

Reconciling Justice
‘Traditional’ Law and State Judiciary
in East Timor

Final Report

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Executive Summary

Local legal systems have proven of continuing relevance in East Timor throughout and beyond the periods of Portuguese colonial and Indonesian occupation. The imposition of state judiciaries during these periods has had a limited impact and the local population has demonstrated an impressive ability to utilize these institutions in accordance with the priorities associated with their own world view. The latter consists of a refined socio-cosmic system in which kinship concepts relate closely to most aspects of life. State-less communities are ordered through these systems, with supernatural ancestral powers as controlling and life-giving forces. Conflict resolution and punishment of crimes are part of this. They are characterized through replacement of values to stabilize the cosmic flow and through social reconciliation to ensure continued harmony within the community. These mechanisms have developed in an environment where no state-bodies prevailed, and are paradigmatically contradictory to modern systems of rule of law.

In the wake of the complete destruction of East Timor's state institutions, local mechanisms provided the only point of stability at the local level and a quick means by which normality could be re-established. During the peacekeeping and state-building operation of the United Nations, reconciling local and state systems and institutions has proven extremely difficult. Apart from the failure of the UN to establish a well functioning, official rule of law, the latter never gained any legitimacy in the eyes of the population. There was not even tension between the two systems – as they both operated in different universes. The international community never paid attention to the nature and relevance of local systems in the determination of strategies. It was taken for granted that new systems would be readily accepted by societies, though they do not match with local concepts and despite the negative experiences with the former Indonesian justice sector.

What was most needed was not even seen: a legitimate manner in which to deal with conflicts at all levels - national and local - and to pave the road for local traditional societies integrated into state society.

In the absence of policy guidance, it was no surprise that most of the UNTAET initiatives to cope with local legal systems, be it to tackle or to integrate them, were conducted as individual initiatives and mostly on an ad hoc basis. The population, disconnected from the international intervention, reverted to their 'traditional' means of solving conflict or sought help from the left-over resistance structure, which in itself was based on local structures.

The most important lesson learnt is that such interventions cannot be conducted without appropriate involvement of the main 'customer' – the local population. For future operations that include the establishment of the rule of law it is therefore important to conduct a quick early assessment of basic societal and power structures with focus on conflict resolution mechanisms. At the same time planners have to determine which options are realistically achievable, with an emphasis on what is attainable given the strength of local paradigms, budgetary and time issues and political will. Further

decisions should be made based on this assessment, and may range from a minimal intervention model to a comprehensive institutional development program. What is important to consider when making these decisions, however, is that institutions and systems that have little or no relevance to a people's way of life are unlikely to be adopted in the short term.

Whatever model is chosen, if a transitional justice system is to be consistent, well coordinated and effective, then appropriate policies should be developed and firm operational guidelines provided to peacekeeping staff on the ground.

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Most importantly, we thank the Timorese for their time and patience in helping us understand their concepts of law.

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Introduction

The lack of knowledge of local ‘traditional’ structures has proven to be a general problem of post-cold war international interventions. Most of these more complex ‘second generation’-operations¹ have not paid attention to what exists on the ground. Even in post-conflict scenarios, local populations have very strong ideas about who should be in power and how society should function. There is a general perception that these societies are characterised by ‘vacuums’ of power. Yet, quite the opposite is the case – societies refer even more strongly to their ‘traditional’ authority structure, as this is what is left after the destruction of the state apparatus or the withdrawal of a government. This is what people understand and what helps them to reconstruct their lives.

The question of how the international community should administer justice in post-conflict scenarios has also become more urgent and apparent in the last decade², as justice has turned out to be a crucial aspect of more complex interventions. To combine these two diagnosed weaknesses of international operations in this research was therefore a challenging task, especially in the case of East Timor.

After the brutal rampage following the vote for independence from Indonesia in September 1999, the entire infrastructure and administration of East Timor were destroyed. The United Nations was mandated as a Transitional Administration (UNTAET) and assumed the entire range of state-building activities, including the (re-) establishment of the judiciary. The Portuguese colonial rule had not asserted significant influence on internal Timorese power structures and mechanisms of conflict resolution, while the succeeding Indonesian judicial system never gained the trust of the population as it was viewed as particularly corrupt. UNTAET hence entered at a stage where East Timor’s multiple and diverse societies were still very much rooted in ‘traditional’ social systems with mechanisms that developed to respond to the specific needs of non-state societies, and where conflict resolution is an integral part of the social organization.

Our main research question was therefore to assess the present strength, influence and nature of local legal systems in East Timor, and, most important, how they interplay with the official justice that was set up under the UN operation. The aim was to be able to identify crucial aspects for the administration of justice in future peacekeeping operations that take place in an environment determined by ‘traditional’ social structures.

In East Timor the legal system had to be established from scratch and administered by the Transitional Administration. This included the more technical side of institution building as well as capacity building of legal personnel to enable the justice sector to eventually hand over to a local government. As the occupier had withdrawn, all that was left was a highly traditional scenario and the remains of the Indonesian law. A confrontation

¹ John Mackinlay and Jarat Chopra, ‘Second Generation Multinational Operations,’ *The Washington Quarterly*, Vol. 15, No. 3, Summer 1992, pp. 113-131.

² See for example Mark Plunkett (1998) Re-establishing Law and Order in Peace-maintenance, In: Jarat Chopra (ed) *The Politics of Peace-Maintenance*, Lynne Rienner, Colorado and London, pp 61-79.

between the Indonesian left-overs, western concept of rule of law and the local mechanisms, and a discussion about the integration or disintegration of the latter, seemed the most logical consequence. Yet, reality often turns out differently.

The first chapter of the report focuses on the nature of the local legal systems, contrasting local concepts of justice from western-based ideas. The following chapter examines the relations that occurred between local and official law in the course of the transitional administration in East Timor. It reviews the perspectives on local law that prevailed within UNTAET and examines the policy environment that prevailed throughout the mission and the guidance provided to staff in the field in relation to local law. A further section focuses on key areas of the UN's operation where local justice expectations and realities prevailed, and examines strategies used by UNTAET staff to approach local law. Then the report examines Timorese perceptions on transitional justice and Timorese ways of dealing with the two different systems.

Literature Review

The official judiciary and the local legal systems in East Timor during Portuguese times are well documented. Sources mainly consist of colonial documents or anthropological research of the late colonial period. In the late 60s and early 70s numerous anthropologists conducted research in the area and their material has been published over the last twenty years. There are excellent monographs written on the Mambai in Aileu, the Marobo in Bobonaro, and the Tetum-speakers in Viqueque,³ as well as shorter pieces on other societies⁴. Yet, none of these accounts specifically investigated aspects of local legal systems.

During the Indonesian occupation, the authorities granted no research permits, therefore very little was documented concerning how local justice systems interfaced with the official Indonesian justice system during this time. Yet people's memories are still fresh, and nearly every generation presently living in East Timor has incredible stories to tell about this period.

The literature situation in the post-consultation period is slightly different. It was over two years into the transitional administration before the weak state of transitional justice was first examined from a more culturally informed perspective. This occurred when Australian Legal Resources International (ALRI) commissioned an anthropologist to

³ Elisabeth Traube (1986) *Cosmology and Social Life. Ritual Exchange among the Mambai of East Timor*, University of Chicago Press, Chicago and London; Brigitte Clamagirand (1982) *Marobo. Une société ema de Timor*. Langues et Civilisations de l'Asie du Sud-Est et du Monde Insulindien No.12, CNRS, Paris ; David Hicks (1988) *Tetum Ghosts and Kin*, Waveland Press, Illinois.

⁴ Claudine Friedberg (1980) Boiled Woman and Broiled Man. Myths and Agricultural Rituals of the Bunaq of Central Timor . In: Jim Fox (ed) *Flow of Life. Essays on Eastern Indonesia*, Harvard University Press, Cambridge, pp. 266-289; Shepard Foreman (1980) 'Descent, Alliance, and Exchange Ideology among the Makassae of East Timor', In: Jim Fox (ed) *Flow of Life. Essays on Eastern Indonesia*, Harvard University Press, Cambridge pp.152-77.

produce a report on the state of local justice⁵. In July 2002 the Judicial System Monitoring Programme (JSMP) in Dili held a workshop with Timorese representatives on ‘formal and local justice systems in East Timor’ and produced a further report.⁶ Even earlier, a few academics started to draft papers on the relationship between the two systems, some of them focusing on reconciliation, which was an obvious problem at that time⁷. Former UN staff have also begun documenting the land and property experience under the transitional administration⁸. At the same time, the establishment of the official judiciary became well documented and discussed.⁹ High-quality information relating to the official judiciary has also been generated by JSMP and Lao Hamutuk.¹⁰ The question of how to deal with local law has only become an issue since independence. During our field-stay we found several initiatives on related issues planned or in progress.¹¹ The objective of a number of these is to provide policy recommendations relating to the future East Timorese justice system.

Methodology

The research team for this study was composed of an anthropologist and a political scientist, both of whom have expertise and field-experience in East Timor. After the review of the available literature, a 20-day field trip was conducted by the two team

⁵ David Mearns (Dec. 2001) *Variations on a theme: Coalitions of Authority in East Timor. A Report on the Local and National Justice Systems as a basis for Dispute Resolution*. Report prepared for Australian Legal Resources International.

⁶ Judicial System Monitoring Programme, ‘Findings and Recommendations: Workshop on formal and local justice systems in East Timor,’ Dili, East Timor, July 2002. Accessed at <http://www.jsmp.minihub.org>

⁷ Dionisio Babo Soares (1999) *A Brief Overview of the Role of Customary Law in East Timor*, a paper presented at a symposium on East Timor, Indonesia and the Region organized and sponsored by Universidade Nova de Lisboa, Portugal and (2001) ‘Nahe Biti: The Philosophy and Process of Grassroots reconciliation (and Justice) in East Timor’, Paper prepared for the conference *Road to Reconciliation*, 11-12 April 2001, Bergen, Norway; Chris Lundry (2002) *Indigenous Justice and the Rule of Law in East Timor*. Lisan, the United Nations, and the Reintegration of Militia members, paper presented at the nineteenth annual University of California, Berkeley *Southeast Asia Conference, Local Knowledge and Global Forces in Southeast Asia*, February 8-9.

⁸ Daniel Fitzpatrick (2002) *Land Claims in East Timor*. Asia Pacific Press, Australian National University, Canberra; Cath Elderton (2002) ‘East Timor – Land Issues and Independence’, paper prepared for the conference symposium *Transforming Land Conflict*, FAO/USP/RICS Foundation South Pacific Land Tenure, 10-12 April, accessed at <http://www.usp.ac.fj/landmgmt/SYMPOSIUM>; Jean du Plessis (forthcoming 2003) *Slow Start on a long journey. Land Restitution Issues in East Timor 1999-2001*. Scott Leckie (ed) *Housing and Property Restitution. A Comparative International Legal Study*. Transnational Publishers, New York.

⁹ Hansjoerg Strohmeier (2001a) ‘Policing the Peace: Post-conflict judicial system reconstruction in East Timor,’ in: *UNSW Law Journal*, Vol. 24(1) and (2001b) ‘Collapse and reconstruction of a judicial system’ *American Journal of International Law* Jan, 95, pp.1-46; Sarah Pritchard (2001) ‘United Nations involvement in post-conflict reconstruction efforts: new and continuing challenges in the case of East Timor,’ in: *UNSW Law Journal*, Volume 24(1); Suzannah Linton (2001) *Rising from the ashes: the creation of a viable criminal system in East Timor*. 25 *Melbourne University Law Review* 5, accessed at <http://www.austlii.edu.au/au/journals/MULR>

¹⁰ Accessed at <http://www.etan.org/lh/>

¹¹ These include *Advocates Sans Frontiers* (Lawyers Without Borders), the Police Needs Assessment Mission (Joint Government), the Columbia University Centre for International Conflict Resolution, USAID, and the Peace and Democracy Foundation (an East Timorese NGO).

members, who assessed perceptions of the official judiciary amongst the population and studied the application of customary law in four selected districts; Bobonaro, Aileu, Baucau and Oecussi. This choice covered a wide geographical distribution, with Baucau as an eastern district, Aileu as a central district, Bobonaro as a western border region and Oecussi as an enclave. Each district consists of differing ethnic-linguistic groups. In some of the districts anthropological studies have been conducted prior to the Indonesian rule. Baucau and Oecussi are both locations of courts.

Apart from the field stay in East Timor, relevant actors were interviewed in New York and Darwin. Questionnaires were sent out to international personnel that had worked in the rule of law sector. As key resource people, the following were selected: leading experts of customary law in ET, experts on set up of judiciary, ex-UNTAET staff, International / local NGOs, individuals presently in ET working in the field of justice, ET government officials, Civpol / UNPOL, Timorese Police, village chiefs, sub-district chiefs, traditional elders, women and youth representatives. Approximately 50 people were interviewed, in English and Indonesian. We decided to leave all interviews anonymous.

Local Systems of Justice

Socio-cosmic Features

The Law is written by history – there is no need for anyone to write it down¹²

Whereas Lord Maugham has asserted¹³ that lawyers ‘are the custodians of civilization’, it is doubtful if this is true for societies such as East Timor, where the majority of the population continues to live a subsistence life in the rural hinterland and has minimal interaction with the legal fraternity. Closely dependant on rainfall and the fertility of the soil for the continued viability of their economically marginal existence, those who inhabit the districts of East Timor believe strongly in the need to maintain excellent relations with, to act in accordance with the wishes of, and to appease where necessary - their ancestors. While our informants tell us that the ancestors are not unsympathetic to the need for change, they represent an ongoing and fundamental feature of social organization in East Timor, and one largely unaffected by the upheavals of recent years. Representing a conservative influence in the positive sense of the term, the ancestors stabilize society. Through rituals, taboos, protocols and social relationships, the local practices honor time proven ways of doing things, and prevent radical changes and initiatives from threatening the ability of the Timorese to extract from the harsh landscape the limited harvest on which their survival depends.

According to the common interpretation, ‘customary’ or ‘traditional’ law describes ancient customs, which have survived against modern influence. Yet as David Mearns has pointed out in his report, communal ways of solving conflict can sometimes be very recent inventions.¹⁴ East Timorese societies were always subject to influences from foreign powers or neighbor communities, even before the Portuguese arrival. To determine therefore what are really ‘ancient’ practices and what has been undergoing change is nearly impossible. Social systems are never static and are always subject to influences that cause cultural transformations. By describing local practices as ‘old’, however, one would in fact be arguing in accordance with the local view itself, because the main source of legitimacy of local customs derives from communities’ perception of their age. The ancestors are thought to have established these customs, sometimes at the very beginning of the world. The older a custom is perceived to be, the more legitimacy it has. Therefore, by placing customs in the realm of the ancient, the local reader would be fully satisfied. Nevertheless, we decided to use the term ‘local legal systems’.

¹² Timorese Politician, Dili, November 2002.

¹³ In Plunkett (2001), *Re-establishing the Rule of Law in Peace Operations - the East Timorese Experience*. Paper presented at the Politics, Crime and Criminal Justice conference (the 15th International Conference of the International Society for the Reform of Criminal Law), held in Canberra from 26th – 30th August, p.1.

¹⁴ Mearns 2001, pp. 8-9.

Our intent is to describe the present ways in which societies deal with crimes and conflicts. To understand these systems, we need to focus on local structures, and specifically on local perceptions of the official law. Former studies on the region of Eastern Indonesia, including East Timor, have shown that local structures have a very specific mechanism to integrate foreign aspects. This was first discovered by early Dutch colonial officers.¹⁵ They described the ability of Eastern Indonesian societies, including those of East Timor, to integrate foreign influence as one of their defining features. Therefore we have to keep in mind, that local systems always reflect somehow the present 'external' law and are not opposed to it.¹⁶ Understanding the local perspective on justice, means understanding the relationship between official justice with local legal systems, seen from the local perspective. This outcome can be contrasted with the modern view of official law. We are less comparing two legal systems than we are comparing two different views *of* the systems, originating from different paradigms.

To achieve this it is important to illustrate the local socio-cosmic structures and how they relate to (a) local understandings concerning what represents a crime, and (b) local conceptions on how to resolve a conflict. Through locating local systems of law in the broader social context, we will be able to understand their main features more easily. Using this approach we can recognize the main authorities who deal with conflicts, identify what is actually perceived as a 'crime' and distinguish the mechanisms used to solve it. This whole complex will allow us to understand what happened from the local perspective under the peacekeeping operation and how customary law conceptually differs from official law. Finally we will be able to pose the question of how to overcome these paradigmatic conflicts that occur between the two legal systems.

To outline the general pattern of local structures, we need to understand the holistic nature of all aspects of local societies. The French sociologist Marcel Mauss described this phenomenon as 'total social fact'¹⁷. All socio-cultural aspects of 'traditional' society are interdependent. Any one aspect, such as law, kinship or the belief system cannot be extracted from the entire socio-cosmic system without taking it out of context. Local conflict resolution methods cannot be understood without understanding their relation to the marriage system, cosmology or kinship. Only in the modern state different aspects become divided. Hence we will start with some basic explanations about the social features of societies of the area. These aspects are not just exotic aspects of life, but interrelated phenomenon that finally, in their totality, constitute a society's paradigm. Local paradigms are to be taken seriously as they form the prism through which every new occurrence is classified and ordered (including freshly deployed peacekeepers). The space in this report only allows us to portray a very basic picture of local socio-cosmic features. Yet, it will hopefully contribute to some better understanding of what otherwise might appear as folkloristic, traditional legal practices.

¹⁵ F.A.E. van Wouden (1935) *Sociale structuurtypen in de Groote Oost*. Leiden, J.Ginsberg.

¹⁶ For examples of how the foreign powers were integrated into local system, see Traube 1986, pp.51. Sofi Ospina and Tanja Hohe (2001) *Traditional Power Structures and the Community Empowerment and Local Governance Project (CEP) in East Timor*. Final Report, prepared for the World Bank / UNTAET, Dili.

¹⁷ Marcel Mauss (1950) 'Essai sur le Don. Forme archaïque de l'Echange,' In: *Sociologie and Anthropologie precede d'une Introduction à l'oeuvre de Marcel Mauss par Claude Lévi-Strauss*. Presses Universitaires de France, Paris.

Such a description cannot take into account the local diversity of concepts and practices. East Timor has an incredible variety of ethnic groups. There are approximately 15 different languages, and a vast variety of dialects. These languages even derive from more than one language family; the majority belongs to the Austronesian family, and the rest to the so-called Papua language phylum. Not only the diversity in language, but also the differences in architecture and ritual practices are obvious to the visitor. It would certainly be incorrect to ignore all of this and speak about 'the' East Timorese culture. Nevertheless, for our exercise of comparing customary law to modern western rule of law, local features need to be drastically simplified. A structuralist approach allows us to portray the main commonalities of East Timorese societies. Anthropological studies across the area of Eastern Indonesia show similarities in the core features local societies across the central Moluccas, Timor and parts of Nusa Tenggara Timur. East Timorese societies are part of this larger group. Different core features have been identified.¹⁸

Most crucial in the Timorese social universe is blood-kinship and the relationships that are built through marriage. As typical across the region, East Timorese societies consisting of unilineal lineages, conduct an asymmetric marriage system with preferred cross-cousin marriage (mostly mother's brother's daughter-marriage).¹⁹ If this marriage form is continued in each generation, the same family will always supply ego's family with women. The relationship cannot be reciprocal. A marriage is not only the establishment of a relation between two single individuals, but between two families (or lineages, perceived as 'Houses'). One of the families acts thereby as 'Wife Giver' and one as 'Wife Taker'.

The initial marriage relationship is established through an exchange of values, symbolized in exchange goods, commonly translated as 'bride price'. Although a bride price contains the idea of payment for a received good, most Timorese strongly deny that this is what happens in the context of marriage, as both parties exchange goods to the other. The Wife Taker gives cattle, buffaloes and money to the Wife Giver. The Wife Giver returns gold, weavings and pigs to the Wife Taker. These goods stand for specific values that are exchanged between the two entities.²⁰ The Wife Giver's goods, which come with the woman, represent femaleness and fertility. The Wife Taker invests his Wife Giver, meanwhile, with the values of maleness and security. As the Wife Giver – Wife Taker relationship is supposed to last over many generations, the exchange of goods continuously supply a family with the most important values that constitute the socio-cosmos and assure them re-creation of life and fertility as well as security.

The two groups are ordered in a hierarchical relationship. The Wife Giver is mostly superior to the Wife Taker, as he is the Wife Taker's ultimate source of life. The classification of a person in the social universe as belonging to ones' Wife Giver or Wife

¹⁸ See van Wouden 1935, James J. Fox (1996) *The Transformation of Progenitor. Lines of Origin: Patterns of Precedence in Eastern Indonesia*. In: James J. Fox and Clifford Sather (eds.) *Origins, Ancestry and Alliance. Explorations in Austronesian Ethnography*. The Australian National University, Canberra.

¹⁹ See for a more detailed description of Timor's social systems Ospina and Hohe 2001.

²⁰ See also Traube 1986, p. 88.

Taker is very important and defines the actual relationship between individuals. In daily conversations people do not refer to another person's name but to 'my Wife Giver' or 'my Wife Taker', which defines a social relation clearer than a single name.

The focal point of blood-relatives is their identification with their 'House', a typical social entity in Eastern Indonesian societies, equivalent to the lineage. Every individual belongs to a sacred house, either in a patrilineal or matrilineal way. The sacred house was founded by the common ancestor and contains the sacred heirlooms.

All the 'Houses' of a community are hierarchically ordered. The order is the sequence of the ancestors' arrivals on the land, following the idea of 'precedence'. The oldest and highest 'House' is that of the ancestor that settled first and therefore opened the land and its fertility. It is associated with the values of fertility and femaleness. All the following sacred houses differ in their importance and tasks. They are often classified in a dualistic manner, as immigrant and autochthonous. This resembles the two value categories expressed through the exchange goods of the Wife Giver and Wife Taker. The 'immigrant' represents the value of security, whereas the 'autochthonous' represents value fertility. Only the interplay of the two categories of 'Houses' can therefore guarantee stability and fertility in the community. Migration and the 'opening' of new land create new sacred houses, and eventually settlements.

Internally, each sacred house is headed by one elder. He represents the ancestors. On the level of the whole community, other ritual authorities are responsible for the sacred items, for contact with the ancestors and for the ceremonial life. They are clearly confined to the sacred world and are responsible for the fertility of society as well as for the fertility of the crops.

In contrast to the ritual authorities stand the political authorities, like the *liurai*. He is responsible for the political and profane world. 'These latter became the active executives, responsible for the maintenance of jural order, while the old rulers retained ritual authority over the cosmos'²¹. In most contexts the *liurai* is inferior and receives orders from the ritual authority. Nevertheless he is the focal point for the 'outside' society. He has to deal with issues like territorial demarcation lines and with foreign powers such as once the Portuguese.²² The 'inside' of society was not connected to these tasks.

The *liurai* had to be from a specific sacred house. Under the *liurai* was the *dato*. He was heading a settlement or a House. Certain Houses were therefore confined to worldly political power and the *liurai* or the head of a settlement had to originate from their line. This system is nowadays still very much in place and the House that used to provide the

²¹ Traube 1986, p.98.

²² He used to be the link to the Portuguese colonial government, and therefore it was always assumed that he has totalitarian power. That his power depended upon the ritual authorities was not seen by the outside world.

liurai is now often the House of the village chief. ‘We want to appoint a *liurai* again on the basis of the House’.²³

Important is that the dualistic system of power – the ritual and the political authority – exists on all level of society: within the ‘House’ and on the level of the whole community. One of the dualistic powers is always superior and gives orders to the inferior entity. The ritual authority conducts ceremonies and sits silently inside the sacred house. He is connected to the sacred sphere inside the sacred house and therefore to the ancestors. His ancestral contacts provide him with the capacity to make decisions for society. He is ultimately the one that appoints the political ruler, who falls under the category of the ‘immigrant’: ‘Tradition also relates that the founders relinquish political power to newcomers from outside the community’.²⁴

The ‘Houses’ of a community were ultimately bound in a kingdom, with the king (*liurai*) as head. These kingdoms were scattered across Timor, varying in size and influence. They were ruled by the king as political authority, internally dominated by the ‘silent presence’ of their ritual authorities. Kingdoms were autonomous entities. They would enter alliances with neighbor kingdoms and also maintain hostile relations to others. As the kingdom was sovereign, it had to secure its border and invent mechanisms to protect it. Diplomatic relations to other kingdoms could turn out to be essential. Consequently one entered specific relationships with each other. These were classified as Wife Giver - Wife Taker or younger brother - elder brother relations. Both are typical classifications in Eastern Indonesian and East Timorese societies. Kinship relations often serve as nominator to classify any kind of social relationship. The Portuguese also aligned with some kingdoms and faced a number of hostile relationships. In some cases individual Portuguese men married kings’ daughters and thus became Wife Takers.

Foreigners, like the Malay traders in the past and the Portuguese colonial power, had to be integrated into the local cosmos. They were therefore classified in the ‘immigrant’ category and attributed with the values of political power, border control, and eventually the government. Local cosmologies prescribed that they originated from Timor and had made their way overseas.²⁵

It took a long time, until the autonomy of the kingdoms was finally broken by the colonizer, yet, the socio-cosmic systems still carry all the features of a state-less society, including the complex systems of ritual and political authority that remain administered through offices that are – ideally – occupied on the basis of birth-right. Attempts made during Indonesian times to replace bearers of authority with candidates considered by the Indonesian administration to be more suitable, and ideas of modernizing and democratizing political relations mooted during the era of transitional administration, have not managed to influence enduring changes to East Timorese conceptions of social organization²⁶. During our research we were told numerous accounts of the severe

²³ Hamlet Chief, Bobonaro District, October 2001.

²⁴ Traube 1986, p.98

²⁵ Traube 1986, p.51.

²⁶ See Ospina and Hohe 2001, p.60.

consequences an individual risks by disregarding ancestral will in relation to the occupancy of key posts in the village administration. During 1998 for example, a man without the correct family lineage took up the chief position for Bobometo village in Oecusse. In the position for only a year, he was murdered by militia during the violence of 1999. The following year a further incumbent was installed in the position, but again without the correct lineage, he died unexpectedly in November 2002. The people of the village have now gone to the family of the man designated to hold the political title, and said there is no one else in the village who is prepared to accept responsibility for this leadership position, and that the legitimate leader must face up to his inherited obligations.

Survival and resistance during the Indonesian occupation required excellent relations with the ancestors, and respect for those able to communicate with them. In Oecusse, it is the *naizuf mnasi* who possesses the ability to communicate with *Maromak* (God) and with the ancestors. This contact allows him to make people invisible to their enemies. Such magic, according to an old and senior *naizuf mnasi*, was last used in 1999, when villagers fled to the hills to hide from rampaging militia members.

In the same village, the story is told of a ritual that was maintained throughout the duration of the Indonesian occupation, and in which the assistance of the ancestors was solicited in order to realize the withdrawal of the Indonesians. Recently, now that the Indonesians have gone and the militias dispersed, the ritual has been brought to a close with a final ceremony, held in the same spirit house in which it first began. That the magic worked, and that the ancestors supported the fight for freedom, is clear to the residents of the village. Although the militia made many attempts during the course of their frenzy of destruction, they were unable to burn this spirit house.

For the East Timorese, therefore - and with very real implications in terms of social organization and the expectations of villagers in relation to administration and justice - it is the ancestors who continue to exercise a fundamental role as the custodians of civilization.

'Traditional Justice'

With this basic understanding of the socio-cosmic features on which the complex social systems of the East Timorese are based, we can focus on local legal systems. First of all, there is no such thing as a separate cultural aspect called 'law'. The Tetum word for 'custom' (*lisan*) comprises everything that is 'old' and inherited from the ancestors. It refers to the 'order' given by the ancestors, but not specifically to what in a western context is classified as 'crime'. Yet, there are certainly conflicts arising in a community as people feel someone else has 'done wrong' and acted against the 'order'. On a very abstract level, these 'wrongs' are often related to the dual socio-cosmic structure we have described above.

The communities' survival depends on the appropriate exchange of values between certain entities of society, enhanced in the ancestral order. The most important social entities, the Wife Giver and the Wife Taker, constantly exchange the above-described 'male' against 'female' values. The values can be embedded in goods or persons. The woman that is given to the Wife Taker family contains the value of 'fertility' as much as other material goods that are passed on in the same direction. The female values guarantee fertility on the Wife Taker's field or fertility in his family life. The male values guarantee a Wife Giver the strength to defend himself against the enemy and to cope with all other political issues. Both value categories have to be presented and have to circulate, otherwise the order of the socio-cosmos is interrupted and life cannot function.²⁷ This circulation of values guarantees the stability of the cosmos and the constant supply of the values necessary for life.

What are conflicts?

The local legal systems, or better the local 'orders', draw their legitimacy from the ancestors. Their good will and presence insures the community with all essential goods. In return, humans need to live in adherence with the order, of which the ancestors are the guardians. Trespassing upon rules can therefore invite ancestral punishment. It can lead to draughts, bad harvests, diseases or the death of one's children. Ancestral rules are not written, therefore certain society members have to be 'in contact' or 'know the words', in order to be able to interpret the ancestors' will. They are in the position to reveal transgression from the order and to define punishment, hence to speak law. While the ancestors are acting as legislators, their living representatives become the judiciary.

What is perceived as 'wrongdoing' in a community is hence a disturbance of the system of value-circulation. If an individual commits a crime, or a social conflict occurs, the flow of value is interrupted and an imbalance in the socio-cosmic system is the result. The cosmic order has been disarranged. Hicks describes this in his monograph on a Tetum-society, as creating disorder between the dual categories in which life is categorized.²⁸ This can relate to murders as well as trespassing kinship and marriage regulations, both of which can threaten the communal life. Such events can have serious consequences for the community and endanger its survival.

In a society where mechanisms remain responsive primarily to traditional needs, the threat of someone behaving against the social rules is perceived as very serious. A good example is the asymmetric marriage system, in which women are passed from one clan to the other. This system in its ultimate form has the advantage of combining as many clans as possible into a peaceful relationship. Yet, if community members start acting against prescribed marriage, then this system of ensuring peaceful relations with one's neighbors is endangered. Not marrying one's mother's brother's daughter endangers society more than, for example, a case of domestic violence. Hence, society needs mechanisms to prevent such a marriage transgression from occurring.

²⁷ The origin myth Traube describes shows the vision of what cosmos would be like if one of the values was missing (1986, pp.54).

²⁸ Hicks 1988, p. 109.

Social rules and ‘law’, to ensure that rules are not broken, have developed to maintain the stability of the system. All the actions of community members need to remain within the realm of the ‘normal’, as any other deed threatens the system. Therefore, what the local paradigm classifies as crime or misconduct might be different from what an official legal system would define. In a state, peaceful relations are guaranteed by other means. We will give some examples here of types of conflict that were frequently discussed in our interviews or seemed to be relevant issues in local legal systems.

Replacing values

Concerning the punishment of a crime or conflict resolution, local law is mainly about the replacement of values, to re-establish their correct exchange and thus reinforce the socio-cosmic order. They recreate the ‘right’ flow of value, meaning that taken or missing values are replaced and social disarray corrected. Harmony in the cosmos and for community members is insured again. To restore this harmony where the cosmic order has been violated, the appropriate fine for a perpetrator has to be determined. The judicial powers determine the matter in accordance with the principle that: ‘small problems are in accordance to the small gold piece, big problems are like a buffalo horn’²⁹. Only then, the continuation and survival of society can be guaranteed.

Conflicts among individuals most frequently occur within a family, for example between unmarried brothers who still live in their father’s household.³⁰ They are subject to the rule of a family head. He has to negotiate with the fighting individuals. These cases are not seen as of concern to the public, yet the ancestors of a family in this position are likely to want to punish such misbehavior, as it is a threat to the well-being of the family. If a conflict is not solved, individuals sometimes separate from their family and establish a new home, which ultimately can lead to the development of new settlements.

The important distinction here is if a conflict is not between blood-brothers, but an in-law and a blood-kin of a family. Then the origin-family of the in-law can get involved. The best example for such a case is domestic violence between marriage partners. In the case of a patrilineal society³¹, in which the woman has moved to the man’s location after marriage, she has become ‘subject’ to the man’s family with the first Wife Taker exchange goods given to her side. Nevertheless, she will always remain connected with her family of origin. If the husband now commits violence against his wife in a worrying manner, she can flee back to her family and the case evolves into a conflict between the two families – entangled in a relationship as Wife Giver and Wife Taker. The elders of both families negotiate the matter. The core problem of the conflict is viewed in the light of the values that had been exchanged in the past. If the husband is found wrong, and he wants his wife back, he has to give another buffalo (the goods given by the Wife Taker) in order to receive her. If she is found guilty, or she decides to stay with her family, then

²⁹ Villager Raeheu, Bobonaro District, November 2002.

³⁰ Hicks 1988, p.82

³¹ Most of East Timor’s societies are patrilineal. There are a minority of matrilineal societies among them, like the Bunaq in Bobonaro and the Galoli in Manatutu.

the Wife Giver has to return the values that are embedded in her. He has to give pigs and weavings, representing fertility, to the Wife Taker.

A rape case is treated in a similar way. The important factor is if the woman is married or not. In case of an unmarried woman, the solution is simple: the man is expected to marry her. As soon as he agrees, negotiations about the exchange of marriage goods begin. The woman traditionally was not given the choice if she wants to marry or not. If the man is not willing to marry the woman, he has to pay her family to 'cover the parent's shame'. He has damaged her reputation and she will not be able to find a husband. The payment consists of the exchange goods of the Wife Taker to restore her full social position. If the rapist is married himself, then the same rules apply, he will just not be expected to marry her. In times of polygamy, which Timorese claim do not exist anymore³², the man could have taken the woman in addition to his other wives.

The 'almost impossible' case ('because no man would ever do such a foolish thing') is if a man rapes a woman that belongs to his Wife Taker family. This is, according to our Timorese informants, a very 'heavy' thing to do. It means placing the entire order of the cosmos at odds. Here people actually say 'he is wrong'³³. In this case, the man has to pay twice as much, as he has to reverse the Wife Giver and Wife Taker relationship. This means that he re-replaces his own family from the superior position of being a Wife Giver to the inferior position of the Wife Taker. He now has to pay the goods of the Wife Taker, which he used to receive before.

Talking to our Timorese interview partners about rape, it became clear that 'rape' (Indonesian *perkosaan*) did not necessarily mean a violent abuse of a woman against her will. The term is actually used to express a sexual relationship that is against the social order. Therefore we had to define if the 'rape' had taken place with both, man and woman, 'wanting' it (Indonesian *mau sama mau*), or if it was against the woman's will. The aspect of violence seemed less important.

In this type of cases, like domestic violence, rape and adultery, the core disorder appears in the world of social relationships. Transgression of the social order is heavily punished, as it threatens the peaceful living together of a community. It concerns mainly the exchange of values between important social entities, such as the Wife Giver and Wife Taker. Transgression of social order affects the cosmic flow of values. The punishment needs to restore the imbalance of values that has occurred. Cosmic disorder, created through adultery for example, has to be recovered by reinforcing a flow of values in the 'right' direction. In the case of adultery, the perpetrator-man pays the Wife Taker goods to the husband and therefore places himself in an inferior Wife-Taker position. The cosmos is ordered again.

Murder cases have been reported to official authorities since Portuguese time. Before that, different mechanisms of punishment were conducted. In some areas, the murderer had to replace the person he killed. He would move to his family and work there for the

³² The Church has forbidden it, but it is still widely practiced.

³³ Elder in Manapa village, Bobonaro district, November 2002.

rest of his life. The payment of goods and money by a murderer to the victim's family is still conducted nowadays. In Oecussi we received a detailed account of the compensation payments for killing a person³⁴:

Compensation for a Killing

1. First you must pay for the head, as a symbol of the whole human being, whose life you took.
Cost: a *tutupanu, belak* or \$100
2. For the social function of the person,
Cost: a *poe aluk*, or \$25
3. For the sadness you produced, for destroying peace and love,
Cost: 9 traditional coins ('Hollander') or \$45
4. For the genitals,
Cost: \$50
5. For the 2 eyes and the mouth (depending on family name),
Cost: \$50
6. For the brain, the thoughts and the rationality,
Cost: \$300 (price for a specific kind of a traditional necklace)
7. For the teeth and for the tongue, because the dead cannot speak again,
Cost: *kabauk* (worth \$100)
8. For the left body and the right body,
Cost: 16 traditional coins for each side (about \$80 each).

This example of payments for the different parts of a human being shows how a person is constituted out of specific values. They are what flows together in a marriage through the couple and through the exchange goods. Only then the creation of another person, a child, is possible.³⁵ If a person is murdered, these specific values have to be replaced. This happens in the form of goods symbolising these values. In this modern example of payment, money replaces the traditional exchange goods, but stands for the same values that are required. The informant even mentioned that one should attempt to pay in objects, but that money is acceptable as an alternative if necessary.

³⁴ Politician, Oecussi district, November 2002.

³⁵ This concept is well explained in Cécile Barraud, Daniel de Coppet, André Iteanu and Raymond Jamous (1984) 'Des relations et des morts. Etudes de quatre sociétés vues sous l'angle des échanges,' In: Jean-Claude Galey (ed) *Différence, valeurs, hiérarchie. Textes offerts à Louis Dumont*. EHESS, Paris.

In cases of theft the focus is on the replacement of the stolen values. The thief has to pay back the stolen good(s) and pay an additional compensation. The compensation can be a horse, a goat or a buffalo, the amount and the specific goods vary from area to area. There are mostly fixed regulations of what the thief has to pay back. In a Bunaq society in Bobonaro, it is clearly defined that for a stolen goat, the thief has to kill a goat and a cow.³⁶ In some cases the penal law was even publicly written or expressed, learned from the Portuguese.³⁷ If the thief and the victim are engaged in a Wife Giver and Wife Taker relationship, then the payment of the perpetrator is determined by the goods that flow into the appropriate direction. If he belongs to the Wife Taker group, he pays buffaloes, if he belongs to the Wife Giver, he pays pigs or weavings. This order of the flow of values cannot be reversed, it would create only more disorder. The payment reimburses the victim for the loss of the stolen good, but at the same time re-insures the socio-cosmic order by restating the direction in which values flow.

A specific case of theft is usually distinguished from stealing personal goods: the stealing of public goods. Timorese communities have an intricate system of exploiting communal goods, such as fruit trees, coconut trees, wood and honey from the forest and so forth. The system is established to insure that nobody damages the environment. A public order prescribes when certain goods can be exploited or harvested and when they are taboo. If someone trespasses this order, he has to pay a fixed fine consisting of money or certain goods.

For the destruction of property, burning someone's house for example, the family of the perpetrator has to reimburse the victim's family. This means to pay everything that was in the house, or the victim's family can take the perpetrator's belongings. If the latter does not have the means to do so, his family can give one of their children to work in the victim's family, because values can manifest themselves in goods or persons. In former times, if a person could not pay 'we would have killed him and put his head on a stick'³⁸. In that case a 'good' from each family would have 'gone up in smoke'. (To kill the perpetrator for material damage is ultimately the opposite effect from replacing a person through values embedded in goods.)

Shaming and covering shame

Another important social control mechanism, connected to the value replacement, is the idea of shaming the perpetrator and 'covering' the victim's shame (Indonesian *tutup malu*). In the scenario of a rape case, for example, in which the woman is married, the perpetrator has put the husband to shame. Informants claim: 'we would have killed him in the past' or 'he has to fill a mat with gold and silver for her husband, to cover his shameful face'.³⁹ The same counts for the case of adultery. Here, for example, the married perpetrator has to pay his parents in law 'to cover their shame'.

³⁶ Village Chief, Bobonaro District, November 2002.

³⁷ See for example Jean A. Berlie (2000) 'A Concise Legal History of East Timor'. *Studies in Languages and Cultures of East Timor*. Academy of East Timor Studies, University of Sydney, p. 143.

³⁸ Elder in Manapa, Bobonaro District, November 2002.

³⁹ Elder, Bobonaro District, November 2002.

Murderers also used to be put into shame, in addition to the payment they had to deliver. A Mambai informant recounts how murderers in Portuguese times were beaten or partly burnt. They were hung and grass was burnt underneath them, developing smoke, which would sometimes eventually kill them.⁴⁰ The community could do to them whatever they wanted. In other cases they were mutilated. Parts of their ears were cut off or fingers chopped. The mutilated person could be easily identified as a thief wherever he went. If one follows the above diagram on the exact value of the different parts of the human being, to take body parts off could also indicate that a specific value is taken.

In Bobonaro we were told that the thief would have to undress, his sarong would be put on top of his head and he would be sent through the village. He is then full of shame and 'never does it again'⁴¹. The way of dressing a person upside down also symbolizes the disorder the person has created.

Conflicts that arise on the inter-communal level, formerly between kingdoms for example, are mostly land disputes or political conflicts. They can quickly turn into a war. Their resolution focuses less on restoration than on the creation of socio-cosmic order. Mechanisms of defending the community or the establishment of political and diplomatic relations come into place. Peace is established through well-determined means: the foundation of kinship or marriage relations. Communities either try to find such links in their histories, or they establish them new: by entering a blood oath and therefore becoming blood brothers, or by giving one of their daughters for marriage. The nature of these relationships prescribes future sharing of goods, such as garden products, hunting game or fruit trees. It also, in contrast, prescribes the martial support in case the brother-kingdom goes to war with another kingdom.

If a land dispute occurs between kingdoms and it comes to war without reconciliation, land is taken by the strongest. He then start planting or 'opening' the land and creates a new history for his community. In some cases, a violent relationship between two kingdoms is prescribed, and therefore is part of the socio-cosmic order again. At the end of the day, violent conflicts, such as a land dispute with the neighbor kingdom reaffirm cosmic order.

Restoring social order

One of the most important stages following the consensus on a compensation for a crime and the payment or execution of the punishment, is reconciliation.⁴² Community members that had been entangled in a tense relationship, now have to reconcile to emphasize that the conflict is over and that both sides are now entering a peaceful relationship again. There cannot be a winner and a loser left behind in the same village.

⁴⁰ National Politician, Dili, November 2002.

⁴¹ Elder, Bobonaro District, November 2002.

⁴² Dionisio Babo Soares (2001) 'Nahe Biti: The Philosophy and Process of Grassroots reconciliation (and Justice) in East Timor', Paper prepared for the conference *Road to Reconciliation*, 11-12 April 2001, Bergen, Norway.

This is crucial for the survival of the community. If there is no reconciliation, tension can survive and threaten the community at a later stage. A reconciliation ceremony is therefore held. It involves the ritual authorities and hence insures ancestral participation in the new peace agreement. This supernatural involvement prevents community members from exercising revenge at a later point. Once reconciliation has been conducted under the eyes of the ancestors, breach of the agreement can lead to ancestral sanctions.

The goods for the ceremony have to be contributed by the perpetrator, and often by the family of the victim. An important contribution, next to the feast for the community, is the alcoholic beverage, *tuak*. If a thief has stolen public goods, the provision of *tuak* for the whole community is essential to reconcile. Only the communal meal and the communal drink, with ancestral participation, can reestablish the socio-cosmic order. Problems are settled for good.

With thieving or killing, we must first negotiate and pay compensation. And then drink *tuasabu* (distilled palm wine) to conclude the reconciliation. If the problem happens again, the community will inform police and the courts. But it is very important to first make a decision in the community.⁴³

Furthermore, committing a crime is not perceived as merely an act of transgression on the part of an individual, but it is a community problem. A crime or dispute is likely to attract, therefore, the interest of a large number of people anxious to establish what went wrong and how to arrive at a resolution. Were, for example, a fight between two individuals from different villages to result in a death, then the whole of the survivor's village would be expected to contribute to the compensation payment for the family of the deceased. The desire to prevent one's family from acquiring a bad name provides strong motivation to reconcile a dispute, especially since - from the East Timorese perspective - allowing one's family name to be tarnished could attract the wrath of the ancestors.

In a village environment, where villagers live in close proximity to one another and to each others' relatives for their entire lives, the promotion of peaceful relations between individuals and families remains of high priority:

People in the villages live and drink together, and if someone goes to jail, then even after being there for twenty years, the bad feeling will remain...If people can sit together, however, then the problem may be resolved.⁴⁴

Restoration of social order therefore encompasses a larger group of people.

Who are the authorities?

As pointed out above, ritual and political authorities represent one of the main dualisms in East Timor's cosmologies. Their authorities in differing realms of social life also play

⁴³ *Naizuf* and village chief, Oecusse, November 2002.

⁴⁴ *Meo*, or Local System Security Officer, Oecusse, November 2002.

into local conflict resolution. In the traditional kingdom, the *liurai* or king, was the ultimate representative of political authority. It was his task to guard the borders of the land, grant land to the people and be in charge of their security. The *liurai* assigned legal tasks to persons who belonged to the realm of political authority. Concerning justice, the Mambai have the *lian nain*, the ‘owner of the words’. In Macassae he is called *ano sobo*, the ‘man of the voice, the one who speaks’.⁴⁵ He is said to originate from a *liurai* family. In Kemaq the person with this position is the *gase ubun*, in Bunaq the *bei* or *himagomon* and in Oecussi he is the *naizuf*. In most communities they have, in addition, helpers. In Bunaq the *gongiri* or *datas gi matas*, in Mambai the *morador*, is the person that receives reports of crimes or conflicts and runs to the *bei* or *lian nain* to report.

The *lian nain* know the history and are familiar with the ancestors. They come from specific families that are the ‘owner of the words’, and they can ‘speak’. They interact with the community. They recount the history of families including their marriage and kinship relations. They have knowledge on how families are interrelated, which often determines the compensation for a crime or the amount of exchange goods that have to be involved in a marriage. They know the rules the ancestors have set, and therefore they have the competence to speak the law. They can recount ancestral sanctions.

Their involvement depends on the level on which the conflict or crime occurs. For a conflict within a family, the head of the family is responsible. If the problem occurs between two families, then their leaders come together and solve it, especially if the two families are engaged in a Wife Taker and Wife Giver relation. Only if they do not succeed in solving a problem, or more families are involved or is even a ‘public’ offense (such as stealing fruits from public trees), would the legal person described above be called. They then appear as a neutral entity, hearing the victim's and perpetrator's families speak. In some communities the *liurai* is the last one to accept such a decision. In other communities, the last agreement to a decision has to be made by the ritual authority. The dualistic opponent of the political authority is the ritual authority, which would literally ‘sit silently in the center’. He is in contact with the ancestors and determines the ritual life of community. In Mambai these are called *kuku nain*, they ‘deal with ghosts and dead people and witchcraft’.⁴⁶ They become very important in reconciliation.

Newly introduced governmental or colonial institutions on the local level were easily integrated into this system. The officially required sub-district chiefs or village and hamlet chiefs came from specific families with political authority. Their new positions were seen as an extension of the political authorities on the ground, linking with the government.⁴⁷ They attend conflict resolution as a witness or final authority, as the *liurai* used to. Yet, the village chief is never the person to recount history and speak the law, ‘he does not know anything about history’.⁴⁸ Government and the official judiciary are much the same from this perspective. If local conflict resolution is impossible, there is nowadays always the possibility to go to the ‘government’. It takes over the position that

⁴⁵ Liurai, Baucau, November, 2002.

⁴⁶ National Politician, Dili, November 2002.

⁴⁷ See Ospina and Hohe 2001 pp.36.

⁴⁸ National Politician, Dili, November, 2002.

formerly the king would have held. Cases are sometimes just sent to the official governmental side to ask for their help in the negotiations. The village chief is eventually the one taking the case up to a higher entity, hence representing the link to the official government.

Dealing with conflict resolution

If a problem occurs within a family or between two families that are engaged in a Wife Giver and Wife Taker relationship, then it is the task of the heads of the families to solve it. They gather to discuss the problem and negotiate a possible solution. Only if this attempt fails, the conflict is brought to a more public level. If a conflict occurs between unrelated families, or between settlements, it becomes instantaneously a public matter.

The process starts with a report of the issue to the village or hamlet chiefs (depending on the level on which the conflict or the crime occurred) by the heads of the families involved in the conflict, or the family of the victim. The 'helper' takes note and reports to the 'local legal authorities', such as the *lian nain*. The authorities set up a date and the 'helper' or the village chief organizes the meeting and makes sure all conflicting parties and the appropriate authorities are invited.

Meetings are usually set up the next day or in the very near future. The time issue is important, as social disorder threatens the continuation life in the community. On the other hand, perpetrators do not have to be detained, as they cannot run away. An escape for an individual in a traditional society is like suicide, as he cuts himself off from all necessary communal support for life. Despite this, the entire community quickly knows about a case and these communal mechanisms prevent a person from trying to hide or escape.

The meetings take place in a communal area where a symbolic woven mat (*biti boot*) is unfolded, the place where discussions and negotiations have to take place. The persons who gather in such a meeting are the heads of the families involved, and the *lian nain*. While an individual might have committed a crime, it is the family that is held responsible. The same counts for a conflict between families, where individuals are expected to take sides with their family or a related family.⁴⁹ They are the most important entities in this gathering. Apart from the families and the *lian nain*, other authorities of the community come together, such as ritual leaders, warriors, the local priest, the hamlet - and village chief. Depending on the kind of conflict, the 'land experts', like the *tobe* in Oecussi, have to be present. The composition of these meetings varies, in some areas they are strictly traditional authorities, in others the nowadays more modern 'society representatives' take part.

The agenda of such a meeting is to negotiate the compensation. The actual speaking and negotiating is mainly done by the traditional legal experts. Only they have the competence to finally take decisions and determine the fines. Most of the other authorities have to make sure that the things spoken or the decisions taken are in

⁴⁹ David Hicks 1988, p.82

accordance with their realm of authority. This means the ritual authority has to approve a decision, weighing whether the ritual sphere and the ancestral world agrees. The highest ritual leader does not join the meeting, he 'only sits in the sacred house and lets his hair grow'.⁵⁰ The hamlet or village chief has to make sure that the decision is not against regulations of the government. Therefore he is perceived as a 'witnesses' of such a trial. The final decision has to be based on a consensus of the 'law experts', but all the other authorities have also to agree. It has to be assured that a decision is in harmony with all the different aspects of the cosmos. Yet, it is emphasized that the village chief does not make a decision.

The objective of such a meeting is to find a solution for good, so community can live together in peace again. If no solution is reached, the group can refer to a higher authority. A Macassae informant stated that cases then go (from a hamlet) to *lia oli*, a 'higher court'.⁵¹ This court contains similar authorities at a higher level, such as the village or the sub district. A similar process is conducted here. A solution 'has to be found' at this stage. If this is not possible, the case is passed to the government.

History

The indigenous paradigm that encompasses the legal mechanisms of communal life is still very much present. At most, the new governmental systems and legal systems of the occupying powers were integrated into the local structures. The 'outsiders' have left their footprints on local societies, but after a closer look many of them can be identified as superficial. They never really had paradigmatic impact and caused structural transformations.

During the long history of Portuguese colonization, local legal systems were left fairly untouched. The main interest of the Portuguese was to prevent kingdoms from going to war with them and to continue to collect taxes and trade. Local mechanisms were therefore only of interest if they could be utilized. The rule of law within the kingdom was basically left to the king. The Portuguese followed this indirect rule till the end of the nineteenth century.⁵² But even about the 1950s it is mentioned 'there were 54 administrative posts, divided into sucos which observed customary laws in everyday life'.⁵³ Only serious cases, such as murder, were brought to the attention of the Portuguese system. The Portuguese only interacted with the *liurai* later, after they restructured the administrative system in 1930s, with the village chief. Yet 'the continual influence of traditional law, *adat*, shows that colonial and indigenous legal and political systems existed in parallel'.⁵⁴

⁵⁰ Villager, Bobonaro District, November 2002.

⁵¹ Liurai, Baucau District, November 2002.

⁵² Berlie 2000, p.147.

⁵³ Berlie 2000, p.148.

⁵⁴ Berlie 2000, p.149.

Under the Indonesian occupation, East Timor was prescribed as solely subject to laws adopted by the national legislative council.⁵⁵ The local system now only dealt with civil matters. The Indonesians formed formal village councils: Council of the Village People (LKMD⁵⁶) and the Council of Elders (LMD⁵⁷). They were partly created for conflict resolution. In some parts, where the appropriate traditional leaders were taken on board they seemed influential. In other areas they became dysfunctional as soon as the Indonesian exodus occurred, as 'people didn't trust them'.⁵⁸

One of the main critiques informants gave us about the Indonesian judiciary concerns its corruption. Everywhere people say that in Indonesian times you could only win a court case if you had the money. An ex sub-district chief of the Indonesian system told us 'when I was *camat*, I advised the people not to go to court, as they would lose anyway.'⁵⁹ Offences like domestic violence under Indonesian law were not regarded as criminal, but as a private problem.

⁵⁵ Dionisio Babo Soares (1999) *A Brief Overview of the Role of Customary Law in East Timor*, a paper presented at a symposium on East Timor, Indonesia and the Region organized and sponsored by Universidade Nova de Lisboa, Portugal.

⁵⁶ *Lembaga Ketahanan Masyarakat Desa*

⁵⁷ *Lembaga Musyawarah Desa*

⁵⁸ District Administrator, November 2002.

⁵⁹ Ex-camat, Bobonaro District, November 2002.

Under International Administration

Resistance Justice

After nearly 450 years of Portuguese rule over the half-island East Timor, the Portuguese dictatorship in Lisbon was overthrown in 1974. The new government stood for decolonisation. For colonies, like East Timor, the prospect of independence in the near future became reality. The news of the demise of the dictatorship was followed by the establishment of the first Timorese political parties and the start of internal political conflict and unrest throughout the country. The large neighbor Indonesia took advantage of the conflict and invaded and annexed East Timor. On the eve of the invasion, a young group of Portuguese-educated intellectuals, the leadership of the Revolutionary Front for an Independent East Timor (Fretilin), declared the independent 'Democratic Republic of East Timor' (RDTL), headed by young Francisco Xavier do Amaral as President. After the invasion, some of the elite stayed overseas, such as Mari Alkatiri and Ramos Horta, to fight against the occupation on the international diplomatic front. Others remained in the country and left for hide-outs in the mountains to apply guerilla tactics against the invader. They eventually formed the National Liberation Armed Forces of East Timor (Falintil).

The new foreign power led a harsh rule, during which many Timorese lost their lives. The resistance movement, with Fretilin as its main party and Falintil as its military wing, had to rely on the support of the local population. They socialized them over the years to join the struggle and eventually created a country-wide clandestine movement. Part of the engine of this was the creation of a new 'Timorese' identity.⁶⁰ No common identity had existed before, except under the small Portuguese-educated elite. The one factor the entire population had in common was the Portuguese rule over the territory. The other factor was the brutality with which the Indonesian military forces ruled the people – undeniably bringing the population up against their occupier.⁶¹ Many Timorese had to live a double life, with many young people studying under the Indonesian education system while active for the clandestine system at the same time.

Finally, in 1998, the fall of the Soeharto regime in Jakarta created an unstable political environment. In January 1999, Soeharto's successor announced that East Timor would be given a choice between greater autonomy within Indonesia or independence. Within the resistance, different parties had already gathered under the umbrella of the National Council of Timorese Resistance (CNRT) to fight for their common goal. The CNRT⁶²

⁶⁰ Antonio Diaz (1999) Le mouvement indépendantiste de Timor Oriental. *Lettre de l'afrese*, no.49.

⁶¹ Still many people nowadays are willing to recount how many good institutions the Indonesians build for them – but everybody complains about the measure of brutality that the Indonesian military (TNI) used against them.

⁶² See Pat Walsh (1999) From Opposition to Proposition: The National Council of Timorese Resistance in Transition, Australian Council of Overseas Aid: Canberra. Accessed at

had been formed in April 1998 as a multi-party umbrella organization fighting for the Common goal of East Timorese independence. The CNRT superceded the CNRM (National Council of Maubere Resistance), which had existed as a resistance organization since 1987. Replacing the word '*Maubere*' with 'Timorese' was a gesture undertaken to make the organization more inclusive of all parties, since the term '*Maubere*' had long been associated with Fretilin. In a dramatic 'Popular Consultation' organized by the United Nations (UNAMET) in August 1999, the majority of the East Timorese decided to reject an Indonesian proposal for greater autonomy. The referendum was followed by a brutal rampage undertaken by militias, supported by the Indonesian military. At the end of September the International Forces for East Timor (INTERFET) entered the country and oversaw the withdrawal of the Indonesian Forces.

When UNTAET was established, in October 1999, East Timor lay in ashes. Most cities had been destroyed, houses burnt, and belongings taken. Fields had been ruined, people had fled to the mountains and a large number of refugees had been forced across the border into West Timor by the militias. The entire administrative- and infrastructure was destroyed and the Indonesian-dominated civil service apparatus was lost, as people had returned to Indonesia. The country had to be literally rebuilt from scratch.

The assessment that led to Security Council Resolution 1272 (1999) indicated that the country was thought to be incapable of administering itself. The United Nations was therefore mandated to act as Transitional Administration. The international community assumed more political and juridical authority than it ever had before.

In the following two and a half years, UNTAET established District Administrations in the 13 districts of East Timor and created sub-district offices. It established all the necessary administrative institutions, including judiciary and political institutions. A general election for a Constituent Assembly was held, which then drafted the constitution of the new country. The Assembly was finally turned into the parliament and a second election for presidency was the last act of UNTAET before it handed the country over to independence on 20 May 2002.

The successor mission, United Nations Mission of Support in East Timor (UNMISSET) has, apart from the military component, an advisory capacity to the Timorese government and is still providing interim law enforcement.⁶³

Administratively, UNTAET kept the Indonesian division of the country into thirteen districts, each of which is divided into an average of approximately five sub-districts, or *postos*⁶⁴. At the time the transitional administration arrived⁶⁵ these sub-districts numbered sixty in total, each of which contained an average of approximately eight villages or *sucos* (totaling four hundred and sixty-two nationally). Each of the villages is divided

http://www.acfoa.asn.au/advocacy_&_policy/east_timor/cnrt.PDF for a concise history of the CNRT and Ospina and Hohe (2001) for further details concerning its domestic structure.

⁶³ Security Council Resolution 1410 (2002).

⁶⁴ A term derived from the Portuguese placement of military posts throughout the districts.

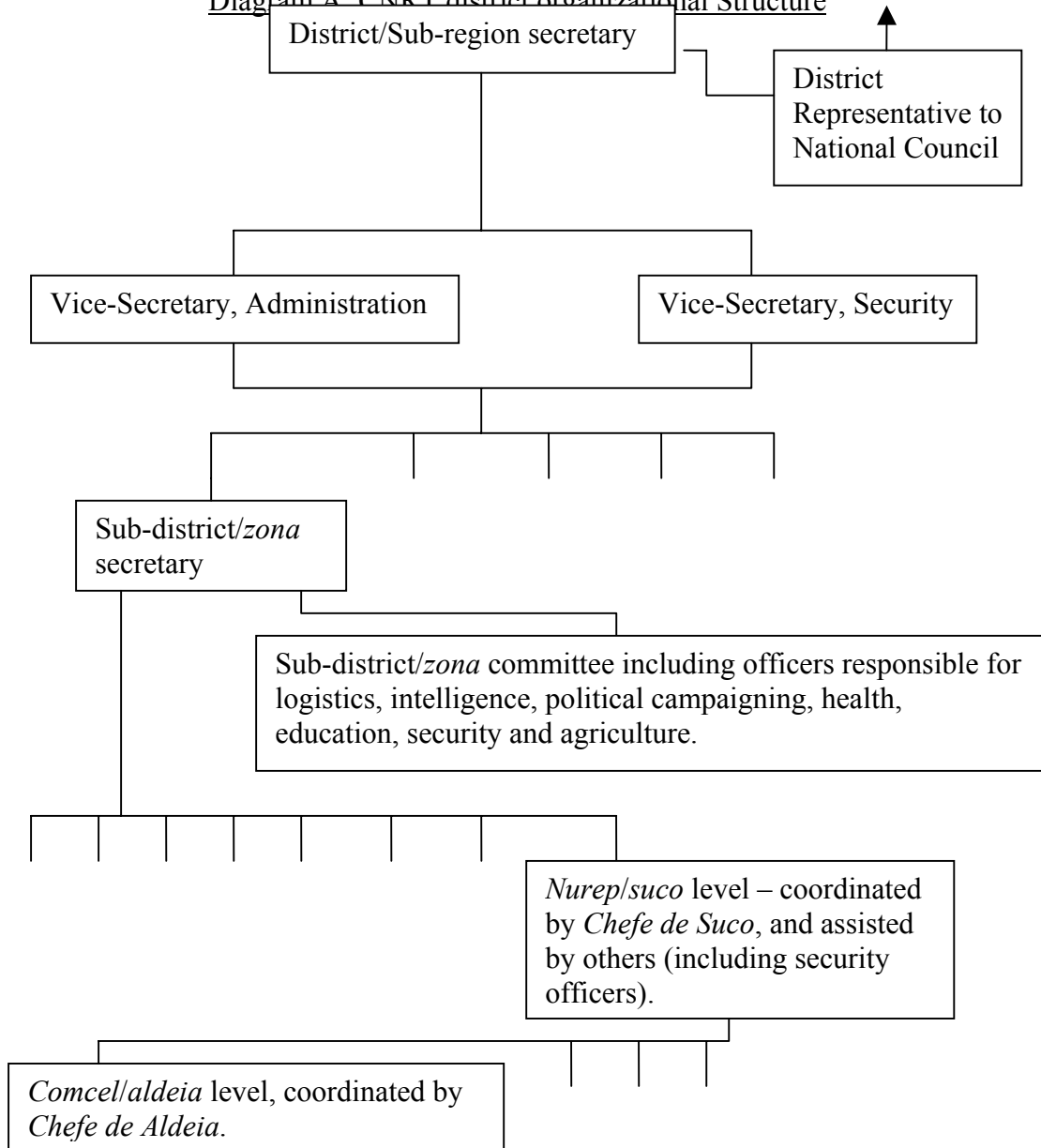
⁶⁵ Since 1999 a number of new sub-districts and villages have been created.

further into hamlets or *aldeias*, which may number as few as two, or as many as nine. In earlier days, villages were banded together as kingdoms.

The situation in East Timor at the deployment of the second United Nations mission occurred under specific circumstances and cannot be compared with the classical scenario of a peace agreement between fighting factions. In this post-conflict scenario, the main 'opponent', the Indonesians – had already fled. Internal powers remaining behind were all the various factions of the resistance movement. They had already come together the year before as the CNRT, and were now the only obvious power in place. Xanana Gusmão, previously the leader of the armed wing, became head of the CNRT. In cooperation with Falintil, representatives from the hamlet level up to the national level were appointed. They were trusted and, in the eyes of the population, legitimate society leaders. A shadow-administration was simultaneously established therefore, as the first UNTAET personnel arrived in the country.

The CNRT possessed an organizational structure that stretched from the hamlet to the national level, and which was of similar nature to the previous clandestine administrative network.

Diagram A: CNRT district organizational Structure



Nurep and *celcom* coordinators⁶⁶ became village chiefs and hamlet chiefs, and a significant number of CNRT officials at all levels had authority stemming from the local power structure. Accordingly, for example, the CNRT district secretary for Aileu was a *lian nain* (keeper of the word), and the CNRT spokesperson for Oecusse was a *meo* (local system security officer). One CNRT official, also a senior *liar nain*, later became an official sub-district coordinator during the transitional administration. Committed to ensuring that his sub-district is administered in accordance with the endorsement of the

⁶⁶ *Nurep* and *celcom* coordinators were responsible for the resistance networks at village and hamlet level – respectively – in the earlier resistance structure.

ancestors, he ensures that monthly ceremonies are held in which sacrifices are made to them⁶⁷. Even though the CNRT was ultimately abolished therefore, there is no reason to believe that local authority plays any decreased role in social administration⁶⁸.

This CNRT local administrative structure allowed it to tap directly into the administrative and security resources of the population. Even though the CNRT did not complete its service to the nation with an unblemished record, and varied throughout the districts in its level of efficiency and organizational ability (some reference is made to these matters in due course), it is an indication of the extent to which the CNRT was a legitimate organ of popular resistance that it was able to organize down to the grassroots of the national community in this manner. It also made it the natural choice, in many instances, for the deferment of justice matters and conflicts that could not be resolved within the village.

Between the exodus of UNAMET in early September 1999 and the arrival of UNTAET, a period of at least three months (depending on location) ensued during which the East Timorese relied on their local and resistance administrative systems. During this time the UN was faced with the task of planning and establishing an administration in a country with a destroyed infrastructure and a substantially dispersed population. In the event, the mission was deployed too slowly and was concentrated in Dili, with the result that it failed to interface with the grassroots for a long time. As the UN went about getting organised therefore, the East Timorese began returning to whatever remained of their homes and villages, bringing with them whatever systems of administration, conflict resolution and justice were characteristic of their community. A priest with four decades of experience in East Timor observed with respect to this period that:

...in the villages after September 1999, it was customary law that asserted itself quickly. This was natural and not surprising because – though everything had been destroyed – through tradition and culture the local law lived on in strength inside people's heads.⁶⁹

For the CNRT, the absence of any competing administrative system beyond the village level transformed this former resistance organization almost overnight. It assumed immediate obligations at district level to process the re-integration of refugees and former militia members, distribute aid, provide conflict negotiation and justice services, and carry out various other administrative functions.

While the CNRT was coming to terms with these new challenges, the new UN transitional administration was beginning to come to life. While UN administrative staff were arriving in the districts in November and December 1999, however, personnel numbers, vehicles and other resources were few in the beginning, limiting the ability of the administration to establish a visible and effective presence at this time.

According to a senior CivPol source who served in Oecusse⁷⁰, CivPol arrived there in November 1999 with two officers and no cars, a resource constraint that seriously limited

⁶⁷ These ceremonies involve the sacrifice of goats. In good times, brandy is also offered to ancestors. In leaner times it is substituted with the local *tuasabu*, or distilled palm wine.

⁶⁸ For further information on this, see Ospina and Hohe 2001.

⁶⁹ Priest, Oecusse District, November 2002.

their visibility in the community in the early days. By March 2000, there were twenty-two officers but still only two cars, although by the end of March a third had arrived which was allocated to the commanding officer. It was April therefore, before CivPol was able to sustain two simultaneous patrols on a routine basis and work on the development of a significant presence in Oecusse. Accounts from UN personnel stationed in Aileu at the time, suggest that it was to be six months after arrival before CivPol began patrolling the sub-districts there⁷¹.

It should be noted at this point, that the challenge of maintaining a CivPol and broader UN presence in the more remote areas of each sub-district, appears to have represented an ongoing problem throughout the entire course of the administration. While the CivPol force in Oecusse, for example, increased to seventy-four officers later in 2000 supported by more vehicles, local information⁷² suggests that even by the close of the transitional administration, CivPol was still struggling to provide a visible presence in settlements remote from the main roads. This information is reinforced by an account from a UN military observer⁷³ stationed in Oecusse and then in Suai, who suggests that in his experience, the presence of CivPol and other UN staff in the field remained thin:

My mission as Military Observer was to patrol, many times to remote areas to see the situation. In those places we seldom saw any kind of representative from UNTAET. What you see out in remote places is some NGOs. If there is an incident you will see CivPol and representatives from UNTAET but never in any kind of prevention operations. People always tend to spend a lot of time in [the] office and in meetings. If you saw someone from Dili HQ they are just out for a short visit. I had expected to see more people out in the fields. But as usual in peacekeeping operations everything is concentrated in the main city.

While meetings and office duties no doubt played a role, resources and personnel limitations are understood to have limited at least CivPol's ability to maintain an effective presence in the more remote areas, with implications on the extent to which local law became integrated by default into the justice framework:

Resources were always extremely limited, the main factor was personnel. And there are only 24hrs in a day. Realistically, we had to 'offload' the majority of matters to a traditional resolution because we did not have time or manpower to deal with all offences in the formal way.⁷⁴

The absence of a functioning court system doubtless provided further incentive to CivPol to 'offload' criminal cases back to the local justice system.

The role of the CNRT varied in the Districts. The UNTAET district administration arrived in Aileu on 4th December 1999. As the site of the voluntary cantonment of the armed Falintil resistance troops, the town was a resistance stronghold and home to some

⁷⁰ Former Civpol Officer in Oecussi, Dili, November 2002.

⁷¹ The assertion, however, is that resource and personnel limitations may not have been solely responsible for this lag-time.

⁷² A Priest from the Oecusse settlement of Kutete, for example, claims that the impact of CivPol was minimal in remote places. Interview, Oecussi, November 2002.

⁷³ Former UN military observer in Oecussi and Suai. Written correspondence, November, 2002.

⁷⁴ Former CivPol Officer in Oecussi and Baucau. Written correspondence, November 2002.

influential national figures⁷⁵. Upon the arrival of the new UN district administrator (DA) and other UN staff, it was clear the CNRT was firmly established as the de facto formal administration. When the new UN District Administrator was advised of a town planning meeting to be held the following week, he was told he was welcome to attend if he wished⁷⁶. An indication of the extent to which good organization and discipline prevailed in Aileu district amongst former resistance organizations during this period, is evident from the food crisis that afflicted the Falintil troops cantoned there. Despite months of low food supplies, order was maintained amongst these troops until the final delivery of a food convoy in April 2000⁷⁷.

In a way that would shadow developments to come, the UN administration (and this matter is dealt with in some detail later in the chapter) was already challenged when it came to providing logistical support and guidance to its staff in the districts. Arriving in Aileu with neither an infrastructure budget⁷⁸ nor an infrastructure officer, the district administration was further let down by a lack of information on programs that were being organized by UNTAET in Dili. This level of support impacted on the ability of the district staff to establish a credible presence, and prompted one former UNTAET employee who was stationed in Aileu to suggest to us that 'UNTAET is considered a success only because of the patience of the CNRT'⁷⁹.

At this time in Aileu (late 1999), the CNRT in⁸⁰ was increasingly busy facilitating the re-integration of refugees and militia members, who by late December 1999 were being trucked into Aileu at the rate of between one and two hundred individuals per day by the United Nations High Commission for Refugees (UNHCR) and the International Office of Migration (IOM). This process (in Aileu as well as elsewhere) represented a most significant interface between formal and de facto realms of authority. In Aileu, returning refugees were being handed over to Falintil and the CNRT, who kept returnees in their compound for a processing period that lasted on average several days. This processing period included searches and questioning sessions aimed at determining if individuals had been involved in militia activities. Returning refugees and the majority of those with

⁷⁵ Including Fretilin President Lú Olo.

⁷⁶ Upon doing so, however, the CNRT committee members were dismayed to hear that effectively the DA was an administrator without an administration budget, and hence unable to fund the reconstruction plans they had developed. The impression of the DA was that the CNRT town planning committee initially suspected that he (the DA) had access to a significant budget, but was choosing to 'sit on it'. Given the committee's previous experience with the Indonesian administration, and Indonesia's reputation in the area of administrative integrity (see Transparency International 2001; 2002), such suspicions are not difficult to understand.

⁷⁷ The food convoy was delivered by the Portuguese military, and reportedly contained a 'great mess' of food amongst which was an abundance of canned beetroot and asparagus. While the food was unfamiliar, Falintil were reportedly more concerned by the lack of any documentation accompanying the convoy, as they were at pains to ensure that all transactions were transparently undertaken with no room for allegations of corruption.

⁷⁸ In the course of the East Timor transitional experience, funding for actual infrastructural development operations would be sourced mainly from the Trust Fund for East Timor (TFET), a separate budget from the one funding UNTAET.

⁷⁹ Former UNTAET staff, Dili, November 2002.

⁸⁰ Former district administration staff, Dili, November 2002.

militia involvement were handed over to village chiefs at the end of this process, and returned to their villages. The subsequent reconciliation processes and ceremonies were organized by the East Timorese, and held without attendance by CivPol or other UN staff. Of note in relation to this process is that all but three individuals with militia involvement were deemed suitable for re-integration into the community, with the outstanding three being sent to Dili for formal processing⁸¹.

Notwithstanding this success, the nature of the cooperation between IOM, UNHCR and UNTAET on one hand, and the CNRT and Falintil on the other, is known to have provoked controversy within the ranks of UN staff. Firstly, there was concern about the possible implications of handing returnees over to armed groups, fuelled by fears of the retributive slaughter of returning militia members and pro-autonomy (integrationist) sympathizers. Unconfirmed reports suggest that to prevent this outcome, requests were made for armed Falintil guerillas to guard the returnees against possible reprisals. Secondly, there was concern about the questioning, and more particularly the searching of returnees, as a breach of human rights. The UN did not prevent the questioning and searching from proceeding, yet it did ensure that these processes occurred in the presence of CivPol officers or other UN staff.

While there are reports that a number of returning militia members were beaten in Aileu, there are no reports of retributive killings. On a number of occasions CNRT members stepped in to prevent killings from occurring, and overall the reintegration of returnees in Aileu is believed to have proceeded peacefully and successfully. Although the UN district administration attempted to secure funding for the construction of a transit station to enable them to facilitate the return of refugees themselves, resources were not forthcoming. Without a venue from which to operate a returnee program themselves, and with minimal local links established, the UN district administration had little choice in Aileu but to permit the CNRT facilitated process to proceed as a semi-formal operation.

In the Oecusse enclave, where Falintil never had an armed presence, the CNRT leadership fled to the hills during the 1999 militia violence, where they organized a government in exile with the encouragement of a local priest. Although the CNRT in Oecusse were known for their fund-raising efficiency, their organizational and administrative ability in the period following the withdrawal of Indonesia is recognized as less of a strong point⁸². Even so, the CNRT in Oecusse worked with IOM, UNHCR, UNTAET staff and CivPol⁸³ to facilitate the re-integration of returning refugees and

⁸¹ One additional factor that might have enhanced the capacity of people to reconcile with former militia, was that the circumstances of the recruitment of militia members were known to other villagers. As recounted by a *lian nian* from Aileu, the Indonesian military would require each village chief to send a certain number of young men for military training. According to this source, the young men would then be sent to Dili to be taught how to burn houses, kill people and rape women. Interview, November 2002.

⁸² If comparisons are to be made with Aileu, it should be remembered that Aileu possessed a high concentration of national resistance and guerilla leaders, while Oecusse suffered one of the highest rates of property destruction of all districts (Timor Loro Sa'e Census and Statistics Office 2001).

⁸³ From a number of local sources, including one interpreter closely involved in the UN operations of this time (interviewed November 2002), it appears that the CivPol involvement was minimal during this period. The resource limitations referred to earlier would doubtless have been a contributing factor to this.

militia members. As in Aileu, they also ran programs distributing food, organizing security and investigating militia. Our information indicates⁸⁴ that minimal contact occurred between CivPol and the CNRT. Crimes unable to be dealt with at hamlet or village level - such as serious⁸⁵ militia crimes - were initially passed to the CNRT. Even after the CNRT was dissolved, CivPol would continue to approach former members of the organization in their capacities as community leaders, for advice on whether or not to pass particular crimes back to families, hamlets or villages for resolution.

Unlike Aileu, in Oecusse we learnt of significant resentment – from a range of sources - held towards certain CNRT leaders in relation to abuses of power they were alleged to have committed in the early post-conflict period. These include allegations that the CNRT extracted compensation payments from individuals with minor involvement in the militia, but that the payments were kept by the CNRT instead of distributed to the victims. Also, there were further reports of pro-autonomy sympathizers and former minor militia members being beaten upon their return. Additionally, people held grudges concerning a number of small transgressions committed by senior CNRT officials, such as using the CNRT motorcycle for private business, or failing to distribute food and household goods fairly. Similar criticism were also heard in Maliana, with one informant complaining that the ‘CNRT took people’s belongings and didn’t give them back...did too much of that.’⁸⁶

Despite people having reservations about the integrity of certain individuals within the CNRT it represented the preferred forum for the hearing of disputes unable to be resolved within the hamlet and the village (including inter-village land disputes⁸⁷). Just as *liurais* were approached for the resolution of matters unable to be resolved in the villages during earlier times, and as sub-district coordinators and district coordinators⁸⁸ are in present times, the CNRT was considered the appropriate authority for the resolution of broader level social conflicts. As such, there was a degree of confusion associated with the dissolution of CNRT, despite the fact that much of what was briefly known as the CNRT structure continues to function (as it has always done) in the form of the village networks and the co-ordination of sub-districts:

...in 1999-2000 the legal way was via CNRT...only seldom people went to UNTAET and PKF. If we go to UNTAET, there is a difference in culture...there is international laws and not normal local ways...⁸⁹

The preference of the East Timorese to take issues to the CNRT instead of CivPol at this time, despite concerns about corrupt practice within the CNRT, can also be seen as a

⁸⁴ Based on the accounts of several CNRT officials (including the former Oecusse CNRT spokesperson) and an interpreter who was working with CivPol at the time (interviewed in Oecusse, November 2002).

⁸⁵ The general definition for ‘serious’ refers to killings or severe beatings. Other ‘minor’ crimes would be dealt with through compensation and reconciliation ceremonies in the village.

⁸⁶ Government official, Bobonaro district, November 2002.

⁸⁷ Village Chief, Bobonaro District, November 2002.

⁸⁸ Many of whom hold positions in the local authority structure (ritual and political / administrative) that are appropriate to these posts, a qualification that would have also been recognized under the CNRT structure.

⁸⁹ Government official, Bobonaro District, November 2002.

legacy of the Indonesian period of administration. In this respect, an indication of the dire expectations that prevailed – in relation to an encounter with security forces - is provided in an account⁹⁰ of the arrest of a militia member by UN peacekeeping troops in Oecusse in late 1999. The suspect, who was at a river crossing when confronted by the troops, simply waded into the water and waited to be shot (which he was *not*).

Indeed, with specific respect to policing, the information available suggests that winning the trust of the public remains an ongoing challenge for international and local police officers alike. It would, however, be overstating the case to suggest that the East Timorese have made the mistake of perceiving CivPol exactly as though they were Indonesian era police. In fact – over the broader time frame – as culturally insensitive and linguistically incompetent as East Timorese might have considered CivPol officers to be, there is universal appreciation of the comfort they provided simply through their presence - somewhere in the district - in the months and years following the militia violence.

Justice under the early post-conflict period in East Timor was dominated by local powers. UNTAET's deployment was slow, and once on the ground, law enforcement personnel and administration staff were rarely seen and had minimal impact. Justice at this time was provided by the remaining elements of the resistance movement that had quickly restructured to form an unofficial local governance system. Yet the way this system dealt with conflicts and administrative matters came out of the local 'traditional' paradigm.

On the national level UNTAET did not develop a clear strategy for dealing with the single entity of the CNRT in this post-conflict scenario. This led to a disappointed Timorese leadership pushing for a complete hand over of power at a very early stage. The development of political and legal institutions therefore occurred in haste. Furthermore, UNTAET did not have the capacity to fully understand the fractionalized state of the CNRT. Beneath the CNRT's 'unity' the old divisions that dated back to the time of the resistance were slowly forming again.

In August 2000, the largest resistance party Fretilin split from the CNRT. Fretilin's capacity remained underestimated by the international community. Fretilin went and took the 'grassroots', which made them the most powerful entity in the country. When in July 2001 the remaining CNRT dissolved, the two months to the elections were not sufficient for the old and newly formed parties to secure the support of the grassroots. Fretilin therefore won the elections, formed the majority of the constituent assembly and was able to determine the outcome of the constitution.

But even in the days when UNTAET had built up a justice system, it was so flawed that the population would not make use of it.

Lack of Guidelines

⁹⁰ Witness to the event. Dili, November 2002.

The previous section provided a description of the broader context that prevailed during the initial phase of UNTAET, and of some of the difficulties associated with establishing the initial UN presence in East Timor. It also describes the extent to which the CNRT system was rooted in principles of local administration and law, and how – through the CNRT de facto administration and the resource limitations of UNTAET – these principles of local administration and law became re-established early in the post-conflict phase.

In this section, active responses by the UN to the relationship between formal justice and local justice are examined, beginning with an exploration of the reasons contributing to the variability of approaches taken towards the interface between the local justice and formal justice systems during the transitional administration.

In the course of the research, it has become clear that different perspectives have prevailed throughout the various arms of UNTAET, concerning the appropriateness and necessity of utilizing local law. The debate by UN internationals on whether or not to integrate local law has been fuelled by sound arguments on both sides, which perhaps can be divided loosely into the camps of the *idealists* and the *realists*. Those opposed in principle to the use of local law, argue that it is open to abuse, nepotism and cronyism by local leaders who may be inclined towards minor acts of despotism, and that local law falls short of observing internationally accepted standards of human rights. Others, meanwhile, have argued that in order for the justice system to be relevant to the East Timorese, it must tap into local perceptions and expectations of justice. Similarly, the *realists* argue that if the transitional administration is to play a role in establishing a justice system that is sustainable within the context of the ongoing resources available to a subsistence society, then it must attempt to utilize - to every extent possible - the local justice systems that already exist, modifying them only where they represent a threat to the viability of the peacekeeping operation.

Consistent with this *selective interference* principle, is the view that placing special focus on a more limited range of modifications to local practices is more likely to meet with success, and more likely to be within the resources and capacities of the emergent state to support on an ongoing basis. It is of note, in relation to the resources that were available to the formal justice system throughout the course of the transitional administration, that even those who tend towards the *idealist* perspective of justice readily admit that the dysfunctions, delays and resource limitations surrounding the official justice system have prevailed as a most compelling argument in favor of local justice.

In the face of a necessity to place considerable reliance on local justice systems (a reality that will be addressed in the course of this chapter), it can be speculated that the ability of the UN as a sovereign power to formally adopt a pragmatic approach towards the matter may have been compromised by the UN's broad obligations in the area of human rights. This gap between what has been possible to achieve (given resources and social realities) and the associated necessity of reliance on local law on one hand; and the requirements of those principles underlined in UN Security Council Resolution 1272/1999 relating to 'international humanitarian, human rights and refugee law, including child and gender

related provisions' on the other, would have complicated any attempts to reconcile these two requirements in a formal policy development process.

It seems likely that such factors played a role in the failure of the UN to formulate policies prescribing the role local law would have in the wider transitional justice arena. What has been ascertained, however, is that few meaningful policies on customary law were provided to regional offices and field staff working as, for example, CivPol Officers, Field Officers, Judicial Affairs Officers, Human Rights Officers, Political Affairs Officers or District Administrators⁹¹, as indicated by the following remarks:

From an Australian police point of view, it's no secret that UNTAET was completely disorganized, even more so in the early days. I never saw any official guidelines for dealing with anything at all. Most of the operating procedures were ad hoc and fully dependant on the discretion of the CivPol dealing with matters as they arose. Over time, procedures were developed and best practice was established from experience. My experience was the UN as an organization had nothing to do with the development of the procedure. It came about from the individual CivPols using common sense and was largely based on the practicalities of the environment.⁹²

We were permitted to do anything. But expected to do anything in particular? Cannot answer that question because everything was so ad hoc. No job descriptions were provided. One dealt with situations as they came up. One used judgment and hoped for the sake of the Timorese that the judgment was sound.⁹³

What makes it difficult to be certain that the absence of policies on local law was due to the contradictions between operational realities and UN human rights obligations, are indications that the UN policy scarcity was indiscriminate, and that attempts by district staff to secure guidance from senior officers in Dili on any other area of operation may have been just as likely to meet with similar results. As an example, sources close to a UN District Administrator⁹⁴ claim that the DA wrote twelve long memos to his superiors in Dili requesting guidance on a range of simple matters over the term of his employment, yet received not a single reply. Similar experiences have been confirmed by a range of other informants, with one referring to the situation thus:

You got the impression there was a basement under the UNTAET building in Dili with a fax machine and an infinite supply of paper. And that every few weeks, truck loads of faxes would be taken out and dumped in the ocean without being read...⁹⁵

In areas of operation relating to local law, one result of this near policy vacuum was that a range of approaches were applied towards local justice, both across different instrumentalities of the UN administration, and over time within the same instrumentalities. As different approaches and strategies waxed and waned in popularity

⁹¹ In UNTAET, as has been pointed out by a Judge who served in a district, 'law and justice matters were administered centrally from Dili [and] there was no scope to determine policy at local level. The UNTAET district administration had no authority to formulate policy on law and justice matters.'

⁹² Former CivPol Officer in Oecusse and in Baucau, written correspondence, November 2002.

⁹³ Former UNTAET Field Officer in Oecusse

⁹⁴ Interviewed, Dili November 2002.

⁹⁵ Former Political Affairs Officer, Dili, November 2002..

in accordance with the assessments and preferences of successive contract-generations of UN staff, a fluid and organic environment of strategic change ensued, with strategies in most cases being devised and applied by individual staff, or groups of staff – in the field. As will be explored in due course, one outcome of this inconsistency has been a certain degree of confusion, particularly amongst the East Timorese.

Despite the general absence of coordinated policies relating to local law, a number of notable exceptions did prevail. These include the officially sanctioned trial of a diversionary justice program in Oecusse, which utilized elements of the local law system, and the approach of the Land and Property Unit, which sought to have elements of local justice systems officially integrated into its operations. Both of these initiatives are examined in this chapter.

Notwithstanding the potential for contradictions between internationally accepted standards of human rights and local justice principles to complicate policy-making in this area, a further factor which would have limited the ability of the transitional administration to make informed policy developments in areas relating to local law was the absence of any detailed knowledge about how local justice systems functioned. Experiential learning occurred as individual UN field staff interfaced with aspects of the local justice system in the course of their daily work, and some isolated attempts were made to learn about the traditional system. However, no detailed and systematic study of local law in East Timor was commissioned by UNTAET throughout the course of its mandate.

The first detailed and systematic study of local law was the report commissioned by ALRI. Although an excellent study given the limitations of the time-frame, the distribution of the Mearns report was unfortunately subjected to limitations by ALRI, and circulation of the report remained restricted even in late 2002, six months after the termination of the UNTAET mandate.

It can be speculated that for the development of a complete and consistent approach to customary law under the UNTAET administration, a certain amount of research into the matter would have been *necessary*. However, given that policy development has been identified as a weakness of the transitional administration in East Timor generally, it remains far from certain that the completion of research in the area of local law at an early stage in the operation of UNTAET would have represented *sufficient* measure to ensure that informed policy development would have taken place.

The limited research undertaken on local justice systems in East Timor meant not only that the UN was without firm policy platforms to guide operations, but also in no position to provide comprehensive briefings to field staff concerning the nature of the justice systems they could expect to find in the field, or the expectations likely to be held by the rural East Timorese population with respect to justice and conflict negotiation matters. In this minimally briefed operational environment, there are indications that international staff recruited from countries where local justice systems remain similarly strong, were

able to identify more easily with local justice systems in East Timor than those officers recruited from elsewhere. This matter is addressed further in due course.

It might further be pointed out, that briefing on local law may not have been the only area in which UNTAET fell short, and that knowledge – within CivPol at least – of the formal system was also minimal. According to one account:

CivPol have no idea about either the Indo law or UN law and no one is interested in letting CivPol know about either. Its pure practicality and common sense. We just do our best in a bad situation.⁹⁶

An initiative to develop a coordinated approach to the matter of local law under UNTAET was prepared by the Office of the National Security Advisor in October – November 2001. At this time concern was growing within the Office that land and property disputes had the potential to threaten national security. Commensurate with such concerns, a report released jointly by the Office of the National Security Advisor and the National Land and Property Unit (LPU) in December of 2001, following the launch of the local law coordination initiative, noted⁹⁷ that the current draft of the national Constitution failed to ‘adequately recognize or protect’ the right to occupancy of land ‘in accordance with customary rights and rules of traditional justice.’ The report advised⁹⁸ that ‘land-related disputes are the major source of internal conflict in East Timor’, and recommended⁹⁹ that the Land and Property Unit:

...should, in conjunction with appropriate NGOs, initiate a project to coordinate and synthesize the results of the various existing and proposed studies on customary law and communal tenure within East Timor. Both the various initiatives and materials need to be collated and efforts coordinated to feed into the development of a comprehensive policy.

Aware that no other UNTAET department was attempting to coordinate the development of an informed approach to the matter of local law throughout the various government instrumentalities (both UN and East Timorese), the Office of the National Security Advisor began organizing meetings aimed at achieving this outcome. According to the officer responsible for advancing this agenda, the initiative was unsuccessful because it ‘did not receive appropriate support or acknowledgement from either UNTAET or the East Timor government’, with the East Timor Justice Minister, Ana Pessoa, ‘pointedly ignore[ing]’ the initiative altogether.¹⁰⁰ With only junior staff sent to represent the various UN and East Timor Transitional Authority (ETTA) departments, the initiative eventually failed due to lack of interest, its legacy an indication of the minimal importance attributed to local law within the circles of governance in East Timor at the time.

⁹⁶ Former CivPol officer, Dili, November 2002.

⁹⁷ LPU 2001:3

⁹⁸ LPU 2001:4

⁹⁹ LPU 2001:7

¹⁰⁰ Former UNTAET staffer, Dili, November 2002.

Strategies and Experiences

A number of factors, including personnel and resource shortages, coordination difficulties, the lack of a functioning formal justice system, the expectations of the East Timorese, and the established nature of local and resistance systems of administration, resulted - largely by default - in local justice and conflict resolution processes becoming integrated to varying levels into UNTAET operations at the very beginning. Due to an absence of informed policy formulation and the failure of the UN administration to provide consistent strategic guidance to staff, approaches and strategies relating to the interface between local and formal justice were subject to variation over time and within particular areas of operation. Mindful of this variance and investigating it where appropriate, it is possible to identify a number of significant factors that characterized the approach of UN instrumentalities to the interface between local and formal justice during UNTAET. It is appropriate for these to be explored in relation to key areas of UN operation in which the interface between formal and local conflict resolution and legal processes featured prominently, specifically the areas of Policing and Justice, Land and Property, and Reconciliation.

Policing and Judiciary

This area relates generally to the wider area of policing and justice. Although CivPol – as the public front of the formal justice system - was often the first point of contact for conflicts and crimes that entered the formal system, other UN staff including Field Officers and Human Rights Officers may also have facilitated the entry of a crime into the formal system.

A preliminary point to note in relation to the policing environment in East Timor, is that East Timorese in most cases will not deny a crime they have committed. In fact, one officer¹⁰¹ even found that in the interests of protecting other persons, innocent parties would often be willing to admit guilt as well. To avoid being misled, therefore, by those inclined towards wrongful confessions, investigations would sometimes have to be made to establish who is innocent, as well as who is actually guilty. The same officer pointed out that effective investigation of crimes and conflicts in East Timor, means hearing the complete history of the underlying dispute, which may go back generations.

Those who served as CivPol officers often¹⁰² tend to believe that either because of the close nature of the social environment in which they worked, or because of the excellent rapport they established with the communities with whom they worked (or both), they were privy to information concerning the great majority of crimes and disputes that arose. Information from villagers, however, suggests that CivPol may have been notified of a minority of disputes that occurred, partly through the capacity of local systems to deal with most issues themselves, and partly – particularly in remoter areas - through the scarcity of CivPol officers on the ground. As suggested earlier, the lingering distrust of

¹⁰¹ CivPol commander who served in Oecusse, Dili, November 2002.

¹⁰² A Thai CivPol regional commander believed otherwise, however, thinking that the cases that made it to the formal system would number in the minority.

the Indonesian policing and judicial environment would not have helped engender trust in the new UN system. With respect to the later point, a UN judge, has outlined¹⁰³ elements of the Indonesian system as it was described to him:

There was no lawyer in the district. There were no Timorese judges or public prosecutor[s] in the Oecusse district court or public prosecutors office from among the local population. The judge and public prosecutors were all Indonesian citizens¹⁰⁴, generally corrupt and alien to the local people.

Additionally, several accounts from CivPol officers suggest that the authority of CivPol to arrest people where necessary was misunderstood by some East Timorese as a pre-disposition towards arresting people at will – again perhaps, a further legacy of the Indonesian days. Even an officer who considered himself to have developed excellent terms with the local community, found eventually that he would turn up to a village for a routine call, only to find that everyone had fled out of fear of arrest¹⁰⁵. The same officer found that on occasions where arrests were made, widespread outbreaks of crying could occur as arrested suspects were led away, indicating that the punishment of the jail sentence may remain remote from popular East Timorese conception of justice¹⁰⁶.

Notwithstanding indications that aspects of the formal justice system remain inappropriate to East Timorese perceptions of their justice needs, there is broad acceptance of the role of the formal system in murder cases that is said to date back to Portuguese times, and it is believed that CivPol would have always known about killings that occurred in the community because *someone* (generally a family member) would have informed them. It should be noted that even now, however, elders speak about murder cases as matters that can – when necessary – be resolved using local law in accordance with well established principles. It is known, in this respect, that compensation and reconciliation procedures were well advanced in relation to a massacre that occurred in September 1999 in Tumin in the district of Oecusse, until intervention occurred from the UNTAET Judicial Affairs and Human Rights staff¹⁰⁷.

Finally, it was observed by several of our informants that East Timor's rate of reported crime is low for the region¹⁰⁸. A contributing factor to this is likely to be the extent to which local law remains utilized as a primary measure.

Utilizing local law

As has been examined in relation to the period in which the CNRT was performing – with varying degrees of effectiveness – as a de facto administration in East Timor, UNTAET was faced from the very beginning with compelling reasons for the utilization of local law, and was aware that directing justice and conflict resolution matters to a non-

¹⁰³ Judge, written communication, November 2002.

¹⁰⁴ Technically, of course, everyone was an Indonesian citizen at this time. This is taken to mean that the judicial staff came from outside East Timor.

¹⁰⁵ CivPol Commander, Dili, November 2002.

¹⁰⁶ Not altogether without a place, however, for a variety of reason.

¹⁰⁷ Former UN judge, written correspondence, November 2002.

¹⁰⁸ This observation was made by a CivPol district police commander, and a former UN Judicial Officer.

existent judicial process would delay reconciliation between parties and threaten the peace:

Limited Resources and non-existence of legal and judicial infrastructure greatly influenced [the] UN to accept customary processes to give immediate decisions in land disputes having law and order implications and speedy resolution of petty offences to make social reconciliation a success¹⁰⁹.

To permit the utilization of local law for the resolution of ‘minor crimes’ and land disputes with ‘law and order implications’, one of the major - and few - guidelines to emanate from the justice department on local law matters was issued early in the life of the transitional administration (in 2000) to be effective only until the ‘establishment of functional district courts’.

In the absence of guidelines concerning *how to go about* utilizing the local law systems, there are indications, of variations in approach, interpretation and procedure prevailing in relation to the interface between formal law and local law systems, with some idiosyncratic strategies being adopted on occasion. In this respect it might be observed that while Timor is an island of significant cultural diversity, the UN itself is arguably a far more culturally diverse organization, with member states varying considerably in their institutional approach to matters ranging from the right of individuals to consume alcohol to the role of religion in politics and justice or the right of the state to practice capital punishment. Given this reality, it should not be surprising to find variation in approach to local justice, or in fact any range of matters¹¹⁰.

In the course of the research, for example, a District Administrator, commented that in his experience, Asians had been more ‘accommodating of customary law than the New Zealand and Australian police officers...’, and were also less ‘culturally insensitive’¹¹¹. To illustrate his point the administrator referred specifically to a case where the Deputy Special Representative to the Secretary General had prevented a local reconciliation ceremony involving a militia leader to occur, through declaring that Serious Crimes would arrest the militia leader were he to return to East Timor. On the basis of his experience with CivPol and UN staff from a variety of cultural backgrounds, this administrator believed that someone from a country similar to East Timor would have understood the need for the local ceremony to proceed, to allow the matter to be resolved within an appropriate time frame in accordance with the wishes of the community. While UN policy may have interfered in this instance, given the profile of the case in question, the example still provides an indication of the variability of response to local law – based on cultural factors - that were identified by East Timorese in the course of the transitional administration.

Once conflicts or crimes were reported to, or otherwise came to the attention of CivPol or other UN staff (remembering that in all probability many crimes *did not* come to the

¹⁰⁹ *Ibid.*

¹¹⁰ According to an East Timorese interpreter who worked for CivPol in 2000, for example, debate concerning how a crime should be investigated was common amongst officers of different nationality. Interview, Oecussi, November 2002.

¹¹¹ District Administrator, November 2002.

attention of the authorities), CivPol would be faced with deciding what to do with them in a resource constricted environment. The accounts the research team have been provided with concerning how CivPol officers and Judicial Affairs staff went about this, fall into the categories of the *ad hoc* and the *formal*. While the *ad hoc* procedures were developed through trial and error in the course of on ground experience, the *formal* procedures were the product of conscious design. Examples of each are provided below:

Ad hoc procedures

One instance of an ad hoc approach developed and practiced in accordance with consistent and defined principles by *one individual*¹¹² serves as a first example. The CivPol officer who developed and practiced this particular procedure prefaces its description with some comments on the latitude permitted by the UN to the individual CivPol officer:

CivPol were ‘permitted’ to do just about anything to resolve matters. The UN’s ‘expectation’ was very grey. My experience is that the UN wouldn’t have known or cared how this was done. In practice, a whole spectrum of resolution methods were utilized from a warning, though to traditional resolution, to arrest and detention for matters that went to a court process.

The procedure itself, ‘formulated at the local level 100% by experience [with] no input from local people or the UN’, is described as follows¹¹³:

Matters were prioritized. My personal policy as a CivPol was that there were three kinds of matters.

Firstly, anything serious enough (eg. Murder, rape, assault leading to serious injuries) or if a suspect had been dealt with traditionally previously and re-offended, was automatically out of bounds for being dealt with in the traditional way. Suspects were arrested and dealt with by the courts, irrespective of the views of the community.

Secondly, there were less serious crimes (eg. theft, minor assault) where *I* was prepared for the community to resolve it traditionally, *but* the complainant, victim or the wider community refused to deal with it and demanded the matter go to court. This was a difficult situation and could often be negotiated down into the third category. However, to satisfy the expectations of the community, on occasions, these matters went to court as well.

Thirdly, less serious crimes where I was prepared for the community to resolve it traditionally and they were happy to do so...[This category included several cases]... where wives reported domestic abuse but then agreed to traditional resolution with the village chiefs, representatives of both the husband’s and the wife’s family, and CivPol present at a formal meeting. Obviously, community pressure was placed on the wife to agree to this method of resolution. Also, as a practical measure, the wife often could not afford to have her husband locked up because she needed a means of support for herself and her children. While not satisfactory, this was the only way to deal with this in the circumstances.

¹¹² Australian CivPol Officer who served in Oecusse and in Baucau, written correspondence, November 2002.

¹¹³ Note that the officer would not approve local law ‘where the facts were an issue’. Such a situation would require a court process.

The officer who developed and applied this system estimates that some form of 'traditional resolution or another' was applied in two thirds of all cases. With respect to the general suitability of outcome, he made the following remarks:

In general, I think most Timorese saw the sense in it. Which is not to say some were not extremely upset when I refused to let a matter be dealt with traditionally, or tried to negotiate a matter into a traditional resolution, when they wanted someone arrested.

The following procedure was developed by an Australian CivPol Officer¹¹⁴, who adapted his system from the South Australian Juvenile Justice code, integral to which is an informal cautioning system for application in relation to minor assaults and first offences. The officer took a keen interest in the local justice systems of that area in which he was stationed. He negotiated his system with the village chiefs where he worked, and attempted to encourage the use of it more widely. The following outline of the system he developed is drawn from a report he submitted to the Community Policing Unit headquarters in Dili¹¹⁵:

...It should be noticed that all case studies relate to the offence of 'minor' assault, as members at this police station have yet to resolve any other type of offence through usage of, 'traditional justice'.

For Vemasse police to suggest or allow traditional justice as an outcome for certain offences, an informal policy or criteria must be considered.

These 'criteria' are guidelines only, in making that decision, with flexibility determined by the characteristics of each relevant offence.

The informal criteria are;

- The offence is of a minor nature, such as a simple assault with no permanent injuries to the victim(s) or a 'minor' theft without violence, and;
- The victim(s) requests traditional justice as a method of resolving the incident; and;
- No coercion, threat or violence is used by any person to encourage the victim(s) to suggest or accept traditional justice, and;
- The suspect(s) admit committing the offence, and;
- The suspect(s) have little or no previous criminal history for the same or similar offence, and;
- The victim(s) and suspect(s) consent to making a written agreement providing details of the resolution to the incident, and;
- Police believe that traditional justice is the appropriate resolution for this incident.

Vemasse police also ensure the involvement of an independent third person, such as a non-related village chief, in the traditional justice decision, to witness and mediate the proceedings.

Other criteria would be considered if relevant.

While no uniform approach was ever developed under UNTAET, the officer received approval to use the system himself by the Timorese district prosecutor in Baucau. While retaining final control of whether or not local justice could be applied to cases (depending on the 'seriousness' of the offence), the district prosecutor approved of police officers

¹¹⁴ Based on unpublished reports and correspondence produced by the officer relating to his experience, and on a telephone interview, December 2002.

¹¹⁵ Dated 18th February 2001.

‘accepting or initiating’ local justice resolutions in accordance with the framework outlined above, and ‘advised that he would rarely initiate prosecution against an offender, where the matter had been resolved by traditional justice’. Furthermore, the district prosecutor, required that all instances of the application of local justice were documented and filed, in order to prevent criminal investigations from occurring into matters that had already been settled locally, and the possibility that individuals might be penalised by the formal system when they had already paid compensation for their actions and reconciled with the parties involved. Of further note, and, consistent with the procedure referred to in the former example, is that individuals would become ineligible for local justice where it was known that local justice had failed to reform their behaviour in the past¹¹⁶. Under suitable circumstances his system may have been adopted more widely. In the event, while the system was also adopted by one of the officer’s colleagues, this colleague was relocated after one and a half months at his post, and the Filipino CivPol who eventually replaced him received no formal instructions to perpetuate the system he had developed¹¹⁷.

A final point of interest relates to the officer’s own philosophical outlook on the role of local law in a world where the abuse of any justice system is a possibility:

In my opinion, traditional justice has a ‘place’ in East Timorese society, as long as it is utilised impartially, with common sense and not as a means to ‘prevent more paperwork’. This system of law is not too dissimilar from that used by police in remote areas of Australia, where they are required to ‘juggle’, the various statutes and common law, with Aboriginal law. This system of justice is open to abuse and corruption, but then so too is statute law under given circumstances.

The Oecusse Diversionary Justice program

Notwithstanding the general difficulty of obtaining guidance from UNTAET headquarters, an experiment initiated by the UN district administration in Oecusse demonstrates that dialogue with Dili was not a total impossibility. This was the case with the Oecusse Diversionary Justice Program (ODJP), which was given ‘conditional and partial’ approval by the Deputy Special Representative of the Secretary General of the United Nations (DSRSG) for use for a limited period¹¹⁸. The Oecusse district administration developed the ODJP, which incorporated elements of local law, modified where ‘found inconsistent with human rights norms [especially in relation to women and minority groups], or unreasonable [or] disproportionate in the facts and circumstances of a given case’¹¹⁹. The ODJP was partly inspired by a New Zealand ‘diversionary justice system’ designed to divert proceedings and punishments for minor crimes away from the mainstream criminal justice system. Of note in relation to the New Zealand model is the

¹¹⁶ This is not to imply, however, that formal justice and the prison system are necessarily more effective at discouraging re-offence than local systems (although they may be). Many Timorese, however, think that allowing offenders to go to prison instead of reconciling in accordance with local law is an easy way out.

¹¹⁷ Although he *did* instruct them in what he had been doing.

¹¹⁸ The researchers have received unconfirmed reports that a similar system was conducted in Suai.

¹¹⁹ Details of the ODJP outlined in these paragraphs is drawn from an extensive written account of the program provided to the researchers by the former UN Judicial Officer, and from a former CivPol officer, November 2002.

emphasis it places on retribution to the community, in the form of community service work.

The ODJP was seen as a means of facilitating ‘immediate decisions in land disputes having law and order implications and speedy resolution of petty offences to make social reconciliation a success’. It was deemed suitable for the resolution of crimes and disputes of the following nature:

- theft
- minor assaults
- attempted assault
- ... ‘certain offences committed during the pre and post consultation time ... [were considered on the basis of the circumstances surrounding them]. But not the offense of murder, rape, or serious bodily injury... Those serious offences were to be tried by law courts under formal justice system’
- land disputes

The process through which crimes would be diverted to the ODJP began with CivPol, who were responsible for identifying ‘appropriate cases during [the] investigation stage’, and ‘conducting a preliminary mediation between the offender, suspect and the community leaders to [determine their willingness] to take recourse to the [ODJP] system.’ The diversionary program was then applied in accordance with the following procedures and conditions:

Salient features of the system

- a) The victim was required to give a written consent to settle the case through the process. Once agreed to, the victim alone would not be in a position to prevent the process from continuing except in exceptional circumstances.
- b) The suspect was also required to give a written consent to the process.
- c) The suspect had to confess his guilt and express sincere remorse for his action. The suspect must make a confessional statement regarding his other criminal activity so that the process may be considered for those also. If previous crimes are not confessed and detected by an investigation later on, then the process for these cases may not be considered.
- d) The village chief must agree to the process on behalf of the local community.
- e) The offender must agree to and complete the punitive measures decided in the process.
- f) If those conditions were not satisfied CIVPOL would proceed with criminal prosecution according to UNTAET regulation.
- g) Decision handed down in the process was final, and
- h) the punitive measures available in the process was compensation to the victim and/or community service.

The ODJP was used to settle twenty-three land disputes and three criminal offences. While the ODJP incorporated elements of local justice systems, notably the involvement of local elders, it varied significantly from local justice systems in several important respects, beyond the limitation of its applicability to minor crimes only. Firstly, it varied from local compensatory norms in placing an emphasis on restorative labor in place of an exchange of cattle or other material wealth. Accordingly a person guilty of burning a

house would be required to assist in rebuilding a house, and a person guilty of slaughtering animals would be required to assist in raising animals.

A further variation from the norms of local justice was the exclusion of the consumption of *tuasabu* (local distilled palm wine) from the reconciliation ceremony, a deviation from established practice which the researchers believe may prove to be temporary:

In [the] customary system apart from compensating the victim [the] accused had to arrange a feast, and share [*tuasabu*] with the victim and all persons participating in the process. We considered the [*tuasabu*] unhygienic and such approval would encourage alcoholism in the rural areas. We wanted to stop this practice and ultimately succeeded in abolishing [it]. This element of the process was abolished with the active cooperation of the community leaders.

During the time the ODJP was operational, Oecusse had not one or two, but three realms of justice operating. Firstly the realm of local laws, secondly the diversionary justice hybrid system, and thirdly the formal system for matters which could not be resolved within the other two. The Oecusse diversion system, like the earlier cases, is an example of the exercise of personal and collective initiative, where an attempt was made to develop a consistent and formalized routine for managing justice issues in a resource constricted environment with a strong tradition of utilizing local law. While the formal justice system may have improved little since 2000, the UN emphasis now favors the use of it, and a regulation circulated in April 2002 requires that once crimes and disputes have entered the formal system, they should remain there¹²⁰. In addition to compromising the 'speedy resolution' of disputes, there are indications that a degree of confusion prevails in the community at present concerning the role of local law and its legitimacy in the eyes of the authorities¹²¹.

Justice and Human Rights

In the policing and justice strategies that have been examined, serious crimes (including murders, rapes and serious assaults) would be diverted to the formal system and lesser crimes to local law. Concern has been expressed by some UN staff, however, that domestic violence has rarely been responded to appropriately in the course of the CivPol policing experience.

An account related by a UN Field Officer¹²² demonstrates the extent of the challenge ahead for the Timorese in dealing with this problem, in its description of a male dominated meeting held to discuss the murder of a woman who was beaten to death on the head with a stone. Upon the Field Officer asking the meeting what they intended to do about the incident and the potential for its re-occurrence, a senior man addressed the meeting with the following words:

Haven't I told you many times that we don't use sticks and stones, only our fists?

¹²⁰ CivPol district commander, Dili, November 2002.

¹²¹ *Ibid.* This officer claims that local leaders are often asking him what they may and may not ask their people to do.

¹²² UN field officer, telephone interview, November 2002.

The fact remains however, that domestic violence is a sensitive matter. A widely held view (which can be found also amongst members of women's groups and NGOs) holds that the full force of the formal justice system is rarely desired in domestic violence situations, due to the possibility that such action could worsen relations further and lead to the woman losing income, her husband or both. Highlighting further the delicacy of this issue, a senior UN Human Rights officer related an account of a committed UN worker in the Vulnerable Persons Unit (VPU), who was pro-active in pursuing the organizational agenda in the district in which they were posted. So dedicated was this officer in ensuring that domestic violence offenders were detained, however, that women stopped reporting further cases. A better informed approach with appropriate guidelines could have avoided this, as it turns out that what many women want is for their husband to receive a warning from police after committing acts of domestic violence.

What unfolded was an approach that lacked consistency. A UN Field Officer, who was also district Gender Focal Point, has provided the following account of experience in the field:

There were no guidelines...Specifically there were no guidelines with respect to CivPol and domestic violence, so these things had to be developed case by case...I worked case by case with CivPol when women wanted me. It was completely hopeless. There was no coordination and it was quite upsetting. When CivPol attended CivPol callouts, traditional chiefs would sort it out - [using their] traditional mediation role - and CivPol would leave. I have no information about how well this [mediation] worked.

A further area that could have benefited from a unified approach and from clear operational guidelines is that of sorcery, as it has also presented challenges in the course of the East Timor transitional justice experience. In Timorese societies sorcery is a great fear. Youth, tertiary education, mobile phone ownership and employment in progressive human rights NGOs provide no guarantee that an individual will not see magic to represent the same level of danger that an octogenarian shaman from a remote hamlet might consider it:

Customary law should be integrated into state law, however things should be changed including the increased involvement of women in the community...Black magic [however,] is bad, and therefore the customary law sanctions against black magic should remain the same.

Mearns¹²³ refers to an incident where an international policeman was approached by a villager whose daughter was being accused of sorcery. Having no guidance about what to do in such circumstances, the officer advised the man to settle the matter traditionally. The man returned several days later and admitted to having killed the man who made the accusations.

In the absence of any special instructions about how to deal with sorcery related accusations, it is reasonable to assume that an officer will fall back on his or her cultural background and personal/professional experience. In an account from an Australian

¹²³ Mearns 2001, p.20.

Civpol officer¹²⁴, the latter was asked by village elders to play the role of an independent mediator in the resolution of sorcery accusations. In response to the death of an infant, the child's father (A) accused another man (B) of 'sucking the soul' of the child, and of also attempting to kill him (A) using magic. B, a well known magician and the owner of a special tree root that enabled him to make his magic stronger, rejected the allegation that he had cast a spell on the child, but admitted that he was sharpening his machete in preparation for killing A in response to the accusation. Other villagers claimed that while B was innocent of killing the child, he (B) was now casting spells against A in response to the accusation. It was said that B had recently clubbed and burnt a dog to enhance his magic, and sent another dog to bite A, who was now feeling ill as a consequence. In the negotiated settlement to the dispute, the magic tree roots were burnt by the CivPol officer (as an independent outsider) at the request of all villagers (including B), and this was followed by a reconciliation of both parties to the dispute, after which the matter was considered settled.

As a sociological phenomenon, accusations against sorcerers are a well known feature of subsistence societies, often as explanation for the deaths of family members from diseases. Again, providing CivPol officers with basic information relating to sorcery beliefs and accusations could make significant differences to outcomes, through increasing the possibility of settlement processes such as that outlined above.

Notwithstanding the mechanisms developed and applied - at both ad hoc and formal level - to determine which cases should be referred to the courts and which to the village, there are cases of individuals being subjected to both systems. This will remain a possibility for as long as prosecutors have the power to pursue the official system regardless of local justice settlements. While it may be appropriate on occasions, there are also likely to be occasions when it is inappropriate. We learnt about a case where considerable confusion prevailed over which alternative was appropriate.

In March 2002, an act of domestic violence occurred in Oecusse enclave. The perpetrator of the domestic violence was then beaten up by the victims' two brothers. This was followed by a reconciliation process in accordance with local justice principles, and attended by CivPol representatives. Shortly afterwards, in April 2002, the three men involved in the fight (the husband and the two brothers of the victim) were taken before the district judge, who decided to place them all on remand for thirty days, while an investigation was undertaken into the events. While the Oecusse court opened in June 2000, there is still no prison there. Therefore, the prisoners had to be transported to the capital to be put on remand in Becora jail in Dili. Due to a long history of administrative delays, transport between Oecusse and Dili was extremely difficult. So not only were the families of the prisoners unable to reach Dili for visits, but for transport and other reasons it was three months (three times the legal remand period) before the inmates could be returned to Oecusse to face trial. Finally returning to Oecusse court several months after East Timor had become an independent nation, and after living together in the same cell for the entire period of their incarceration, the inmates were then told by the judge that on

¹²⁴ Australian Civpol Officer, written correspondence, November 2002

second thoughts, the local reconciliation process they had undertaken prior to their arrest was satisfactory and appropriate after all, and they could all go free.

It might be recalled that a guideline passed in April 2002 requires theoretically that matters passed to the formal system must stay in the formal system, and may no longer be diverted back to local justice systems in accordance with the kinds of procedures outlined earlier. While there are indications that increased numbers of crimes are being reported to the formal justice authorities, there is little sign that the inefficiencies and logistical difficulties associated with the formal justice system are abating, suggesting that the kind of dysfunctional scenario outlined in the previous paragraph may become more common in the future. Regardless of the merits of formal justice over local justice systems, the desirability of any approach to justice which risks delaying reconciliation between conflicting parties has to be questioned, particularly in a post conflict environment.

Land and Property Issues

In relation to local law and land and property matters under UNTAET, a number of points are of note, several of which have already been touched on. Firstly, there was concern about the potential for unresolved land and property disputes to cause conflict in the absence of a functional formal justice system and/or Land Tribunal. The Land and Property Unit of UNTAET promoted therefore the use of local law in the resolution of disputes as an emergency measure. On the ground, for example, the understanding of a UN Judicial Affairs Officer concerning the boundaries of his ability to utilize local law for land disputes is expressed as follows:

UNTAET Land and Property Unit recognized utilization of traditional law (*adat*) and customary mechanism[s] to make urgent and [unifying] settlement of land disputes provided there was an apprehension of breach of peace and the customary law did not conflict [with] any provision of any UN regulation. Such settlements were temporary in nature and did not give or recognize title in land. It only recognized lawful possession and the right to use land until appropriate land law was enacted and [a/the] Land Tribunal was constituted to give authoritative decisions on such disputes.¹²⁵

Secondly, the longer-term utility of local law as an appropriate means of resolving land and property disputes on an ongoing basis was recognized and promoted by the UN Land and Property Unit, one of the few organs within UNTAET which took local law matters seriously. Accordingly, in its endeavors to establish procedures for the resolution of land disputes, the Land and Property Unit ‘promoted the idea that all customary channels be addressed first’¹²⁶ before the Land and Property office could be approached in relation to a dispute. Ultimately, the attempts by the Land and Property Unit to ensure the establishment of a Land Tribunal or some other instrumentality to facilitate the resolution of land disputes - within which such principles might have been enshrined, never reached fruition. As described by du Plessis ‘...in spite of continual pleas for urgent implementation of a mechanism to deal with the land issue [including proposals for a Land Tribunal or some other dispute resolution system], the East Timor Transitional

¹²⁵ UN Judicial officer, written correspondence, November 2002.

¹²⁶ From interview with senior UN Land and Property officer. Darwin, December 2002.

Administration, which included senior East Timorese leadership, repeatedly declined to approve the proposals.¹²⁷

It might be observed - in accordance with principles discussed earlier - that the strategy of directing land disputes to local law processes in the first instance, is consistent with the Timorese philosophy of taking conflicts from one authority to another in ascending order, until eventually they reach either the *liurai* or the government. Accordingly, had a Land Tribunal been established which operated in this fashion, it may well have functioned in accordance with the expectations of the Timorese. The absence of a land tribunal, however, has not prevented other organs of the administrative apparatus from fulfilling the same role.

An important area of concern that has been identified in relation to Land and Property matters relates to instances where the state itself is a party to a land dispute, and where no procedures exist to ensure that the acquisition of land for state purposes occurs fairly and transparently. Elderton¹²⁸ refers to an incident whereby a block of land near Metinaro (East of Dili) was compulsorily acquired by the new East Timor Defense Forces (FDTL) as a training ground. While the block itself had been gazetted for government agricultural use during the Indonesian times; (a) compensation payments to the local landowners remained outstanding and; (b) the military training area that was being developed extended beyond the agricultural block, and no negotiation process had transpired in which this expansion had been agreed to. Information from elsewhere suggests that prior to work on the development commencing; the local land owners had been approached by the FDTL commander directly, but had felt in no position to bargain with the nations' armed forces. Eventually, once work commenced, the land owners began opposing the development, halting work until a partial solution had been arrived at. Elderton¹²⁹ uses the example to illustrate that 'there was a lack of appreciation by representatives of both UNTAET and FDTL of the role of the 'state' land agency [the Land and Property Unit] in the land acquisition process, and there was no mechanism in place to ensure that customary owners would be effectively represented in dealings regarding their lands.'

Reconciliation

In the course of discussing the events immediately following the violence of 1999, the role of local conflict resolution and justice systems in facilitating the re-integration of former militia members into society has been discussed. As with the justice system, a formal mechanism for reconciliation was also established by UNTAET, under which Regulation No. 2001/10 *On the Establishment of a Commission for Reception, Truth and Reconciliation (TRC) in East Timor* (UNTAET 2001) was passed on 13 July 2001. With

¹²⁷ Jean du Plessis (forthcoming 2003) *Slow Start on a long journey. Land Restitution Issues in East Timor 1999-2001*. Scott Leckie (ed) *Housing and Property Restitution. A Comparative International Legal Study*. Transnational Publishers, New York.

¹²⁸ Elderton, Cath (2002) 'East Timor – Land Issues and Independence', paper prepared for the conference symposium *Transforming Land Conflict*, FAO/USP/RICS Foundation South Pacific Land Tenure, 10-12 April, p. 14, accessed at <http://www.usp.ac.fj/landmgmt/SYMPOSIUM>.

¹²⁹ Elderton 2002, p.14.

a proposed donor-provided budget of US \$3.8 million¹³⁰, the TRC was established for an initial period of two years. It was determined that the TRC be composed of between five and seven National Commissioners, to be appointed by a Panel chaired by the SRSG (or his representative) and including members appointed by a wide range of political parties and civil society organizations. In turn, these National Commissioners were required to advise the SRSG on the appointment of a further twenty-five to thirty Regional Commissioners, whose duties would include facilitating Community Reconciliation Agreements (CRA) in the districts. The specific ‘objectives and functions’ of the TRC were outlined as follows:¹³¹

- a) inquiring into *human rights violations* that have taken place in the context of the *political conflicts in East Timor*;
- b) establishing the truth regarding past *human rights violations*;
- c) reporting the nature of the *human rights violations* that have occurred and identifying the factors that may have led to such violations;
- d) identifying practices and policies, whether of State or non-state actors which need to be addressed to prevent future recurrences of *human rights violations*;
- e) the referral of *human rights violations to the Office of the General Prosecutor* with recommendations for the prosecution of offences where appropriate;
- f) assisting in restoring the human dignity of *victims*;
- g) promoting reconciliation;
- h) supporting the reception and reintegration of individuals who have caused harm to their communities through the commission of minor criminal offences and other harmful acts through the facilitation of community based mechanisms for reconciliation; and
- i) the promotion of human rights.

To assist in the pursuit of its investigations, the TRC was granted wide ranging powers, including the power to undertake search and seizure operations and the ability to organize victim and witness protection.

In relation to local justice matters, the CRA process is of particular interest. Under the TRC regulations, perpetrators of non-serious crimes are eligible to participate in community reconciliation processes under certain conditions. These include the submission to the TRC of a written statement containing (among other things) ‘an admission of responsibility’ for their crimes, a voluntary request to participate in a Community Reconciliation Process’ (CRP), and ‘a renunciation of the use of violence to achieve political ends’. Where accepted for the CRA process, an offender is brought before a hearing presided over by a panel composed of a Regional Commissioner (as Chair) and between two and four community representatives. At this hearing, presentations are made by the offender, victims of the offender, and other community members with further information. The CRP panel then determines an appropriate ‘act of reconciliation’, which could involve (Section 27.7) ‘(a) community service, (b) reparation; (c) public apology; and/or other act of contrition.’ Non-compliance with this ‘act of reconciliation’ makes the offender liable to a fine of up to US\$3000, up to a years imprisonment, or both.

¹³⁰ Accessed at <http://www.easttimor-reconciliation.org/justicesystem.htm>.

¹³¹ UNTAET 2001: Section 3.1

Unlike local reconciliation processes, Regulation 2001/10 places limitations on the types of offences which the CRP is authorized to deal with, requiring (Section 27.5) that:

...where, during the CRP hearing, credible evidence is given of [an offender's] commission of a serious criminal offence, the CRP Panel shall make a record of such evidence, refer the evidence to the Office of the general Prosecutor and adjourn the Community Reconciliation Process.

Under Regulation 2001/10 (Schedule 1), the CRP process is deemed suitable for reconciliation in relation to matters 'such as theft, minor assault, arson (other than that resulting in death or injury), the killing of livestock or destruction of crops'. The Regulation requires, however, that under 'no circumstances, shall a *serious criminal offence*¹³² be dealt with in a Community Reconciliation Process.'

With the requirement that women have a prominent presence on the CRP panels, and the inability of the Panels to hear serious crimes - and thus make their own decisions about which matters to deal with locally and which to defer to higher authorities - the CRP process differs significantly from what local Timorese authorities might devise for themselves. While the limited jurisdiction of the CRP panels may not be appropriate to the present reconciliation needs of the East Timorese community as perceived from some perspectives (as addressed in the next section of this chapter), the process appears to be delivering effective results within the parameters it has been allowed.¹³³

With respect to the actual process, TRC officials provide a day of training to CRP panels, who then organize proceedings themselves. Local or customary practices influence the ceremonies in significant ways, including the wearing of traditional dress and the utilization of the *biti boot*, or big mat. Although the composition of the CRP panels is influenced by international conceptions of appropriate gender balance, reports indicate that local ritual, administrative and religious figures attend and participate in the reconciliation ceremonies, vesting legitimacy in proceedings in local terms. Furthermore, perhaps for reasons relating to the cultural phenomenon of the role of outsiders in Timorese society, or simply because of the desire for international recognition of the importance of the Timorese reconciliation process in a less arcane sense, the official legitimization of proceedings by UNTAET is believed to be important.

Despite the extent to which the CRP process has been guided by official legislation, concern prevails amongst international human rights officials that CRP panels have often responded inappropriately to the crimes that have come before them¹³⁴. In this respect, an instance has been recorded where an offender was required to rebuild a wall *together* with the victim. However, regardless of how unusual reconciliation penalties might appear

¹³² As outlined under UNTAET Regulation No.2000/11 On the Organization of Courts in East Timor (UNTAET 2000a), and UNTAET Regulation No.2000/15 On the Establishment of Panels with Exclusive Jurisdiction over Serious Criminal Offences (UNTAET 2000b) the term *serious criminal offence* refers to acts of genocide, war crimes, crimes against humanity [including extermination, enslavement, enforced disappearance], murder, sexual offences and torture.

¹³³ Timorese member of the TRC; Expatriate staffer on the TRC. Dili, November 2002.

¹³⁴ Based on an interview with an expatriate justice monitoring official conducted during November 2002.

through the international human rights eye-glass, whether or not they are effective at producing reconciliation in the local context remains an important performance indicator.

Notwithstanding the benefits of CRP (including the official legitimization aspect), there are several comments regarding the broader UNTAET-established reconciliation agenda that should be made, based on observations made by Timorese consulted in the course of the research process. Firstly, as related earlier, the East Timorese began organizing their own reconciliation processes as people began returning to their villages following the violence of September 1999. There is every indication that local justice and conflict resolution processes could have dealt adequately with reconciliation in relation to crimes such as minor assault, arson, and damage to livestock and crops. Furthermore there are senior member of the rural East Timorese community who believe that local reconciliation processes remain capable of dealing with far more *serious* crimes as well, and that the broader process of reconciliation would have progressed far faster had local ritual and administrative leaders been free to determine which crimes should be dealt with locally, and which crimes should be deferred to the courts.

Timorese Strategies

Dispute Resolution

Amongst the present Timorese leadership two views on local justice prevail. Some politicians support a role for local justice systems, as their outlook and actions are determined to a large extent by the local paradigm. The conservatism of this group received popular recognition in the Constituent Assembly elections. A second group of influential government politicians and opposition members returned from a quarter of a century in exile to assume power under the UN transitional administration. This second group seem to have no association with the local systems, and it is they who have the greatest influence over government business. For members of this diaspora, local justice is either irrelevant or it represents a direct threat to their newly gained power:

There are traditional customs, not traditional laws...Maybe in 10-20 years we have knowledge of customary law, but not now. The first step is to assert government ownership and control over state land. The state has to have the right to exist.¹³⁵

Other than the leadership, a small educated elite is beginning to introduce new perceptions of justice to the Timorese community, and several women's activists interviewed strongly favoured local law being phased out in favor of the formal justice system.¹³⁶ Yet, the daily lives of the majority of the population are determined through the 'traditional' system. For them local justice has a legitimate and important role in maintaining the social order, even beyond its capacity to provide timely and cheap outcomes relative to what the courts can deliver. Not surprisingly, therefore, it is common to hear criticisms from East Timorese concerning the limited extent to which UNTAET formally recognized the validity of local justice in the wider justice arena. An East Timorese lawyer working with *Yayasan Hak* (Organization for Rights) in Dili, provided some well considered thoughts the matter from an informed perspective¹³⁷:

If people are to own the law, even in a transitional context, then they must feel that it recognizes their own customs. It makes sense to put customary law together with state law...UNTAET adopted Indonesian laws and this did not come from the people. It was top down. It came without policies concerning how to apply it.

...and on the broader importance of respecting Timorese customs:

The UN have a mandate to provide stability, but they should not just impose these human rights laws from New York and Geneva. People felt strange having these laws imposed. The UN should have consulted with the communities to ask the leaders what ideas they had about implementing UN laws. With UNTAET, people thought that everything came from just Sergio de Mello. It was not good that CNRT gave up their power to UNTAET. Why did they have to do this?

¹³⁵ Government minister, Dili, November 2002.

¹³⁶ Two of the women's activists who were interviewed during November 2002 were of this view. One was from Dili and the other from Baucau. Their views contrasted with the views of women's activists from more rural areas.

¹³⁷ East Timorese lawyer, Dili, November 2002.

Despite such misgivings, the fact remains that the presence of CivPol was widely appreciated throughout the course of the transitional administration, because of the perceived security threat. Timorese perceptions of Timorese police officers, who were employed and trained by the international administration, varies. A number of senior community leaders have commented on the youth of many of the new recruits to the new East Timorese police service, claiming that many of the new officers must have been recruited from Junior High School. Given the limited employment opportunities in East Timor, a considerable degree of resentment prevails over this perceived preference of younger recruits over older recruits (in their late twenties, for example). Furthermore upon the completion of their training, new officers are being posted to their home sub-districts. Because they are an integral part of the social systems here, an overlap between local and formal justice systems continues at this level.¹³⁸ Elsewhere, other newly appointed Timorese officials are also incorporating the local system.¹³⁹ An East Timorese Public Prosecutor calls victims and perpetrators into the same room, and endeavors to negotiate a suitable outcome for both parties through exercising a local-system or traditional mediation role. And while such a strategy may appear outrageous from an international human rights perspective, there is much to suggest that it remains an appropriate strategy in terms of the prevailing expectations of the East Timorese.

Similarly, a senior *lian nain* employed by the Timorese public service to coordinate one of the sub-districts in the district of Aileu, is consulted in relation to all crimes and disputes unable to be solved within the hamlets and villages of his sub-district. With the exceptions of murder, the rape of a minor, or a very big land dispute, he believed there was no need to defer any matter to a higher authority. For the overwhelming majority of cases, this sub-district coordinator and local law authority – in accordance with his dual capacities - allows villagers to choose between local justice and an official mechanism for the resolution of their disputes. According to him, eighty percent choose local law. Furthermore, the official mechanism in this instance consists of a mediation (and compensation negotiation) meeting in the sub-district coordinators office followed by a reconciliation ceremony back in the hamlet, indicating that even the official mechanism is heavily influenced by local justice norms and expectations¹⁴⁰.

An account of a land dispute in Oecusse¹⁴¹ indicates the kind of expectations that can prevail in relation to the resolution of a dispute between two villages over tenure of one rice field. This particular dispute developed in early 2002, although its origins date back decades to when the village chief of one of the villages permitted the second village

¹³⁸ It is notable in this respect (according to a government minister interviewed in Dili in November 2002), that consideration of local justice remains totally absent from the present and proposed judicial and police training curriculums.

¹³⁹ Human Rights Officer, Dili, November 2002.

¹⁴⁰ According to the Official, a court solution would only be contemplated in the unlikely instance that all sub-district and local mechanisms failed. However, individuals would be entitled to take matters to court at an earlier stage if that is what they wanted. Sub district coordinator, Aileu, November 2002.

¹⁴¹ Village chief, District Administrator, local priest, Oecussi, November 2002.

access to land¹⁴². The matter has now passed beyond the capacity of the two village chiefs to resolve, and an initial attempt at outside mediation has failed¹⁴³. In earlier times it is conceivable that the dispute could have led to conflict, had it not been resolved by the *liurai* of the region¹⁴⁴. The case is presently going to court, and the views of one of the parties to the dispute concerning acceptable potential resolutions are of interest. Firstly, one village chief says he would not agree to any decision which gave all of the land to the other village. Secondly, he says he would be satisfied with splitting the land in half (a solution being proposed by the District Administrator¹⁴⁵). Thirdly, he would be satisfied with giving all of the land to the state, if this was the only means of preventing all of it from going to the other village. The expectation of this village chief therefore, is that (a) a solution will be mediated to this dispute by someone with authority beyond the village-level, and (b) the solution will ensure that this chief's village does not lose relative to the other village. And according to a long term observers of such disputes in Timor¹⁴⁶, the threat of a lose-lose scenario is the most effective means of ensuring eventual agreement between the villages on a fifty-fifty settlement.

The dispute referred to above is not yet settled, but in general terms it is clear that any individual able to successfully threaten such a lose-lose scenario would have to be respected by both parties, like the regional *liurai*, or as someone who in other local respects has senior authority over land and other matters. The Timorese often comment that things will go well when government works together with 'traditional' law. As examined earlier, one way the Timorese seem to be advancing this agenda is by appointing individuals to the official administrative system consistent with their status in local authority structures. More broadly, in terms of the methodologies employed within these institutions, it is conceivable for the future that local systems and expectations may influence the nature of the formal administrative and judicial systems more strongly than formal administrative and judicial ideals will influence the way conflicts and justice are addressed.

Perceptions

The population itself often plays a strong hand in determining when to try and resolve matters within their local justice systems, and when to direct them to the formal justice system. Amongst those interviewed, there was general agreement that victims of crime had the right to approach the formal system if they wished, although because of the desire to avoid shaming an offender *too much* and risk jeopardizing eventual reconciliation (as

¹⁴² According to the village chief, the people from the other village were newcomers, and were only able to establish their village with his permission.

¹⁴³ This involved a large meeting attended by representatives from UNTAET, CivPol, TPLS (Timor Lorosae Police Service), the District Administrator and the District Land and Property Officer.

¹⁴⁴ Who according to local accounts, may well have claimed the disputed land as his own. Evidently the current king would also have this option available.

¹⁴⁵ This is said to have been a common solution to land disputes during both Portuguese times and Indonesian times as well.

¹⁴⁶ Local (expatriate) Clergyman, Oecussi, November 2002.

in domestic violence cases) it is likely that the social context in which offences occur plays a role in influencing victims to remain within local systems.

Notwithstanding the above, the pattern in East Timorese societies of taking disputes from one authority to another – through the various levels of the hamlet and village administrative structures - indicates a highly developed dispute resolution framework that could have been formally integrated into a transitional justice system and which could be integrated into a future East Timorese justice system.

Some respondents suggested that local justice systems remain capable of reconciling murder cases in the event this is necessary. In relation to this capacity, community leaders were critical that while no *serious crimes* case had been taken to court yet, community members were prevented from advancing their own reconciliation agenda with former militia members, due to UN policy. An announcement by a senior UN administrator in 2001 that certain returning militia members returning from West Timor would be arrested was considered responsible for slowing down the return of significant numbers of other refugees. One senior community leader commented that:

...it was very strange for UNTAET to force people to implement something against culture...Reconciliation should have occurred through customary law...UNTAET did have some good ideas...[however]...the problem with UNTAET on justice is that UNTAET wants major criminals to go to jail, but who will feed them? Only...crimes [like] mass murder should go to the courts.

The concept of imprisonment is perceived in different ways by the local population. Beyond the question of the economic viability of a prison system in East Timor in the long term, there is evidence suggesting that the prospect of a prison sentence is likely to appeal differently according to individual circumstance. While accounts of villagers deserting their hamlets upon the approach of police officers out of fear of incarceration represent one part of the story, errant youths who see prison as a means of avoiding compensation payments for their actions represent another.

Recently, a young man in Oecussi was brought before a meeting of traditional leaders for getting a young woman pregnant and not wanting to marry her. When asked to pay one traditional necklace of US \$100 in value, the man refused, saying he did not want to pay and would prefer to go to jail. Other accounts confirm the view that jail is seen by many as 'an easy way out'. Imprisonment is an opportunity to eat, sleep and avoid paying compensation. The possibility that increasing numbers of young men may be sent to prison has clear dangers, particularly where they are incarcerated before they have reconciled with their victims, and therefore may not be in a position to freely return home upon the completion of their sentences. An undesirable trend would involve significant numbers of such individuals making contact in prison and, upon being released with few relevant skills into an economically depressed post-conflict urban environment, turning to crime for survival.

From an international human rights standpoint, Timorese local law approaches to sexual crimes are found deficient. There is little awareness of rape as it is conceptualized from

the international viewpoint, and little distinction between rape and adultery. Under the powerful beam of the modern human rights spotlight, the compensation negotiations associated with the resolution of rape (and adultery) cases make the crime itself appear like a property offence and women appear as cattle. Particularly in the village environment of rural East Timor however, the re-establishment of the flow of values and the importance of social reconciliation retain high priority. Many rape cases that are reported to the police turn out to be consensual arrangements. A common motive for reporting such acts as rape is said to be the reneging by the man on a promise to marry that was made to the woman prior to sex. This social offence is considered of sufficient importance to take to the official authorities, whereas violent rape may not be.

Increasing reports of 'rape' appear the result of human rights publicity that has occurred since the beginning of the UN presence in East Timor. According to a women's activist in Baucau¹⁴⁷:

Now we have experience that rape is bad...Before it was not seen this way, payment and marriage straight away.

Yet while some women's activists lobby for sexual crimes and domestic violence to be reported to the formal authorities, this approach is not universal. One young Timorese Human Rights Official in a less urbanized district, was inclined to view the situation in more considered terms, with regard to the extent to which a dispute or crime in the village can become 'everybody's problem', and one not necessarily suited to a resolution through formal processes. She and the other members of *Centro Feto* (Center for Women) are less concerned with replacing local justice with formal justice than with organizing education campaigns in the villages on issues such as rape, domestic violence and marriage. The group were also concerned with lobbying for compensation paid in relation to sexual crimes, domestic violence or other offences (including offences against children) to be paid directly to the victims instead of to the families. The emphasis of the group is on 'finding good solutions for women' and the group has recently organized the construction of a Safe House for women seeking sanctuary from domestic violence¹⁴⁸.

Of further significance is the view of this women's activists and Human Rights worker that the formal system does not necessarily offer the best solution for women, because 'in the courts, a suspect can be a winner and the victim a loser', and it is therefore 'wrong to think that a court solution will mean there will not remain a problem in the community.'

There are indications that flow on effects from the bride-price system have the potential to occasionally threaten the psychological wellbeing of children. An account was related¹⁴⁹ concerning several children reclaimed from their mother after their father was killed by militia. The father had not yet paid the bride-price for his wife at the time of his death, so the adoptive parents of the mother reclaimed the children in what may be seen

¹⁴⁷ OMT member, Baucau, November 2002.

¹⁴⁸ This Safe House is attached to the local Police Station and was opened in February 2002. Up until November 2002 it had been used by four women for an average of two days each.

¹⁴⁹ *Centro Feto* staff, November 2002.

as an act of value transfer, creating considerable stress in the process. What is less clear is whether any formal justice mechanism could have produced a permanent resolution in this instance through means other than negotiation, given prevailing expectations. As things transpired, the women's organization *Centro Feto* mediated a solution that involved finding a way for the bride-price to be paid.

No other issues relating to vulnerable groups emerged as significant on the ground. The standing vis-à-vis local law of individuals who migrated from one part of Timor to another is that such an individual would be treated equally with other villagers, but that they would be expected to abide by the local law of their adoptive home. The researchers received information from several locations¹⁵⁰ indicating that in the past, in the absence of mental health facilities, individuals who were mad and dangerous had been killed to protect other members of society. The impression of the researchers is that such killings are extremely rare.

¹⁵⁰ Oecusse and Dili

Discussion

Contrasting Concepts

A significant contrast prevails between the concepts of local and modern law. Firstly, there are different perceptions regarding what constitutes a crime and what actions have the potential to create conflicts. The traditional classification system places violence into a value category, which is opposed to fertility. Without violence, there is no fertility; hence violence becomes part of the recreation of life. While under the Indonesian law domestic violence was a private issue, international human rights place violence against another person in the realm of a criminal act. It has to be pursued legally and is not tolerable.¹⁵¹

Western law is divided in criminal and civil law. Theft and violence against a person are in the same category of violations; both are criminal acts. The local East Timorese law draws different distinctions. While violence is hardly ever pursued in the local justice system (unless it leads to the death of a person), theft is a serious crime. On the other hand, what the western system classifies as civil law (divorces, marriages and so forth), are important cases in traditional society, yet they would be treated no different from a theft. In fact, such matters are considered more life-threatening to a Timorese community than violence.

In western criminal law, the perpetrator is accused by the state, and the prosecutor acts on behalf of the population. Here the victim becomes a pure witness. In the local law, however, offenses are a matter between the families involved (except for theft of public goods). The victim is on one side of the conflict and expects to be reimbursed.

The modern system focuses on the western idea of human rights and on the individual as 'the measure of all things'. The individual is the value in itself. In the 'traditional' society, the concept of the individual plays a minor role. It is, instead, constituted of several values that were brought together (through the marriage exchange goods).¹⁵² Local justice emphasises the re-establishment of the flow of these values in accordance to the socio-cosmic structures. This shows the interrelation between local justice and the local social system and how in western law goods and persons are distinguished, whereas in the 'traditional' law they are constituted of the same values.

Another difference is that the modern law is written, in comparison to an order that is based on the word of the ancestors, written by history. The latter requires experts who have the knowledge of the word and know social relations better than anyone else. Such an expert will best accommodate the needs of the state-less society: his decisions can be

¹⁵¹ Except for specifically defined scenarios, such as war or personal defense.

¹⁵² See Louis Dumont (1980) *Homo Hierarchicus. The Caste System and its Implications*, University of Chicago Press, Chicago, p.261.

adapted to social changes, as the version of history is flexible. This is important in an ever-changing social context. The western judge is unrelated to his clients and only interprets what has been written.

Other conceptual differences occur in regard to judgment and punishment. Official judgements are not necessarily locally legitimate. Deriving from the fact that the 'wrong' person might have made the judgement, that the process is alien and that the punishment does not deliver the desired result, a judgement might not be acknowledged by the community. On top of that, if reconciliation is not conducted, a matter with which official justice does not concern itself (it does not care about the social impact of a trial), then a conflict is everything but settled.

Detention as a form of punishment is a strange concept from the local point of view. The perpetrator receives a place to live and is served food without working for it. The general perception seems that a detainee becomes 'fat', which normally is a privilege of the rich. Here, in the eyes of the locals, the cosmos is turned upside down. Further, a conflict or crime does not merely involve the individual, but more than one family. If the individual perpetrator is taken to prison, the families - equally wound up in the social tensions - remain with the seemingly unsolved problem.

In some cases, perpetrators prefer the jail, because it prevents them from having to pay compensation. Yet, for the community this can have serious consequences. Especially in cases of serious crimes, the non-compensation of the victim is a problem. The value-replacement after a crime is most important in order to re-establish the socio-cosmic order.

The local punishment emphasises the shaming of the perpetrator. Whereas for a western person, being subjected to detention introduces a huge shame factor, this strange punishment may not necessarily be considered shameful by a local villager, and therefore may not have the same deterrent effect. What shames a person is culturally relative.

In the scenario of an international intervention, none of the two parties necessarily understands the difference in concepts. The local population struggles to understand modern law out of their paradigm, while the internationalists do not see the nature and relevance of the local system. From both perspectives, the other 'foreign' system looks rather small and insignificant. The majority of the population hardly makes any distinction between the government and the legal system. In their perception it is all the same, contrasting with the local way of life.

What is even more of a concern is that the national elite often acts in accordance with the local paradigm, while being located in modern state institutions. Some of the leading figures in the country either adhere to the local paradigm themselves, or abuse its structure for power-purposes. The former case occurs, for example, when the head of the army attempts to acquire land for the Defense Force, relying on his status as a powerful warrior (see above). Yet such acts are normal in the eyes of the people, they just confirm his social status.

As we can see, local law differs from western law not only with respect to specific points, but in fundamental aspects. The clash is not just of legal systems but of paradigms. Notions of human rights, for example, or the conceptual separation of goods and persons, are intrinsic to western understanding and to the fundamental principles of western society. Local legal mechanisms are closely connected to the entire social system. If these mechanisms are jettisoned and replaced by a legal system that has nothing to do with the social context, fundamental paradigmatic problems are faced in the understanding and application of this law in its new setting. While conflict resolution in traditional Timorese society continuously reaffirms the social system, the implementation of western conflict resolution is disconnected from it. The infant rule of law system in East Timor has fallen so far from social and conceptual realities that people are being put on trial for acts they never realised were criminal, and before the basic concepts of the new legal system have even begun to permeate the social fabric. 'It was very strange that UNTAET forced people to implement something against their culture'¹⁵³

If laws are to function, they should not be alien to a community. Particularly following times of social upheaval, familiar institutions represent a link with normality. The enforcement of a justice system that is unrelated to broader social expectations and realities, by contrast, may contribute to the development of tensions in fragile post-conflict environments.

The international community is only at an early stage in learning how to build judicial systems. And the design of these justice systems is so far only reflecting western concepts of justice, crime and conflict. Many of these concepts may be irrelevant to the needs and understandings of the societies most in need of peacekeeping intervention and transitional administration.

In Practice

Because the set-up of the official judiciary took so long, villagers started to 'reinvent their law'¹⁵⁴ or revert to the CNRT presence. Some informants claim that the preference for traditional law under the transitional administration was even stronger than under the Indonesian government. People did not feel there was any rule of law, and at the same time, UNTAET officials claim that no conflict matters came near them.¹⁵⁵ UNTAET ignored the social realities on the ground and failed to recognize the need to generate policies and provide guidance to field staff. As a consequence, both the Timorese and UN personnel were left to work it out for themselves. The regime of ad hoc strategic development and application that occurred as a result of UNTAET's policy failings resulted in inconsistency and confusion on the ground.

The weak judiciary UNTAET has established, does not contribute to a resolution of the paradigmatic conflicts of the two law system. Quite the opposite. In practice people have

¹⁵³ District Administrator, November 2002.

¹⁵⁴ As it happened in Manapa, Bobonaro District, 2000.

¹⁵⁵ Former UNTAET official, November 2002.

the ‘worst of both worlds’¹⁵⁶. The dysfunctional official system does not provide a positive influence for transformation of the local system and promotes the search for an alternative system – local justice. It therefore reverses the progress of slowly socializing people towards a new system. The view that ‘if you cannot build something properly, don’t do it’¹⁵⁷ becomes of particular relevance now that the international community is slowly leaving East Timor after only three years of deployment. The question now arises concerning who will support the strengthening of the official system? UNTAET was preoccupied with establishing a western legal system without regard to their limitations of time and resources.

The grassroots have a clear preference for what is familiar to them. Only in two scenarios has help from official law been chosen by communities: a) murders, and b) in cases where women and youth already know about the formal justice system and human rights, and perceive advantages to be associated with the formal justice system. The vast majority of other cases are dealt with on the spot. This is consistent with the general perception that the official judiciary costs too much and takes too long, and judgements and punishments are often not satisfying. Additionally, the official system has not developed to the point where it can guarantee environmental protection. Also, bribery is not possible in ‘traditional’ law, but it was associated closely with the justice system during Indonesian times and appears to be making a resurgence in the new state. Yet, some people claim that official law is seen as more precise and not discriminatory.

While the newly established justice sector is rarely encountered by the population and therefore has no relevance for them – the new police force is present at the grassroots. However, the process through which the police force was established is attracting criticism, and there are indications that the force is developing into the worst case scenario of a politicized security organization¹⁵⁸. In the event this trend continues, the development of trust between the police force as an institution and the Timorese population will clearly be jeopardized.

This trend is occurring at the same time as international police slowly start leaving the districts after having made minimal impact by many accounts. Many of the police officers were too culturally different to be able to appreciate community issues. They also had no guidelines on how to interface with local justice, and thus reacted to the situation in different ways. In this ad hoc environment minor crimes sometimes reached court while major crimes were addressed using local justice.

Furthermore, many of the new Timorese police officers lack legitimacy amongst the population due to their youth. Deployed to their home communities, they will always be part of the social system. Additionally, their actions are sometimes seen as political, as they are classified as the ‘government’. No distinction between law enforcement and

¹⁵⁶ UNMISSET Human Rights Officer, Interview November 2002.

¹⁵⁷ UNMISSET Human Rights Officer, November 2002.

¹⁵⁸ See for example ‘500 Eks Frente Klandestin-Falintil direkrut jadi PNTL’, *Suara Timor Lorosae*, 23 September 2002, p.1

government is made in local concepts. Villagers mostly make use of the police if they are not satisfied with 'traditional' solutions, or if police supports them against their opponent.

Numerous studies are now investigating the matter of local law and official judiciary, including policing. The problem of late assessments seems symptomatic. The discussions about the interplay of traditional and official justice should have begun at the time the mission was deployed. Then the results of early assessments could have been integrated into the initial set-up of the justice system. Now, however, a Timorese government is established, which is heavily influenced by the Diaspora, and some factions of the governmental party are condemning all efforts to integrate local concepts of justice.¹⁵⁹ The reasons for this relate less to the efficiency or legitimacy of the justice system, as to social and historical factors. International efforts are now coming late in the day and a problem exists that did not previously prevail: if policy-making is to be influenced in independent Timor, then dynamics of national politics will have to be taken into account. This hurdle is likely to represent as significant a challenge as the actual question of if and how to integrate local justice into the national system.

Different Models

Three different suggestions arose in the course of our interviews concerning how to deal with the interface between formal justice and local systems.

Total Abolishment of the local system

Many women and human rights groups and some internationals favour the abolition of local legal systems altogether. The argument for this approach is that in some cases it contradicts international Human Rights standards. They suggest that no official entity (local police for example) should ever use 'traditional' law, to set a good example. Timorese officials and international representatives should not be seen at local reconciliation meetings, even as witnesses – as this only lends legitimacy to the local process and confuses the population with respect to the distinction between 'local' and 'official' systems.

Given that concepts of justice in traditional societies are inter-related with the broader social paradigm, the entire social structure would have to be transformed in order for an imposed western-style justice system to assume full legitimacy. Implementing this approach in a traditional society would amount to a comprehensive social engineering venture probably involving a medium to long-term commitment to the economic and industrial development of the country. The researchers are of the view that where the resources and capacity to do this are unavailable, it is not a strategy that should be attempted

¹⁵⁹ See for example Timor Post 'We can't tolerate this form of slavery' says Da Silva. In: *Timor Post* 14 November 2001.

Integration of local into written law

Some Timorese lawyers made the point that some features of customary law should be intergrated into the written law. These might include environmental protection regulations that integrate local law mechanism, or the requirement that courts preside over the negotiation and determination of compensation agreements on a routine and formal basis. This model means basically the abolition of local mechanisms, while elements of the 'traditional' systems are included in the official law. Such a strategy would be likely to increase the legitimacy of the official law in the eyes of the population. Studies would need to be conducted to identify features of the local law suitable for integration into the official law.

Transitional Application of local system

The majority of people interviewed made the case that international administrators should base the justice system on customary law. This model would have local legitimacy, and it would fit within the financial and broader capacity of a mission. The official judiciary in Timor has clearly proven its limits. Reliance on other systems was unavoidable. Only for serious crimes should an official system be in place and only those features of the local system that contradict international standards of human rights should be abolished.

We note that the search for a middle ground between human rights and local justice is a problem being encountered beyond the shores of Timor and one unlikely to be solved within the space of a 2 year field operation. Furthermore, the international human rights perspective in some cases overlooks the appropriateness of many aspects of local justice systems in a place like East Timor, and also those aspects which may be progressive even in an international context. The emphasis of the Timorese on promoting reconciliation between parties and on rehabilitating offenders back into the community, for example, is an approach that has failed to receive the recognition it deserves. A system that delivers reconciliation and rehabilitation has much merit, especially in a nation where much of the population is young and where the economy is subsistence. In addition, post-conflict scenarios are times when societies require stability, a condition that is likely to be supported by a societies own traditional systems. To leave people between two ways of doing things is unlikely to promote social stability.

Therefore this model supports the application of local law in the transitional period, while an official system is created and an educational agenda advanced. This provides societies with the opportunity – over the long term – to transform into state-societies and adopt state institutions.

It is up to mission planners which model to apply, depending on the main objectives of a mission. It is important, however, that planners take into account the strength and existence of local systems. Furthermore, budget and time-frame limitations are an important consideration, and planning should take into account all the challenges and consequences of an approach. For reasons demonstrated by the East Timor experience, working with local systems is the only viable option in a short-term operation. A long-

term strategy, however, may present the opportunity to work towards the development of an official judiciary, provided that the broader social context (including educational and economic opportunities) can be developed to the point that an official judiciary becomes of relevance to the population.

A fundamental tension in a peacekeeping operation of this nature is between accepting local justice systems that have legitimacy amongst the local population but are deficient in international human rights terms, and imposing an alien justice system on the mission-recipient population that will only function after prolonged and intensive social engineering. The latter alternative, again, is only a realistic option in the event that planners are prepared to make a far greater commitment in terms of time and resources than occurred in relation to East Timor.

An important question barely addressed in this report, is how to open the door - in the course of a peacekeeping operation - for 'traditional' societies to develop into state-societies. It is a question of great relevance throughout the broader realm of social development policy-making. Although western nations, the 'Asian tigers' and certain states elsewhere have successfully transcended the conceptual, political and economic margins characteristic of 'traditional' societies, many other states find that their capacity to modernize is limited by economic stagnation, ethnic competition, population expansion, educational shortcomings and a whole host of other handicaps. Overshadowed by such factors, a path to the kinds of social changes that will support an official justice system and greater regard for human rights is not always clear. Although space limitations prevent advanced consideration of such matters in this report, any analysis of this nature should begin with the assertion that an international intervener should acknowledge the strength of local social structures.

General recommendations

Local Knowledge

- Early deployment of anthropologists, social researchers and regional specialists to assess local situation and integrate local knowledge into operational planning process.
- Develop understanding of the local system in order to be able to anticipate potential conflict points with modern justice system and decide how to deal with these.

Assessment, and Mission Planning

- Clearly define the objectives of the mission and know what the budget and other capacity limitations are
- Determine the extent to which it is *possible, necessary* and *appropriate* to modify local systems, bearing in mind social realities, the available resources, and the proposed time-frame of the mission, as well as the human rights situation.
- Take into account the need for the system to be sustainable beyond the international intervention. Important factors in this regard may include the political will to continue rule of law operations, budgetary limitations and local legitimacy
- Review the consequences of attempting to establish a full rule of law system, including the possible consequences of *failure* in this venture.
- In respect to all the above points, work in consultation with a representative section of the national community to as great an extent as possible (clearly difficult prior to employment).

Policy Development

- Policy development at all levels should include broad local participation and be informed by anthropological and social research.
- In accordance with mission objectives, develop clear and consistent policies for interfacing with local law systems at key levels of the mission such as justice, land and property and reconciliation. In particular, these policies would specify when local justice should be used, and when formal justice should be used.
- Develop and disseminate operational strategies for field personnel in all relevant areas of operation to ensure that field operations function in a consistent manner.
- With respect to policing operations, the development of strategies and procedures should take into account the cultural specifics of the operational environment, informed by the above points. It is likely, for example, that procedures would be developed in relation to such matters as domestic violence and sorcery allegations where appropriate.

Education, Training, and Communication

- All UN field staff should attend training sessions designed to inform them about the social environment in which they are operating. Training should provide (a) a general overview of the background and culture of the mission-recipient country, and (b) specific information relevant to the professional activities of the personnel concerned.
- An education campaign should be launched to inform members of the mission-recipient country about the nature of the justice mechanisms developed. This education should ensure that rural and remote areas are covered as well as urban areas. Nationals who have been involved in the development of justice objectives and policies may be the appropriate people to inform their communities about the policy developments.

Other

- Placement of UN field staff, including CivPol officers, should be for a minimum of 6 months.
- To as great an extent as possible, staff should remain in the same posting to maximize the development of relations with community members.

Glossary

<i>Adat</i> (Indonesian)	Traditional customs
<i>Aldeia</i> (Port.)	Hamlet in the transitional period; name given by the clandestine structure immediately after the ballot.
<i>Ano sobo</i> (Macassae)	‘Master of the voice’, local authority involved in conflict resolution
<i>Bei</i> (Kemaq, Bunaq)	Ritual leader
<i>Biti Boot</i> (Tetum)	Big woven mat
<i>Belak</i> (Kemaq)	Necklace, given as marriage exchange good
<i>Camat</i> (Indonesian)	Sub-district coordinator
<i>Dato</i> (Indonesian)	Term for different kinds of power positions. Mostly used in Portuguese times for village or hamlet chiefs.
<i>Gase ubun</i> (Kemaq)	local authority involved in conflict resolution
<i>Gi matas</i> (Bunaq)	‘helper’ of the authorities in conflict resolution
<i>Gongiri</i> (Bunaq)	colloquial expression for gase ubun
<i>Himagomon</i> (Bunaq)	local leader
<i>Kabauk</i> (Atoni)	head-dress
<i>Kuku nain</i> (Mambai)	ritual leader
<i>Lian nain</i> (Mambai)	‘master of the words’, involved in conflict resolution
<i>Lia oli</i> (Macassai)	‘big council’
<i>Liurai</i> (Tetum)	Chief of a kingdom or village.
<i>Lisan</i> (Tetum)	customs
<i>Maromak</i> (Tetum)	God
<i>Meo</i> (Atoni)	Former warrior
<i>Morador</i> (Port.)	Helper in conflict resolution
<i>Naizuf mnas</i> (Atoni)	Ritual authority
<i>Naizuf</i> (Atoni)	Authority in conflict resolution
<i>Nurep</i> (Nucleos Representatives) (Port.)	Village leader in the clandestine structure.
<i>Poe aluk</i> (Atoni)	Small bag for food distribution
<i>Posto</i> (Port.)	Sub-district in the Portuguese administrative structure and in the current transitional structure.
<i>Selcom</i> (Port.)	Hamlet leader in the clandestine structure.
<i>Suco</i> (Port.)	Village in Portuguese administrative structure; also in the current transitional administrative structure.
<i>Tobe</i> (Atoni)	Authority for land issues
<i>Tuak</i> (Indonesian)	alcoholic beverage
<i>Tuasabu</i> (Atoni)	dito

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