

CONSENT, ESTRAGA FETO & DECISION-MAKING AGENCY IN TIMOR-LESTE

CONSENTIMENTO, ESTRAGA FETO E AGÊNCIA DE TOMADA DE DECISÃO EM TIMOR-LESTE

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Abstract: Sexual violence is a serious problem in Timor-Leste. Drawing on the stories of women survivors of sexual violence and other interviews conducted across Timor-Leste since 2008, this paper explores common local understandings of sexual violence as key to enhancing preventative and legal strategies aimed to address this problem. While there are still many questions to be answered, fieldwork indicates that the concept of consent in sexual decision-making is poorly understood, with most community members understanding sexual violence in relation to the locally-used term *estraga feto*. However, this is misleading as the concept of *estraga feto* comes from a different paradigm, driven by ideas of family honour which are dependent on unwed women and girls retaining their virginity – and accompanying ideas of ‘lost value’ for women and girls who lose their virginity outside marriage. To challenge the further abuses and victim-blaming that can arise because of this paradigm, such as women and girls being married off to their rapists, subject to further sexual abuse or violence, and/or left with limited future prospects, it would be more useful long-term to educate community members on the concept of consent as a veto in sexual decision-making, and in doing so to refocus the conversation to people’s individual rights under the law.

Keywords: rape; sexual violence; sexual violence prevention; consent.

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Resumo: A violência sexual é um problema sério em Timor-Leste. Com base nas histórias de mulheres sobreviventes de violência sexual e outras entrevistas conduzidas em Timor-Leste desde 2008, este artigo explora os entendimentos locais comuns sobre violência sexual como chave para melhorar as estratégias preventivas e legais destinadas a enfrentar este problema. Embora ainda haja muitas questões a serem respondidas, o trabalho de campo indica que o conceito de consentimento na tomada de decisão sexual é pouco compreendido, com a maioria dos membros da comunidade entendendo a violência sexual em relação ao termo local *estraga*

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feto. No entanto, isso é enganoso, pois o conceito de *estraga feto* vem de um paradigma diferente, impulsionado por ideias de honra familiar que são dependentes da manutenção da virgindade de mulheres solteiras e meninas – e acompanhando ideias de ‘valor perdido’ para mulheres e meninas que perdem a virgindade fora do casamento. Para enfrentar a continuação dos abusos e a culpabilização das vítimas que podem surgir devido a esse paradigma, como mulheres e meninas casando com seus estupradores, sujeitas a mais abuso sexual ou violência, e/ou a perspectivas futuras limitadas, seria mais útil a longo prazo promover a educação dos membros da comunidade sobre o conceito de consentimento como um veto na tomada de decisões sexuais e reorientar a conversa para os direitos individuais das pessoas ao abrigo da lei.

Palavras-chave: estupro; violência sexual; prevenção da violência sexual; consentimento.

INTRODUCTION

Sexual violence is a serious problem worldwide, including Timor-Leste. The drivers of sexual violence are complex and many, and preventative initiatives need to be supported and prioritised long-term in order to properly address the problem. There are a number of initiatives in Timor-Leste that are aimed at doing just that, including efforts to strengthen the legal system’s responsiveness to sexual violence, ongoing community-based legal education, efforts and lobbying to improve service delivery for survivors of sexual violence, initiatives to challenge gender inequality amongst community members (and in particular teenage boys and girls), and various groups that have formed to speak more openly about gender inequality, and to challenge sexual harassment and gender-based violence.

Accompanying and supporting these initiatives is a great deal of research that is available on the incidence of, and factors contributing to, sexual violence in Timor-Leste. Quantitative studies have been conducted into the prevalence of sexual and other forms of violence committed against women and girls, so we have a good idea of rates of gender-based (including sexual) violence across the country (see for example Asia Foundation, 2016; GDS et al., 2018). These rates are disturbingly high, with 40% of women having been raped by their husband or boyfriend, and

14% percent of women having been raped by someone who was not their intimate partner (Asia Foundation, 2016, pp. 51; 64). For most women, this sexual violence is ongoing and not a one-time occurrence (Asia Foundation, 2016, p. 60). The vast majority of respondents who responded affirmatively in the Asia Foundation (2016) survey stated that they had been raped during the past 12 months.

Numerous qualitative studies have also been conducted to help us understand the driving factors which contribute to the high levels of sexual violence, and various responses to address the problem. These studies include (among other things) research into the incidence of sexual violence alongside other types of gender-based violence (Hynes et al., 2004; Graydon, 2016; O’Keeffe, 2017), the legacy of trauma and militarised masculinity (Niner, 2011), analyses of the responsiveness of formal and informal justice systems in cases of sexual violence (Kovar, 2012; Asia Foundation, 2012), and insights for improved service provision for survivors of sexual violence (Belton, 2011). There is also a significant body of more historical research, looking at ongoing issues of impunity for women who experienced sexual violence and slavery during Indonesian occupation (CAVR, 2003; Fokupers, 1999; Alves et al., 2003).

Despite – or perhaps because of – the high rates and accompanying normalisation, it is also known that the vast majority of sexual violence crimes are not reported to the police for prosecution (Asia Foundation, 2016, p. 60). There are some good reasons for this: the formal justice system is weak and it may take many years before a case is heard, family members and local leaders often prefer to resolve such cases using local customary processes, and there are high levels of gender bias and victim-blaming for women who seek to use either formal legal or informal customary systems (Cummins, 2015, pp. 79-92).

However, while we know a great deal about the patterns and prevalence of sexual violence and responses to the crime, there is very little commentary available on how community members (ordinary men and women) understand and differentiate sex that is ‘okay’ (referred to in this article as ‘permissible sex’) from sexual violence, from their own perspective. This is personally not surprising. As a researcher who has lived and worked in Timor-Leste over the past ten years and who has conducted many projects on gender-based violence, I have held hundreds of interviews on the topic with government officials, activists, local leaders, women survivors and ordinary community members. During all

of these interviews it was simply not a topic that arose naturally. The very act of focussing on, and asking about, violence placed an automatic bias on the discussions, orienting people to talk about the obvious violence of fist against face, the use of weapons, situations in which one person is physically and brutally overwhelmed by another. This type of violence is easily recognisable: the after-effects are seen in bruises and cuts and other forms of bodily injury. These cases overwhelm the discussion, and the less-obvious factors that combine to create an environment characterised by male sexual entitlement tend to not be spoken about. It is simply not their priority: it is a reality that is so normal that it does not bear speaking about.

It was only when doing some very different research looking at the incidence of teenage pregnancy in Timor-Leste (UNFPA et al., 2017) that I could explore in more detail issues of sexual decision-making agency and people's ideas of what is, and is not, permissible in sexual relations. Significantly, the research that led me down this path was focussed on sex and pregnancy rather than crimes, violence or wrongdoing. It was only incidentally in that research project that stories of sexual violence and abuse were shared by a few teenage mothers, and many of these young women did not realise that they were victims of a crime. These insights then led to more research after the project was complete with other women, which provided similar results. While there are still many questions which need to be answered, these findings bring new insights to the literature on sexual violence, and carry some important implications for legal education campaigns and other preventative work that aims to address the problem.

ESTRAGA FETO

A useful entry point to understanding local perspectives on how people commonly differentiate permissible sex from sexual violence is to examine the concept of *estraga feto*, which loosely translates as to 'damage' a woman¹. If you visit a village and ask community members if they consider *violensia seksual* or

¹ *Estraga* normally translates as to damage, but it sometimes translates as to destroy (making *estraga feto* to either damage or destroy a woman.)

*violasaun seksual*¹ to be acceptable, it's equal odds whether your question will be met with a clear 'no' or a look of confusion. Those who have had the term explained to them already – perhaps through community-based legal information sessions – will recognise the more formal terminology *violensia seksual* or *violasaun seksual* and (in most cases) respond that it is not acceptable. But these are not terms that are commonly used in the local setting. Those who have not been to information sessions about the law will likely not recognise the term, responding instead with confusion. Because of this, many people running education campaigns on sexual violence have learned to use a different term when explaining people's rights and responsibilities under the law – *estraga feto*.

Estraga feto is widely condemned by local leaders and community members as a serious offence, provoking strong emotional reactions by the people involved. But the problem is, *estraga feto* is not the same as sexual violence. It operates from a different paradigm, with the wrongdoing better understood as an offence against the woman's position in the social order by having unmarried sex, and possibly also becoming an unmarried mother. This difference in focus can also be seen in the longer phrases that are sometimes used in place of *estraga feto*, such as '*estraga feto nia naran*'³ or '*estraga feto nia familia nia naran*'⁴. *Estraga feto*, or damaging/destroying of a girl's social status, is a serious wrongdoing which is deeply shaming to her and her family, and which has many practical implications for her future. To avoid the shame, the vast majority of families will try to keep an unmarried pregnancy secret by forcing a quick wedding before the child is born. Such cases are common enough that there is a quaint saying that is used by the woman's family, which roughly translates as "your buffalo has jumped over our fence."

Other research studies have also noted the different value system which drives expectations of pre-marital chastity and virginity, and accompanying notions of family honour and value (see for example O'Keeffe, 2017). Because in cases of *estraga feto* the focus is on family honour and the woman's perceived loss of value, and not on whether or not sexual relations were forced, the preferred

¹ *Violensia seksual*: sexual violence. *Violasaun seksual*: sexual violation.

³ *Estraga feto nia naran*: to 'damage a woman's name'.

⁴ *Estraga feto nia familia nia naran*: to 'damage a woman's family's name'.

solution of a shot-gun wedding applies regardless of whether the sex was forced or consensual. This means that rape survivors who become pregnant are forced into an untenable position: either marry their rapist, or endure the ostracism, abuse and victim-blaming that is commonly inflicted on single mothers. In most cases, her family makes the decision for her to marry her rapist, and she is expected to concur.

Many rape survivors' stories show that they too would prefer to marry rather than face the alternative living as a single mother – indicating the normalisation of this perspective, and the paucity of choices that are made available to them. This does not imply that the women are happy with their lot; during interviews, they all spoke of their suffering, trauma and shame, and their diminished hope for the future. And it does not change the fact that they are survivors of sexual violence. But it is important to acknowledge these women's voices and perspectives, as it demonstrates the very different paradigm or worldview in which they experience and express their suffering.

For example, in the case of one young woman who became pregnant and married her cousin who had repeatedly raped her, her sadness and shame was focussed more on the fact that he later abandoned her and their baby, rather than recognising the rape for what it was⁵. When asked about her first sexual experience, she shared her story as follows: "I was in the kitchen, doing work on my own... I don't know if he came in through the back or front door. He just came up behind me and started ripping my clothes off." She then went on to describe, "he pushed me into the room and showed me his body [penis]. I said 'I don't want to, I don't want to', I yelled but there was no-one else in the house." These attacks continued for many months, with him visiting when she was alone in the house and hitting her if she didn't comply with his requests for sex.

When she became pregnant she told him that she was with child, with the expectation that he would marry her. He at first denied responsibility:

I let him know I was pregnant and he said: 'that isn't my baby. If you're pregnant it's not because of me.' I said 'no, you made me pregnant, you kept coming into my house, all the time, it couldn't be anyone else, only you.

⁵ Interview from project *UNFPA et. al.*, 2017, Aileu Municipality (rural), October 2016.

By this stage others in the family were also aware of what had happened. When he denied paternity of the child, her grandfather intervened on her behalf, shaming him and forcing him to take responsibility:

Our grandfather spoke to him, told him off, he said ‘why did you do this to her, you made her pregnant and this is why she is asking you [to take responsibility]... how can you deny it, and say that it’s not your child?’

As a result of this and other family pressure, they got married and began living together when she was five months pregnant. However, when the baby was ten months old he got bored and left them both, stating that he was now seeing another woman and wanted to marry her:

Now he has gone and married another woman, and she’s already pregnant. His grandfather sometimes come to visit us and look in on the baby... he gives me fifty cents or a dollar... I have no money to buy new pants or a top for the baby because he doesn’t send us any money.

Similar themes were repeated in another clear case of sexual violence against a teenage girl, with the rape committed by a stranger who attacked her on and off for many months⁶. This was her first sexual experience. As she explained, she had not received any sexual education, so at first was confused about what he was doing:

He forced me... He pushed me in the room and told me, ‘we will be boyfriend and girlfriend’. Then he told me to remove my pants; I said: ‘why do I need to remove my pants?’ He said, I have decided we will be boyfriend and girlfriend so I want to be with you. I didn’t want to but he forced me, he said [if I did not do it] he would beat me to death.

This went on for three to four months, until she became pregnant. At first, given her lack of experience and sexual education, she did not realise that she was pregnant; it was only when her mother noticed her changing body that it was discovered. When she told him that she was pregnant, he told her that he was already married with children, and that he had lied to her, using a false name:

I told him I was one month pregnant... and he said, ‘I can’t take responsibility for the child because I am already married,

⁶ Interview from project *UNFPA et al., 2017*, Aileu Municipality (urban), October 2016.

I have a wife and three children...’ I said to him ‘you came and you told me your name is Siku, that you are single, that you want to marry me.’

Because he could not marry her, her family went to the *xefe suku* and requested his help in dealing with the situation, asking for US\$10,000 compensation. After hearing from both families he decreed that the man should pay US\$2,500 as compensation to the young woman’s family “to cover the shame”. It was only when he did not go on to pay this compensation that she went to the police and filed a complaint. During interview, she repeated many times “I want to send him to jail”. However, when asked why she wanted him to go to jail, her reply was that he had “created the situation and not taken responsibility” for her pregnancy.

In yet another case, a young woman described having been forcibly imprisoned and raped by her then-boyfriend⁷. When she found she was pregnant their families agreed that they should marry. As a result, she dropped out of school and returned to her rural village to take on life as a married woman. While she describes herself as “heartbroken” at her lost opportunities, she accepts her lot now as a married woman.

There are good reasons explaining these young women’s preference to marry rather than face the alternative. Alongside family pressure, their vulnerability and naiveté as teenage girls, and their limited understanding of their legal rights, it also reflects a very pragmatic assessment of their available options. The implications of *estraga feto* are practical and long-lasting, severely curtailing a woman’s practical and economic opportunities, and rendering her vulnerable to further abuse. She is judged harshly by her family and within the community, and subject to various forms of violence and abuse ranging from ostracism, people spitting on her in the street, to people hitting her or throwing stones at her. Additionally, as men in the community come to consider her as sexually available, she becomes vulnerable to further sexual harassment, violence and abuse.

The increased vulnerability and limited options can become a negative spiral, leaving her with no clear way out, seen in the case of another woman who explained that since she was raped, other men started visiting her and

⁷ Personal interview, Lautem Municipality (rural), February 2018.

pressuring her for sex⁸. Following on from her first series of rapes and resultant pregnancy, she was subsequently raped by another man and became pregnant for a second time. Because her mother is afraid that this will continue to occur, she has encouraged her to take the contraceptive pill to ensure that at least if she is raped again, she doesn't become pregnant a third time.

The negative spiral was also clearly demonstrated in the case of another woman who was violently raped as a teenager⁹. As she told her story, she described that when it became known in the community that she had been raped, her parents told her that she had no future and that her best option was to stop school and to start trading sex for money:

Because I was raped, my family said they would not support me to continue my study... They said: who will support you? No one will support you anymore. So you should just continue your life by having sex with others to earn money.

She lived for a few months in a women's shelter, but when she returned to live in the community she was subjected to further gossip, with people mistreating her, calling her a "slut" and a "prostitute". So she moved to a new municipality in order to continue school. But on finishing school and returning to her home village, the gossip and mistreatment continued. Trying to earn money to survive, she applied for various jobs, but when she was lucky enough to reach interview the organisation's manager offered her the job only if she would have sex with him:

When I was looking for a job, the interviewer asked me to have sex with him first, then he would accept me as his staff. I refused, and I have not been able to get any other work to this day.

As her financial situation became increasingly desperate, she eventually started trading sex for money in order to survive, with accompanying abuse and continued stigma in the community. Over time she fell in love with a man and they decided to marry, but he has since left her because of family pressure:

⁸ Interview from project *UNFPA et al., 2017*, Aileu Municipality (rural), October 2016.

⁹ Interview from project *The Asia Foundation 2012*, Covalima Municipality (urban), February 2012.

My husband has divorced me because his family influenced him to leave me. Before he came to talk with my parents to marry me I told him honestly about all of my life, and he decided to marry me even though I was raped and involved in transactional sex. However, because his family does not accept me and my life, and they have major influence on my husband, he decided to leave me with our daughter who is a few months old.

With limited employment options and now with a daughter to feed, she grows a few vegetables at home and earns extra income through trading sex for money.

There are, of course, many different themes that emerge from these women's stories: rape and male sexual entitlement, the reduction of a woman to her status as either a virgin or a married woman, double standards for men committing sexual violence and paying for sex with limited (if any) consequences, and, of course, victim-blaming.

But these and other stories of rape also highlight another important point which is often missed: while they are both about sexual wrongdoing, rape and *estranga feto* are not the same thing. While it may appear on the surface that the crime of rape is at least partially understood (if not fully appreciated) at the community level, this is not the case. The tendency to use the term *estranga feto* interchangeably with rape or sexual violence is only confusing the issue further.

When seen from this perspective, some attitudes and behaviours that initially seem baffling and contradictory become clearer. It is cruel, but not contradictory that most community members consider *estranga feto* to be a serious wrongdoing that is committed by men, while also abusing and ostracising rape survivors – from their perspective, it is she who has lost value. It is harsh, but not contradictory that parents should love their daughters, but on discovering that she is pregnant expect that she marry her rapist – they know the abuse that awaits her if she lives as an unmarried 'fallen woman' in the community.

CONSENT

Another theme that emerges from women's stories and that is striking in its omission is the lack of focus on, and understanding of, consent as key in distinguishing permissible sex from sexual violence.

The concept of consent is enshrined in many legal regimes, and is the key factor differentiating permissible sex from sexual violence. It essentially acts as a veto in sexual decision-making; if either partner withholds their consent and the other continues regardless, then that is considered rape. However, this legal understanding of rape is not the case in Timor-Leste: article 172 of the Penal Code instead defines rape as the use of force or threat of force in sexual relations, with 'force' generally interpreted as physical force¹⁰. Consent does not form part of the legal definition of rape.

The absence of consent in the legal definition of rape represents a major missed opportunity for preventative work to address the high levels of sexual violence, and intimate partner rape in particular. In the absence of consent, fieldwork indicates that fuzzy concepts such as "respecting each other" and "listening to each other" are generally used to describe respectful sexual relations¹¹ – laudable concepts but with no clear way forward for boys and men who do not understand the limits. While ideas of respecting each other and listening to each other are positive, it is difficult for those working in the preventative space to clearly map out what it means in practice. If a man wants sex and a woman doesn't, does the man ignore his desire because he respects and listens to his wife or girlfriend? Or does the woman 'give' sex because she respects and listens to her husband or boyfriend? How much pressure may a man put on his wife or girlfriend before that becomes unacceptable? What about situations where sometimes the sex is consensual, but other times she does not want it and he rapes her? By contrast, the concept of consent is relatively clear: if she says 'no', then that should legally and morally be the end of any sexual advances at that time.

¹⁰ Personal communication, Maria Agnes Bere, September 2018.

¹¹ Prevention Workshop from project *UNFPA et al., 2017*, Aileu Municipality (rural), March 2017.

Consent has been rightly noted as an imperfect legal concept, with commentators generally arguing that it does not go far enough in addressing unequal power relations between men and women in sexual decision-making (see for example Pateman, 1980). However, it is a necessary first step. By refocusing attention on whether both partners actively agree and express a desire to have sex, it can go some way to addressing the problem of sexual decision-making under conditions of inequality. It does not change unequal gender relations in relationships. It does not change the cultural conditioning of women who are socialised to be obliging, or of men who are socialised to be forceful. It does not change the many problems of a legal system that is not responsive to women's needs, or the possible practical consequences to women if they refuse a man's sexual advances. But it does give a clear answer to the question: what does the law say if the man and woman want different things?

Unsurprisingly, given that the concept of consent is not enshrined by law, women's stories of rape show a clear lack of understanding of consent. In all of the stories noted above, women described being forced under threat of violence or death to have sex. When telling their stories, women were clear that they were forced, using such phrases as "I didn't want to" or "he forced me to". But they paid only limited attention to the act of sexual violence, using various euphemisms such as calling it a 'problem' rather than naming it as a wrongdoing or crime. While one woman went to the police, she did so because her rapist refused to take responsibility for the baby¹². While her case is being treated legally as rape, she understands it as *estraga feto* and abandonment. None of the women identified the non-consensual sex as the key wrongdoing.

The general lack of understanding around consent is also unsurprising given the different worldview expressed via the concept of *estraga feto*, in which a woman loses value if she has sex before marriage (see also O'Keeffe, 2017, p. 380). The logic of it goes that if all premarital sex is 'wrong', there can be no 'good' premarital sex. Lack of consent in premarital sex has no real meaning because there is limited room for the opposing concept of 'good' consensual premarital sex.

¹² Interview from project *UNFPA et al., 2017*, Aileu Municipality (urban), October 2016.

This logic also applies in the opposite direction, with a general failure to recognise marital rape for what it is. Interviews with women survivors of domestic violence who described situations of marital rape did not recognise it as a wrongdoing; they simply accepted it as their husband's prerogative. For example, one woman whose husband had subjected her to various forms of domestic violence, including physical violence, sexual violence, forced imprisonment, and economic abuse of her and her children, spoke for a long time about the physical violence, economic abuse and forced imprisonment, clearly stating that what he did was 'wrong'¹³. However, when speaking of her husband repeatedly raping her she described it as him "wanting to relax" – uncomfortable because her children were on the other side of the curtain which separated their sleeping quarters, but something to be endured. Similarly, another woman who endured years of emotional, sexual and physical violence and was almost killed when her husband attacked her with a machete spoke at length about the physical violence, but when describing clear situations of marital rape only referred briefly to relieving his "male needs."¹⁴

The general lack of understanding of consent, coupled with traditional understandings of appropriate sexual conduct and community tendencies to blame the victim, leads to rape survivors internalising the fault as their own. Following is a fairly typical example, a segment from an interview with one young woman who was repeatedly raped as a teenager:

Interviewer: after the first rape, why did you not let your mother and father know?

Interviewee: [because] I did a bad thing.

Interviewer: huh?

Interviewee: because I did a wrong thing, I didn't tell my father and mother¹⁵.

During this interview, and despite coming at the conversation from a variety of angles, the idea that she did a 'bad' or a 'wrong' thing was so embedded that it was not possible to get past this thought and explore the nuances any further – even though by her own account the sex was violently forced.

¹³ Interview from project *UN Women 2017*, Bobonaro Municipality (rural), November 2017.

¹⁴ Personal interview, Baucau Municipality (rural), January 2018.

¹⁵ Interview from project *UNFPA et al., 2017*, Aileu Municipality (rural), October 2016.

This internalisation of fault was echoed in another case of rape committed by a boyfriend against his girlfriend¹⁶. As she described it, she was living away from home, staying with family members in Dili so she could pursue her studies. One day she went to visit her boyfriend's house and he trapped her, locking her in his bedroom for 2-3 days and repeatedly raping her:

He forced me... he said, if you don't give yourself to me you will die, I will beat you to death. You must do this. We two are alone here [so if you do not] I will beat you to death. He locked me in [and said] if you don't give yourself to me now you will never leave this room. I will beat you to death.

Like all of the other young women whose stories are shared in this article, this was her first sexual experience. However, while she spoke of the rape as a 'problem' which led to her pregnancy, she did not consider herself to be the victim of a crime. As she went on to explain, "I didn't want it, he forced me, but as the days went on we both liked it." Because she eventually went on to 'like' (or possibly just accept) the sex, and because they got married after she became pregnant, she viewed the entire series of events as normal sexual relations instead of recognising the first few experiences for what they were. When questioned about whether she saw the relations as normal and loving, she replied: "he loves me, but he threatened me." And while she expressed her deep sadness at her life now, living as a married woman and a mother in her mountain village without possibility of continuing her schooling, she simply accepts it as her lot.

The imposition of fault is also reflected in community attitudes, where survivors of rape are blamed for their situation. In one rape case, the mother and sister of the rapist visited the pregnant young woman when they learned what had happened, insulting her and saying "are you blind, why didn't you know that he was a married man?"¹⁷ In another case, the woman's uncle beat her severely with a buffalo whip when he discovered she was pregnant, only stopping when her mother intervened¹⁸. From their perspective, the fact that she did not consent to the sex was immaterial.

¹⁶ Interview from project *UNFPA et al., 2017*, Covalima Municipality (rural), October 2016.

¹⁷ Interview from project *UNFPA et al., 2017*, Aileu Municipality (rural), October 2016.

¹⁸ Interview from project *UNFPA et al., 2017*, Covalima Municipality (urban), October 2016.

At this point, I need to be crystal-clear. The contention that consent is not truly understood amongst community members does not mean that sexual relations are conducted in a state of anarchy. Women are not automatic victims, and men are not automatic aggressors. This is not the case in Timor-Leste, nor is it the case in any other part of the world. Women and men interact and express their power and agency in a variety of ways. In addition, the fieldwork also indicates clear principles and values that guide loving relationships – most commonly expressed in terms of “loving each other”, “respecting each other” or “listening to each other”¹⁹. These values can act as a kind of proxy for consent: loving or respecting your partner may translate into actively checking whether she also wants to have sex before going any further; listening to your partner may translate into hearing and responding accordingly when she says ‘no’. But the statistics are also clear: rape committed by a boyfriend or husband in Timor-Leste is extremely high, at 40.5% (Asia Foundation, 2016, p. 51). In the space where people are negotiating between permissible sex and sexual violence in intimate relationships, a frighteningly high number of women are being raped. Legally enshrining and then educating people on consent as a veto to sexual relations is a necessary first step for effective preventative work in communities that currently operate under a very different paradigm.

SEXUAL ENTITLEMENT AND DECISION-MAKING AGENCY

The factors leading to men’s perpetration of sexual violence are diverse and many, including Timor-Leste’s legacy of conflict and militarised masculinity, traditional family and community structures, and general higher levels of tolerance to violence in any form (see for example Niner, 2011; O’Keeffe, 2017; Cummins, 2015).

Attitudes of male sexual entitlement are high amongst Timorese men and women. In a recent study assessing men’s motivations in committing gender-based violence, the primary motivation for men committing intimate partner rape was

¹⁹ Prevention Workshop from project *UNFPA et al., 2017*, Aileu Municipality (rural), March 2017.

it being fun or them being bored (59.2%), closely followed by the belief that they had the right to sex regardless of the other's consent, or sexual entitlement (57.1%) (Asia Foundation, 2016, p. 181). This same study showed that sexual violence is committed in conditions of relative impunity, with the three most common consequences that surveyed male perpetrators reported facing after committing rape including feelings of guilt, having to apologise to the woman, or no consequences at all. These attitudes of male sexual entitlement are echoed in another survey conducted into young people's perceptions of gender and masculinity, in which 31% of surveyed young men did not consider forced sex to be violence, and 40% (52% in rural areas) stating there was nothing wrong with making sexual comments to women on the street (Niner & Wigglesworth, 2015, pp. 321-22).

Male sexual entitlement, and aggressive male displays of sexuality including sexual harassment, is not something that boys are born with. They are socialised into this behaviour pattern as they grow from boys to men, as they watch how older men interact with women, and listen to how sex is talked about. A key theme which emerged during the research is the level of importance that was given to male sexual desire, with both male and female interviewees speaking frequently about "male needs".

Of course, trying to understand what people do and do not understand or prioritise, and from what set of values, can seem a bit like putting together a jigsaw puzzle in the dark. There are still many questions which are unanswered. But fieldwork indicates that lacking the legal (and moral) concept of consent as a veto in sexual decision-making, what takes up this conceptual space is the idea of male needs as the baseline for negotiations between intimate partners. By this logic, all the male partner needs to do is state his male needs, and it is then incumbent on the female partner to find an acceptable reason for not wanting to have sex. Negotiations between the two, as they talk and they fumble, should then be guided by ideas of respecting of each other and listening to each other.

The importance of male needs was referred to repeatedly in a Prevention Workshop, convened by UNFPA and Plan International as part of the teenage pregnancy research, to explore the limits of respectful or acceptable sexual behaviour. Participants were selected based on their involvement in

the community and positive role modelling for gender relations, were aged 17-30, and included an equal mix of male and female participants, some of whom were married, others single. When male and female groups were asked separately what would happen if male needs were ignored, female participants responded with variations of “you can’t, it would be really bad for him.” But they could not explain why: for them, the consequences were both mysterious and dire. For male participants, amid laughs and joking they also agreed that there needed to be a good reason to ignore their male needs – such as their girlfriend needing to finish school. One young man who suggested masturbation as a good alternative was laughed down by others in the group. All participants agreed that the values of “respecting each other” and “listening to each other” should guide their communications, but were unable to clearly say how that would play out in practice. None of the male or female participants stated that if a girl says no, her wishes should automatically be respected.

The heavy conceptual weight that is put on male needs places the onus on girls and women to not only say no, but to also give an acceptable reason that will convince her partner that he should ignore his sexual desire. He may or may not agree. And if she continues to refuse him there may be violent consequences – as shown in the young women’s stories shared thus far. The possibility of violent backlash is also demonstrated in the statistics: the National Demographic Health Survey in Timor-Leste conducted in 2016 showed that 36% of female respondents, and 28% of male respondents, consider it appropriate for a man to beat his wife if she refuses to have sex with him (GDS, 2018, p. 275).

The impact of coercion and fear on girls’ and women’s decision-making should not be under-estimated. In a context where sexual harassment and gender-based violence is normalised, women’s fear of violent consequences and their sense of self-preservation is constant background noise, limiting and controlling what they will and will not do. Sexual negotiations are all communications that are conducted under conditions of significant gender inequality. In addition, sexual decision-making is not like a contract negotiation: it is deeply personal, emotional, and often confusing, particularly

if one or both partners are still virgins. In Timor-Leste, this is made even more difficult because of inadequate sexual education, as teenagers naturally respond to changes in their bodies but have no framework to understand or intellectualise what is happening. While boys are socialised to aggressively display their sexuality, girls are socialised to do the opposite. If the boyfriend is older, wealthier, or if he has been threatening or violent with her on previous occasions, this can open the door to various forms of coercion and control. All of these factors combine to limit her decision-making agency, diminishing her ability to express what she wants clearly, and to have her wishes listened to sensitively and respectfully.

What this means is that in many cases, men do not have to physically and violently force a woman to make her do something that she does not want to do. Her fear of the possible consequences in making him angry does this for her. In this context, it is necessary to flip the current approach by introducing the legal and moral concept of consent, as a necessary first step to empowering girls and women to take control of their own bodies.

CONCLUSION

Currently, there is major confusion about the difference between *estragafeto* and cases of sexual violence. However, if we drop what we think we know, and listen closely to what women are actually telling us, a new picture emerges which shows that attitudes around permissible and non-permissible expressions of sex centre not on sexual violence, but on women's premarital chastity. At the legal level, until this basic misunderstanding of what constitutes sexual violence is clarified, there will be confusion for both victims and defendants on what part of the wrongdoing actually constituted a crime, and any mobilisation or other campaigns to prevent or reduce the incidence of rape in communities will be less than effective.

It is also clear that men have an important role to play in reducing the incidence of sexual violence, by role modelling positive communication and interaction with women, and by calling out other men who commit sexual

violence, abuse or harassment. However, as men and women become involved in the debate and in practical action, there is also a risk that they may seek to put girls and women into a ‘protective box,’ further limiting what they may and may not do, in order to keep them safe. Local ideas of *estraga feto* centre on traditionally-defined loss, with a woman, or a girl losing an intrinsic part of her value when she ‘loses’ her virginity. The idea of combating this loss is something that many people can get on board with: the very idea that she is someone’s sister, someone’s daughter, someone’s wife is an idea to rally around. It does not upset the current system which limits women’s decision-making agency, and in particular their sexual decision-making agency. While communities may be mobilised to address the incidence of sexual violence, there is a distinct risk that they may do so by seeking to protect young women’s chastity (with accompanying victim-blaming if she ‘loses’ her virginity), rather than seeking to protect her right to choose.

What is needed is a different approach: one in which girls are not overly-protected by limiting their agency, and one in which boys are taught to be respectful of girls’ right to choose. The introduction of consent is a necessary first step in doing this.

The giving and the receiving of consent – the understanding of consent – is not something that we are born with. It is socially formed, which means that it is context-driven. It is driven by culture, by social norms, by gender norms which are instilled from a young age into little girls and little boys. These norms can change, but they must change in context, and in this respect the law has a powerful role to play in helping to educate people on what consent in decision-making is, and why it’s important.

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REFERENCES

- Alola Foundation. (2004). *Trafficking in East Timor: A Look into the Newest Nation's Sex Industry*. Dili: Alola Foundation.
- Alves, M. D. F., Abrantes, L. S., & Reis, F. (2003). *Written in Blood*. Office for the Promotion of Equality. Dili.
- Belton, S. (2011). Health Professionals and Lawyers Understandings of Domestic Violence and the Domestic Violence Law: the 2011 Judicial System Monitoring Program survey. In *Hatene Kona Ba Timor Leste (vol. 2)*. TLSA: Dili.
- Commission for Reception, Truth and Reconciliation in East Timor (CAVR). (2003). *Public Hearing on Women and Conflict*. www.easttimor.reconciliation.org
- Cummins, D. (2015). *Local Governance in Timor-Leste: Lessons in Postcolonial Statebuilding*. Routledge: London and New York. <https://doi.org/10.4324/9781315757933>
- Fokupers. (1999). *Gender-based Human Rights Abuses during the Pre-and Post-Ballot Violence in East Timor. January – October 1999*. Dili.
- General Directorate of Statistics (GDS); Ministry of Health and ICF. (2018). *Timor-Leste Demographic and Health Survey 2016*. Dili, Timor-Leste and Rockville, Maryland, USA: GDS and ICF.

- Graydon, J. (2016). *Valuing Women in Timor-Leste: The Need to Address Domestic Violence by Reforming Customary Law Approaches While Improving State Justice*. PhD thesis, University of Melbourne.
- Hynes, M., Robertson, K., Ward, J., & Crouse, C. (2004). A Determination of the Prevalence of Gender-based Violence among Conflict-affected Populations in East Timor. <https://doi.org/10.1111/j.0361-3666.2004.00260.x>
- Kovar, A. (2012). Approaches to Domestic Violence Against Women in Timor-Leste: A Review and Critique *Human Rights Education in Asia Pacific (Vol 3)*, pp. 207-52. Asia Pacific Human Rights Information Centre: Osaka.
- Niner, S. (2011). Hakat Klot, Narrow Steps: Negotiating Gender in Post-Conflict Timor-Leste. *International Feminist Journal of Politics (Vol 13, Issue 3)*, pp. 413-435. <https://doi.org/10.1080/14616742.2011.587371>
- O’Keeffe, C. (2017). *Understanding Gender in Conflict-Affected Timor-Leste: Women’s Voices on Marriage, Motherhood and Gender-Poverty-Violence Nexus*. PhD thesis, National University of Ireland, Galway.
- Pateman, C. (2008). Women and Consent. *Political Theory*, Vol. 8, No. 2. (May, 1980), pp. 149-168. <https://doi.org/10.1177/009059178000800202>
- Paz y Desarrollo and National University of Timor-Lorosaé (UNTL). (2013). *Baseline Study on Attitudes and Perceptions of Gender and Masculinities of Youth in Timor-Leste*. Paz y Desarrollo: Dili.
- RDTL. (2009). *Decree Law 19/2009 Penal Code of Timor-Leste*. RDTL: Dili.
- The Asia Foundation. (2012). *Ami Sei Vitima Beibeik: Looking to the needs of Domestic Violence Victims*. The Asia Foundation: Dili.
- The Asia Foundation. (2016). *Understanding Violence against Women and Children in Timor-Leste: Findings from the Nabilan Baseline Study – Main Report*. The Asia Foundation: Dili.
- Timor-Leste Armed Violence Assessment (TLAVA). (2009). *After the Guns Fall Silent. Sexual and Gender-Based Violence in Timor-Leste*. Issue Brief n. 5: November 2009. TLAVA: Dili.

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