



REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE
PROVEDORIA DOS DIREITOS HUMANOS E JUSTIÇA



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Complementary NHRI report on the implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

Review of the Democratic Republic of Timor-Leste by the UN Committee on
Migrant Workers during its 23rd Session (31 August – 9 September 2015)

Information submitted by:

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The Office of the Provedor for Human Rights and Justice was established by the Constitution of the Democratic Republic of Timor-Leste in May 2002 and first opened its doors in 2006. It is charged with providing oversight over State entities. The main activities of the PDHJ include: cooperation with national and international entities for the advancement of a human rights framework in Timor-Leste, good governance and human rights monitoring, activities for the promotion of human rights and good governance principles, reporting to the United Nations treaty bodies and the UPR, activities for human rights education as well as conducting investigations in relation to human rights issues or abuses.

Table of contents

Contents

- Abbreviations 3
- Introduction..... 4
- Situational Analysis..... 6
 - Foreigners in Timor 6
 - Lack of data 7
 - Issues resulting from legal inconsistencies 8
 - Trade unions..... 9
 - Border controls..... 10
 - Human trafficking and forced labour 10
 - From Timor-Leste 11
 - To Timor-Leste..... 11
 - Within Timor-Leste..... 11
- Violence against migrants 12
- Timorese communities abroad 12

Abbreviations

ACP	African, Caribbean, Pacific countries
CMW	Committee on Migrant Workers
CODIVA	Coalition for Diversity and Action
IOM	International Organisation for Migration
KSTL	Timor-Leste Trade Union Confederation
PDHJ	Provedoria dos Direitos Humanos e Justiça (Provedor for Human Rights and Justice)
PNTL	Polícia Nacional de Timor-Leste
SEFPOPE	Secretario de Estado para a Política de Formação Profissional e Emprego (State Secretariat for Policy on Professional Training and Employment)
UNDP	United Nations Development Program

Introduction

The Office of the Provedor for Human Rights and Justice (PDHJ) has prepared the following submission to the UN Committee on Migrant Workers (CMW). The report is compiled for the review of the Democratic Republic of Timor-Leste in the 23rd session of the Committee. For the preparation of this report, the PDHJ has followed a broad consultative process that included government representatives, civil society and international organizations.¹

Due to a number of factors, Timor-Leste has been both a destination and a source country for regular and irregular migration. Lying in between two regional powers, Indonesia and Australia, Timor-Leste has been a source country for these both and a destination country mainly for Indonesians. The fact that Timor-Leste is the only dollar-based economy in the region strengthens the attraction for migrants to come to Timor-Leste, for example from China and the Philippines.

Other factors include the history of Timor-Leste; the country has strong ties with Portugal and for Timorese citizens it is often relatively easy to obtain Portuguese citizenship, making it significantly less difficult to travel. In addition both the Portuguese and the subsequent Indonesian occupation have pressured many Timorese to leave the country in search of a better life.

Apart from these specifically Timorese factors, the Southeast Asia region is characterized by high levels of irregular migration in general and in addition Timor-Leste does not escape the global tendency of rural to urban migration. The latter is a migration pattern in itself but also the increased pressure on people living in the urban areas because of internal migration and the associated difficulties it may present them can create an incentive for them to leave the country.

This report aims at providing the Committee on Migrant Workers with information on a number of key issues that are relevant to Timor-Leste. These issues include the inconsistency of the legal framework vis-à-vis migrant workers and their rights under the Convention, the serious lack of data on migrant workers in Timor-Leste and Timorese migrants abroad, human trafficking and forced labour, violence against migrants and the lack of credible government policies to regularize migration flows.

¹ Including, but not exclusively, CODIVA, Fundasaun Mahein, KSTL, Alola Foundation, ONG Belun, IOM, UNDP, Embassy of the Philippines in Timor-Leste, Embassy of Portugal in Timor-Leste, Embassy of Australia in Timor-Leste, TL-SEPFPOPE, TL-Labour Inspection Service, TL-Immigration Service and a focus group of returned migrants and migrant community representatives.

Recommendations

The Provider for Human Rights and Justice invites the Committee on Migrant Workers to recommend the State of Timor-Leste to implement recommendations on the following topics:

Lack of reliable data on migrant workers in Timor-Leste

- Make a significant effort to collect and analyse information on migrants entering, residing in and working in Timor-Leste.
- Draft policies regulating migration flows based on data analysis.

Issues resulting from legal inconsistencies

- Ensure that all legal instruments regulating rights of migrants are consistent and not contradictory.
- Ensure that relevant laws are enforced effectively.
- Ensure that all migrants are able to enjoy the rights they are entitled to under the constitution and the Labour Code.
- Ensure that the Immigration and Asylum Law is amended to ensure basic rights of migrants.

Border controls

- Significantly increase efforts to make border controls more efficient.
- Increase efforts to ensure a system of visa applications that encourages migrants to apply for visa before arriving in Timor-Leste.
- Increase the budget to allow for strict enforcement of the law and deport migrants who break the law.

Human trafficking and forced labour

- Ensure that all relevant stakeholders (including the PNTL and the judiciary) understand what human trafficking is and how it can be challenged.
- Ensure prosecution of those involved in human trafficking.
- Ensure protection of victims of human trafficking.

Violence against migrants

- Ensure training of Timorese workers to avoid friction between foreign workers and Timorese workers on the labour market.
- Ensure that labour conditions are similar for foreign migrants and domestic workers in accordance with the law.

Timorese communities abroad

- Improve consular support to Timorese citizens abroad.
- Cooperate with foreign authorities to ensure the well-being of citizens abroad.

Situational Analysis

Foreigners in Timor

As is to be expected, the majority of foreigners living in Timor-Leste are based in Dili. Slightly over 60 percent were living in the capital according to the Timor-Leste Census 2010.² Most migrants were between the age of 25 and 44, with migrants aged between 30 and 34 making up the largest group.³ Migrants are in majority male although the proportion of women is significant with 40 percent.

The Timor-Leste Census 2010 found that half of the migrant population in Timor-Leste comes from Indonesia.⁴ Although the significant amount of Indonesians in the country is not surprising in itself, it is conspicuous that Chinese and Philippine migrant groups are significantly smaller (10 percent and 7 percent respectively). It cannot be ruled out that this is the consequence of the character of these communities and their potential inability to participate in censuses either due to their invisibility in society or practical reasons such as language barriers. In addition the Timor-Leste Census 2010 may suffer from other systemic flaws that make the data less reliable.

According to SEPFPOE, the state agency for professional education and employment, the applications for work permits by foreigners can be divided into the following categories:

- 24% Managers: senior level positions
- 21% Professional: engineers, economists, lawyers etc.
- 14% Technicians and associate professionals
- 39% Crafts and related trade workers: mechanics, electricians, carpenters, chefs etc.
- 2% Plant and machine operators and assemblers

However these numbers are based solely on the official data and do not include irregular migrants, of which there may be many. Although this is anecdotal evidence, the number of tourist visas that have been issued in 2014 was allegedly 60,000.⁵ It is likely that most of these did not come to Timor for tourism purposes but for work purposes. Another sign that official data or unreliable relates to Timorese migrants abroad. According to official numbers of SEPFPOE, in 2013 there were a total of 19 Timorese working as migrants in Australia.⁶ This number does clearly not reflect the actual number of Timorese migrants in Australia.

Types of migrants most important in Timorese context as identified by the IOM are therefore⁷

² New country, new needs, new responses: Irregular labour migration to Timor-Leste, ACP Observatory on Migration, 2013, 37.

³ Ibidem, 38.

⁴ Ibidem.

⁵ Cited by IOM strictly as unconfirmed number of tourist visas issued. Actual numbers not provided (on time) by immigration service.

⁶ 'Numero actual trabalhadornebee servisu iha Australia – 2013', downloaded from <http://sepfpo.blogspot.com.au/2014/02/sepfpo-hasai-ema-hatama-osan-liu-husi.html> , accessed 10-08-2015.

⁷ Interview with IOM, 22-07-2015.

- Construction workers
- Migrants in the services sector (retail etcetera)
- Domestic workers
- Victims of trafficking (sex workers and domestic servitude)
- Timorese abroad

Numbers provided by SEPFOPE show that between January and June 2014, 616 applications for work permits were filed.⁸ Of these, 488 were male and 128 were female. Considering the fact that the standard procedure at the airport is to issue a tourist/business visa, which can be obtained easily on arrival, it is unlikely that this number reflects the actual number of migrants working in the country.

Representatives and/or members of migrant communities in Timor-Leste have identified a number of issues that in their experience are important.⁹ One issue that was named by all those interviewed was difficulties encountered with the application for work permits. As one interviewee put it: 'Different government organizations have different procedures. One says you have to do this, another says you have to do the opposite'.

A telling example is a story by one interviewee who was told that he could only apply for a work permit after he had started working while another organization said he was not allowed to work on his tourist visa. The rationale was that for applying for a work visa, he had to provide an employer. As a result it is not possible to obtain a work permit without already having found an employer prior to that, which becomes even more problematic given the ease with which any migrant can get access to the country on a tourist visa.

Another interviewee shared a story about how he had been trying to obtain a work permit for more than a year and had consistently failed to do so. Without elaborating on the reasons for this, the consequence was that this person had worked on a tourist visa and consequentially had to leave the country every 3 months in order to be able to obtain a new visa.

Lack of data

In accordance with Article 65 of the Convention on the Protection of the Rights of All Migrant Workers, the government of Timor-Leste should maintain appropriate services to deal with questions concerning international migration of workers and members of their families. To that end, the government should formulate and implement policies regarding migration, ensure cooperation and consultation between relevant authorities at the international level, provide all (national) stakeholders with appropriate information on laws, policies and regulations relating to migration and ensure provision of information and assistance to migrant workers and members of their families.

To fulfil these obligations, it is recommendable to increase efforts to gather and centralize data relating to migration flows. Without gathering data collection and analysis, it is impossible to monitor the rights of migrants and to draft laws and policies to protect these. The serious absence of any reliable data is therefore a major issue when it comes to the protection of the rights of migrant

⁸ SEPFOPE, Labour Market Outlook 2014, 4.

⁹ These are members of the Indonesian and Philippino communities. For privacy reasons they preferred not to be named.

workers. There is a very limited number of sources that touch upon the issue of migration in Timor-Leste and on many issues, there is no data that is publicly available, or accessible in other ways.

There are no reliable statistics on the number of undocumented migrants in Timor-Leste. Even more difficult to monitor is the protection of the rights of these undocumented migrants that work in Timor-Leste, as many migrants are outside the view of any official authorities.

The Provedor for Human Rights and Justice invites the Committee on Migrant Workers to recommend the State of Timor-Leste to:

- Make a significant effort to collect and analyse information on migrants entering, residing in and working in Timor-Leste.
- Draft policies regulating migration flows based on data analysis.

Issues resulting from legal inconsistencies

Section 9 of the Constitution of Timor-Leste establishes that 'rules provided for in international conventions, treaties and agreements shall apply in the internal legal system of East Timor following their approval, ratification or accession by the respective competent organs and after publication in the official gazette'. The Convention on Protection of the Rights of All Migrant Workers and Members of their Families therefore automatically became part of the national legal framework after it was ratified.

An important issue is the fact that the two most important legal documents regulating labour and migrants in Timor-Leste, namely the 2012 Labour Code and the 2003 Immigration and Asylum Act, are either unsubstantial on rights of migrants or contradictory to other legal obligations.

The only reference to migrant workers in the Labour Code is Article 77 – Foreign worker:

1. A foreign worker exercising a professional activity shall enjoy the same rights and be subject to the same duties applicable to national workers, pursuant to this law and the International Labour Conventions ratified by Timor-Leste.
2. The employment contract entered into with a foreign worker shall be in writing and authorised by the relevant authority, with observance of the rules provided for in specific legislation.

However in the Immigration and Asylum Act, the rights of migrants are defined in a much stricter way. Examples are Immigration and Asylum Act Article 7, obliging resident foreigners to notify the Immigration Department of the police within 60 days after changes in marital status, profession, domicile or nationality. Article 8 prohibits foreigners to engage in any remunerated activity other than with the organization that initially hired the foreigner unless there is express authorization from the Timorese authorities.

The right of association is recognized in Article 9 but limited to 'associations with cultural, religious, recreational, sports, charitable or assistance purposes'. Article 11 explicitly prohibits foreigners to 'participate in the administration or social organs of a union, corporation or professional organization, or in agencies that monitor paid activities'. Activities of a political nature are prohibited

altogether, as are organizing or participating in demonstrations and organizing political activities even if solely among co-nationals.

The Timorese Court of Appeals has ruled that certain provisions in the Immigration and Asylum Act 2003 that restrict the rights of foreigners in Timor-Leste are unconstitutional. This ruling was made prior to the enactment of the law. Nevertheless, the law was published without adapting or removing the unconstitutional provisions.¹⁰

Trade unions

Articles 26 and 40 of the Convention clearly establish the right of migrant workers in relation to trade unions. Article 26 ensures migrant workers' right to participate in activities of trade unions, join trade unions or seek the assistance of trade unions. Article 40 ensures migrant workers' right to form trade unions.

The national legal framework does not entirely comply with this. The Labour Code establishes in article 78 that 'all workers and employers, without any discrimination and without any need for prior authorization, shall be free to establish, and to become members of, organizations the objective of which is to promote and defend their rights and interests'.¹¹ However the Immigration and Asylum Act makes it illegal for a foreigner to 'participate in the administration or social organs of a union, corporation or professional organization, or in agencies that monitor paid activities'.¹²

The KSTL, the Timor-Leste Confederation of Trade Unions, interprets the law in a way that grants foreigners the rights that they are entitled to in accordance with the Labour Code.¹³ However this has not been tested in court. It is therefore unclear whether foreigners would benefit from the rights that have been established in the Labour Code or whether they will be subjected to the more restrictive measures in the Immigration and Asylum Act.

One sign that may indicate difficulties faced by foreigners and migrant workers in protecting their rights through trade unions is that, according to KSTL, no foreigners have formed a trade union and only a very limited number have joined one.¹⁴ Those few who did were employed mainly in the hospitality industry (restaurants, catering, hotels) or construction.

KSTL has received signals that employers do not allow migrant workers to join trade unions, to participate in their activities or to benefit from their services. Nevertheless the KSTL claims to have helped migrant workers on a limited scale.

The nationality of the migrant workers seems to matter for their participation in trade union activities. According to KSTL, Philippine migrants are more likely to form their own affiliations although these cannot be qualified as trade unions. Indonesian migrants are most likely to use the services of trade unions. Chinese migrants do not join or contact any trade union at all, leading to serious concerns about their freedom and treatment as workers in Timor-Leste.

¹⁰ ACP Observatory on Migration, 25.

¹¹ Labour Code 2012, Part III, Chapter I, Article 78: General principles

¹² Immigration and Asylum Act 2003, Chapter II, Article 11: Restrictions

¹³ Interview with KSTL, 27-07-2015.

¹⁴ Interview with KSTL, 27-07-2015.

The Provider for Human Rights and Justice invites the Committee on Migrant Workers to recommend the State of Timor-Leste to:

- Ensure that all legal instruments regulating rights of migrants are consistent and not contradictory.
- Ensure that relevant laws are enforced effectively
- Ensure that all migrants are able to enjoy the rights they are entitled to under the constitution and the Labour Code.
- Ensure that the Immigration and Asylum Law is amended to ensure basic rights of migrants.

Border controls

Border controls are problematic in Timor-Leste. Immigration occurs through land borders with Indonesia, through sea ports and by air.

Timor-Leste shares 6 land border check points with Indonesia. Apart from the main checkpoint, Motain, some checkpoints lack capacity to perform their border control function effectively. As a result, borders are porous and migrants coming from the Indonesian part of Timor do not go through the official process of applying for a visa.

Timor-Leste's Border Patrol Unit and Customs Service have recently benefitted from capacity building and technical training on issues such as recognizing human trafficking and migrant smuggling among other topics. The training was conducted for a total of 25 participants.¹⁵ The PDHJ recognizes and appreciates the efforts made by the customs and border patrol units in improving their performance.

The Provider for Human Rights and Justice invites the Committee on Migrant Workers to recommend the State of Timor-Leste to:

- Increase efforts to make border controls more efficient.
- Increase efforts to ensure a system of visa applications that encourages migrants to apply for a visa before arriving in Timor-Leste.
- Increase the budget to allow for strict enforcement of the law and deport migrants who break the law.

Human trafficking and forced labour

Perhaps the most pressing concern in relation to trafficking in human beings is the apparent lack of awareness of the issue among virtually all stakeholders. According to the IOM 'only one semi-authoritative study' has been conducted by a Timorese NGO (Alola Foundation) in 2004. Most information therefore stems from direct observations and anecdotal evidence gathered by UN agencies, NGOs and Timorese authorities.

¹⁵ 'Border Patrol Units and Customs Officers in Timor Leste Receive International Border Interdiction Training by U.S. Customs and Border Protection and UNODC', <https://www.unodc.org/indonesia/en/2014/10/border-timor-leste/story.html> , accessed 04-08-2015.

Human trafficking is explicitly prohibited by Art. 163 of the Penal Code. The definition of exploitation includes prostitution or other forms of sexual exploitation, forced labour, slavery and servitude.

In addition, human trafficking is prohibited under Art. 81 of the Immigration and Asylum Act 2003, under similar language as in the Penal Code.

In a situation in which the entry of a foreigner into Timor-Leste does not amount to human trafficking as defined by either the Penal Code or the Immigration and Asylum Act, it might still be possible to prosecute 'all persons who, (...), assist or facilitate the illegal entry or stay of a foreigner' in Timor-Leste under Art. 79 of the Immigration and Asylum Act.

There is no specific law targeting human trafficking. The government has not issued any policy, action plan or other strategy to combat human trafficking. Several NGOs either work on issues related to human trafficking, such as the protection of the rights of sex workers.

Timor-Leste is both a source and a destination for victims of human trafficking. Victims – men, women and children – are subjected to forced labour and sexual exploitation, among others.

From Timor-Leste

Women and girls are trafficked to Indonesia with the purpose of domestic servitude.¹⁶ Very little data is available about the fate of Timorese women who become victims of organized transnational trafficking.

To Timor-Leste

Even though reliable numbers are lacking, it is not a secret that many women get trafficked to Timor-Leste to work as prostitutes.¹⁷ These women often enter the country on a tourist visa while in fact they are active as sex workers. Women who are brought to Timor-Leste as victims of trafficking are often from Indonesia, China and the Philippines. Practices of perpetrators of human trafficking include retaining passports and circulating women between several countries every few months in order to avoid prosecution. According to the 2015 Trafficking in Persons Report, human traffickers are often members of Indonesian or Chinese organized crime syndicates.¹⁸

Within Timor-Leste

There have been accounts of rural residents who are being lured to the capital city Dili with the promise of better chances in education or a job. In reality they risk ending up in a form of servitude that resembles slavery.¹⁹ This form of trafficking often occurs through family ties and can be seen as a result from traditional customs rather than the organized crime syndicates that are often associated with human trafficking.²⁰ Reasons for sending family members or relatives into servitude can include debt repayments, enhancing family ties or provision of agricultural labour.

The Provedor for Human Rights and Justice invites the Committee on Migrant Workers to recommend the State of Timor-Leste to:

¹⁶ Trafficking in Persons Report 2015, US Department of State, 334.

¹⁷ 'Prostitution in East-Timor', <http://www.easttimorlawandjusticebulletin.com/2009/07/prostitution-in-dili-east-timor.html>, <http://temposemanaltimor.blogspot.com.au/2010/12/timor-lestes-prostitution-to-condemn-or.html>.

¹⁸ US Department of State, 334.

¹⁹ US Department of State, 334.

²⁰ Interview with IOM, 22-07-2015.

- Ensure that all relevant stakeholders (including the PNTL, the judiciary and local communities) understand what human trafficking is and how it can be challenged.
- Enact legislation that allows for effective prosecution of perpetrators of human trafficking.
- Enact legislation that allows for effective protection of victims of human trafficking.

Violence against migrants

Multiple organizations and experts signal an increasingly hostile attitude towards migrants in general and migrant workers in particular among local residents.²¹

Among Timorese citizens, a feeling exists that migrants not only occupy jobs that could be taken by Timorese, but also that foreign workers often get treated better than their Timorese counter-parts. This relates not only to a perception that foreign workers earn higher salaries but also that they receive better accommodation and higher quality of nutrition. Although it is at this stage impossible to verify the extent to which this is true exactly, it is evident that particularly those migrants who are either the victims of trafficking or those who work in a context of illegality are unlikely to enjoy better treatment than their Timorese counterparts.

In addition, and perhaps more veracious, Timorese citizens are reported to be frustrated with the fact that migrants have the capital to set up local shops or supermarkets supplied through their networks in, for example, Indonesia or China and that local shop keepers, more likely to own small neighbourhood shops known as 'kiosks', cannot compete with them. As one NGO pointed out, Timorese shop owners feel like 'they should be earning money by selling vegetables to foreigners, but instead the foreigners are earning money by selling vegetables to them'.²²

Nevertheless, the tense situation is a reality and should not be ignored. The NGO Fundasaun Mahein listed a number of incidents on an anecdotal basis, including the killing of three Indonesian migrants in 2014, the burning of shops owned by migrants in several parts of Dili and violent attacks on migrants in the streets.²³ The NGO Belun, through their 'Early Warning, Early Response' mechanism, has a database of violent incidents in Timor-Leste. Most incidents involved migrants from China and Indonesia and they were often shopkeepers. Incidents included physical violence, sexual violence and intimidation. In total, 22 incidents were listed occurring between 2012 and 2015.²⁴

The Provedor for Human Rights and Justice invites the Committee on Migrant Workers to recommend the State of Timor-Leste to:

- Ensure that labour conditions are similar for foreign migrants and domestic workers in accordance with the law.

Timorese communities abroad

²¹ Interview with KSTL, 27-07-2015. Interview with Fundasaun Mahein, 24-07-2015.

²² Interview with Fundasaun Mahein, 24-07-2015.

²³ Interview with Fundasaun Mahein, 24-07-2015.

²⁴ Request for information to ONG Belun, received on 03-08-2015.

Significant numbers of Timorese go abroad to work there. The main countries of destination are South-Korea, Australia, Portugal and the United Kingdom.

Considering the fact that a substantial part of Timorese travelling abroad do so on Portuguese passports that are relatively easy to obtain, the Portuguese Embassy in Dili has declared that it cannot establish how many Timorese travel to Europe.²⁵ The reason is that once the Timorese travel on their Portuguese passports, they will not be identified as Timorese when entering Europe.

The lack of consular support to Timorese abroad is a significant problem. Not only for Timorese citizens abroad who are in need of help, but also because maintaining ties with Timor-Leste benefits the country. According to SEPFOPE, between January and June 2014 a total amount of 2.9 million USD in remittances was sent from South-Korea to Timor-Leste.²⁶ Although there are no reliable numbers for other countries with Timorese communities, it is not unlikely that the total amount of remittances provides a significant contribution to the Timorese economy.

Consultations with migrants who worked in Portugal and the United Kingdom reveal that the Timorese communities abroad generally do not receive support from Timorese representations in their countries of residence. There are two reasons for this. Firstly, the capacity of Timor-Leste to establish and maintain such representation is low. Secondly, many Timorese who travel abroad for work do so on Portuguese passports. As a result they are considered to be the responsibility of the Portuguese authorities and in addition it makes them more difficult to identify as Timorese migrants abroad.

The Provedor for Human Rights and Justice invites the Committee on Migrant Workers to recommend the State of Timor-Leste to:

- Improve consular support to Timorese citizens abroad.
- Cooperate with foreign authorities to ensure the well-being of citizens abroad.

²⁵ Interview by phone with Portuguese Embassy staff, 31-07-2015.

²⁶ SEPFOPE, Labour Market Outlook Edition 2, July 2014, 3.