



University of Hawai`i at Mānoa
William S. Richardson School of Law
International Human Rights Advocacy Group

UPR Submission
Democratic Republic of Timor Leste-26th session
(Oct-Nov, 2016)

Submitted by:

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Introduction to the International Human Rights Advocacy Group
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1. The International Human Rights Advocacy Group in the University of Hawai`i at Mānoa is a student group committed to investigating and reporting on human rights abuses abroad. As one of our human rights advocacy projects, we are working to protect human rights in the Democratic Republic of Timor-Leste by reporting on the current status of women and girls in the country. It is our aim to keep the momentum going forward on the advancement of human rights in Timor-Leste for women and girls by highlighting the areas where reform should be in order to protect their rights to education. Our findings demonstrate that reform is lagging due to a lack of resolve to enforce the laws promoting equal treatment of women in society, dragging down their ability to finish their education, which in turn holds them back from being able to fully participate in society as equals, particularly in the sphere of employment.

Background of the Human Rights Situation in the Democratic Republic of Timor-Leste

2. Timor-Leste has ratified both the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC).¹ However, despite the ratification of the conventions and the codification in Timor-Leste's Civil Code for greater rights for women in society, there remain customary practices that prevent women and girls from gaining the same status as men in society. In order for Timor-Leste to fulfill its obligations under CEDAW and the CRC, the Government must take measures to end the customary practices that result in abhorrent treatment of women and their marginalization in society.

Protecting the Human Rights of Women

I. Summary

3. Timor-Leste has committed itself to promoting equal access to education at a time when the youth make up the majority of its population. We commend Timor-Leste on the substantial progress made in promoting education thus far. However, we are concerned by the lack of sufficient measures taken by the Government in the areas where progress has stalled in

¹ The Democratic Republic of Timor-Leste has ratified numerous UNHR treaties, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on 16 April 2003 and the Convention on the Rights of the Child (CRC) on 16 April 2003.

guaranteeing equal access to education for both men and women. There is a gap in the primary education of boys and girls that by the time secondary education is completed creates a significant impediment to women having equal status in society. Much of this gap comes from the societal pressure on girls to marry young. One such example is the accepted custom of arranged marriages for girls as young as 16. The customary practice of ‘barlake’ in particular plays a substantial role in arranging the marriage of a young woman in exchange for payment. Most women and young girls also face domestic violence in their public and private lives, severely impacting their ability to gain access to education and become equal members of society. We strongly urge the Government to take measures to enhance the gender equality including the enforcement of the laws that are currently ignored with impunity by many of the abusive spouses, strangers, and family members that harm young women.

II. Customary practices create barriers to women finishing education

4. The traditional roles of men being the absolute head of the household still persist throughout Timor-Leste. Once married, women are still expected to defer to the man of the household, and the women must exercise caution, otherwise they will risk bringing shame to the house and the wrath of the husband. Subjecting women to their husband’s control puts women in severe situations, often choosing to remain with abusive husbands for fear of falling into worse economic conditions.² Additionally, the customary practices of Timor-Leste have the children go with the husband rather than the mother if there is a divorce.³

5. In spite of the civil code of Timor-Leste guaranteeing that surviving spouses are the inheritors of the shared property⁴ and the civil code protecting the rights of individual property for women in marriages,⁵ the customary practice of Timor-Leste leads to the inherited property usually passing on to the eldest surviving male heir if the surviving spouse is a woman.⁶ This is because the eldest male in the household is customarily considered to be the head of the

²Diana Fernández and Lewti Hunghanfoo, *Timor-Leste: The Economic Dimensions of Domestic Violence*, The Asia Foundation, Notes From the Field. (July 22, 2015). <http://asiafoundation.org/in-asia/2015/07/22/timor-leste-the-economic-dimensions-of-domestic-violence/> (last visited March 3, 2016).

³ *Social Institutions & Gender Index, Country Profile: Timor-Leste*, OECD Development Center, Social Institutions & Gender Index, pg. 1 Available at <http://www.genderindex.org/sites/default/files/datasheets/TL.pdf>

⁴ The Civil Code of Timor-Leste, Article 1944: Establishment of Head of Household, (1) The position of head of household shall be assigned in the following order: (a) Surviving Spouse; (b) Executor; (c) The relatives who are legal heirs; (d) The testamentary heirs.

⁵ The Civil Code of Timor-Leste, Article 1620: Non-communicable property, (1) The following are excepted from community: (a) Property donated or bequeathed, even as an inheritance, under a clause of non-Communicability; (b) Property donated or bequeathed with a reversion or trust clause, unless the clause has lapsed; (c) Usufruct, use or habitation and other strictly personal rights; (d) Compensation owed, through verifiable facts, against one of the spouses or against that spouse’s individual property; (e) Insurance policies that mature in favor of each spouse or cover the risks relative to individual property; (f) Garments, clothing and other objects for personal and exclusive use by each spouse, as well as their diplomas and correspondence; (g) Family records with low financial value; (2) The non-communicability of property does not include the fruits thereof or the value of improvements thereto.

⁶ See *Social Institutions & Gender Index, Country Profile: Timor-Leste*, *supra* note 3, pg. 2

household. If the surviving spouse is a woman who has no children, then she will inherit the property; but if she remarries later the property is expected to pass on to her brother or other male head of her former household.⁷ Laws that are meant to protect the property rights of women are not enough if the customs allow women to be passed over in favor of men.

6. Domestic violence remains high in Timor-Leste. The 2010 demographic survey stated that 50% women in the capital of Dili have experienced some form of violence or assault at the home since the age of 15.⁸ While 33% of women in the countryside reported domestic violence, the police have reported domestic violence to be the number one crime that they contend with.⁹ Overall, only 24% of women actually seek help from any source, with most seeking help from family, and only a mere 4% seeking help from the police.¹⁰ Even with new laws targeting domestic violence, and some women stepping forward to report abuse, there remain numerous customary practices that prevent women from seeking justice in the court. Lack of enforcement, a strong preference for informal resolution to disputes, a culture of silence, fear of reprisals, and uncertain property rights leads to the denial of women's rights that should be protected by Timor-Leste's civil code.¹¹

III. Institutional Deficiencies in the Rule of Law Provide a Barrier to Female Access to Education and Employment Opportunities

7. The government of Timor-Leste is responsible for protecting the rights of its citizens in regards to equal access to education for both men and women. We are concerned of the deficiencies in the rule of law at the institutional level, and of the gaps in women's access to justice for ongoing crimes related to gender, including domestic violence, which prohibits women from fully participating in education and, therefore, limiting access to equal employment.

8. The rule of law, as one of the most important foundational legal principles, provides that government decisions should be made according to law. A democratic system that relies on the

⁷ Id

⁸ National Statistics Directorate (NSD) [Timor-Leste], Ministry of Finance [Timor-Leste], and ICF Macro. 2010. *Timor-Leste Demographic and Health Survey 2009-10*. Dili, Timor-Leste: NSD [TimorLeste] and ICF Macro.summary of findings xxix, (Nov. 2010). Available at <http://dne.mof.gov.tl/published/TLDHS%202009-10/Final%20Report%20TLDHS%202010.pdf>

⁹ Annika Kovar, Andrew Harrington, and Maria Bermudez, *Customary Law and Domestic Violence in Timor-Leste*, Justice System Programme UNDP Timor-Leste, pg. 8 (January 2011). Available at http://www.tl.undp.org/content/dam/timorleste/docs/JSP%20docs/TL_JSP_LitReview%20DV_CL_FINALJan2011.pdf

¹⁰ See *Timor-Leste Demographic and Health Survey 2009-10*, supra note 8, pg. 245.

¹¹ Kate Hodal, *Timor-Leste Strives to Overcome Culture of Domestic Violence*, The Guardian, (August 24, 2012), <http://www.theguardian.com/global-development/2012/aug/24/timor-leste-strives-overcome-domestic-violence> (last visited March 12, 2016).

rule of law promotes a higher degree of faith coming from its citizens.¹² Although Timor-Leste is currently in the process of strengthening its judicial institutions through its hybrid customary-formal partnership,¹³ various factors hinder complete reliance on the customary system while the full implementation of a formal legal system is still developing. In relying solely on the customary system, three areas of concern in the rule of law include 1) the arbitrary and inconsistent application of unwritten laws, 2) regional variations and distinctions, and 3) weak institutionalization of enforcement mechanisms.¹⁴ At the same time, a formal system cannot exist without a legal system where a language barrier exists; there are few legally trained professionals, and remoteness of legal infrastructure and services outside of the urban core.¹⁵

9. Aside from addressing weaknesses in the institutional framework to ensure a higher degree of confidence in the rule of law, women in Timor-Leste should be concerned with other barriers in place. Domestic violence remains in the way achieving a higher degree of gender equality.¹⁶ Underlying this finding is the correlation that women who have lower levels of education have less legal knowledge, and thus resulting in a lower percentage who rely on the formal legal system for remedy.¹⁷ Other systemic problems include unreported cases of domestic violence,¹⁸ social stigmatization for those who report,¹⁹ and sweeping domestic violence cases under the carpet as soon as practicable.²⁰ Until such practices diminish, women will not be able to rely on the judicial system for an adequate remedy to facing gender based violence.

IV. The Pressure to Marry Young Results in Women Losing Out in Education

10. Under Timor-Leste's law, the age of consent for marriage is 17 years old for both men and women. However, the law allows for parents or tutors to authorize weddings for individuals

¹² Tanja Chopra, Susan Pologruto, and Timotio de Deus, *Fostering Justice in Timor-Leste: Rule of Law Program Evaluation*, USAID Report for the United States Agency for International Development, pg. 3. (January 2009). Available at http://pdf.usaid.gov/pdf_docs/Pdacam677.pdf

¹³ Silas Everett, *Law and Justice in Timor-Leste: A Survey of Citizen Awareness and Attitudes Regarding Law and Justice 2008*, The Asia Foundation, pg. 8-11. (2008). Available at <https://asiafoundation.org/resources/pdfs/2008LawJusticeSurvey.pdf>

¹⁴ Laura Grenfell, *Legal Pluralism and the Rule of Law in Timor-Leste*, *Leiden Journal of International Law*, 19(2):305-337, pg. 319-320. (2006). Available at https://digital.library.adelaide.edu.au/dspace/bitstream/2440/35385/1/Grenfell_35385.pdf

¹⁵ Erik Jensen, *Introduction to the Laws of Timor-Leste Legal History and the Rule of Law in Timor-Leste*, Stanford Rule of Law Program, Stanford Law School, pg. 23-29. Available at <http://web.stanford.edu/group/tlep/cgi-bin/wordpress/wp-content/uploads/2013/09/Legal-History-and-the-Rule-of-Law-in-Timor-Leste.pdf>

¹⁶ Susan Marx, *Timor-Leste Law & Justice Survey 2013*, The Asia Foundation. pg.16. (November 2013). Available at <https://asiafoundation.org/resources/pdfs/TimorLesteLJSurvey2013.pdf>

¹⁷ Id. pg. 16-17.

¹⁸ Phyllis Ferguson, *Progress in Legislating Domestic Violence and Gender Based Violence in Timor-Leste*, *Malaysia Journal of Society and Space* 7 issue 1 (53 - 64), P. 60. (2011).

¹⁹ See *Law and Justice in Timor-Leste 2008*, *supra* note 13, pg. 51.

²⁰ Annika Kovar, *Approaches to Domestic Violence Against Women in Timor-Leste: A Review and Critique*, Access to Justice Adviser to the Public Defender General, UNDP Justice System Program Timor-Leste, Dili, Timor-Leste, pg. 207. Available at <http://www.hurights.or.jp/archives/asia-pacific/section1/pdf/9%20-%20Approaches%20to%20Domestic%20Violence%20against%20Women%20in%20Timor-Leste.pdf>

under the age of 17 but over the age of 16, with 16 years old being the youngest age a person can be married.²¹ In 2009, 8.1% of girls between 15 and 19 years of age were married, compared to 0.4% of boys in the same age range.²² These numbers have shown reductions from 2003, where 10.6% of girls and 0.6% of boys in this age range were married. Nonetheless, those figures remain stubbornly high. Many of the early marriages are the result of arranged marriages, which either happen at birth or are the result of ‘barlake’, or bride-price, that arrange for payment in exchange for marriage. ‘Barlake’ remains in use primarily among the poorer families in Timor-Leste.²³ Arranged marriages are mostly affecting the impoverished and rural populations in Timor-Leste, whereas the wealthier and more urban families have seen a drop in the early marriage rates.

11. Early arranged marriages result in massive social barriers to young women completing their education. Domestic violence from male spouses remains common and widely accepted, both in and outside the household.²⁴ Lack of access to education for women only increases the rate of violence against them; it has been noted by previous studies that women in Timor-Leste are less likely to experience violence²⁵ as they attain higher levels of education.²⁶ The cultural pressure is on young women to marry and have children, with rural women facing the most pressure to fulfill customary family roles.²⁷ This is evidenced in the division between the rural poor and women in the capital of Dili, where the fertility rates have an inverse relationship with level of education. There are 6.1 births on average for women with no education and 2.9 births on average for women with more than a secondary source of education.²⁸

12. Because of the high pressure on women to marry young and raise children, they attain less education on average than men. According to Timor-Leste’s 2009-2010 demographic and health survey, the first appearance of an educational gap between men and women appears in secondary education, with 12 % of women having no education versus 11% of men.²⁹ The gap widens the older the age group, with 31% of women remaining uneducated at age 30 compared to 22% of men; at the age of 40, 56% of women remain uneducated compared to 30% of men. The educational gap reflects the general separateness that women experience in society, with the customs holding women back in spite of the protections written into the civil code.

²¹ 2011 Civil Code of Timor-Leste r Article 1475 (1)

²² See *Social Institutions & Gender Index, Country Profile: Timor-Leste*, *supra* note 3, pg. 2

²³ *Id.*

²⁴ Diana Fernández and Lewti Hunghanfoo, *Timor-Leste: The Economic Dimensions of Domestic Violence*, The Asia Foundation, Notes from the Field (July 22, 2015). <http://asiafoundation.org/in-asia/2015/07/22/timor-leste-the-economic-dimensions-of-domestic-violence/> (last visited March 22, 2016).

²⁵ See Taft A. and Watson, L, *Violence Against Women in Timor-Leste: Secondary Analysis of the 2009-10 Demographic Health Survey*, Mother and Child Health Research, La Trobe University, pg. 2. (July 2013). Combined violence is defined as “combined forms of physical and/or sexual and/or emotional forms of violence from a partner/husband or someone else.”

²⁶ *Id.* pg. 24.

²⁷ See *Social Institutions & Gender Index, Country Profile: Timor-Leste*, *supra* note 3, pg. 1

²⁸ See *Timor-Leste Demographic and Health Survey 2009-10*, *supra* note 8, pg. xxiii.

²⁹ *Id.* pg. 17

V. Recommendations

13. With the foregoing reasons, our first recommendation is that the Government should implement early education on gender based violence in order to foster awareness of the extent of abuse on women and girls in Timor-Leste. Domestic abuse issues such as the perpetration of violence against women should be addressed at a young age through preventative education. Education on these issues should occur prior to the age of 15 for men and women.

14. Second, the Government should ensure that part of such education should include educating young women of their legal rights, as well as include community outreach and interaction with the families of students, especially in the more impoverished rural areas of Timor-Leste. The purpose is to put pressure on the extrajudicial application of customary dispute settlement practices that prevent women from accessing the court system and seeking justice through the rule of law. Implementing this educational program in schools will further educate the young of these issues and help to reduce the number of men who perpetrate these acts of violence.

15. It is our third recommendation that the Government should seek to end arranged marriages, particularly the practice of 'barlake'. To close the gender equality gap, the customs as well as the laws will need to be reformed. Without taking this necessary step, women will continue to be marginalized and left behind in Timor-Leste's society. Timor-Leste should follow through in their commitments to CEDAW and the CRC to protect its young women from such denigrating practices as arranged marriages that may very well place them into a physically abusive relationship from which there is no escape.