

**TIMOR-LESTE**



# TIMOR-LESTE

*Khoo Ying Hooi\**

## Part 1: Overview of Timor-Leste

### A. Country Background

Timor-Leste Facts	
Geographical size	14,874 sq km
Population size	1,291,358 <sup>1</sup>
Ethnic breakdown <sup>2</sup>	Main ethnic groups: Timorese (78%) Indonesian (20%) Chinese (2%)
Official language(s)	Tetum and Portuguese (national languages) Bahasa Indonesia and English (working languages)
Literacy rate (aged 15 and above)	67.5% <sup>3</sup>
Life expectancy	68.88 <sup>4</sup>
GDP	US\$2.52 billion (per capita US\$2,279) <sup>5</sup>
Government	Unitary semi-presidential representative democratic republic whereby the prime minister is head of government and the president is head of state. It follows the systems of separation of powers and interdependence between organs of sovereignty.
Political and social situation	Economy is largely underdeveloped due to the long fight to restore independence. Since then, Timor-Leste has gone through three sets of highly competitive elections that have been universally recognised as free and fair.

\* Senior Lecturer, Department of International and Strategic Studies, Faculty of Arts and Social Sciences, University of Malaya.

<sup>1</sup> Data from July 2017. 'The World Factbook: Timor-Leste' Central Intelligence Agency, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/tt.html>, accessed on 2 May 2018.

<sup>2</sup> Approximate figures listed as of 2002. See, 'East Timor' Encyclopedia.com, available at [http://www.encyclopedia.com/places/asia/indonesian-political-geography/east-timor#ETHNIC\\_GROUPS](http://www.encyclopedia.com/places/asia/indonesian-political-geography/east-timor#ETHNIC_GROUPS), accessed on 10 August 2018.

<sup>3</sup> Data from 2016. 'Human Development Reports' United Nations Development Programme, available at <http://hdr.undp.org/en/countries/profiles/TLS>, accessed on 10 August 2018.

<sup>4</sup> Data from 2016. 'Timor-Leste' The World Bank, available at <https://data.worldbank.org/country/timor-leste>, accessed on 10 August 2018.

<sup>5</sup> Data from 2016. The World Bank (see note 4 above).

Timor-Leste is the youngest country in Asia and Southeast Asia; it is also the poorest. First colonised by Portugal from 1701 until 1975, it only achieved a nine day period of independence before Indonesian forces invaded. These remained for 24 years, during which time, it is estimated a third of the population died from various forms of abuse, e.g. execution, starvation, and disease. The turning point came in June 1998 when the Indonesian government under former president, Habibie, proposed a special autonomy status for Timor-Leste (known as East Timor at that time). A few months later in January 1999, the Habibie government unexpectedly agreed to a proposal by the United Nations (UN) to host a UN-sponsored popular consultation to allow the people of East Timor to decide whether to remain with Indonesia or to separate for full independence.

In the end, 78.5% of the East Timorese favoured separation from Indonesia. However, the process did not occur easily and led to severe violence, during which time hundreds of people were killed. At the same time, almost 70% of the country's buildings and physical infrastructure were destroyed and almost two-thirds of the population displaced, a problem that remains unresolved to this day. The wave of violence prompted deployment of an Australian-led multinational force (the International Force or INTERFET) to East Timor with the aim of restoring law and order. Subsequently, through UN Security Council Resolution 1272, a UN state-building mission known as the United Nations Transitional Administration in East Timor (UNTAET) was established to ensure political and social stability in the country, prevent any further violence, and restore order. The UN mission was vested with sovereign powers to prepare the territory for political independence and assist in creating democratic state institutions, thus enabling a smooth transition of independence. Finally, in 2002, UNTAET formally handed over administrative authority to the elected Timor-Leste government,<sup>6</sup> paving the way for restoration of its independence in May 2002.

### *Current political situation*

The March 20 presidential election and the July 22 parliamentary election in 2017 were the first elections held in Timor-Leste without assistance from the international community since the UN mission departed in 2012. Held in an orderly and peaceful manner (no major incidents were reported), they were considered a significant milestone and an unquestionable success for the young country. Indeed, its electoral processes have received praise from various international election observers demonstrating just how hard the Timorese have worked to win their democratic rights. On this point alone, the Timorese deserve credit for the country has shown that it is possible to move forward towards forgiveness and political stability despite a conflict-ridden past. This is particularly crucial for young democracies.<sup>7</sup>

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<sup>6</sup> Sahin, SB, 'Timor-Leste's foreign policy: Securing state identity in the post-independence period' *Journal of Current Southeast Asian Affairs*, 2014, Vol 33, No 2, pp 3-25.

<sup>7</sup> Khoo, YH, 'Timor-Leste's personality politics' *The Diplomat Magazine*, 28 February 2018, available at <https://thediplomat.com/2018/02/timor-lestes-personality-politics/>, accessed on 10 August 2018.

After several rounds of negotiation over a number of months, the VII constitutional government was formed (winning a total of 30 out of 65 seats). It was composed of two political parties, the Revolutionary Front for an Independent East Timor (Fretilin) and the Partido Democratico (PD). Three parties formed the opposition: the National Congress for Timorese Reconstruction (CNRT) led by former revolutionary leader, Xanana Gusmao; the People's Liberation Party (PLP) led by former President, Taur Matan Ruak; and Kmanek Haburas Unidade Nasional Timor Oan (Khunto) formed by the opposition coalition or "parliamentary majority alliance" (AMP). Together, the AMP holds a 35-seat majority in Parliament. While the minority government hoped to maintain stability and peace with political inclusion, Fretilin Prime Minister Mari Alkatiri proved unable to pass any policy programs or budget bills after disagreeing with the AMP in parliamentary sessions.

Thus, the government struggled to function on its reserved budget of US\$1.2 billion left over from the previous administration. For six months, political uncertainty led to disturbances until finally on 26 January 2018, President Francisco Guterres (famously known as *Lú-Olo*) announced an early election on 12 May 2018, a decision that most Timorese celebrated.

In summary, the bloody struggle against Indonesian occupation (1975-1999) had the effect of uniting the East Timorese. Realising the 2006 political crisis essentially led to the deaths of over 100 and displaced more than 150,000, twelve years later, the Timorese sought to avoid a similar tragedy and instead, reasserted their belief in democracy. Thus, despite polarized opinions and differences in ideological beliefs, the country has remained united, appreciating that peace should not only mean the absence of conflict but also sustainable development.<sup>8</sup>

### ***B. International Human Rights Commitments and Obligations***

Timor-Leste's Constitution has adopted all the basic and fundamental human rights. For example, conventions advocating the right to life, the right to personal freedom, integrity, and security, and freedom of movement have all been ratified. Its Constitution also guarantees non-discrimination and equal treatment for all. Nationally, Timor-Leste has declared a commitment to the protection and development of human rights. In addition, the government has also established the National Human Rights Institution (NHRI) and the Office of the Provedor for Human Rights and Justice (PDHJ) to further promote human rights and good governance.

Based on an instruction from the Prime Minister (No 17/X/2014) and established in 2014, the National Directive Commission (KDN) was tasked to develop a national action plan for human rights. Headed by the Ministry of Justice, it comprises representatives

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<sup>8</sup> Khoo, YH (see note 7 above).

from UN agencies in Timor-Leste, the ombudsman, representatives of civil society, and human rights groups, with additional support from the Ministry of Justice's technical team. The plan was drafted and developed for the period of 2014-2018. As of 2017, Timor-Leste has produced four thematic action plans on gender-based violence, zero-hunger, disabilities, and women, peace, and security.

**Table 1: Ratification Status of International Instruments – Timor-Leste<sup>9</sup>**

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT)		16 Apr 2003 (a)
Optional Protocol to the Convention against Torture	16 Sep 2005	
International Covenant on Civil and Political Rights (ICCPR)		18 Sep 2003 (a)
Second Optional Protocol to the ICCPR aiming to the abolition of the death penalty		18 Sep 2003 (a)
International Convention for the Protection of All Persons from Enforced Disappearance (CED)		
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)		16 Apr 2003 (a)
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)		16 Apr 2003 (a)
International Covenant on Economic, Social and Cultural Rights (ICESCR)		16 Apr 2003 (a)
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)		30 Jan 2004 (a)
Convention on the Rights of the Child (CRC)		16 Apr 2003 (a)
Optional Protocol to the CRC on the involvement of children in armed conflict		2 Aug 2004 (a)
Optional Protocol to the CRC on the sale of children, child prostitution and child pornography		16 Apr 2003 (a)
Convention on the Rights of Persons with Disabilities (CRPD)		

<sup>9</sup> 'Ratification status of Timor-Leste' United Nations Human Rights Office of the High Commissioner, available at [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=174&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=174&Lang=EN), accessed on 5 May 2018.

As shown above in Table 1, Timor-Leste has ratified seven international human rights instruments out of nine. Following its Universal Periodic Review (UPR) recommendations in 2011, the government adopted a national policy for the inclusion and promotion of individual rights in May 2012. However, limited action has been taken to implement the policy.<sup>10</sup> Moreover, the government has not yet signed or ratified CRPD despite repeatedly promising to do so. At the same time, it has also not signed or ratified CED. Nevertheless, in its UPR of November 2016, the government did highlight a plan to ratify the Optional Protocol to CAT.

Of the 154 recommendations made by UN member states in November 2016, the government accepted 146 recommendations and noted the remaining eight. As of 2017, Timor-Leste has not requested a Special Procedure of the Human Rights Council. Notwithstanding, its Constitution has adopted the general and customary principles of international law and the treaties it has ratified. In addition, the government ensures its national legislation does not contradict international law. However, it has failed to adopt in full the general recommendations of certain treaty bodies, in particular, those of the Committees on CRC and CEDAW. Timor-Leste has also been late in presenting its reports under ICCPR, ICESCR, ICERD, and CAT.

At present, Timor-Leste has ratified six out of the eight fundamental International Labour Organization (ILO) Conventions. Significantly, although a party to the CRC, Timor-Leste is one of 18 ILO member countries that have yet to ratify the Convention concerning Minimum Age for Admission to Employment (C138) requiring countries to set a minimum work age. Timor-Leste is also one of 11 ILO member countries not to have ratified the Convention concerning the Abolition of Forced Labour (C105).<sup>11</sup> To rectify this, the government adopted a minimum working age based on Article 69 of the Labor Law. As such, the Labor Law established a minimum work age of 15 which allowed minors to perform light duties. This law prohibits children below the minimum age from performing work that could endanger their lives. A National Commission Against Child Labor under government resolution No 1/ 2014 has also been established to implement and monitor implementation of the ILO Convention.

Having ratified the Rome Statute of the International Criminal Court (ICC), Timor-Leste incorporated provisions into its national law criminalising actions against humanity, as laid out in the Penal Code. Be that as it may, the country has not yet

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<sup>10</sup> Dos Santos, J, and Morgan, E, 'Steps towards achieving inclusion for people with disabilities in Timor-Leste' State, Society & Governance in Melanesia, 2016/2018, available at <http://ssgm.bellschool.anu.edu.au/sites/default/files/publications/attachments/2016-07/ib-2016-18-dossantosmorgan.pdf>, accessed on 18 May 2018.

<sup>11</sup> 'Report for the Universal Periodic Review (UPR) of Timor-Leste' United Nations Country Team in Timor-Leste, November 2016, available at <https://www.laohamutuk.org/Justice/UPR/2016/UNCTUPRMAR2016en.pdf>, accessed on 3 May 2018.

enacted legislation allowing it to co-operate with the ICC.<sup>12</sup> In addition, the Penal Code has proved insufficient to challenge impunity for past crimes, and some aspects of it are neither consistent with the Rome Statute, other human rights treaties, nor customary international law. In particular, the Penal Code does not appear to include guarantees against national amnesties, pre-conviction pardons, or similar measures of impunity for crimes under international law.

## **Part 2: Outstanding Human Rights Issues**

### ***A. Impunity and Access to Justice***

Following the long struggle for independence and the eruption of violence in 1999, as one of the poorest countries in the world, Timor-Leste is vulnerable due to its small size and because it suffered conflict prior to achieving independence. Similar to other post-conflict countries, debates about transitional justice and the effectiveness of its reconciliation mechanisms abound. Such discourse also triggered questions about the availability of comprehensive legal mechanisms for issues ranging from impunity to human rights violations in the state-building process.

In 2006, tensions between the national police and the armed forces resulted in open conflict between the two institutions and a breakdown of law and order that displaced more than 150,000 people. Efforts to resolve the conflict continued despite attacks on both the President and the Prime Minister in 2008. Although the country eventually recovered from the political crisis, realising that any failure of post-conflict reconstruction could come at a high cost and could potentially trigger new tensions or systemic fragility, the government moved to readdress its structural constraints to avoid, or at least minimize, the risk of new conflict.

Confronting the past has an ethical as well as a political purpose. As such, the Commission for Reception, Truth and Reconciliation of East Timor (CAVR) was mandated to establish the truth about human rights violations perpetrated by all sides in the context of the political conflict of 1974-1999. Accordingly, it documented the painful 1975 civil war that resulted in many hundreds of deaths and divided countless families and communities, the repercussions of which are still felt today. To a certain extent, it has to be said the existing transitional justice mechanism disappointed many war victims. This weakened the rule of law because it left some people unable to trust the justice system, either nationally or internationally.

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<sup>12</sup> Human Rights Council, 'Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1 and paragraph 5 of the Annex to Council Resolution 16/21 – Timor-Leste (A/HRC/WG.6/26/TLS/3)' United Nations General Assembly, 17 August 2016, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/183/00/PDF/G1618300.pdf?OpenElement>, accessed on 2 May 2018.

Through Decree Law No 48/2016, a new government body, the Chega! National Centre – From Memory to Hope (CNC) was established to facilitate the recommendations of CAVR (2005) and the bilateral Timor-Leste and Indonesia Commission of Truth and Friendship (2008). As such, its activities included the erection of memorials, education, the holding of events to demonstrate solidarity with victims of past human rights violations, and outreach. However, the centre lacked a mandate to address CAVR's recommendations on justice and reparations for victims of serious human rights violations,<sup>13</sup> operating instead simply as a provider of programmes and activities.

Access to justice remains a challenge for large sections of the population in Timor-Leste. In 13 municipalities, there are only four permanent courts. Due to poor road conditions and the high cost of travel, access to justice is therefore limited. To overcome this, Timor-Leste introduced 'mobile courts' to increase access to the judicial system but so far, the effort has not proved successful. Primarily, the country lacks sufficient trained lawyers and judges for its courts to function on a regular basis. This limitation ensures courts only function sporadically outside Dili (the capital) encouraging many Timorese to resort to informal justice systems. However, customary justice does not always adhere to international human rights standards and is often applied less consistently than justice administered through the formal justice system. Nevertheless, most Timorese regard informal mechanisms as cheaper, more efficient, easier to understand, and less corrupt than their formal counterparts.

### ***B. Women's Rights and Gender-Based Violence***

The independence struggle left nearly half of all Timorese women widowed and the sole providers for their families. Currently, the main challenges for women remain domestic violence, poverty, and a lack of recognition of women's contribution to the political, economic, and social spheres. In particular, sexual, gender-based, and domestic violence are critical issues for women in post-conflict Timor-Leste. Indeed, cases of domestic violence are the most reported incidents to the Vulnerable Persons Unit of the National Police, a unit that was set up with assistance from the UN specifically to aid vulnerable people including women, children, and the elderly.

In addition, the policing and judicial processes for survivors of domestic violence seeking both justice and protection from their abusers were deemed lacking. In fact, due to fear of reprisals, victims often do not report abuse at all. Even when cases of domestic violence become known, such disputes are often solved using traditional customary laws and practices, either within the family or before community leaders. Concern was also expressed about the absence of legal provisions specifically criminalising marital rape and qualifying rape as a serious crime.

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<sup>13</sup> 'Timor-Leste 2017/ 2018' Amnesty International, available at <https://www.amnesty.org/en/countries/asia-and-the-pacific/timor-leste/report-timor-leste/>, accessed on 27 August 2018.



Early pregnancy is another major concern in Timor-Leste. One recent study in 2017 showed that almost a quarter of women in the country had given birth by the age of 20. Early pregnancies are often followed by marriage. Thus, 19% of girls are married by the time they are 18.<sup>14</sup>

Although Law No 10/2011 acknowledges the equal rights of women and men in marriage, the fault-based divorce system puts women, including victims of domestic violence, at a disadvantage. Moreover, the definition of discrimination in the Constitution and other legislation remains ambiguous. While the Law against Domestic Violence No 7/2010 criminalised domestic violence, including sexual violence, “even within a marriage,” it does not adequately meet the standards of CEDAW, e.g. it fails to implement necessary services and protection for indigenous women and girls.

A recent amendment (Law No 9/2017 of 5 May 2017) to the Republication of Law No 6/2006 (Law on the Election of the National Parliament)<sup>15</sup> stipulates that 33% of political parties must list women as candidates. As a result, 38% of seats in the national parliament are now occupied by women, the highest rate of any country in the Asia Pacific region. At the local level, there are currently 11 female village chiefs, two female sub-village chiefs, and six elders who function as traditional leaders. Under the amendment, each village council is also guaranteed three women representatives nationwide.

Signed in 2016, the Dili Declaration (DD), ‘Invest in Women and Children – Invest in Equality’ aimed to provide comprehensive guidelines to achieve dynamic gender equality by ensuring: gender mainstreaming in national development plans; the development of gender sensitive budgets; the eradication of violence against women and children by the introduction of a funded implementation plan to treat domestic violence issues; the development of a mechanism to promote access to property and land rights; equal access to higher levels of education for women including scholarships in natural resource management; the promotion of gender sensitive health policies to prevent HIV/AIDS; the promotion of family planning and integrated community health services; and investment in women through a policy of decentralisation.

In April 2016, Timor-Leste officially launched its national action plan to implement United Nations Security Council Resolution (UNSCR) 1325 (2000) on Women, Peace and Security, becoming the third country in Southeast Asia to adopt such a measure. Covering the four pillars of Resolution 1325, including women’s participation,

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<sup>14</sup> Cummins, D, *Teenage Pregnancy and Early Marriage in Timor-Leste: Research on the Decision-Making Pathways of Young Women in the Municipalities of Covalima, Aileu and Dili*, Dili: UNFPA, 2017, available at <http://timor-leste.unfpa.org/sites/default/files/pub-pdf/REPORTTPEMLOWRESOLUTIONFINAL.pdf>, accessed on 27 August 2018.

<sup>15</sup> See, ‘Republication of Law No 6/2006 of 28 December’ La'o Hamutuk, available at <https://www.laohamutuk.org/Justice/2017/ElPar/Law%209-2017en.pdf>, accessed on 25 May 2018.

prevention, protection, and peace building,<sup>16</sup> the plan calls for action to advance the participation and leadership of women in all aspects of decision-making and peace-building. Accordingly, it also aims to increase the role of women in preventing and mediating conflicts to ensure they can live free from violence and feel the benefits of the country's development.<sup>17</sup>

### ***C. Children's Rights***

As a follow-up to the UPR on Timor-Leste in 2016, the Ministry of Social Solidarity and the Commission on the Rights of the Child (KDL) established a National Action Plan for Children in Timor-Leste 2016-2020 (NAPC) to improve the lives of children and support the KDL's role in monitoring line ministries based on recommendations of the Convention of the Rights of the Child or CRC. The NAPC, as approved by the Council of Ministers on 31 January 2017, was a result of a government initiative to implement the CRC (which it ratified in 2003),<sup>18</sup> although it also resonates with its sustainable development goals. In the next five years (2016-2020), these priorities, as drawn from the CRC's Concluding Observations, focus on four areas: child protection issues and concerns; child health and nutrition including adolescent health; pre-school education and basic education; and child and youth participation.

The KDL also plays an important role in advocating and implementing interventions with the relevant ministries on such legal issues as the registration of births, the Draft Law on Punitive-Educational Measures for Minors (a special criminal regime for juveniles), and revision of Article 173 of the Penal Code to provide protection in cases of incest. However, there are gaps in the legislative and institutional framework. For instance, juveniles and adult prisoners are currently incarcerated together at Becora prison because of a lack of special juvenile facilities. Recognising this issue, the juvenile justice regime is currently undergoing significant review and reform although it suffers from limited investment. As such, the Draft Law on Punitive-Educational Measures for Minors aimed at children aged 12-16 and a Draft Special Penal Regime for Minors aged 16-21 are currently in the drafting process.

Another immediate area of concern is the high number of children in the work force. In 2016, Timor-Leste made moderate efforts to eliminate the worst forms of child labor.

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<sup>16</sup> 'Investing in women for peace and future generations: Timor-Leste adopts a National Action Plan on Security Council Resolution 1325' UN Women, 28 April 2016, available at <http://asiapacific.unwomen.org/en/news-and-events/stories/2016/04/adopts-a-national-plan-for-womens-security>, accessed on 18 May 2018.

<sup>17</sup> 'Timor-Leste officially launches its National Action Plan for United Nations Security Council Resolution 1325 (2000) on Women, Peace and Security 2016-2020' UN Women, 20 October 2016, available at <http://asiapacific.unwomen.org/en/news-and-events/stories/2016/10/timor-leste-officially-launches-its-national-action-plan>, accessed on 18 May 2018.

<sup>18</sup> National Action Plan on Children in Timor-Leste 2016-2020, available at [https://www.unicef.org/timorleste/01062017\\_NAPC\\_2016-2020\\_Final\\_Version\\_English\(1\).pdf](https://www.unicef.org/timorleste/01062017_NAPC_2016-2020_Final_Version_English(1).pdf), accessed on 7 May 2018.

For instance, some children are trafficked from rural areas to the capital city, Dili, and subjected to commercial sexual exploitation, domestic work, or forced labor in the fishing industry. Children are also trafficked transnationally, including to Indonesia, for labor exploitation. Preliminary data from a child labour survey conducted in 2016 indicates that more than 26,000 children were engaged in “other service activities” such as domestic work; the survey also identified 588 children engaged in street work.<sup>19</sup>

Other advancements include the passing of the Law to Prevent and Fight Against Human Trafficking and the National Action Plan Against Child Labor, now being finalized by the National Commission against Child Labor. In addition, the government also re-established the Inter-Agency Trafficking Working Group. However, it has not approved a decree specifying which occupations and activities are prohibited for children, leaving the group still vulnerable to engagement in hazardous work. In addition, limited financial and human resources continue to hinder the authorities from effectively enforcing laws related to child labour, especially in remote areas.

#### ***D. Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) Rights***

Section 23 of the Constitution states that the interpretation of fundamental rights as enshrined in the Constitution must be in accordance with the Universal Declaration of Human Rights. In such case, one could argue that discrimination based on sexual orientation and gender identity and expression (SOGIE) should, in principle, also be prohibited. However, the Constitution lacks a specific section guaranteeing human rights for all as it does not explicitly include SOGIE. In the past, several prominent Timorese human rights activists advocated introducing sexual orientation into a draft of the Constitution but they were unsuccessful. Only 13 voted in favour, while 52 voted against its inclusion. A further 14 abstained. Those opposing the provision claimed it had the potential to create conflict with the church<sup>20</sup> – Timor-Leste is almost 98% Catholic.

Supported by the UN and international agencies such as the Asia Foundation, Timor-Leste held its first-ever pride parade in 2017. Hatutan, the main network for such initiatives, also conducted other programmes to combat discrimination and violence targeting members of the LGBTI community. As Asia’s youngest democracy, the event was considered a milestone for Timor-Leste. It was also momentous as it was organised at a time when LGBTI rights were under increasing attack in the region. Nevertheless, it was encouraging to note that former Prime Minister, Rui Maria de Araujo, recorded a video message ahead of the parade urging the Timorese to create an inclusive nation, one accepting of people with different sexual orientations and gender identities. His

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<sup>19</sup> ‘Child labor and forced labor reports: Timor-Leste’ US Department of Labor, 2016, available at <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/timor-leste>, accessed on 10 May 2018.

<sup>20</sup> Saeed, I, and Galhos, B, *A Research Report on the Lives of Lesbian and Bisexual Women and Transgender Men in Timor-Leste*, Timor-Leste: Rede Feto and ASEAN SOGIE Caucus, 2017.

action gave a boost to LGBTI rights supporters in Timor-Leste and the Southeast Asia region.

In March 2017, Timor-Leste informed the UN Human Rights Council in Geneva that it had accepted two recommendations on SOGIE: to strengthen the country's legal framework to ensure gender equality and ban discrimination on the grounds of sexual orientation and gender identity; and to develop and adopt legal and administrative measures to investigate and punish acts of discrimination, stigmatization, and violence against the LGBTI community.

While same-sex behaviour is not criminalized under Timor-Leste's laws, they also fail to offer protection against discrimination. Accordingly, LGBTI people regularly face social stigma and discrimination.<sup>21</sup> Although statistical data on the scale of the problem is lacking, Hatutan has received reports on various forms of discrimination and abuse. Therefore despite legal protections and a political commitment to ban non-discrimination on the basis of SOGIE, inadequate support mechanisms and a lack of information available to LGBTI people have conspired to halt progress in this area.

### ***E. Land Rights***

Land rights are a huge problem in Timor-Leste, mainly due to the lack of a comprehensive legal basis for determining land ownership. Originating from Timor-Leste's post-colonial and post-conflict legacies, these challenges, including landlessness and forced displacement, were caused by massive land occupation and have been exacerbated by the questionable legitimacy of formal land titles issued during the Portuguese and Indonesian administrations.<sup>22</sup> Although Art 54(1) of the Constitution states that every individual has the right to private property which is transferable during his or her lifetime or on death, most rural Timorese access and hold land through customary laws and informal systems and schemes which lack legal recognition. For example, land occupation and informal arrangements are common in rural areas with many occupants failing to formalise acquisitions.<sup>23</sup> Without legal land titles, such land rights will not be recognised under Law 1/2003.<sup>24</sup>

After approximately eight years' of discussion and consultation, the Expropriations Law by means of Law 8/2017 was approved on 26 April 2017, coming into force the next day. Regarded as a vital part of the "Land Law Package" that has been discussed

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<sup>21</sup> Beh Lih Yi, 'Asia's youngest nation offers glimmer of hope for LGBT rights' Reuters, 20 July 2017, available at <https://www.reuters.com/article/us-timor-rights-lgbt-idUSKBN1A5005>, accessed on 10 May 2018.

<sup>22</sup> Almeida, B, and Wassel, T, 'Can a new law help Timor-Leste's land rights crisis?' Asia Foundation, 18 January 2017, available at <http://asiafoundation.org/2017/01/18/can-new-law-help-timor-lestes-land-rights-crisis/>, accessed on 18 May 2018.

<sup>23</sup> Almeida and Wassel (see note 22 above).

<sup>24</sup> Almeida, B, and Wassel, T, 'Survey on access to land, tenure security and land conflicts in Timor-Leste' Asia Foundation, December 2016, available at <https://asiafoundation.org/wp-content/uploads/2017/01/Survey-on-Access-to-Land-Tenure-Security-and-Land-Conflicts-in-Timor-Leste-1.pdf>, accessed on 18 May 2018.

for almost a decade, it includes a number of other significant statutes that are expected to be approved and/or gazetted in the near future.

### ***F. Freedom of Expression and Assembly***

Despite constitutional and legal protections, the rights to freedom of expression and assembly are not yet fully protected in Timor-Leste. Some of the issues include structural challenges, financial dependence, and political interference, all of which challenge media impartiality. Since late 2014, journalists have expressed concern about a new press law which many view as seriously damaging to press freedom. Protests aside, the Media Act was passed after several reviews. In particular, the Court of Appeal deemed some provisions unconstitutional; these were subsequently removed. The Act requires all journalists to undergo a six-month internship in a media organization and be accredited by the government-funded Press Council established in 2016; in other words, they must be licensed by a government-funded body. Further, the Council was also given power to grant, renew, suspend, and revoke journalists' credentials and administer disciplinary sanctions including fines for contraventions of the law.<sup>25</sup> However, concerns have arisen regarding the appointment process of members of the Press Council. In addition, unnecessarily restrictive rules regulating foreign journalists in the country have also been noted.<sup>26</sup>

Freedom of assembly is explicitly protected in Art 42 of the Constitution which stipulates that all people "are guaranteed the freedom to assemble peacefully and unarmed." Ordinary Timorese, including human rights activists are therefore generally free to express themselves. However, a few incidences of threats and intimidation have been reported, especially against NGOs publicly raising human rights concerns or to prevent them publicising sensitive issues.

## **Part 3: Conclusion**

Democracy is highly valued in Timor-Leste as reflected in the Timorese spirit during this period of political impasse. Ultimately, the real test for this young democracy's survival is whether tolerance and understanding of the different aspirations of its people can prevail for the betterment of the country. Moving beyond electoral democracy, Timorese society now requires a credible political force to clearly define national development processes and address the issues and challenges encountered by the population. Such a party or coalition must not only be able to compete in the political

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<sup>25</sup> 'Timor-Leste's second Universal Periodic Review (UPR)' Timor-Leste Civil Society Coalition, March 2016, available at <https://www.laohamutuk.org/Justice/UPR/2016/NGOUPRMar2016en.pdf>, accessed on 22 May 2018, at 20-21.

<sup>26</sup> 'Expression' Monitor: Tracking Civic Space on Timor-Leste, 1 January 2017, available at <https://monitor.civicus.org/newsfeed/2017/01/01/expression-timor-leste/>, accessed on 22 May 2018.

arena, but also provide a space and opportunities for all Timorese to enjoy in the spirit of inclusivity.<sup>27</sup>

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<sup>27</sup> Khoo, YH (see note 7 above).