiently serious to be sent directly to the OPS therefore has a significant impact on how rapidly and cheaply the police can be accessed.

41. It is clear that some cases do occasionally reach the police outside of this triage system. Some OPS spoke of community members reporting matters directly to them. Community leaders also acknowledged that this does happen sometimes, although some lamented it as a problem.

3.2 Written *tara-bandu* require revision and ongoing socialisation

42. In seven of the nine *sukus* we visited, local rules and dispute resolution procedures had been codified in written documents. These were referred to as *suku* regulations or written *tara-bandu*. Community leaders explained that these documents had been produced with the assistance of various NGOs. Their contents were said to be partly based on long-standing traditional beliefs and practices, and partly on other principles agreed on through community consultations and meetings.

43. A key focus of these documents is natural resource management, but in all instances the local regulations went beyond that topic. They covered matters such as institutional structures for overseeing the regulations (e.g. a “*tara-bandu* committee” and “*guarda floresta*”), regulation of cultural events and martial arts groups, enforcement of church attendance and sabbath observance, and penalties and procedures for various forms of wrongdoing (ranging from gossiping to serious crimes such as sexual violence).

44. Community leaders in these *sukus* expressed the view that these written regulations had had significant positive impacts. They particularly believe that producing a written document which has been agreed on and disseminated increases the respect for local rules and hence compliance with them. Some community leaders expressed the view that there were fewer disputes or other problems in their *sukus* since they had produced their written *tara-bandu*.

45. Reviews of these documents and discussions with community leaders also revealed some reasons for concern. For example:

- i. The rules applied in practice often differ from what is recorded in the written *tara-bandu*. In some cases, community leaders are agreed on the content of applicable rules, but these do not reflect what is recorded in their written regulations. In other cases, different community

67. Often the distinction is described as being between “big crimes” and “small crimes”. Regarding physical violence, people often explain whether a case is “big”, or sufficiently serious to refer to the police, by reference to whether or not blood was drawn. On this question see: D. Cummins (for Counterpart International) *Suku Councils’ Role in Effective Local Governance: Review, Considerations and Recommendations*, (undated), p12; A. Kovacs and A. Harrington, *Breaking the Cycle of Domestic Violence in Timor-Leste, Access to Justice Options, Barriers and Decision-Making Processes in the Context of Legal Pluralism*, 2013, pp17-18, 42-44; The Asia Foundation, *A Survey of Community-Police Perceptions in Timor-Leste*, 2015, p52-53; C. Graydon, *Valuing Women in Timor-Leste: the need to address domestic violence by reforming customary law approaches while improving state justice*, 2016 (PhD Thesis, University of Melbourne), p161.

leaders expressed various different views about the applicable rules. In fact, responses given in interviews suggest that the written documents are valued more as symbolic representations of community regulation than as resources to be used as a reference for their contents.⁶⁸ Some community leaders expressed the view that all community members know what is in the written *tara-bandu* (because community members had agreed on the document and have received a copy). Yet we have doubts about this because even the leaders themselves have divergent views on the contents of the regulations.

It may be that these issues are due to the very lengthy, legalistic and complex nature of the written documents, but these features may also be a key aspect of what gives them symbolic value.

We saw some examples of communities establishing significantly higher penalties in their tara-bandu than would be usual before a court.

- ii. Some contents of written *tara-bandu* appear to conflict with national laws. A simple example is the requirement under *tara-bandu* for fees to be paid to local authorities, although this is not *permitted* under national law (see further below at paragraphs 51-58). In other instances, conduct which is intentionally permitted and facilitated by national laws (such as divorce, or the activities of registered martial arts groups) are explicitly *prohibited* by community laws. Questions arise generally regarding the permissibility of mandatory mechanisms for dispute resolution at the community level, including the imposition of punishments.⁶⁹ However, even if the view is taken that communities are permitted to establish local systems for criminal sanction, it remains unclear which types of conduct they may prohibit and with what penalties, so as to ensure consistency with national law. For example: where certain conduct has been deliberately omitted from the national Penal Code (for example: adultery or defamation), can communities impose their own sanctions for the same conduct? Conversely, where conduct *is* criminalised in the national Penal Code, can communities establish their own, different, penalties for the same conduct? We saw some examples of communities establishing significantly higher penalties than would be usual before a court.⁷⁰ Moreover, it seems likely that those involved in a case are not aware of this difference when considering their options for resolving the case. From discussions with community leaders, it appeared that they were unaware of these potential inconsistencies and would appreciate assistance in identifying them and considering solutions.

- iii. Some written *tara-bandu* explicitly provide for periodic community processes to review and reaffirm their contents, but in practice these do not seem to occur often (if at all). Some community leaders expressed a desire to review their *tara-bandu*, including because of challenges which have arisen in their implementation (see below at paragraph 56), and are interested in technical assistance in that process. Carrying out these reviews regularly with community involvement might also help to increase local knowledge of the contents of *tara-bandu*.

68. This accords with the conclusions reached through the MLRPA consultation. See Watugari Coelho Consultants, *Tesi Lian and the Law*, Summary Report, July 2020, p10: “Written law in Timor is made and held up as an achievement of ‘development’, but often it is not read, understood, followed, or even respected. Law is mostly a symbol of power...”. This observation may have been primarily referencing national law, but we observed the same phenomenon at the community level.

69. On the reasons why this appears impermissible, see: Megan Hirst, *Community Dispute Resolution in Timor-Leste: A Legal and Human Rights Analysis*, September 2016, pp17-19. We note that an opposing view is expressed in Watugari Coelho Consultants, *Tesi Lian and the Law*, Summary Report, July 2020, p23.

70. Courts generally have a discretion to determine the period of a suspended or effective prison sentence (within a range fixed by law), or the amount of a fine. In theory a fine can range from US\$5 to US\$72,000, but the court is required to consider the circumstances of the convicted person (see Penal Code, article 75). In practice amounts are usually small. For example, between 2012 and 2022 JSMP monitored 30 cases where fines were imposed for property damage or theft. In 25 of those cases the fines imposed were less than US\$100. The largest fine from these 30 cases was US\$400. At the community level we also saw significant variation in the amounts of fines, but some were fixed at a much higher level, sometimes exceeding US\$1000 or multiple buffalo.

3.3 Barriers exist which can prevent access to local justice and also to courts

The most conspicuous of the barriers to local justice is the financial cost of resolving disputes through local mechanisms in many communities.

46. As mentioned above (see paragraph 19), many have observed that community justice is far more accessible to most Timorese citizens than are Timor-Leste's courts. That point is highlighted by findings explained below in Section 3.4 about how difficult it is for litigants and other community members to ascertain and understand what has happened in the courts. In contrast, where disputes are handled in communities it is considerably easier for disputants and others to find out what is happening with a case or about its outcome. Both the process and the outcome of a local dispute resolution involve concepts which are familiar and well understood in communities. It is also clear that the relative speed of these processes is a significant advantage when compared to the speed of court proceedings.
47. However, a striking finding of our research was the extent to which barriers do exist to the accessibility of local justice. The most conspicuous of these barriers is the financial cost of resolving disputes through local mechanisms in many communities.
48. Financial costs involved in local dispute resolution take several forms.
49. The most obvious costs are payments made at the end of the process, once a resolution has been reached. This usually involves each party providing money and/or items (such as livestock, *tais*, alcohol, tobacco products or ceremonial items) to the other party. Although the parties' respective payments are usually unequal, both sides will be required to make some expenditure on this part of the process if the dispute is resolved.
50. Additionally, the process itself and attendant ceremonies involve some costs. Depending on the nature of the dispute, a process at the *aldeia* or *suku* level might have numerous community members in attendance and could take a full day. Seating, food and drink are required. Animals will usually be provided for slaughtering and consumption. These costs are typically shared by the two parties to the dispute.
51. These costs might already be significant, but in many communities further costs have been added.⁷¹ These take the form of a fixed charge paid to the community leaders who will seek to resolve the dispute. In eight of the nine communities we visited, charges of similar levels have been fixed for this purpose. A fee is imposed at each level of the *eskada*, increasing with each level. The fee must be paid by both parties to a dispute. Commonly, the fee is between \$15 and \$100 per party for a mediation attempt, with fees usually increasing with progress up the *eskada*. For example, the fee structure might require a payment of \$25 from each party at the *aldeia* level; and if the matter is not successfully resolved at that level, then a further \$50 might be required from each party in order to attempt a further mediation at the *suku* level.⁷²
52. Community leaders gave various explanations about how they use the funds which are collected in this way. Most often it was explained that the fees are used collectively for the costs of the *aldeia* or *suku* – to buy items of furniture or carry out repairs, for example. Some acknowledged using part of the income to make payments to members of the *Suku* Council.
53. Despite this, raising funds is not necessarily the primary motivation for these fees. Some community leaders recognised *suku* or *aldeia* fundraising as one motivation. However, another supposed benefit of the fees was far more widely cited. In those *sukus* where these fees were imposed, com-

munity leaders claimed that they have a positive impact on reducing social ills such as thefts. They said that because community members are fearful of having to pay the fee, they will not commit crimes or have disputes.⁷³ A belief exists that crime (and specifically thefts) have dropped since the imposition of fees (or the codification of *tara-bandu*).

54. It is not known whether these claims are true, but our research revealed at least some reasons to question their correctness. First, some other community leaders and OPS gave differing accounts. They explained that disputes and minor crimes still occur, but community members try to make peace with each other directly and avoid bringing the matter to the community leaders, so that they will not face any costs. Secondly, other sources (outside these communities) spoke about financial difficulties being caused by these sorts of costs. Some sources claimed that these fees may actually create additional social problems, including theft and debts. Thirdly, in one *suku* we visited which does not use a written *tara-bandu* or a system of fees for dispute resolution (*Suku Soba*), we were also informed that problems in the community, including thefts, have decreased in recent years. *Soba's Suku* Chief attributed the reduction in thefts to the increase in state payments being received in the community. This might show that even if problems in communities have decreased, it might be for other reasons, rather than because of the fee system. We therefore believe there are reasons to doubt whether these fees bring social benefits. In fact, it is possible that they might cause harm.
55. When asked whether the fees create a barrier to people who might need assistance resolving a dispute, community leaders generally expressed a belief that this is not a problem. Some explained that fees can be reduced where necessary. But others said that reducing fees is not permitted. One stated that where disputants lack funds they should wait until they have saved the fee in order to have the dispute resolved. The idea that everybody is able to afford the fee is also not easily reconciled with the belief that fear of paying the fee is reducing crime.
56. Aside from the question of access to justice, other concerns could be raised about these fees. One is that they may contravene national law. The *Suku* Law allows local authorities to collect revenues only where expressly permitted by law.⁷⁴ These fees do not appear to be permitted by laws other than the local *tara-bandu*. Another concern is that the fee system places an unfair burden on victims of crime since both the suspect and victim must pay the fee in order to obtain local leaders' intervention. (A small number of community leaders said that they repay the fee at the end of a process when it had revealed that a person was the victim of a wrong, but most interviewees said this was not a practice they adopted.) Indeed, in one *suku* (*Suku Samalete*) we were told of community unhappiness with the requirement that victims must pay to report crimes they have suffered. The community leaders in that *suku* indicated that they wished to amend their written regulations particularly to address this issue. Leaders in *Suku Samalete* observed that imposing a fee on victims wishing to report a crime could have potentially negative

Another concern is that the fee system places an unfair burden on victims of crime since both the suspect and victim must pay the fee in order to obtain local leaders' intervention.

It seems possible that women, children, people with disabilities and others who are financially dependent could have their access to dispute resolution particularly weakened by the use of mandatory fees.

71. These costs are mentioned in: A. Kovacs and A. Harrington, *Breaking the Cycle of Domestic Violence in Timor-Leste, Access to Justice Options, Barriers and Decision-Making Processes in the Context of Legal Pluralism*, 2013, p33-34.

72. Some variation exists. In one *suku* the amounts were cited as \$25 at the clan level; \$50 at the *aldeia* level; \$100 at the *suku* level. In another the *suku* level charged only \$25.

73. Reflecting this view of the fee, some community leaders referred to it as a "*multa*" ("fine"), although they also explained that the fee is imposed regardless of wrongdoing. Throughout our research we saw that where money or items are paid, they are often discussed as fees, as compensation, and/or as a penalty without a clear difference being drawn between these different concepts.

74. Law No. 9/2016 on *Sukus*, article 80, provides that *sukus* may only collect revenues which are expressly provided for by law.

impacts not only for the victims, but for the whole community, since criminal activity might not come to the attention of leaders.

Our most concerning finding concerns how little information victims and communities have about those cases which have proceeded to the police and court system.

57. We also note that these sorts of disincentives to reporting might act as a barrier not only to community justice but also to justice in the courts, where communities adhere strongly to the *eskada* or the requirement to first report all matters (including serious crimes) to community leaders for referral (see above at paragraphs 39-41).
58. This kind of financial barrier is obviously a problem for poorer households. However, it also may affect members of other households. Even where a family has sufficient income to pay the cost of dispute resolution, decisions on how to spend family money may not necessarily be taken by the person(s) in the family with the greatest interest in resolving a dispute or reporting a crime. Although this question has not been specifically researched, it seems possible that women, children, people with disabilities and others who are financially dependent could have their access to dispute resolution particularly weakened by the use of mandatory fees.
59. It also seems likely that other barriers to accessing local justice exist for marginalised groups. These questions were difficult to investigate through interviews with community leaders. Generally, it was acknowledged that persons with disabilities, LGBTQIA+ people and children rarely or never seek out local justice. However, the reasons for this were difficult to ascertain. Community leaders often believe that members of these groups do not face any problems requiring resolution. However, it seems equally possible that they are reluctant to report. Investigating this question further would be assisted by discussions with these community members themselves, but also from observing the way in which these community members are treated during local justice procedures.
60. When asked about women's access to local dispute resolution, most community leaders gave careful responses. They emphasized that they support women to seek dispute resolution and to speak during these procedures. However, some other community leaders revealed practices which might indicate the contrary. For example, one (female) community leader explained that women are permitted to speak if their husbands allow it. She also recognised that women are often interrupted or shouted over by other participants. Speaking to women disputants and observing proceedings would assist in better understanding these issues.

3.4 Victims and communities are disconnected from court proceedings

61. Our most concerning finding concerns how little information victims and communities have about those cases which have proceeded to the police and court system. Although we had expected to hear of challenges in this area, we were shocked by the magnitude of the problem.
62. Once a case has been reported to the police, there is no feasible way for the victim or community to find information about its progress or outcome. The victim is left to wait and will only receive information once contacted by the Prosecution Service to



attend for the purpose of "*dilijensia*" (providing a statement), or by the court to attend trial in order to give evidence. Suspects seem likely to face a similar situation, considering resource limitations in the Public Defenders' Office.

63. In theory, information about the progress of a case might be released to the victim on request by the Prosecution Service, or – once the file has been transferred to the relevant court – by court officials. This requires an in-person request, however, meaning that the victim would need to travel to the relevant Prosecution Service office or District Court to make the request (with the real possibility of being told that there is no progress and to come back again). For people in many communities this trip would involve at least a full day of travel, as well as the cost of transport. Additional barriers may also prevent the information from being provided. For example, in order to locate the case information, Prosecution Service or court officials may require the unique case number ("NUC") which a victim might have received from police on making a report.⁷⁵ However, the victim might sometimes not have been told the NUC by police or might have lost it since making the report. Even where the NUC is known, it is possible that the information might not be accessible from the institutions' respective databases (for example because of temporary poor connectivity, or a casefile not having been updated). This is problematic where a victim has spent time and money travelling a significant distance to seek the information, and especially where he or she may not be able to return soon to try again. However, it seems that most victims do not even attempt this process because of the time and money which would be involved.

Victims or others interested in a case which has been reported to the police are left without information about its progress.

64. The result in practice is that victims or others interested in a case which has been reported to the police are left without information about its progress. Because cases often take many months or even several years to reach trial, this can be extremely frustrating and disillusioning. Victims and others do not know whether the case remains on foot and whether they will be called up to give evidence at some point, or whether the case has somehow ended.

Systems do not exist for routine sharing of information by the Prosecution Service or courts to the PNTL on the progress of cases.

65. Community leaders and OPS told us that people involved in cases before the courts often ask them for information on the status of the case. Unfortunately, they too have no means of acquiring this information. OPS can attempt to request information from their PNTL colleagues working in Investigations, however this is unlikely to be successful because systems do not exist for routine sharing of information by the Prosecution Service or courts to the PNTL on the progress of cases. Separate databases are maintained by each institution. Police officers can make individual requests to the Prosecution Service for information on specific cases, but we were informed that this should be done in-person, making that process time-consuming for police.
66. Recent changes in the division of responsibility among policing entities may further complicate matters. In addition to the PNTL (overseen by the Ministry of Interior) a separate police institution was established in 2014 under the Ministry of Justice: the Scientific Police for Criminal Investigation (*Polisia Sientifiku ba Investigasaun Kriminál* or "PSIK"). A July 2022 law divided investigative

⁷⁵ We understand that officials sometimes require the NUC because cases often cannot be located based on names, because of variations in spelling.

responsibilities between the PNTL and the PSIK.⁷⁶ It gives presumptive responsibility to the PSIK for some commonly occurring crimes, including sexual crimes,⁷⁷ although outside the areas where PSIK has a presence (currently only Dili) the PNTL will continue to undertake investigations when ordered by the Prosecution Service.⁷⁸ It is yet to be seen what impact this change will have on the availability of information to communities, including through OPS, who are a part of the PNTL.

No notification of a court case's outcome is made to victims, community leaders or OPS. In the great majority of cases – where court cases result in a fine and/or a suspended sentence – victims, communities and community leaders will only know such details about a verdict as the accused or convicted person shares with them.

67. Difficulties in accessing information about a case are not limited to the period during which the case is ongoing. Even once a court has rendered judgment in a case, no system exists to inform the victim or community about the case outcome. In some cases, a victim may attend the delivery of the verdict. This especially happens in simple cases, where the verdict occurs on the same day as trial and the victim has given evidence. However, in many cases the victim will not know of the judgment date and/or will not attend. By law, only the accused person is required to attend,⁷⁹ and in practice only the accused person is notified of the judgment date. No separate notification about the case outcome is made to victims, community leaders or OPS. Community leaders and OPS reported that they will only know what has occurred in a case where it results in a prison sentence and the convicted person is taken into custody. (And even then, there can be uncertainty, because the difference between a prison sentence and preventive detention is not always clear to the community.)
68. The practical consequence is that in the great majority of cases – where court cases result in a fine and/or a suspended sentence – victims, communities and community leaders will only know such details about a verdict as the accused or convicted person shares with them. In some instances, this means that victims and communities do not even know that judgment has been rendered; in many others they receive incorrect information about the outcome from a convicted person. This is sometimes intentional on the part of a convicted person, but it can also reflect the convicted person's own lack of understanding about the verdict (as further explained below).
69. This vacuum of information faced by victims and communities has several potential impacts: While waiting for the outcome of a case they have reported, victims may feel unsure about whether to seek a community resolution instead, and about what impact this would have on the court proceedings if they do eventually occur. More significantly, people are likely to feel that reporting a matter to the police is futile and frustrating. They are unlikely to report repeat offences.
70. We note that victims and community members also have difficulties *providing* relevant information to judicial actors, for the same reasons that they have difficulties receiving it. For example, we were informed of attempts made to request the withdrawal of a case which failed because of the need to travel a great distance to the Prosecution Service office where the matter was being handled.

3.5 Even where known, outcomes of court cases are not understood

71. Where communities do receive information about the outcome of a case in court, that information is usually minimal and not accompanied by any explanation of how the outcome was reached or what it means. This is made more problematic by the limited knowledge that community members

76. For a critique of the new law see: Fundasaun Mahein, [Law on Organization of Criminal Investigation will not resolve controversy and rivalry between PNTL and PSIK](#), 25 July 2022.

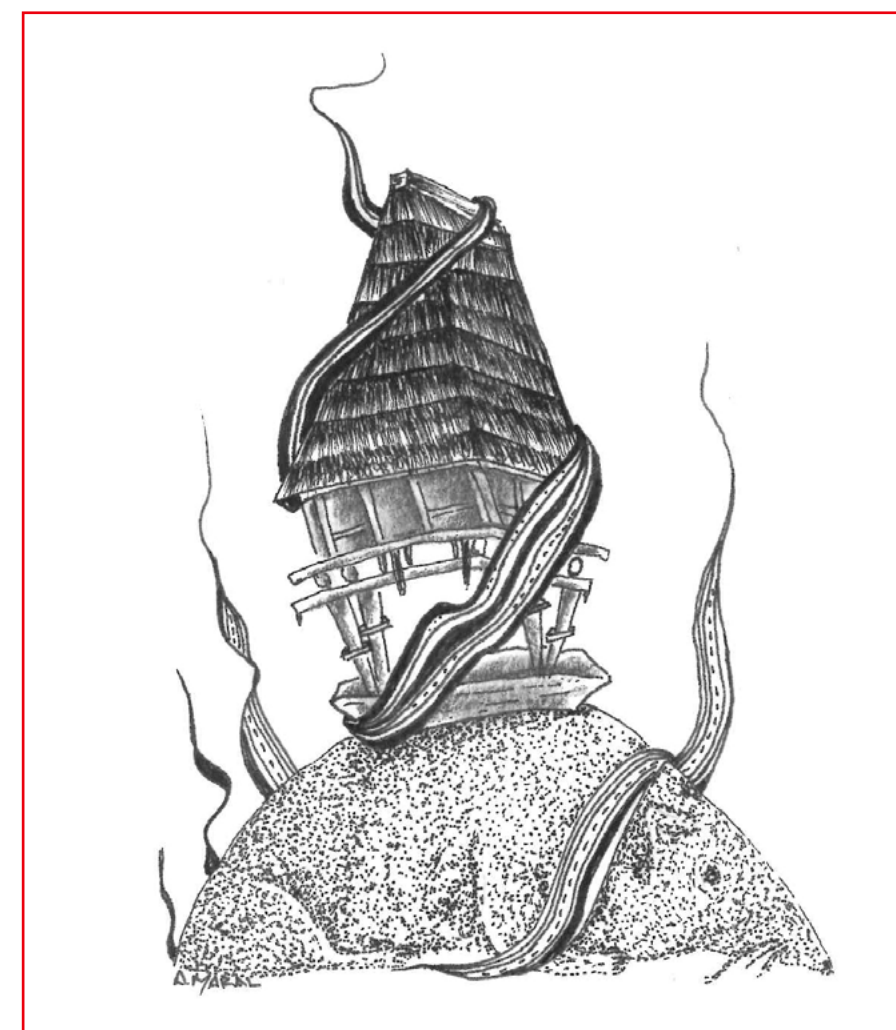
77. Law No. 9/2022 on Organization of Criminal investigation, 13 July 2022, article 10(2)(f).

78. Law No. 9/2022 on Organization of Criminal investigation, 13 July 2022, article 9(2),

79. Criminal Procedure Code, article 253 (and articles 255-259).

and their leaders have about sentences, particularly suspended sentences.⁸⁰ This issue is particularly important because of the prevalence of suspended sentences, especially in domestic violence cases. In 2017 JSMP reported that during the previous year suspended sentences were used in 52% of the criminal cases it monitored which had ended in a conviction.⁸¹ From all domestic violence cases monitored during 2016, JSMP found that nearly 80% resulted in a suspended sentence.⁸²

72. Among all the community leaders we spoke to, none fully understood the concept of a suspended prison sentence. Some recognised the Indonesian term “*tahanan luar*” for a community sentence. Others referred to the concept of a “TIR” (*termu ba identitidade no rezidência*) which is the minimum form of pre-trial measure, requiring a defendant to provide personal information and comply with notifications to appear before authorities pending trial.
73. When asked (after the concept was explained) whether persons in the community had ever been given a suspended prison sentence, most community leaders said that this had never happened; some indicated that they did not know.
74. In a small number of cases community leaders referred to persons in their community having been sentenced to a “TIR” by the courts, which seemed to refer to a suspended sentence. Community leaders, however, did not have a clear understanding of what this meant. They did not know whether the defendant had been convicted, whether the defendant had been punished, what obligations fell on the defendant pursuant to the suspended sentence, or what would (or should) happen if the defendant broke those obligations.
75. In most cases even this level of knowledge did not exist. Most community leaders either did not know that a case had ended or were sometimes only aware that the accused person had gone to court for trial but had not gone to prison. This could be taken to suggest an acquittal, or in other cases was understood to mean that the court had “sent the case back to the community to resolve”. Although we did not have the opportunity to speak to a range of community members, it seems very likely that throughout the communities the level of knowledge about suspended sentences is equally limited, or even more so.



80. Confusion also exists around court costs, which seem to sometimes be confused for fines.

81. JSMP, [Sentencing and Domestic Violence Cases: Suspending prison sentences with conditions](#), December 2017, p8.

82. *Ibid.*, p10.

76. This lack of understanding could have several problematic consequences. First, because community members, leaders and even OPS are unaware that a suspended sentence is in place, and/or do not understand its nature, the sentence is unlikely to be enforced. Not only is there usually no entity specifically tasked with monitoring or enforcing the sentence (on which see further below at paragraph 81(ii)), but the persons in the community best-placed to report violations are not equipped with the information required to do so.

77. Secondly, victims and community members do not realise that the offender has been punished and might not even know that the offender has been convicted. They are likely to believe that reporting to the police had no consequence and might therefore shun this course in the future. It may therefore be even less likely that repeat offending, whether during the suspended sentence or thereafter, will be reported.

Because community members, leaders and even OPS are unaware that a suspended sentence is in place, and/or do not understand its nature, the sentence is unlikely to be enforced. Victims and community members are also likely to believe that reporting to the police had no consequence.

78. Finally, in this context the convicted person may feel no impact of the sentence. Even in the event that the court or defence counsel has clearly explained what the sentence means, the convicted person is unlikely to feel any social condemnation associated with the sentence and may realise that its enforcement is unlikely. However, our interviews (both those in communities and with judicial actors) suggested that many convicted persons may also not understand the nature or terms of their own suspended sentences.

79. It therefore seems probable that many or most suspended sentences are not achieving positive impacts; a real possibility exists that they may actually deter victims and other community members from further reporting to police.

80. In our discussions with community leaders and OPS, they expressed a strong desire to be able to help explain legal processes and case outcomes to community members, including victims and defendants or convicted persons. However, they are currently ill-equipped to do so, not only because of a lack of information about specific cases, but also limited knowledge about the legal concepts. This lack of knowledge also makes it difficult for them to comply with their own obligations to report crimes. Further, it prevents community leaders from serving as part of a system for the enforcement of suspended prison sentences, which is especially unfortunate because of the institutional vacuum which exists at the national level in this area (see below at paragraph 81(ii)).

3.6 State mechanisms to engage with communities on justice processes are weak

81. Having recognised these challenges, we tried to identify state institutions which might play a role in strengthening links between the national justice system and communities. We found that across the state institutions, systems for engaging at the community level are lacking. In some cases, this is due to a shortage of resources. However, often it also appears that insufficient value and priority has been placed on making court proceedings accessible and meaningful to communities.

Community leaders and OPS expressed a strong desire to be able to help explain legal processes and case outcomes to community members, including victims and defendants or convicted persons. However, they are currently ill-equipped to do so.

- i. Courts, the Prosecution Service and police do not have systems for information-sharing regarding specific cases. No institution has clear responsibility for ensuring that

communities and victims are kept informed about the progress or outcomes of individual cases.

- ii. The Department of Social Reintegration (in the Ministry of Justice, within the National Directorate of Prison Services and Social Reintegration), which is the body presumptively tasked by law with supporting the planning and “accompaniment” of suspended sentences,⁸³ has only two officials and is currently focused exclusively on the reintegration of prisoners. It is not informed by the courts of statistics on suspended sentences. The Department’s position is that it will only act on suspended sentences when directed to by the courts. However, the courts appear to consider that the Department is ill-equipped to play a role in suspended sentences that it is futile to order its involvement in given cases. Timor-Leste is left effectively without a functional probation service.⁸⁴ No institution is overseeing suspended sentences or supporting options for other forms of community sentences. This gap has received little attention from government and international agencies even though its consequences are dire. Community sentences (work orders or rehabilitation programs, for example) are almost non-existent. Meanwhile, suspended sentences, which are used extremely frequently (see above at paragraph 71), are rarely enforced. Repeat offending often goes unreported, and even when reported may not have consequences.
- iii. Although the Ministry of State Administration provides training to community leaders, it has so far not included a strong focus on justice issues. The Ministry of Justice carries out socialisation activities at the community level about some laws, but this work is restricted by funding limitations.
- iv. The DNPCK (in the Ministry of the Interior) and DPHKS (in MSSI) are able to provide an alternative to community-based resolution in a relatively limited number of instances. Neither department is in a position to work consistently at the community level throughout the country and neither has a current focus on educating community leaders regarding links to the national justice system.
- v. The PNTL is the only national institution which in principle has a representative in every *suku*, in the form of OPS. In theory this would provide the ideal mechanism for justice-related outreach to communities. Ideally, OPS could be a point of contact for information on individual cases, as well as a source of general education regarding basic legal concepts. However, in reality this is far from being realisable. OPS carry out other functions concurrently which keep them from working full-time in their *sukas*,⁸⁵ and are themselves drastically under-supported with training and access to information on specific cases.

No institution is overseeing suspended sentences or supporting options for other forms of community sentences. This gap has received little attention from government and international agencies even though its consequences are dire.

83. Decree Law No. 14/2014 on the Regime for Penal Execution, especially articles 148-150; Decree Law No. 10/2019 Organic Law of the Ministry of Justice, article 16(2)(n).

84. “Probation” refers to the supervision of convicted persons within the community. In many countries, state institutions with responsibility in this area focus not only on inmates who are released early from prison, but also on convicted persons who receive community sentences, including suspended prison sentences.

85. Fundasaun Mahein and Hau Meni Associates, *Evaluation PNTL Suku Policing Service (OPS) August-October 2018: Final Report*, April 2019.

4. Conclusions

82. Despite recognition that communities play a central role in the Timorese justice system and numerous publications on this subject, there remains much work to be done in this field.
83. Communities lack information about the national justice system, both in terms of how it operates generally, and about specific cases. State mechanisms for socialising general legal information are ineffective, and no mechanisms currently exist to ensure access to information about specific cases. This makes it difficult (or impossible) for community members to take informed decisions about what interventions to make at the local level. For example: Is it permissible to undertake community mediation? Which system (local or national) would lead to the heaviest sanctions? Should a person keep waiting for an outcome in a case that's gone to the court system, or try to resolve it locally? It also undermines the effectiveness of court proceedings and the national justice system. A clear example relates to suspended prison sentences. They can be misunderstood as an acquittal or an invitation to community members to "resolve" the matter locally. Additionally, mechanisms to support, monitor and enforce suspended sentences in communities do not currently exist. Together these problems can render suspended sentences ineffective.
84. Local dispute resolution, at the family or community level, can have advantages in terms of accessibility, but often also involve barriers, including costs. More research is needed to better understand these barriers and how they may operate differently among various members of communities, including members of marginalised groups. Communities would also benefit from support in producing and maintaining *tara-bandu* to ensure that they promote access to justice and comply with national law.
85. Overall there is a need for increased attention to the role that communities play in the justice system. State institutions need more resources to support communities and to establish effective mechanisms for overseeing community sentences. Observation and detailed research on specific issues would also enable better understandings how community justice operates and what measures are needed to support them. Research which may have useful practical implications include: considering the impacts of costs associated with community dispute resolution; identifying other community-level barriers to justice for members of marginalised groups; assessing whether it is correct (as sometimes speculated) that dispute resolution by women correlates to better compliance; and investigating which justice interventions are most successful at reducing recidivism in various kinds of cases.
86. The PASK Options Paper set out specific recommendations for programming by PASK to address some of these needs. PASK has now initiated a pilot program in partnership with JSMP to observe and support community justice work in four *sukus*. However, it is very clear that the challenges identified through this research cannot be met by PASK and JSMP alone. Government and development partners should ensure that justice sector development activities include components to address these challenges at the local level.

