

The Human Rights of LGBTI Persons in Timor-Leste

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Executive Summary

1. This report has been prepared by Kaleidoscope Human Rights Foundation,¹ in conjunction with the Sexual Rights Initiative² and local members of the LGBTI communities of Timor-Leste. It highlights some instances where Timor-Leste is failing to adequately protect the rights of lesbian, gay, bisexual, transgender and intersex (**LGBTI**) persons.
2. While Timor-Leste has taken some steps to protect the rights of LGBTI persons, it has failed to protect LGBTI people from high levels of violence and discrimination. Timor-Leste has not enacted any laws or policies that protect against discrimination on the basis of sexual orientation, gender identity and intersex status. Moreover, bias based on gender identity and intersex status is not treated as an aggravating factor in sentencing, and transgender people are not able to have their gender legally recognized in identity documents.

Positive steps taken by Timor-Leste

3. Consensual same-sex sexual conduct is not criminalized in Timor-Leste, and there is no distinction between the age of consent for heterosexual and same-sex sexual conduct.³ The country has ratified several international human rights treaties⁴ that allow preventing discrimination against persons on the basis of their sexual orientation, gendering identity and intersex status.
4. Timor-Leste is the only country in South-East Asia to have signed the joint statement on “Ending Acts of Violence and Related Human Rights Violations Based on Sexual Orientation and Gender

¹ **Kaleidoscope Australia Human Rights Foundation (Kaleidoscope)** is a non-governmental organisation that works with local activists to protect and promote the rights of lesbian, gay, bisexual, transgender and intersex (**LGBTI**) persons in the Asia-Pacific Region.

² **The Sexual Rights Initiative** is an international coalition including Akahata – a Latin American team working on sexualities and genders, Action Canada for Population and Development, Creating Resources for Empowerment and Action – India, the Polish Federation for Women and Family Planning, and others.

³ Office of the Provedor of Human Rights of Timor-Leste, Report to the Regional National Human Rights Institutions Project on Inclusion, the Rights to Health and Sexual Orientation and Gender Equality (April 2013)

⁴ The International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child

Identity”⁵, which was adopted during the general debate of the UN Human Rights Council in March 2011.

5. The Joint Statement remains the most unequivocal piece of state-sanctioned multilateral action that endorses the notion that the rights of LGBTI people are included within the international human rights framework.⁶ By signing the Joint Statement, Timor-Leste, together with the other signatories, acknowledged its responsibility to end human rights violations against individuals who are vilified and to prevent discrimination in all forms. Furthermore, the Joint Statement placed an obligation on all signatories to end human rights abuses committed against persons because of their sexual orientation or gender identity.
6. In November 2013, Timor-Leste voted in favour of the Asian and Pacific Declaration on Population and Development, which stated that the members of the United Nations Economic and Social Commission for Asia and the Pacific will “work to reduce vulnerability and eliminate discrimination based on sex, gender, age, race, caste, class, migrant status, disability, HIV status and sexual orientation and gender identity, or other status.”⁷

Recommendation

The State of Timor-Leste should:

7. Take the legal and practical measures necessary to meet the aspirations set out in the joint statement entitled “Ending Acts of Violence and Related Human Rights Violations Based on Sexual Orientation and Gender Identity” in order to address discrimination based on sexual orientation, gender identity and intersex status.

Violence against LGBTI persons

8. Although Article 52 of the Penal Code considers crimes motivated by discriminatory sentiment on the basis of “gender” and “sexual orientation” (among other grounds) to be aggravating circumstances which may incur greater penalties,⁸ crimes motivated by bias on the basis of gender identity or intersex status are not subject to any penalty enhancement under the Penal Code.
9. The non-recognition of gender identity as an aggravating factor within Article 52 of the Penal Code is particularly problematic given that transgender people experience high levels of physical and symbolic violence and hate crimes in Timor-Leste. They suffer inhuman treatment by their

⁵ UN Human Rights Council, *Joint Statement on Ending Acts of Violence Related Human Rights Violations Based on Sexual Orientation and Gender Identity*, 22 March 2011, available at: <http://www.refworld.org/docid/4eb8f32e.html>.

⁶ International Gay and Lesbian Human Rights Commission, UN Human Rights Council: A stunning Development Against Violence (23 March 2011).

⁷ Economic and Social Council, Report of the sixth Asian and Pacific Population Conference, UN Doc E/ESCAP/APPC(6)/3 (18 November 2013).

⁸ Article 52 of the Penal Code states “(i) General aggravating circumstances may include the following: (A) The crime imotivated by racism, or any other discriminatory sentiment on grounds of gender, ideology, religion or beliefs, ethnicity, nationality, sex, sexual orientation, illness or physical disability of the victim.”

close relatives and degrading treatment by the police force when they report the injuries and look for protection.⁹

10. The State's non-recognition of gender identity bias as an aggravating factor within the Penal Code fails to provide an adequate deterrent against hate crimes and violence on the basis of gender identity. Moreover, the reaction of police to reports of gender identity-based violence represents a further failure by the State to protect transgender people against violence.

Recommendations

The State of Timor-Leste should:

11. Amend Article 52 of the Penal Code to include bias based on gender identity and intersex status as aggravating factors in the commission of a crime.
12. Conduct sensitivity training of police and other law enforcement authorities to allow them to effectively protect and respond to LGBTI victims of crime without discrimination.
13. Take all necessary measures, including sensitization campaigns across the country, to eliminate violence against transgender people in Timor-Leste society.

Discrimination against LGBTI persons

14. Timor-Leste does not have any laws prohibiting discrimination on the basis of sexual orientation, gender identity and intersex status. Moreover, while Article 16(2) of the Constitution of Timor-Leste prohibits discrimination on a variety of grounds, it does not explicitly include sexual orientation, gender identity and intersex status. In December 2001, the Constituent Assembly specifically voted against the inclusion of sexual orientation as a non-discrimination ground in Article 16(2) of the Constitution.
15. The lack of specific legislation is a contributing factor to the discrimination experienced by LGBTI persons in all areas of public life in Timor-Leste. In particular, there have been reports of discrimination against transgender people and men who have sex with men (**MSM**) when accessing health checks in hospitals and clinics.¹⁰ In Timor-Leste, transgender people and MSM experience high levels of stigma in health care settings.¹¹ The difficulties to accessing health care in a safe and non-discriminatory manner discourages LGBTI people from accessing health

⁹ In August 2014, a transgender woman, Ijha, was beaten in Aileu District due to her gender expression; In October 2014, a transgender woman, Joelha, was stabbed and beaten by her brother, after suffering physical violence from her family. Instead of assisting her, the police ridiculed her when she reported the matter to them. In 2014, another transgender woman, Toty, was regularly assaulted and tortured by her family due to her gender identity and expression. Upon reporting the crime, police treated her in a discriminatory and intimidating manner, <http://isean.asia/wp-content/uploads/2014/11/TDoR-TL.pdf>

¹⁰ Gabriela Gonzalez-Forward, "Transcending gender in Timor-Leste", *Dili Weekly*, 15 July 2014, <http://www.thediliweekly.com/en/news/capital/12564-transcending-gender-in-timor-leste>;

¹¹ "ISEAN HIVOS Programme seminar at JPGSPH", BRAC University, 24 November 2015, <http://www.bracu.ac.bd/news/isean-hivos-programme-seminar-jpgsph>

care and impinges upon their right to health under the international human rights instruments that Timor-Leste has ratified.

Recommendations

The State of Timor-Leste should:

16. Enact comprehensive anti-discrimination legislation that prohibits discrimination on the basis of sexual orientation, gender identity and intersex status in all areas of public life, including health care, education and housing.
17. Amend Article 16(2) of the Constitution urgently to include sexual orientation, gender identity and intersex status as prohibited grounds of discrimination.
18. Take positive steps to counter stigma, stereotypes, and prejudice against LGBTI people.

Discrimination in employment

19. Timor-Leste does not currently prohibit discrimination against LGBTI people in employment. While the *Labour Code* prohibits discrimination on a variety of grounds, these do not include sexual orientation, gender identity or intersex status.¹²
20. Timor-Leste's lack of anti-discrimination legislation is particularly worrying given that the previous *Labour Code*, enacted in 2002 and repealed in 2012, prohibited discrimination on the basis of sexual orientation in employment.¹³ Therefore, Timor-Leste's current legislative situation represents a step backwards which leaves LGBTI workers open to discrimination and harassment and interferes with their right to work.

Recommendations

The State of Timor-Leste should:

21. Amend the *Labour Code* to prohibit discrimination on the basis of sexual orientation, gender identity and intersex status in all areas of employment.
22. Take positive measures, including anti-discrimination campaigns among the public administration and private enterprise, to promote the inclusion of LGBTI workers in the public and private sectors.

Lack of legal gender recognition

23. Timor-Leste does not have any laws or policies that allow transgender persons to change the gender identity on identity cards and documents. This results in the gender identity and expression of transgender people not aligning with their legal gender.

¹² Labour Code, Law 4/2012, Article 6(2).

¹³ Labour Code of the Democratic Republic of Timor-Leste, UNTAET/REG/2002/5. Section 9.4 of the Code prohibited "discrimination in employment and occupation", while section 2 defined "discrimination" to include "any distinction, exclusion or preference based on ... sexual orientation".

24. The lack of legal gender recognition opens transgender people up to significant discrimination in all areas of life where gender information is required, including employment, health care, education and access to justice.

Recommendation

The State of Timor-Leste should:

25. Enact legislation that allows transgender persons to have their gender legally recognized, including in identity documents.