The Impact of UN Peace-building Efforts on the Justice System of Timor-Leste: Western versus Traditional Cultures

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Poverty and other issues associated with development are commonly found in many Asian and African countries. These problems are interwoven with ethnic, religious and political issues, and often lead to incessant conflicts with violence. In order to find an appropriate framework for conflict resolution, we need to develop a perspective which will fully take into account the wisdom of relevant disciplines such as economics, politics and international relations, as well as that fostered in area studies. Building on the following expertise and networks that have been accumulated in Ryukoku University in the past (listed below), the Centre organises research projects to tackle new and emerging issues in the age of globalisation. We aim to disseminate the results of our research internationally, through academic publications and engagement in public discourse.

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Working Paper Series No.56

2009
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INTRODUCTION

At the present time, much attention has been paid to the term “soft power” in the field of international relations, especially since the advent of the book *Soft Power* by Joseph Nye in 2004. Nye put emphasis on the need for states to adopt the concept of soft power in order to exert their power effectively. It is interesting to note that Nye introduced peacekeeping or peacemaking as one form of what he considered to be “soft power.” Nye used the example of Norway’s role as peace-maker to support his point. By taking initiative in peace talks in civil and international disputes, Norway was able to enhance its own soft power and increase its value a big state status (Nye 2004, 10). He also stated that one of the sources that soft power of a country relies on is its culture. The United Nations (UN) achieves peacemaking and peacekeeping missions by recruiting military and civilian staff from most of its member states. While the UN is not a state, so not really applicable to Nye’s book, it does however exert a significant amount of power in achieving international peace and security. In this sense, the UN has legitimacy in paying attention to the concept of soft power in its activities, including peace operations.

Has the UN valued the concept of culture in its peace operations? In several interviews with the UN staff, many of them answered that the UN inevitably prioritises universal values which are historically rooted in Western society. In this context, if the indigenous values of a country accepting the UN peace operations are quite different from Western ones, one can expect there to be conflicts in terms of cultural differences between local people and the UN staff. In reality, most of the states requesting UN peace operations are developing countries and are remote from Western states. A senior officer in one UN agency pointed out several factors influencing UN operations in local areas. In setting priorities for the mission, he argued that “International Law and Norms” will come as the first group. The second group is “Modern Politics and Economics.” Next is “Local

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Religion and Tradition.” The final and the fourth group, he mentioned, is “Indigenous Values and Social Structure.” According to this approach, considerations of local culture will only emerge in the third and the fourth groups, and therefore clearly culture cannot be given a high priority in the UN missions (Figure 1). He concluded that this is not the desire but inevitable reality of the UN missions.¹

![Diagram](image-url)

**Figure 1: Factors Influencing UN Operations**
Source: Interview made by the author with a senior UN officer, March 2009.

Beatrice Pouligny, the author of *Peace Operations Seen from Below* (2006), researched cross-cultural analysis in peace-building especially between peacekeepers and builders, and local people. She suggested that UN peace-building has failed to understand plurality in the peace-building process. Little attention is given to local communication within the community by the UN. However, she argued that this neglect is very serious in political aspects of peace-building as the cases of Haiti and El Salvador indicated.²

¹ Interview with a senior officer of the UN agency, 1 March 2009, Dili, Timor-Leste.
² In the elections of both countries, when local people realised that the results of voting were manipulated,
She also stated that not only practitioners are guilty of this neglect but also many scholars. Political anthropologists and specialists studying non-Western countries have emphasised these issues, but scholars of security studies have largely continued to neglect them (Pougligny 1999, 419).³

Meanwhile, Tamara Duffey emphasised the significance of cultural aspects in peace operations. In her opinion, the cultural challenge for peace operations was that the bottom-up perspective was often marginalised by the international community whose habitus focused on a short-term, linear, top-down process of state-centric conflict containment. She maintained that top-down oriented systems attempted to manage conflict by focusing on establishing political order within a sovereign and internationally recognised state. This results in negotiated settlement packages that focus almost exclusively on democratisation, including democratic elections and the protection of human rights. Duffey claimed that this type of settlement may not be traditionally appropriate, nor culturally acceptable (Duffey 2000, 151).

In general, there are three categories where culture should be considered important to peace operations: 1) UN mission and local culture; 2) national contingents which have their own culture; and 3) civil-military relations in culture. Among them, much has been written on civil-military relations in the academic field of international security. However, in his book Peacekeeping under Fire: Culture and Intervention, Robert Rubinstein (2008) argued that the interaction of UN mission and local culture is essential and should be addressed before the mission begins. He maintained that questions at this level are about how the mission engages local culture when developing programs that promote the rule of law, manage conflict, or attempt to establish mechanisms of local governance. He emphasised that what happens at this interface can either facilitate or compromise the mission’s effectiveness, since it influences the way in which the peace operation is perceived and received by the local population (Rubinstein 2008, 37).

This paper deals with cross-cultural analysis in peace-building, especially the UN mission and local culture in Timor-Leste. There are several reasons to select UN peace-building in Timor-Leste for cross-cultural analysis: size, extensiveness, and difficulty. First of all, the UN peace operations in Timor-Leste have been relatively huge

³ See also Pougligny (2006).
in size. Seven or eight thousands of military personnel and another several hundred civilians were constantly deployed in the United Nations Transitional Administration in East Timor (UNTAET), which was not only the largest UN mission ever at that time, but also this size was exceptionally large for the tiny state of Timor-Leste with a population of less than one million. The larger the size of the UN mission is, the greater the influence and impact it would have on the local culture, and cultural problems.

Second, as mentioned before, UNTAET was the most extensive mission ever. Timor-Leste, known as East Timor in 1999, was totally devastated after a militia campaign and was in the process of achieving independence after the Indonesian government withdrew from the territory, and was dependant on UNTAET for building a state, virtually from a scratch. In other words, the process of the UN peace-building in Timor-Leste was a test-case for state-building itself. UNTAET, as the transitional administration, was in charge of all sectors of the government including security, finance, justice, defence, and humanitarian assistance. In reality, almost all of the foundations of the current state institutions in Timor-Leste were established by UNTAET, on the basis of the legal framework called UNTAET Regulations. Such an extensive mission could bring more communication with local people and therefore it was easier to identify cross-cultural issues.

Third, Efrat Elron et al. examined cultural aspects in peacekeeping from individual and organisational integrating mechanisms. In their paper, they described that there was an increase in the frequency of conflicts due to cultural differences in more “dangerous” missions. UNTAET was mandated under the United Nations Chapter VII, and therefore can be categorised as a relatively “dangerous” mission. In peace-building missions like Timor-Leste, the term “dangerous” can be replaced by “difficult” or “challenging.” In this context, the peace-building process in Timor-Leste was, without any doubt, “difficult” and “challenging” (Elron et al. 2003, 265). This can be recognised, for example, by the fact that the presence of UN peace operations has remained in Timor-Leste, and has had three other UN missions after UNTAET. Even during the UN involvement, small riots occasionally occurred and in 2006, when a serious crisis in Dili destabilised the entire territory, resulted in a huge number of internally-displaced persons.

This paper focuses on how the UN-imposed justice system has affected the pre-existing conflict resolution and justice system of Timor-Leste and its wider culture. The current
mechanism of conflict resolution and justice was originally created on the base of UNTAET Regulations. However, to what extent were cultural and traditional aspects considered in building the framework of conflict resolution and justice of UNTAET? More significantly, what is the impact of peace-building efforts on justice in cultural aspect? First, this paper examines the traditional conflict resolution system and the response of UNTAET. Next, it discusses the impact of peace-building efforts on justice with cross-cultural analysis by focusing on the then-President Xanana Gusmao’s perspective on justice and traditional approach to reconciliation policy. Then, the research deals with a comparative analysis between traditional and the new formal justice system by using gender-based violence as an example.

1. Traditional Approaches to Conflict Resolution and the Response of UNTAET

First of all, the ideal lifestyle of the Timorese people consists of a harmony between the physical and spiritual worlds. In other words, spiritual factors have historically been more highly valued by East Timorese than Western people. This is centered around the respect for one’s ancestors. Ancestors are considered to still live in the spiritual world and to have created the traditional rules and prohibitions, called *bandu*, which have been followed by the Timorese people for generations. *Bandu*, which is customary law, is unwritten. The breaking of *bandu* law by an individual or community will be regarded as a lack of respect for the ancestors and the spiritual world. It will anger the ancestors, which will be reflected in the form of punishment in the physical world, such as tragedy and serious misfortune, including conflicts (Trinidade and Castro 2007, 17).

The Tetum word for custom *lisan* has also a significant part in the East Timorese society. *Lisan* is said to comprise everything which is inherited from the ancestors. Some Timorese attributed recent conflicts in Timor-Leste to the increasing adoption of Western values and customs instead of traditional *lisan*. The main source of legitimacy of traditional custom derives from its age as perceived by Timorese people and communities. Therefore, the older a custom is perceived to be, the more legitimacy it has (Hohe and Nixon 2003, 11).

In Timor-Leste, peace is considered to be established through the foundation of kinship or marriage relations. The significant point of kinship is identification of its “House.” Every individual belongs to a sacred house, called *uma lulik*. Each *uma lulik* is led by one elder person, who represents the ancestor. Community membership, participation
and group solidarity are facilitated through *uma lulik*. Therefore, even if an individual commits a crime, the crime is seen as a communal problem.

The *lisæn*-based conflict resolutions system is called *nahe biti*. *Nahe biti* is a traditional dialogue process where family or wider social issues are discussed, debated and settled. Ultimately, it is expected to resolve disputes and settle political conflicts. However, the process of *nahe biti* is only a mechanism to achieve certain ends, and not the end of the process itself. Therefore even if the *nahe biti* can lead to an agreement, this requires ongoing commitment to the agreement from all parties. The process of *nahe biti* also requires proper preparation, building trust and confidence between parties. *Nahe biti*, which requires all parties to actively seek agreement, would inevitably necessitate compromise in order to bring different viewpoints together (Pigou 2004, 27). Dionisio Babo-Soares also stated that this process includes “the willingness to come together, the willingness to accept culpability, the willingness to reach consensus with one’s adversaries and willingness to agree to disagree in order to maintain a stable social order” (Babo-Soares 2001, 13).

The traditional style of reconciliation, *badame* in Tetum, is based on the desire of Timorese people to prevent one’s party and family from getting a bad image and name. Tarnishing one’s family name could attract the wrath of the ancestors (Hohe and Nixon 2003, 23). This is not to say that all disputes can be solved and reconciled without costs. In accordance with the nature of the dispute or conflict, one party might have to pay goods as compensation to another party. The compensation can be a horse, a goat or a buffalo and so on. The compensation should be of equal value as was lost in the dispute.

The *nahe biti* process is usually finalised with *juramentu* or “blood oath.” In *juramentu*, both parties in the dispute drink the blood of a sacred animal mixed with local palm wine. This mutually binds their agreement to the terms of the negotiation, and reconnects both parties to their ancestral past. *Juramentu* symbolises the “death” of the conflict and establishes normal relations between those who were divided (Trindade and Castro 2007, 25). The ultimate purpose of the previously mentioned ceremonies is not to solve each dispute but rather to restore social order. The underlying concept is that there cannot be a winner or a loser left behind after the dispute has been resolved. The reconciliation ceremonies involve the ritual authorities and insure ancestral participation in the new peace agreement (Hohe and Nixon 2003, 22).
On the whole, traditional conflict resolution in Timor-Leste is to a considerable extent different from those of Western countries. The value of spiritual aspects is less significant for Western people. Presumably, there is no image of a sacred house for the western style of conflict resolution. Ancestors do not seem to play a major role in solving disputes in Western states where precedent can always be overturned. Disputes can focus on individuals and their groups instead of communities surrounding the disputes, and each dispute and conflict is rarely connected with the entire social order and disorder in a Western society. Reconciliation cannot be applied to criminal acts in Western states. Face-saving measures, which are valued in conflict resolution in Timor-Leste, hardly exist in the Western justice system. Punishment is central to the criminal system in the West. Furthermore, disputes are solved by using fixed and codified regulations, written agreements, concrete processes, and structures with more time-consuming investigations and more considerations of human-rights issues.

The UN has adopted the Western style justice system for conflict resolution and what it defines to be justice. Peace-building led by UN has adopted more universal values in its mandates and operations as laid out in the Universal Declaration of Human Rights and similar documents. The UN peace-building in Timor-Leste was not exceptional.

It might not be difficult to understand that the UN and its peace operations are traditionally based on Western values. Since the UN was established in 1945, the leadership of the international organisation has been controlled mainly by Western states. In terms of the UN peacekeeping operations, majority of the contributing states to the UN operations especially in their early stages of the 1950s, 1960s, and 1970s were the so-called “middle powers” from the West, such as Canada, Austria, Sweden, Finland, Australia, Ireland, and Norway (United Nations Peacekeeping). Values and traditions of the Western-based UN operations at that time have continued to form the basis of the current UN strategy in the post-Cold war period.

Before the advent of UNTAET, the Secretary-General’s report to the Security Council of 4 October 1999 recommended the dispatch of legal experts to East Timor—presumably experts in Western law—to provide “immediate legal advice and to assess the legal and judicial system including existing laws for a properly functioning administration of justice” (UN 1999, para.5).4

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4 See also Bull (2008, 191).
Since UNTAET was established in October 1999, all legislative and executive authority in East Timor, including justice, was vested in UNTAET, and was exercised by the Special Representative of the Secretary-General as the Transitional Administrator. Therefore, the authority was not vested in Timorese traditional leaders. The Transitional Administrator then appointed individuals to the judiciary. The judicial process in UNTAET was based on internationally recognised human rights standards, such as, the Universal Declaration on Human Rights of 1948 (UNTAET 1999). UNTAET Regulation No. 2000/30 stipulated that the Transitional Administrator promulgated the Western style of provisions of criminal procedure including criminal jurisdiction, investigation, arrest and detention, indictment, trials, appeals, and etc. (UNTAET 2000). In terms of serious crimes, the Serious Crimes Unit (SCU) and Special Panels for Serious Crimes were established in 2000 by the UN, mandated to conduct investigations, prosecutions, and judicial proceedings relevant to serious crimes committed in 1999 in Timor-Leste. This was a typical Western style of tribunal. Thus, UNTAET adopted a Western system in the judicial sector which was believed to meet international standards. However by doing so, they hardly provided space for the traditional justice system.

In her book *No Entry without Strategy: Building the Rule of Law under UN Transitional Administration* (2008), Carolyn Bull pointed out that UNTAET undertook no studies to document local cultural values or establish whether there was a cultural gap with respect to the rule of law. She continued that, aware of the need to avoid criticism of cultural imperialism, the question of “cultural change” appeared to have a taboo element among the UNTAET leadership. She quoted the comments of the Transitional Administrator in her personal interview on this issue:

> What cultural change is there to attempt? UNTAET is not trying to implement cultural change. What we are trying to achieve through the creation of courts, the Serious Crimes Unit and the truth commission is to bring institutions and process back into tune with what the Timorese expect. We are trying to restore what they lost or never had. (Bull 2008, 218–219)

Nevertheless, there were several occasions where minor disputes and incidents were solved by the traditional justice system in the early stage of UNTAET, and in fact the reports of the Secretary-General to the Security Council commented on it (UN 2000, para.46; 2001a, para.27; 2001b, para.18). However, UNTAET did not adopt any aspects of traditional justice for major cases, and as UNTAET focused more on the
improvement of the formal justice system in its effectiveness, efficiency and quality of staff, traditional justice was not mentioned in the Secretary-General’s reports.

2. Impact of Peace-building Efforts: Xanana Gusmao’s Reconciliation Policy Based on Tradition and Culture

Justice has been one of the most important and difficult issues to tackle in the peace-building process in Timor-Leste. The current state of Timorese justice originated in the referendum periods in 1999. The state paid the cost of a huge anti-independence militia campaign which was launched in East Timor during the pre- and post-referendum periods. The result of the referendum in September in 1999, in which 78.5 percent of the voters opted for independence of East Timor, led to a huge pro-Indonesia campaign in the entire territory of East Timor. Several investigations revealed that the campaign was conducted systematically and orchestrated by the Indonesian troops (UN 2000; KPP-HAM 2000). By the time the first international forces were deployed, thousands of East Timorese had already been killed from both before and after the referendum, and over 500,000 people in East Timor from a population of only 800,000 had been displaced. 200,000 of these had crossed the border and become refugees in West Timor. In Dili, 70 to 80 percent of the business district buildings have been damaged (The Times 1999). During the campaign, pro-Indonesia militias committed serious human rights abuses such as burning of houses, kidnapping individuals, sexual assaults of women, as well as injuring and killing of individuals (Kingsbury 2000, 141). However, these war criminals and perpetrators, most of who had escaped to West Timor, have not been indicted in the formal justice system after the advent of UNTAET and even after the independence of Timor-Leste in 2002. This was partly due to the perspective on justice of the then East Timorese President Xanana Gusmao and his government.

President Gusmao took a traditional approach to justice issues. His pragmatic policy was identified in the process of refugee repatriation in the early 2000s. He prioritised peace and stability in East Timor over pursuing fair justice, and he believed reconciliation would play a key role in achieving peace and stability. In order to do that, repatriation of East Timorese refugees in West Timor was among the most important issues to resolve. However, he estimated that the use of strict legal procedures would deter the return of former militias in West Timor, which would in turn negatively effect repatriation efforts and lead to a deterioration of security in border areas. He was
sympathetic to subordinates in the militia groups, who inevitably joined the militia campaign during the referendum periods for economic reasons or were inspired ideologically because of a poor education and social inequality. He was convinced that an absence of reconciliation would destabilise the total security of East Timor. He answered in an interview as follows:

I will recommend that punishment is not only to be sent to trial, but maybe there are many ways of trying them by working to the community etc, because they were ordered to do something wrong you know, and that is why I cannot punish the subordinate ordered to kill…Who has more responsibility is his commander or the political leaders or the Indonesian generals.  

He considered it unfair to prosecute former rank East Timorese militia and not Indonesian military officers who orchestrated the militia campaign during the referendum periods in 1999, and that it would destabilise social security in East Timor. He also recognised that East Timor’s capacity to deliver justice was very limited. Gusmao was convinced that social welfare created social security, and he considered “justice” in the broader context, as not only criminal justice but also social justice. He frankly argued:

These men, they will go to trial, they will go to prison. Who will pay for their daily life in prison? The money that you pay in taxation, instead of going on teachers and nurses, will go to prison. Do you accept this? What we have discussed is that if we need to repair buildings, the people who burned the buildings will repair them. (Time Asia 2001)

In fact, Gusmao was keen to take the reconciliation process to many levels, such as reconciliation with the pro-Indonesia militia side, at the community level, and with the Indonesian authorities.

In terms of reconciliation with the pro-Indonesia militia side for example, in August 2003 the East Timor attorney-general’s office granted immunity from detention to about 150 former pro-autonomy militias and pro-integrationists so they could return home temporarily for reconciliation meetings with officials and relatives. They actually met with Timorese officials including Gusmao on their arrival. However, it is to be noted

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that among the people granted immunity were some notorious former militia leaders, such as Egidio Manek, former deputy commander of the Laksur militia, and Vasco Da Cruz and Domingos Alves, former commanders of the Mahidi militia. Some judicial observers questioned whether the attorney-general had the authority to grant such temporary immunity to former militia leaders since they should have been dealt with by the Serious Crimes Unit led by the UN instead of the reconciliation programme (*Suala Timor Lolosae* 2003a).

Gusmao was also very keen to involve himself in the community-based reconciliation process by travelling widely in East Timor. He persuaded communities to forgive the militia and try to understand their actions so that they were reintegrated into society.

He also believed that the future relationship with the Indonesian government was of paramount importance. This was recognised by the fact that the East Timorese government invited the former Indonesian Foreign Affairs Minister Ali Alatas as a keynote speaker, to the “International Relations Conference” in Dili on 9 September 2003. At this conference, Gusmao declined all questions from the audience on the sensitive issues concerning the history of human rights violations committed by the Indonesian troops, emphasising that it was more important for East Timorese to look to the future than the past. He mentioned Alatas in the conference as follows:

> Mr. Ali Alatas, by simply being here today, proves that on the part of both countries, Indonesia and Timor-Leste, there exists a common objective which guides both people to a future of good relations, to a future of strengthened cooperation and understanding, to a future where we can all engage in the building of Peace. (*Suala Timor Lolosae* 2003b)

Despite Bishop Carlos Belo’s criticism⁶ of Gusmao’s comments on Alatas, East Timor’s President consistently advocated this pragmatic position on the prosecution of the Indonesian officials over human rights violations in East Timor for several reasons. The key reason is that this tiny country still faced the possibility of retaliation by Jakarta, as well as subversive activities by rogue military elements and militias.

On 10 May 2004, the Serious Crimes Unit in the UN issued an arrest warrant against

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⁶ He said in the International Relations Conference, “For all his merits, he [Alatas] was a mouth piece for the Suharto regime. We cannot forget that our people are demanding justice and reparation” (*Suala Timor Lolosae* 2003c).
General Wiranto. This was a significant step in the continuing efforts to bring to justice those responsible for the crimes against humanity in East Timor up to 1999. Prior to and after East Timor’s overwhelming vote for independence, his troops and their militia proxies conducted a campaign of terror resulting in more than 1,400 deaths, the displacement of three-quarters of the population and the destruction of more than 75 percent of East Timor’s infrastructure. However, the leaders in Timor-Leste including Gusmao said that they had little interest in the case, adding that their burgeoning relationship with neighbouring Indonesia was more important than seeking justice for the victims of its twenty-four-year military occupation (International Herald Tribune 2004).

Thus, one can identify the extremely pragmatic approach for justice of war crimes by the government of Timor-Leste which emphasised reconciliation instead of seeking formal justice in accordance with the universal standard of human rights. Its position might be, to some extent, due to economic and diplomatic factors which Timor-Leste has intrinsically had as a newly independent state. However, one should not forget that reconciliation itself has long been rooted in the culture of Timor-Leste for centuries as stated previously. In fact, in his speech in the National Parliament, Gusmao implied that his reconciliation policy originated in cultural traditions:

What does reconciliation mean? We have the word badame in our tradition. And when the Constitution talks about strengthening our cultural traditions, it is important that we do not forget about the various other social aspects in the system of government of our people that to do with the concept of badame, including aspects that we would even consider as being political. There is much to learn from the wisdom of our people and, for this very reason, we express our gratitude to you…for being able to interpret what is most sacred in our identity: our tradition.7

On the whole, while Gusmao accepted and even welcomed the UN operations in Timor-Leste during the emergency period in 1999 when everything collapsed and state-building had been initiated from scratch, he realised that there was a huge gap in the approach to justice and conflict resolution between Timor-Leste and the UN styles. He believed that this gap would not be filled in a short period. Many of the Timorese

people were still not familiar with the formal justice system. The sectors of the rule of law and justice in UNTAET were too under-developed. Therefore, Gusmao still recognised the legitimacy of the entire Timorese culture and the value of the traditional system of justice and conflict resolution, such as lisan (traditional custom), bandu (customary law), uma lulik (sacred house), nahe biti (traditional conflict resolution process), badame (traditional reconciliation process), and juramentu (blood oath).


As stated above, when the nation-building process was initiated in Timor-Leste after the advent of UNTAET, the UN launched a process of creating a Western style of law, and it has paid serious attention to the role of the pre-existing local justice system. However, the formal Western system was not only alien and marginal but also irrelevant for most East Timorese people. For example, the practice of imprisonment as punishment is normal in the formal justice system. However, this was not the case for East Timorese:

Where the majority of the population is involved in backbreaking subsistence agricultural work, the notion of being provided with free accommodation and three meals a day with no work requirement...is sometimes considered a privilege, not punishment. (Graydon 2005, 66–70)

In Timor-Leste, detention is not necessarily considered shameful, while this is a very shameful punishment in Western society. Likewise, Tanya Hohe, an anthropology specialist on Indonesia and Timor-Leste, pointed out a huge difference between the Western and local concepts of laws. For example, Western law is divided into criminal and civil law whereas local law has different distinctions. In Timor-Leste, thefts, covered by criminal law in the West, and divorces, covered by civil law in the West, are categorised in the same traditional law, and are considered to be more serious cases than violence. Small violence is hardly pursued under local law. Therefore, it happens that East Timorese people are imprisoned for acts which they had never considered as crimes. In Western criminal law, an individual who committed a crime is accused, whereas in local law, offenses are a matter between the families involved. Western law values the concept of human rights, and cannot substitute the value of human rights for other values whereas the concept of human rights and the individual do not play a major

8 See, for example, UN (2001b, para.20–22; 2002, para.17–19).
role in traditional law. Instead, individuals and goods of being of the same value are considered as compensation (Hohe and Nixon 2003, 63).

This different understanding of crime, justice and punishment can be identified in gender-based violence in Timor-Leste. Gender-based violence, especially husbands’ violence towards wives at home, has been a serious social issue in Timor-Leste. According to statistics conducted by an NGO in 2004, about 40 percent of the total abusers in gender-based violence are victims’ husbands.9

A huge difference in marriage culture is identified in the Western countries and Timor-Leste. Men and women are treated equally in marriages of the Western countries. Sofi Ospina explained the marriage system in Timorese culture as follows:

The marriage system is based on the circulation of women and means of production between clans classified as wife-givers and wife-takers. This system involves exchange of goods (barlake) following long negotiations between both clans and establishes a commitment of solidarity between them. This constitutes a sort of social net but many also make women more vulnerable, particularly those who are obliged by a patrilocal system to live with their in-laws. (Ospina 2006, 17)

In reality, very few female victims of domestic violence have reported to police. The research on gender-based violence in Timor-Leste from the United Nations Population Fund (UNFPA) in 2002 found that almost half of the respondents reported at least one incident of violence from their partners in the previous year, only two percent of victims reported such abuse to the police and 84 percent of the respondents felt that family problems should be discussed only with people in the family (UNFPA 2005, 1). Women are often condemned by their community for going to the police because the latter is often regarded as facilitators of divorce (UNFPA 2005, 3).

According to other data from the Vulnerable Person’s Unit, National Investigations Division, PNTL, the number of the cases on violence against women reported to the police in Timor-Leste was 361 in January-August 2004. However, of those reported to police, only a very small portion was processed by the prosecutor’s offices in each

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district. In domestic violence cases, the Judicial System Monitoring Programme (JSMP) attributed the decrease in number of cases reaching the prosecutor’s office for several reasons, such as economic dependency (because the victim needs their husband’s income to support the family); threats of further violence from the husband and his family; and embarrassment (because of the damage it will do to their family’s reputation). As a result, wives very often bring the cases to *adat* (the traditional justice process)\(^{10}\) or send the cases to the village or sub-village chief (JSMP 2005b, 8–9). According to another survey, 81 percent of the Timorese respondents felt that community leaders are the people primarily responsible for law and order in the community; only 14 percent felt that the police hold the main responsibility for preserving law and order (UNFPA 2005, 36).

The traditional *adat* process is quite simple. It is in general initiated by the victim’s family. They call members of their family who have cultural power to solve the case. A hearing is conducted where a woman and a man present their stories. Then the administrators weigh up the stories and apportion blame to one or both parties. The payment of compensation involving fines or goods takes place between the families (Swaine 2003, 2). Punishment also includes oral or written undertakings not to re-offend, community work and public shaming.

Timorese people are in general satisfied with the *adat* process. A survey on law and justice in Timor-Leste conducted by the Asia Foundation in 2004 indicated that 91 percent of the respondents consider that the *adat* process is fair, and 86 percent believe that it protects women’s rights (The Asia Foundation 2004, 56).

Furthermore, women are also reluctant to go to police because of the possibility of corruption and lack of transparency in the police. Especially, people in Timor-Leste have a negative image towards the police because of the brutal behaviors of the Indonesian police during the occupation period. In fact, it is generally agreed that the National Police of Timor-Leste (PNTL) still lacks professional skills and morale. As a result, the formal justice system is utilised far less than the traditional justice process. However, the assessment of traditional justice systems varies. The following analysis of the traditional justice system by Aisling Swaine is not compatible with the above result of the survey by the Asia Foundation:

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\(^{10}\) According to JSMP, “The Indonesian word *adat* is often used to refer to traditional dispute resolution and the body of traditional laws which encompasses it, however, this does not represent a uniform body of practice and there are inevitably regional variations within Timor-Leste” (JSMP 2005c, 2).
In consideration of international standards, it is evident that women’s rights are not given adequate consideration in their research for justice, especially in local justice proceedings. Local belief systems stipulate the power which individual may possess, and women are not attributed any of this power, especially in regard to the decision making power in local justice settings. According to the cultural systems this research approached, women have never had and can never possess such power. (Swaine 2003, 3)

In short, in the survey by the Asia Foundation, the *adat* system was mostly considered to have a human rights standard by Timorese women, whereas Aisling Swaine, as a legal specialist claimed that the *adapt* system does not have an international human rights standard. Presumably, both researches were correct but there is a huge gap in recognition of the human rights between the two sides. In other words, international human rights standards are alien concepts to Timorese communities. In fact, Swaine quoted the following comments from a community leader who makes his decision on a case where a husband has hit his wife, implying how remote the leader’s recognition of a human right from international standards:

> If the man comes home and the woman has not cooked the rice on time, he is angry and hits her…if she’s been hanging around not doing anything all day, and he beats her, that is he fault…if she doesn’t confess to this, then the neighbors will say that they saw he like this and she will be blamed. (Swaine 2003, 28)

Carolyn Graydon also pointed out a number of key weaknesses which local justice systems have, including the lack of safeguards against violations of human rights, inconsistency and lack of certainty of decision making, vulnerability to partiality and corruption of local decision makers, lack of intellectual rigour in investigating claims and apportioning fault, basic fair trial standards, and so on (Graydon 2005, 66–70).

Furthermore, it should be noted that despite the fact that the vast majority of the Timorese people, in reality, have chosen going to the traditional justice system or not taking action (only two percent going to police), the results of surveys show only a small gap between the two systems (the local and formal justices) in case of a future domestic violence. According to a survey by the Asia Foundation in 2004, for the question “Would you most likely seek justice from an *adat* system or the formal legal system in case of an assault by a family member?”, only 33 percent would seek justice
in an adat system, 47 percent would seek justice in the formal legal system, and 16 percent would utilise both (The Asia Foundation 2004, 35). Likewise, the research by UNFPA in 2005 demonstrated that if a man beats his wife seriously, 56 percent of people felt that this should be addressed by the traditional means, and 42 percent felt that this should be dealt with in the formal justice system (UNFPA 2005, 37). The seeming contradiction might indicate two gaps. The first gap would be one between intention and action. Barely a few Timorese women might intend to opt for the police and formal justice system which have both legitimacy and authority. However, when they take actions they would avoid the police because of the reasons which have already been stated above, such as economic, shame, face-saving, and more familiarity with the local community system. The second gap would be one between internal feeling and external expression. Many international aid workers agreed that Timorese people have a character of hiding their internal or honest feeling to external people such as NGOs or UN staff. They tend to avoid arguing with international or external staff. They tend to be modest about expressing their own life style and culture, and show respect to external ways of life. In short, Timorese people have a tradition and culture of taking “face-saving” measures. This culture reflects the answers of surveys and questionnaires distributed from Western people. In other words, they tend to give pro-Western answers.

On the whole, this section indicated that the adat system is still highly utilised in the East Timorese community despite a number of weaknesses pointed out by Western scholars. Several weaknesses, including lack of an international human rights standard, have not been perceived by women as well as community leaders in Timor-Leste. Inherent cultural practices are still so powerful that standards of human rights and other Western norms are nearly lost in Timor-Leste. However, some results of the survey indicated that Timorese people have started recognising the legitimacy of the police and the entire formal justice system. Nevertheless, the figures of the pro-Western results are not compatible with the actual conduct of Timorese women, most of whom in fact chose traditional and local justice system. It will take a lot of time for the entire community in Timor-Leste to fully understand the formal justice system. Therefore, it was recommended that the government of Timor-Leste, the UN, and international NGOs should recognise this reality and not marginalise the adat system.

However, during the UNTAET period, UNTAET did not enact domestic violence legislation because it was considered difficult to overcome cultural beliefs about the acceptability of domestic violence (Bull 2008, 213). In fact, there was no guarantee that
victims of gender-based violence would receive fair treatment in courts. In one case, Sergio Lobo, a famous surgeon, who allegedly beat his wife, was acquitted in court on the grounds that his medical skills were too valuable to waste (Bull 2008, 213–214).

UNTAET created two achievements for the issues of gender-based violence: the Office for Promotion of Equality, the national machinery for women, and the Vulnerable Persons Unit of the UN Civilian Police (Ospina 2006, 11). The Office for Promotion of Equality (OPE), consisting of Timorese women, belonged to the Prime Minister’s Office, which strengthened the Government’s capacity to address gender-based violence by developing legislation and promoting a culture of equality. The OPE was considered to be a success, although several criticisms were also pointed out during the evaluation. For example, the Timorese staff in the OPE did not have proper skills because the UNTAET international staff did not have a long-term perspective. Another criticism was a lack of capacity amongst the international staff in UNTAET themselves to instruct the national staff of OPE. Many of them cannot and do not try to speak any local languages. Sofi Ospina also stated that a lack of efficiency of work in the OPE was “due to different levels of cross-cultural understanding by the advisers” (Ospina 2006, 37).

The Vulnerable Persons Unit (VPU) also consisted of female officers and established a network with the NGOs which supported the victims of gender-based violence. The VPU also had a positive assessment that the number of cases of violence against women reported to the police significantly increased after the establishment of the Unit. In fact, during the term of the United Nations Mission of Support in East Timor (UNMISET) following UNTAET, VPUs were established in all districts. However, it was also claimed that some of the victims of domestic violence were not adequately advised by the VPU officers. For example, the report of the JSMP revealed that some VPU officers had discouraged women from reporting minor domestic violence incidences or rapes that were not “serious” (JSMP 2005a, 10–11).

Above-mentioned two organisations led by UNTAET, to a large extent, adopted the Western concept and paid little attention to the adat system in their missions. Many local people supporting the adat system were concerned that they would have to absorb values and standards they did not understand. Xanana Gusmao reflected this concern:

We are witnessing another phenomenon in East Timor; that of an obsessive acculturation to standards that hundreds of international experts try to convey to
the East Timorese, who are hungry for values…What seems to be absurd is that we absorb standards just to pretend we look a democratic society and please our masters of independence.11

Table 1: Four Cases on Gender-based Violence which Adopted an Adat Process in the District Courts of Timor-Leste (April-December 2005)

<table>
<thead>
<tr>
<th>No.</th>
<th>Date and Court of Decision</th>
<th>Facts</th>
<th>When Adat used</th>
<th>How used in Court</th>
<th>Court’s Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>4 October 2005, Dili District Court</td>
<td>Rape of a minor by a stranger in the local market.</td>
<td>Family of accused approached victim's family but they refused and took case to police. Negotiations continued until sentencing.</td>
<td>The parties came to an agreement and asked the court to dismiss the case to resolve traditionally.</td>
<td>The court agreed to delay the trial for the negotiations to take place but said that it must decide on crimes brought before it.</td>
</tr>
<tr>
<td>2</td>
<td>11 October 2005, Suai District Court</td>
<td>Rape of a minor 3 times by her stepfather.</td>
<td>Adat tried first but no solution found so case taken to police.</td>
<td>Not used.</td>
<td>Court decision did not mention.</td>
</tr>
<tr>
<td>3</td>
<td>18 October 2005, Oecusse Court</td>
<td>Rape of a 17-year-old by the local nurse.</td>
<td>Adat tried first but no solution found so case taken to police.</td>
<td>The prosecutor sought to bring evidence from the local chief that the accused confessed during the adat process.</td>
<td>The court allowed the evidence of the local chief and relied on it as one factor in finding the accused guilty.</td>
</tr>
<tr>
<td>4</td>
<td>22 November 2005, Oecusse Court</td>
<td>Rape of a minor by a male relative.</td>
<td>Adat process began after the police were involved and suspect arrested.</td>
<td>The defence informed the court that the adat process had come to an agreement between the families and asked the court to take this into account in sentencing.</td>
<td>The court took the agreement into account, giving a custodial sentence but also ordering payment of the remainder of the accused's debt to the victim's family.</td>
</tr>
</tbody>
</table>

Source: JSMP (2006, 26)

Has the formal judicial system created by the UN been compatible with the adat system at all? Has the adat system successfully coexisted with the formal system? The issue of compatibility of the adat with the formal justice system has been analysed by the long

research of the JSMP. The report of JSMP in February 2006 gave a significant analysis and outcome. It analysed the law of gender-based violence in Timor-Leste and 12 decisions of the district courts handed down between April and December 2005. The 12 decisions revealed that they decided 13 separate cases. Of the 13 cases, four cases had been through an adat process as indicated in Table 1.

The above result reached JSMP’s conclusion that communities viewed adat and the formal system as operating alongside each other and see no contradiction in seeking justice through both systems at the same time. It can also be concluded that courts were accommodating traditional negotiations but have maintained the supremacy of the formal system by not dismissing a case to be resolved by traditional means (JSMP 2006, 26–27).

CONCLUSION

This paper examined the cultural aspects of peace- and nation-building in Timor-Leste by analysing the effect of conflict resolution and justice. The following conclusions can be made.

First, cultural aspects of peace-building or peace operations should be given more attention by the UN and the international community at the planning stage. Traditional UN peace operations, whose concept was established during the Hammarskjöld period, were created in a short time-frame, with a sense of urgency, and in an ad hoc manner. Whereas current UN peace operations are mostly peace-building, as in the case of Timor-Leste, and require a longer perspective and thus a longer period of preparation. Peace-building has multifunctional and more people-centered mandates, including rule of law and justice as stated in this paper. People-centered missions require pre-study of local culture and tradition. In this context, it is to be noted that the author conducted short interviews and questionnaires with nineteen international staff from the UN and various NGOs. To one question of the questionnaires “To what extent did you have the knowledge of the culture, values, traditions, religions and beliefs of Timor-Leste?” 73.6 percent of the respondents answered “a little” or “hardly or nothing.” Whereas, to the question “Do you agree that the culture, values, traditions, religions, and beliefs of Timor-Leste should be learned in advance for effective missions for the UN or NGO activities in Timor-Leste?” indeed 90 percent of the respondents gave a positive
answer. Therefore, the arguments of Pouligny, Duffey and Rubinstein have a large extent of legitimacy.

Second, while the UN and international aid workers recognised the lack of pre-study of local culture and tradition, and while local people remain unfamiliar with the “new” or “western” culture which the UN brought with it, traditional culture and values should be partly adopted in implementation of the UN peace-building process. This paper raised the cases of Gusmao’s reconciliation policy and gender-based violence in Timor-Leste. Gusmao valued the traditional practices of *badame* and *nahi biti* in his reconciliation policy and they were successful. In the issue of gender-based violence, while the formal justice system was considered to be ideal for local people, they still preferred traditional justice due to greater familiarity with the latter and several inconveniences with the former. As a result, the combination of both systems was desired and in reality was adopted, especially for minor cases.

Further efforts at reconciliation were made by the traditional *nahe biti* ceremony in Viqueque District in April, 2009. It should be noted that this ceremony was conducted as a result of a joint dialogue project between the Ministry of Social Solidarity and the UN Development Programme (UNDP) (Relief Web 2009). This is a case in which the UN accommodated traditional approaches to reconciliation although it mainly valued the Western system of UN. Positive impact of peace- and nation-building initiated by the UN would be enhanced by a mutual recognition of the benefits of local and formal systems.

Third, it is also recommended that the UN and international staff of NGOs should continue and extend their efforts to give local people proper information and knowledge on the formal and more universal system of justice which they intend to utilise in their mission. The efforts had not been conducted sufficiently in the entire UN peace operations including the past instances in Timor-Leste. Recognition of the UN missions and familiarity with universal standards by local people does not mean the marginalisation of the traditional culture. For example, by doing so, local people would try to modify a partial lack of international human rights standard in the *adat* system. Major crimes would be suggested to be dealt with by the formal justice system instead of traditional reconciliation by local people.

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12 From the author’s field research, 1–6 March 2009, Dili, Timor-Leste.
Thus, as Timorese people are becoming more aware of the cultural gap between the Western and local justice system, and realising the strengths and weaknesses of their own traditional system, they would review their tradition and culture, a part of which would be improved or changed to adapt and include more universal values. Therefore, culture itself would be changeable. Kevin Avruch, the author of *Culture and Conflict Resolution*, also stated as follows:

Culture is social inherited, which is why there is a traditional force to it; but at the same time it must be responsive to situational change…[c]ulture, not being timeless, are subject to change. (Avruch 1998, 105–106)

In the considerations of the effectiveness and efficiency of UN operations such as peacekeeping and peace-building, one has focused on various factors, including the validity and clarity of mandates, the timing, the size, and the legitimacy of the UN deployment, a political will by great powers, regional and international recognitions, exit strategies, and etc. This paper, dealing with the impact of UN peace- and nation-building efforts on justice in Timor-Leste, strongly suggests that culture should be a new factor to be considered in building future UN peace operations.
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