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## **Rights, Regulation and Ritualism — Country Studies Working Paper No 5: Timor-Leste**

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# Country Studies

## Timor-Leste

### I INTRODUCTION

This paper is part of a research project, 'Strengthening the International Human Rights System: Rights, Regulation and Ritualism', funded by the Australian Research Council's Laureate Fellowship scheme. The project focuses on a problem endemic to the international human rights system: why are international human rights standards widely accepted in theory but so hard to implement in practice?

Although the international community has created a complex and sophisticated system of human rights standards, these principles are regularly sidelined or ignored by countries that have accepted them. The project draws on regulatory scholarship to analyse how states respond to human rights principles, focusing particularly on the notion of ritualism. In a classic sociological text, Robert Merton identified five modes of individual adaptation to a normative order: conformity, innovation, ritualism, retreatism and rebellion.<sup>1</sup> These modes appear equally at the level of organisations and among collectivities. All five modes are evident in responses to international human rights regulation, but ritualism is particularly pervasive. It has been pithily defined as 'acceptance of institutionalised means for securing regulatory goals while losing all focus on achieving the goals or outcomes themselves'.<sup>2</sup> The concept of regulatory ritualism, then, can be understood as formal participation in a system of regulation while overlooking its substantive goals.

One aspect of the research project is to identify and analyse the ways that regulatory ritualism operates in the international human rights system through a series of case studies, of which this paper is one. The case studies document techniques of ritualism employed by countries participating in the international human rights system, with particular reference to the United Nations' Human Rights Council Universal Periodic Review (UPR).<sup>3</sup> The papers also look at the extent to which human rights treaties are implemented within a country's legal framework, and the efficacy of independent oversight mechanisms such as judiciaries and National Human Rights Institutions. Collectively, they identify instances and document techniques of ritualism, as well as considering how rights are realised and ritualism avoided in particular contexts.

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<sup>1</sup> *Social Theory and Social Structure* (Free Press, 1968) 194.

<sup>2</sup> John Braithwaite, Toni Makkai and Valerie Braithwaite, *Regulating Aged Care* (Edward Elgar, 2007) 7.

<sup>3</sup> See Hilary Charlesworth and Emma Larking (eds), *Human Rights and the Universal Periodic Review: Rituals and Ritualism* (Cambridge University Press, 2014).

## II TIMOR-LESTE

The Portuguese arrived on the island of Timor in 1511.<sup>4</sup> They were followed by the Dutch, who began colonising the island in 1568.<sup>5</sup> The tussle between Portuguese and Dutch colonialists for national sovereignty of the Timorese territory was resolved in 1859 with the Treaty of Lisbon—according to this treaty, the eastern half of the island and the enclave of Oecussi went to Portugal, with the rest going to the Dutch.<sup>6</sup> Along with the rest of Indonesia, the west gained independence from the Dutch following World War II.

Portugal's April Revolution of 1974, which ended a long period of military rule, led to the dissolution of Portugal's colonial empire. In November 1975, the Timorese Social-Democratic Association (which later changed its name to *Frente Revolucionária do Timor-Leste*, or FRETILIN)—a liberation movement that emerged in the space created by the withdrawal of the Portuguese from the eastern part of the island—unilaterally declared the independence of Timor-Leste.<sup>7</sup> Nine days later, Indonesia invaded the newly independent state. The invasion had the support of the Australian government, and also had the tacit support of the United States.<sup>8</sup> The Indonesian invasion, coupled with the ensuing occupation that lasted until 1999, is estimated to have cost more than 100,000 lives.<sup>9</sup> The period was characterised by widespread human rights abuses, involving killings, enforced disappearances, sexual violence, torture and war crimes. Australia was the only state to recognise Indonesia's annexation of the territory.<sup>10</sup>

After Indonesian President Suharto resigned in 1999, the new president, B J Habibie, agreed to hold a referendum on the question of independence. The referendum was supervised by the United Nations. That year, widespread violence occurred in Timor-Leste. Before the vote, pro-Indonesia militia groups targeted suspected independence supporters with threats and violence. The worst occurred after the announcement of the referendum outcome supporting independence, when pro-Indonesian militia, Indonesian soldiers and police initiated a campaign of violence that led to over a thousand deaths and an estimated 400,000 (more than half the population) displaced. An UN-mandated military force arrived in mid September, and in October, the country was placed under the administration of the UN. Independence was declared in 2002. Timor-Leste joined the UN the same year.

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<sup>4</sup> John Braithwaite, Hilary Charlesworth and Adérito Soares, *Networked Governance of Freedom and Tyranny: Peace in Timor-Leste* (ANU E Press, 2012) 9.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid 10.

<sup>7</sup> Ibid 12–15.

<sup>8</sup> See *ibid* ch 3.

<sup>9</sup> Ibid 1.

<sup>10</sup> Andrea Hopkins, 'Australia Let Indonesia Invade East Timor in 1975', *The Guardian* (online), 13 September 2000

<<http://www.theguardian.com/world/2000/sep/13/indonesia.easttimor>>.

In 2006, violence erupted again after close to 600 members of Timor-Leste's armed forces, primarily from the west of the country, were dismissed. In January, many of these soldiers from the west had gone on strike alleging discriminatory treatment from the leaders of the armed forces, who were primarily from the east. The violence involved the police, the army, rebel soldiers and other street gangs. Over 100 people died. The violence led to further displacement, and the resignation of Prime Minister Mari Alkatiri.

Since 1999, the UN has been active in Timor-Leste. The most recent mission, the United Nations Integrated Mission in Timor-Leste (UNMIT), was established in the wake of the 2006 crisis. Its mandate ended in 2012.

The current Prime Minister of Timor-Leste is Rui Maria de Araújo. The President is Taur Matan Ruak.

### III THE DOMESTIC SPHERE

#### *A Monist or Dualist Legal System?*

The Timor-Leste Constitution was adopted in 2002. The Timor-Leste approach to international law is monist. Section 9(2) states that:

[r]ules 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.

Section 9(3) provides that laws that are contrary to the provisions of international conventions, treaties and agreements as they apply within Timor-Leste's legal system 'shall be invalid'.

Customary international law is incorporated into the legal system of Timor-Leste via s 9(1), which provides '[t]he legal system of East Timor shall adopt the general or customary principles of international law'.

#### *B Constitutionally Entrenched Rights?*

The Timor-Leste Constitution enshrines the full range of human rights.<sup>11</sup> Part II of the Constitution, titled 'Fundamental Rights, Duties, Liberties and Guarantees', has three chapters on human rights principles. The first of these sets out general principles, such as the principle of equality before the law, the principle of non-discrimination, and equality between women and men. Section 25 provides that fundamental rights, freedoms and guarantees may be suspended if 'a state of siege or a state of emergency has been declared' (s 25(1)). Such a state may only be declared in case of 'effective or impending aggression by a foreign force, of serious disturbance or threat of serious disturbance to the democratic constitutional order, or of public disaster.'

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<sup>11</sup> United Nations Country Team and UN Integrated Mission in Timor-Leste, 'Report for the Universal Periodic Review of Timor-Leste' (October 2011) [2] <[http://www.upr-info.org/sites/default/files/document/timor-leste/session\\_12\\_-\\_october\\_2011/unct-eng.pdf](http://www.upr-info.org/sites/default/files/document/timor-leste/session_12_-_october_2011/unct-eng.pdf)>.

In no case shall a declaration of a state of siege affect the right to life, physical integrity, citizenship, non-retroactivity of the criminal law, defence in a criminal case and freedom of conscience and religion, the right not to be subjected to torture, slavery or servitude, the right not to be subjected to cruel, inhuman or degrading treatment or punishment, and the guarantee of non-discrimination.<sup>12</sup>

The second chapter of Part II sets out personal rights, freedoms and guarantees, including the right to life, the prohibition on the death penalty and torture, freedom of speech and information, freedom of press, freedom of association and religion. The third chapter sets out 'economic, social and cultural rights and duties.' This includes a section on the environment (s 61), which provides that '[e]veryone has the right to a humane, healthy, and ecologically balanced environment and the duty to protect it and improve it for the benefit of the future generations.'

Section 23 sets out the interpretive rule that '[f]undamental rights enshrined in the Constitution shall not exclude any other rights provided for by the law and shall be interpreted in accordance with the Universal Declaration of Human Rights'.

### *C Implementation of Human Rights Treaties*

In the immediate post-independence phase, Timor-Leste ratified a number of human rights treaties, but domestic implementation has lagged.<sup>13</sup> Although international treaties become part of Timor-Leste domestic law automatically in accordance with s 9 of the Constitution, the status of international human rights instruments with respect to national law is not clear.<sup>14</sup> Owing to the very new justice system in Timor-Leste, most treaties do not have corresponding pieces of legislation that enshrine their norms at the domestic level. An exception to this trend against pieces of specific implementing legislation is the *Law Against Domestic Violence*,<sup>15</sup> enacted in 2010 and embodying some norms from the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW).

Timor-Leste has only inconsistently submitted periodic reports under the human rights treaty body reporting framework of the UN. At its UPR, Timor-Leste stated that it found treaty reporting to be a 'cumbersome exercise, notwithstanding the enormous benefits.'<sup>16</sup> Annemarie Devereux and

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<sup>12</sup> *Constitution of the Democratic Republic of Timor-Leste* s 25(5).

<sup>13</sup> Mariana Pinto, 'Children's Access to Formal Justice in Timor-Leste' (Status Report, Judicial System Monitoring Programme, 2014) 14 <[http://ntba.asn.au/wp-content/uploads/Childrens-Access-to-Formal-Justice-in-TimorLeste\\_ENGLISH-Sophie-Knipe.pdf](http://ntba.asn.au/wp-content/uploads/Childrens-Access-to-Formal-Justice-in-TimorLeste_ENGLISH-Sophie-Knipe.pdf)>.

<sup>14</sup> Committee on the Elimination of Discrimination against Women, *Concluding Observations of the Committee on the Elimination of Discrimination against Women—Timor-Leste*, 44<sup>th</sup> sess, UN Doc CEDAW/C/TLS/CO/1 (7 August 2009) [15] ('*CEDAW Concluding Observations*').

<sup>15</sup> *Law No 7 of 2010* (Timor-Leste).

<sup>16</sup> Joaquim da Fonseca, 'Consideration of the Report of the Working Group on the Universal Periodic Review of Timor-Leste: Timor-Leste's Response to the Recommendations' (16 March 2012, Permanent Mission of the Democratic Republic of Timor-Leste to the United Nations Office and Other International Organisations in Geneva) 3 <<http://www.upr->

Catherine Anderson have commented that in Timor-Leste '[t]here remains a paucity of appropriate methodological tools to support the reporting process and facilitate the integration of human rights and development goals.'<sup>17</sup>

### 1 *International Covenant on Civil and Political Rights (ICCPR)*

Timor-Leste has not submitted its initial report under the ICCPR to the Human Rights Committee, which was due in 2004.

The period of Indonesian occupation of Timor-Leste was marked by widespread violations of civil and political rights. Between 1974 and 1999, over 100,000 people were killed as a result of executions, massacres, and conflict-related famine and illness. Enforced disappearance, arbitrary detention, torture, rape, and sexual slavery were widespread. Children were used as soldiers in hostilities, civilians were targeted during military operations, and degraded by the occupying force. This legacy undermines contemporary stability in Timor-Leste.<sup>18</sup> There has been little accountability for the crimes that were committed.<sup>19</sup>

Current issues in Timor-Leste involving civil and political rights include:

- excessive use of force occasioned by police forces and the military.<sup>20</sup> This is dealt with in greater detail in section III(C)(4) on the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)*, at 11;
- incidents of violence by members of the Catholic community against some evangelical church members and their places of worship. There has been a 'weak government response', and in many instances, 'government authorities, including police, have demonstrated open disapproval of the Evangelicals continuing their religious activities';<sup>21</sup>
- violence against women is widespread. Services for victims are insufficient and confined to urban areas;<sup>22</sup>
- trafficking and exploitation of women through forced prostitution is persistent.<sup>23</sup> Although the government is 'active in protecting

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info.org/sites/default/files/document/timor-leste/session\_12\_-\_october\_2011/timorlestepenarystatement2012-2.pdf>.

<sup>17</sup> Annemarie Devereux and Catherine Anderson, 'Reporting under International Human Rights Treaties: Perspectives from Timor Leste's Experience of the Reformed Process' (2008) 8 *Human Rights Law Review* 69.

<sup>18</sup> Human Rights Council Working Group on the Universal Periodic Review, *Summary Prepared by the Office of the High Commissioner for Human Rights in accordance with Paragraph 15 (c) of the Annex to Human Rights Council Resolution 5/1—Timor-Leste*, 12<sup>th</sup> sess, UN Doc A/HRC/WG.6/12/TLS/3 ( 22 July 2011) [20].

<sup>19</sup> For further information, see section VI of this paper on rights ritualism at 26, below.

<sup>20</sup> United Nations Country Team and UN Integrated Mission in Timor-Leste, above n 11, [22].

<sup>21</sup> *Ibid* [31].

<sup>22</sup> *Ibid* [19]. See also Stephanie Boulet, 'Domestic Violence Laws in East Timor Failing to Protect Women, Perpetrators often Unpunished, NGOs Say', *ABC* (online), 8 November 2013 <<http://www.abc.net.au/news/2013-11-08/domestic-abuse-in-east-timor/5024198>>. The issue is treated in more detail in section III(C)(6) on CEDAW, below at 12.

<sup>23</sup> *CEDAW Concluding Observations*, UN Doc CEDAW/C/TLS/CO/1, [31].

trafficked persons', it has not taken 'steps to address the root causes of trafficking.'<sup>24</sup>

A joint submission by the UN Country Team and UNMIT to Timor-Leste's UPR in 2011 commented that '[f]reedom of expression enjoys fullest respect in Timor-Leste, although there are structural weaknesses in the regulatory framework'.<sup>25</sup> Timor-Leste's new media law, adopted in 2014, potentially threatens freedom of expression, and has attracted significant concern from human rights organisations, civil society and journalists' unions. In its original form, the law mandated that all journalists (local and international) be accredited by a government-sponsored press council. Anyone who collects, analyses and disseminates information to the public will have to apply for credentials to the council, which has the power to issue and revoke licenses. There are no provisions for freelancers, or those reporting on a casual or sporadic basis such as citizen journalists.<sup>26</sup> Under the law, journalists are obliged to 'promote the national culture' and 'encourage and support high quality economic policies and services.'<sup>27</sup> The Bill was returned to parliament for review after the Court of Appeal found it to be unconstitutional, and a revised law—removing some of the restrictions—was adopted in December 2014.<sup>28</sup>

## 2 *International Covenant on Economic, Social and Cultural Rights (ICESCR)*

Timor-Leste was scheduled to submit its initial report to the Committee on Economic, Social and Cultural Rights in 2005. It has not done so.

Since independence, Timor-Leste has increased life expectancy, lowered child mortality and increased school enrolments.<sup>29</sup> More children are being vaccinated for common childhood illnesses, and leprosy is no longer a public health problem within the country.<sup>30</sup>

As a country that is engaged in state-building, there are many problems concerning socioeconomic rights in Timor-Leste. The country is still recovering from widespread population displacement, and approximately 70 per cent of its buildings, homes and schools were destroyed in the protracted conflict with Indonesia.<sup>31</sup> Timor-Leste is one of the world's poorest countries,<sup>32</sup> with the rural population (a majority in Timor-Leste) being particularly affected.

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<sup>24</sup> United Nations Country Team and UN Integrated Mission in Timor-Leste, above n 11, [27].

<sup>25</sup> Ibid [32].

<sup>26</sup> I S, 'Muzzling the Messenger' on The Economist, *Banyan* (11 September 2014) <<http://www.economist.com/blogs/banyan/2014/09/press-freedom-timor-leste>>.

<sup>27</sup> Roy Greenslade, 'Proposed Media Law in East Timor "A Threat to Freedom of the Press"', *The Guardian* (online), 18 July 2014 <<http://www.theguardian.com/media/greenslade/2014/jul/18/press-freedom-timor-leste>>.

<sup>28</sup> Amnesty International, 'Amnesty International Report 2014/15: The State of the World's Human Rights' (2015) 367 <<https://www.amnesty.org/en/documents/pol10/0001/2015/en/>>.

<sup>29</sup> UNDP in Timor Leste, *About Timor Leste* (2012) UNDP <[http://www.tl.undp.org/content/timor\\_leste/en/home/countryinfo/](http://www.tl.undp.org/content/timor_leste/en/home/countryinfo/)>.

<sup>30</sup> Ibid.

<sup>31</sup> Jared Genser, 'An Agenda for East Timor's New Leadership', *The Diplomat* (online), 19 February 2015 <<http://thediplomat.com/2015/02/an-agenda-for-east-timors-new-leadership/>>.

<sup>32</sup> UNDP, above n 29.

Although Timor-Leste's economy has seen 'remarkable' growth since independence,<sup>33</sup> the rapid rate of development has not necessarily corresponded to increasing implementation of socioeconomic rights.

Problems include:

- very high unemployment.<sup>34</sup> In 2013, the International Crisis Group estimated that 71 per cent of the available workforce is either unemployed or informally employed;<sup>35</sup>
- endemic corruption.<sup>36</sup> In the 2014 Transparency International Corruption Perceptions Index, Timor-Leste ranked 133 out of 174 countries;<sup>37</sup>
- 58 per cent of communities continue to live with poor housing, the majority having no access to clean water and sanitation.<sup>38</sup> This contributes to illnesses among children, including diarrhoea, which is among the top three causes of death among children under five;<sup>39</sup>
- malnutrition and poor health are widespread.<sup>40</sup> It is difficult for those in rural communities to access adequate healthcare.<sup>41</sup> There is serious malnutrition among children. In 2011, '45% of children under age 5 were underweight and the growth of 58% of this group was stunted.'<sup>42</sup> This is an 'intergenerational problem due to poor feeding behaviours and lack of access to and utilization of essential nutrition services.'<sup>43</sup>
- an unskilled workforce. Timorese do not have sufficient skills to compete with migrant workers. Workers do not have adequate protective measures against violation of their rights.<sup>44</sup> Many labour disputes in Timor-Leste have been pending for more than two years without resolution;<sup>45</sup>
- high dropout rates in education. As at 2011, only 27 per cent of children who entered grade 1 continued to enroll in grade 9. Many

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<sup>33</sup> The World Bank, *Overview* (2 April 2015) Countries—Timor-Leste <<http://www.worldbank.org/en/country/timor-leste/overview#1>>.

<sup>34</sup> Genser, above n 31.

<sup>35</sup> International Crisis Group, 'Timor-Leste: Stability at What Cost?' (Asia Report No 246, 8 May 2013) 35 <<http://www.crisisgroup.org/~media/Files/asia/south-east-asia/timor-leste/246-timor-leste-stability-at-what-cost.pdf>>.

<sup>36</sup> See *ibid* 35–37.

<sup>37</sup> Transparency International, *Corruption Perceptions Index 2014: Results* (2015) <<https://www.transparency.org/cpi2014/results>>.

<sup>38</sup> Office of the Provedor for Human Rights and Justice and Civil Society organizations in Timor-Leste, 'Joint Submission' (21 March 2011) [36] <[http://www.upr-info.org/sites/default/files/document/timor-leste/session\\_12\\_-\\_october\\_2011/js2-jointsubmission2-eng.pdf](http://www.upr-info.org/sites/default/files/document/timor-leste/session_12_-_october_2011/js2-jointsubmission2-eng.pdf)>.

<sup>39</sup> Save the Children Timor-Leste and Plan Timor-Leste, 'Joint Submission' (2011) [20] <[http://www.upr-info.org/sites/default/files/document/timor-leste/session\\_12\\_-\\_october\\_2011/js1-jointsubmission1-eng.pdf](http://www.upr-info.org/sites/default/files/document/timor-leste/session_12_-_october_2011/js1-jointsubmission1-eng.pdf)>.

<sup>40</sup> UNDP, above n 29.

<sup>41</sup> Save the Children Timor-Leste and Plan Timor-Leste, above n 39, 16–17.

<sup>42</sup> United Nations Country Team and UN Integrated Mission in Timor-Leste, above n 11, [41].

<sup>43</sup> *Ibid*.

<sup>44</sup> Office of the Provedor for Human Rights and Justice and Civil Society organizations in Timor-Leste, above n 38, [47].

<sup>45</sup> *Ibid* [46].

schools are in poor physical condition, and teaching is of a low quality;<sup>46</sup> and

- though literacy in Timor-Leste has improved since independence,<sup>47</sup> it is still low at 58.3 per cent.<sup>48</sup> Low literacy can lead to socio-economic exclusion and the marginalisation of students belonging to linguistic minorities.<sup>49</sup>

### 3 *Convention on the Rights of the Child (CRC)*

The Committee on the Rights of the Child issued Concluding Observations to Timor-Leste in 2008, after Timor-Leste submitted its initial report in 2007.

Since this first reporting cycle, Timor-Leste has passed some legislation that was either encouraged by the Committee, or which redresses a gap or disparity that was identified. For example, in 2008, the Committee expressed concern that the marriageable age of girls was too low.<sup>50</sup> As a result of the Timor-Leste Civil Code, enacted in 2011, the marriageable age for boys and girls is now the same: 17 without parental consent, and 16 with consent.<sup>51</sup> The National Commission on Child Rights was established in 2009<sup>52</sup>—a commitment mentioned by Timor-Leste in its initial periodic report,<sup>53</sup> and which was welcomed by the Committee.<sup>54</sup>

However, deficiencies exist in the legal framework for children's rights. The Committee expressed concern over:

- the lack of consistent legislative protection in many areas, including youth justice and education. There have been delays in the adoption of laws that are instrumental to the implementation of the Convention;<sup>55</sup> and
- the fact that no overarching plan of action on children's rights had been elaborated by the government.<sup>56</sup>

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<sup>46</sup> United Nations Country Team and UN Integrated Mission in Timor-Leste, above n 11, [39].

<sup>47</sup> UNDP, above n 29.

<sup>48</sup> UNICEF, *At a Glance: Timor-Leste* (31 December 2013)

<[http://www.unicef.org/infobycountry/Timorleste\\_statistics.html](http://www.unicef.org/infobycountry/Timorleste_statistics.html)>.

<sup>49</sup> United Nations Country Team and UN Integrated Mission in Timor-Leste, above n 11, [40].

<sup>50</sup> Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention*, 47<sup>th</sup> sess, UN Doc CRC/C/TLS/CO/1 (14 February 2008) [24] ('*CRC Concluding Observations*').

<sup>51</sup> Youthpolicy.org, 'Timor-Leste' (Fact Sheet, 6 June 2014)

<<http://www.youthpolicy.org/factsheets/country/timor-leste/>>.

<sup>52</sup> UNICEF, 'Timor-Leste Establishes National Commission for Children' (Media Release, 29 September 2009) <[http://www.unicef.org/eapro/media\\_11526.html](http://www.unicef.org/eapro/media_11526.html)>.

<sup>53</sup> Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention—Initial Report of States Parties due in 2005—Timor-Leste*, UN Doc CRC/C/TLS/1 (28 June 2007) [12].

<sup>54</sup> *CRC Concluding Observations*, UN Doc CRC/C/TLS/CO/1, [12]. Despite its establishment, in a joint submission to Timor-Leste's UPR, the UN Country Team and UNMIT commented in 2011 that the Commission on Child Rights cannot perform its role independently for insufficient resources: above n 11, [48].

<sup>55</sup> *CRC Concluding Observations*, UN Doc CRC/C/TLS/CO/1, [8].

<sup>56</sup> *Ibid* [10]

A National Education Strategic Plan was elaborated in 2011, to run through to 2030. In its UPR in 2011, Timor-Leste mentioned its draft Children's Code,<sup>57</sup> which would implement domestically many of the country's commitments under the CRC. As at 2014, the Code had not been approved by Parliament.<sup>58</sup>

Human rights problems that attracted the attention of the Committee included:

- *de facto* discrimination faced by certain groups of children, particularly children of returnees, children who do not have baptismal certificates, children born of sexual relationships among family members and children with disabilities. This discrimination in particular affects access to education;<sup>59</sup>
- serious malnutrition and the high rate of infant mortality faced by children in Timor-Leste;<sup>60</sup>
- reports of ill-treatment suffered by children at the hands of police and within the prison system;<sup>61</sup>
- the fact that corporal punishment is a common phenomenon in many contexts—not only is it practised at home, but also in schools and other institutional settings;<sup>62</sup>
- the fact that the majority of cases of violence against children go unreported, and are not adequately addressed in the judicial system.<sup>63</sup> Few cases of violence against children, including sexual violence, come before courts;<sup>64</sup>
- with respect to health, there are persistent factors within Timor-Leste that lead to high rates of child disability. These include poor maternal health standards and isolation from formal health services;<sup>65</sup>
- Timorese children have a high vulnerability to diseases, including malaria, measles, typhoid, dengue fever, as well as respiratory and gastrointestinal infections;<sup>66</sup>
- the low rate of enrolment in school. At the time, the Committee noted that less than 50 per cent of children reached grade six.<sup>67</sup> A World Bank sponsored project called the 'Education Sector Support

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<sup>57</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review—Timor-Leste*, 19<sup>th</sup> sess, UN Doc A/HRC/19/17 (3 January 2012) [74] (*Report of the Working Group on the UPR—Timor-Leste*).

<sup>58</sup> Forum Tau Matan, 'Protecting the Young in a New Nation: Youth in Timor-Leste', *Right Now* (online), 10 April 2014 <<http://rightnow.org.au/topics/children-and-youth/protecting-the-young-in-a-new-nation-youth-in-timor-leste/>>.

<sup>59</sup> *CRC Concluding Observations*, UN Doc CRC/C/TLS/CO/1, [26].

<sup>60</sup> *Ibid* [30].

<sup>61</sup> *Ibid* [40].

<sup>62</sup> *Ibid* [42].

<sup>63</sup> *Ibid* [54].

<sup>64</sup> JS3, 'The Situation on the Rights of the Child in the Democratic Republic of Timor-Leste' (Joint Stakeholders' Submission, March 2011) [15] <[http://www.upr-info.org/sites/default/files/document/timor-leste/session\\_12\\_-\\_october\\_2011/js3-jointsubmission3-eng.pdf](http://www.upr-info.org/sites/default/files/document/timor-leste/session_12_-_october_2011/js3-jointsubmission3-eng.pdf)>.

<sup>65</sup> *CRC Concluding Observations*, UN Doc CRC/C/TLS/CO/1, [56].

<sup>66</sup> *Ibid* [58].

<sup>67</sup> *Ibid* [64].

- Project' has, since then, helped increase children's completion of primary school in Timor-Leste to over 83 per cent;<sup>68</sup> and
- widespread child labour in Timor-Leste,<sup>69</sup> and the situation of children who live and work on the streets.<sup>70</sup> At Timor-Leste's UPR, the stakeholder group designated 'JS3'<sup>71</sup> noted that many children are involved in work that is dangerous and onerous.<sup>72</sup> Timor-Leste has not ratified ILO Convention No 138 on the minimum age for admission to employment and work.<sup>73</sup>

The Committee also noted the existence of 'widespread practices' by which children are removed from their families.<sup>74</sup> Many children were separated from their families during the Indonesian occupation. Information on this phenomenon within the Concluding Observations is scant.

The Concluding Observations welcomed some positive developments Examples of include:

- the successful establishment of an Expanded Programme of Immunisation and a national nutrition strategy;<sup>75</sup>
- the establishment of a Special Solidarity Fund and that the Foundation for National Development includes a range of measures for children;<sup>76</sup> and
- the attention given by Timor-Leste to school based-sport and recreation,<sup>77</sup> as well as the consideration of the need to further incorporate Indigenous culture within the education system.<sup>78</sup>

Timor-Leste submitted its combined second and third periodic reports under the CRC in 2013. The Committee on the Rights of the Child is yet to consider the report.

*(a) OP-CRC on the Involvement of Children in Armed Conflict*

The Concluding Observations issued by the Committee on the Rights of the Child in 2008 relating to children in armed conflict are brief. The Committee noted that a prohibition on recruitment of persons under 18 had been

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<sup>68</sup> As at 2012: The World Bank, *Timor-Leste: Bringing Better Education for Timorese Children* (4 April 2013) <<http://www.worldbank.org/en/results/2013/04/04/bringing-better-education-for-timorese-children>>.

<sup>69</sup> *CRC Concluding Observations*, UN Doc CRC/C/TLS/CO/1, [76].

<sup>70</sup> *Ibid* [71].

<sup>71</sup> Comprised of the *Istituto Internazionale Maria Ausiliatrice*, VIDES International (International Volunteerism Organisation for Women, Education, Development), Franciscans International and the Marist International Solidarity Foundation.

<sup>72</sup> JS3, above n 64, [12].

<sup>73</sup> *Ibid*.

<sup>74</sup> *CRC Concluding Observations*, UN Doc CRC/C/TLS/CO/1, [45].

<sup>75</sup> *Ibid* [58].

<sup>76</sup> *Ibid* [60].

<sup>77</sup> *Ibid* [68].

<sup>78</sup> *Ibid* [66].

incorporated into Timor-Leste domestic legislation governing its armed forces.<sup>79</sup>

Timor-Leste had not, at the time of the Observations, adopted any provisions criminalising the forcible recruitment of children, nor their deployment in hostilities.<sup>80</sup> The Committee referred to the continuing consequences for children who were involved in hostilities during Timor-Leste's struggle for independence, as well as their communities. It noted the lack of information provided by Timor-Leste about available services devoted exclusively to former child soldiers.<sup>81</sup>

#### 4 CAT

Timor-Leste's initial report under CAT was due in 2004, but has not been submitted.

Excessive violence by police and security forces in Timor-Leste is one of the most prevalent human rights concerns within the country. In the final report issued by the Secretary-General on UNMIT (covering the period from 7 January to 20 September 2012), UNMIT received allegations of 47 cases of ill-treatment or excessive use of force by members of the National Police Force of Timor-Leste (PNTL), and 13 cases by members of F-FDLT (Timor-Leste's Defence Force).<sup>82</sup> Some of these cases involved the discharge of a firearm (including off duty use), civilians being shot, and illegal entry, search and arrest.<sup>83</sup>

According to Human Rights Watch in 2006,

[p]olice officers regularly use excessive force during arrests and beat detainees once they are in custody. The police and other state institutions have often failed to respond to incidents of police abuse with appropriate disciplinary measures or criminal proceedings.<sup>84</sup>

UNMIT reported instances of PNTL offices refusing to open disciplinary investigations against other members of PNTL without a written complaint from the victim, despite the fact that this is not required by law.<sup>85</sup>

In Timor-Leste's UPR, the country commented it was 'not surprising that some behaviours which reflect past realities during the occupation should persist.'<sup>86</sup>

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<sup>79</sup> Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 8 of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict—Concluding Observations—Timor-Leste*, 47<sup>th</sup> sess, UN Doc CRC/C/OPAC/TLS/CO/1 (14 February 2008) [4].

<sup>80</sup> *Ibid* [11].

<sup>81</sup> *Ibid* [15].

<sup>82</sup> *Report of the Secretary-General on the United Nations Integrated Mission in Timor-Leste (for the period from 7 January through 20 September 2012)*, UN Doc S/2012/765 (15 October 2012) [37] ('*Report of the Secretary General on UNMIT 2012*').

<sup>83</sup> *Ibid*.

<sup>84</sup> Charmain Mohamed, 'Tortured Beginnings: Police Violence and the Beginnings of Impunity in East Timor' (Report Volume 18, No 2(C), Human Rights Watch, April 2006) 16.

<sup>85</sup> *Report of the Secretary General on UNMIT 2012*, UN Doc S/2012/765, [39].

## 5 *International Convention on the Elimination of All Forms of Racial Discrimination (CERD)*

Timor-Leste was scheduled to submit its initial report under CERD in 2004. It did not do so.

Issues of racial discrimination in Timor-Leste are rarely addressed in UN treaty body materials, UPR documents, or NGO commentary.

Elements of Timor-Leste's *Immigration and Asylum Law* of 2003 discriminate against foreigners. The problems with this law are discussed in greater detail under section III(C)(7) on the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (CMW), below at 15.

In 2013, former President Xanana Gusmao was reported in Timorese media to have expressed anti-Chinese sentiments in a public statement.<sup>87</sup> There is a Chinese ethnic minority group in Timor-Leste. As at 2015, there is a negative migration rate in Timor-Leste, in the sense that more people are emigrating from the country than are arriving.<sup>88</sup>

## 6 *CEDAW*

The Committee on the Elimination of Discrimination against Women issued Concluding Observations to Timor-Leste in 2009 after its initial report was submitted in 2008.

The realisation of women's rights in Timor-Leste faces significant obstacles, and is routinely undermined. Braithwaite, Charlesworth and Soares have observed how Timor-Leste's social fabric before the 1975 occupation was 'staunchly patriarchal, woven from strands of indigenous culture, Portuguese colonialism and Catholic beliefs, all of which prioritised the masculine over the feminine.'<sup>89</sup>

The human rights of women were consistently and systematically undermined in the course of the Indonesian occupation, during the independence phase, and have also been affected in the post-independence period. During the occupation, women suffered harassment, sexual assault, and rape. Women were forced into marriages with members of the Indonesian army. There were instances of forced labour, and mandatory population control, where Timorese women were forcibly injected with a contraceptive drug, or administered the

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<sup>86</sup> *Report of the Working Group on the UPR—Timor-Leste*, UN Doc A/HRC/19/17, [22].

<sup>87</sup> 'Report of Racist Anti-Chinese Comments by Prime Minister Gusmao' on *East Timor Law and Justice Bulletin* (11 May 2013) <<http://www.easttimorlawandjusticebulletin.com/2013/05/report-of-racist-anti-chinese-comments.html>>.

<sup>88</sup> Central Intelligence Agency, *The World Factbook: Field Listing; Net Migration Rate* (2015) <<https://www.cia.gov/library/publications/the-world-factbook/fields/2112.html>>.

<sup>89</sup> Braithwaite, Charlesworth and Soares, above n 4, 264.

drugs without being informed of its effect. Immediately after the independence vote, women suffered from orchestrated rape and sexual violence. Since that time, some rape victims have been ostracised by their families.<sup>90</sup>

During Indonesian occupation, women were critical members of the resistance movement.<sup>91</sup> In the period surrounding Timor-Leste's independence, a number of women's organisations emerged.<sup>92</sup> Since that time, the primary concerns of these groups have been security of women within their communities and homes, and equality with men in the political system.<sup>93</sup> Women's groups have also been strong advocates in the campaign to deal with accountability and reparations for occupation-era crimes.<sup>94</sup>

Despite this, and in the context of the state-building process, the Committee expressed its concern that:

the promotion of women's human rights and gender equality has not been considered as a priority, in particular in efforts to address the consequences of the conflict and in the peacebuilding and reconstruction process.

The Committee was 'also concerned about the small number of women in leadership positions in areas connected with the transition process'.<sup>95</sup>

Violence against women remains one of the most significant human rights problems in Timor-Leste. Charlesworth and Wood suggest that domestic violence is an 'accepted traditional method for men to reassert their leadership' within Timor-Leste society.<sup>96</sup> The *Law Against Domestic Violence* was enacted in 2010. Cases of domestic violence and sexual assault make up the vast majority of cases before Timor-Leste's courts.<sup>97</sup> The UN Country Team and UNMIT noted that authorities do not always respond appropriately to complaints of domestic violence by victims.<sup>98</sup> In some instances, police do not open investigations, choosing instead to refer victims to mechanisms of traditional justice that may not adequately protect women's rights.<sup>99</sup>

Some issues relating to the rights of women in Timor-Leste include:

- there is no definition of discrimination against women in Timor-Leste's Constitution, nor in any other laws. Though the Constitution

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<sup>90</sup> For a more comprehensive view of the human rights violations suffered by women in Timor-Leste, see Hilary Charlesworth and Mary Wood, 'Women and Human Rights in the Rebuilding of East Timor' (2002) 71 *Nordic Journal of International Law* 325, from 329.

<sup>91</sup> Braithwaite, Charlesworth and Soares, above n 4, 265.

<sup>92</sup> See Charlesworth and Wood, above n 90, 332.

<sup>93</sup> Braithwaite, Charlesworth and Soares, above n 4, 275.

<sup>94</sup> *Ibid* 276.

<sup>95</sup> *CEDAW Concluding Observations*, UN Doc CEDAW/C/TLS/CO/1, [13].

<sup>96</sup> Charlesworth and Wood, above n 90, 331.

<sup>97</sup> Mischa Wilmers, 'Foreign Judges Fired for Exposing Corruption in Timor-Leste, Report Claims', *Equal Times* (online), 6 January 2015 <<http://www.equaltimes.org/foreign-judges-fired-for-exposing-15789#.VcAXk4uJf8s>>.

<sup>98</sup> See also Boulet, above n 22.

<sup>99</sup> United Nations Country Team and UN Integrated Mission in Timor-Leste, above n 11, [19].

provides for 'equality of opportunities' between men and women,<sup>100</sup> this is not the same as 'equality', in the fullest sense of the word;<sup>101</sup>

- women are not aware of their rights under CEDAW or the complaints procedure under the Optional Protocol;<sup>102</sup>
- women are often not able to access justice or bring cases before courts because of factors such as illiteracy, language barriers, practical difficulties in getting to courts, the persisting legacy of traditional justice systems, costs, and lack of information and assistance;<sup>103</sup>
- there is a persistent patriarchal ideology in Timor-Leste, containing entrenched gender stereotypes that are difficult to displace, and adverse cultural norms. These include forced and early marriage, polygamy, and bride price. These practices discriminate against women, limit opportunities for women in terms of education and employment, and are obstacles to women's enjoyment of their human rights;<sup>104</sup>
- women continue to be underrepresented in public and political life and in decision-making positions. The Committee received information suggesting that women standing for election fear reprisals from their communities or other forms of political intimidation and violence;<sup>105</sup>
- the education problems faced by girls. The Committee suggested there are low enrolment and high drop out rates, caused in some instances by early pregnancies and marriages. There are a high number of girls who suffer sexual harassment and violence on their way to school.<sup>106</sup> There is a low representation of women in higher education (only a third of university students are women, and of these, only 20 per cent graduate);<sup>107</sup>
- there is an extraordinarily high fertility rate, and the maternal mortality rate is similarly very high.<sup>108</sup> Women lack access to adequate pre-natal and post-natal care, and to family planning information, leading many women to give birth at home, or perform illegal or unsafe abortions. Existing sex-education programmes are insufficient, and abortion is a punishable offence under the Penal Code;<sup>109</sup>
- women suffer *de facto* discrimination in employment. There is an extremely wide wage gap and occupational segregation.<sup>110</sup> Women in Timor-Leste earn one-eighth the income of men;<sup>111</sup> and

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<sup>100</sup> *Constitution of the Democratic Republic of Timor-Leste* s 6(j)

<sup>101</sup> *CEDAW Concluding Observations*, UN Doc CEDAW/C/TLS/CO/1, [17]

<sup>102</sup> *Ibid* [19].

<sup>103</sup> *Ibid* [21].

<sup>104</sup> *Ibid* [27].

<sup>105</sup> *Ibid* [33].

<sup>106</sup> *Ibid* [35].

<sup>107</sup> Braithwaite, Charlesworth and Soares, above n 4, 265.

<sup>108</sup> *Ibid*.

<sup>109</sup> *CEDAW Concluding Observations*, UN Doc CEDAW/C/TLS/CO/1, [37].

<sup>110</sup> *Ibid* [39].

<sup>111</sup> Sara Niner, 'Hakat Klot, Narrow Steps' (2011) 13 *International Feminist Journal of Politics* 413, 422, cited in Braithwaite, Charlesworth and Soares, above n 4, 265.

- women returnees who have been displaced by violence and conflict may be in precarious living conditions, or may not have immediate means of redress.<sup>112</sup>

Some laws in Timor-Leste are inherently discriminatory—for example, the Civil Code contains discriminatory provisions on divorce. A woman must wait 300 days to re-enter a marriage after divorce or the death of a spouse, whereas a man has only to wait 180 days.<sup>113</sup> In Timor-Leste's UPR (discussed below), the country rejected a recommendation that it '[r]epeal provisions in its legislation which are discriminatory towards women, including in respect of inheritance, land ownership and legal capacity'.<sup>114</sup>

As at December 2013, women parliamentarians made up 38 per cent of Timor-Leste's National Parliament.<sup>115</sup> This high percentage—the highest in Asia<sup>116</sup>—is the result of an electoral law introduced in 2006 requiring that one in four of the candidates put forward by political parties for election to National Parliament be female.<sup>117</sup> The law was amended in 2011 to mandate that one in every three candidates must be female.<sup>118</sup>

Timor-Leste submitted its combined second and third periodic reports under CEDAW in 2013. The Committee on the Elimination of Discrimination against Women is yet to consider the report.

## 7 CMW

Timor-Leste was scheduled to submit its initial state party's report to the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families in 2005. The Committee issued Timor-Leste with a list of issues prior to the submission of Timor-Leste's initial report in 2014.<sup>119</sup>

Since Timor-Leste's independence, the country has been receiving regular and irregular migrants, who mainly work in construction, commerce and services. As a developing country that lacks many specialised workers, Timor-

<sup>112</sup> *CEDAW Concluding Observations*, UN Doc CEDAW/C/TLS/CO/1, [43].

<sup>113</sup> See Committee on the Elimination of Discrimination against Women, *Consideration of Reports Submitted by States parties under Article 18 of the Convention—Second and Third Periodic Reports of States Parties due in 2013—Timor-Leste*, UN Doc CEDAW/C/TLS/2-3 (22 January 2014) [357].

<sup>114</sup> *Report of the Working Group on the UPR—Timor-Leste*, UN Doc A/HRC/19/17, [80] (Recommendation 80.1).

<sup>115</sup> Inter-Parliamentary Union, *Timor Leste: National Parliament* (11 December 2013) <<http://www.ipu.org/parline/reports/2369.htm>>.

<sup>116</sup> Inter-Parliamentary Union, *Women in National Parliaments* (1 June 2015) <<http://www.ipu.org/wmn-e/classif.htm>>.

<sup>117</sup> Braithwaite, Charlesworth and Soares, above n 4, 272.

<sup>118</sup> European Union Election Observatory Mission, 'Timor-Leste Final Report: Parliamentary Election 2012' (2012) 5 <[http://www.eueom.eu/files/pressreleases/english/east-timor-2012-final-report\\_en.pdf](http://www.eueom.eu/files/pressreleases/english/east-timor-2012-final-report_en.pdf)>.

<sup>119</sup> Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, *List of Issues Prior to Submission of the Initial Report of Timor-Leste*, 20<sup>th</sup> sess, UN Doc CMW/C/TLS/QPR/1 (2 May 2014).

Leste is expected to continue to receive migrants.<sup>120</sup> There is a low instance of trafficking in Timor-Leste, but it is expected to continue, owing to the country's geographic position and economic situation.<sup>121</sup> In the Committee on the Elimination of Discrimination against Women's 2009 Concluding Observations, the Committee welcomed the passage of the *Immigration and Asylum Law* in 2003 and the Penal Code, which criminalises trafficking.<sup>122</sup> Despite this, trafficking remains persistent, and measures to implement the legislation have limited efficacy.<sup>123</sup>

The *Immigration and Asylum Law*, which regulates and responds to the presence of migrant workers in Timor-Leste, was severely criticised by a group of NGOs appointed to study the legislation as a Bill before it was enacted into law.<sup>124</sup> Among the problems cited were:

- art 11, which places several restrictions on foreigners, including that they cannot, for example, engage in activities of a political nature, participate in the administration or social organs of a union, corporation, or professional organisation, nor own the majority of stock in a media company or domestic commercial airline;<sup>125</sup>
- art 12, which provides that the Minister of the Interior can prohibit foreigners from organising conferences, congresses, artistic or cultural demonstrations when they undermine Timor-Leste's 'relevant interests of international relations';<sup>126</sup>
- limitations on freedom of speech, assembly and association;<sup>127</sup>
- the government's power to expel virtually any foreigner at any time;<sup>128</sup>
- the absence of any requirement to advise potential deportees or denied asylum-seekers why decisions are being made against them;<sup>129</sup> and
- non-compliance with the *Convention Relating to the Status of Refugees*.<sup>130</sup>

The Court of Appeal of Timor-Leste ruled that parts of the law were unconstitutional. Despite this, the law was enacted.<sup>131</sup> In 2006, the government initiated a plan to revise the legislation. In 2010, the International

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<sup>120</sup> Tânia Santos and Carlos Alberto Florindo, 'New Country, New Needs, New Responses: Irregular Labour Migration to Timor-Leste' (Report, 2013, ACP Observatory on Migration) xvi.  
<sup>121</sup> Ibid.

<sup>122</sup> *CEDAW Concluding Observations*, UN Doc CEDAW/C/TLS/CO/1, [31].

<sup>123</sup> Ibid.

<sup>124</sup> Letter from NGO Working Group to Study the Immigration and Asylum Bill to the National Parliament, 13 May 2003 <<http://www.laohamutuk.org/Justice/ImmigLaw/visacommente.pdf>>.

<sup>125</sup> Ibid 5.

<sup>126</sup> Ibid 6.

<sup>127</sup> Ibid 1.

<sup>128</sup> Ibid.

<sup>129</sup> Ibid.

<sup>130</sup> Ibid 2.

<sup>131</sup> La'o Hamutuk (The Timor-Leste Institute for Development Monitoring and Analysis), 'Revising Timor-Leste's Immigration and Asylum Law' on *East Timor Law and Justice Bulletin* (11 April 2010) <<http://www.easttimorlawandjusticebulletin.com/2010/04/httpwww.html>>.

Organization for Migration in conjunction with the Secretary of State for Security of Timor-Leste held a consultation on a draft revision of the Bill.<sup>132</sup>

#### D Independent Bodies to Monitor and Scrutinise Rights Enforcement

Section 27 of the Timor-Leste Constitution provides for the *Provedoria dos Direitos Humanos e Justiça*, or Ombudsman. Section 27(1) sets out that the Ombudsman is an independent organ ‘in charge of examining and seeking to settle citizens’ complaints against public bodies’. It seeks to certify the conformity of public acts with the law, prevent injustice and initiate the remedy process for wronged parties.<sup>133</sup>

The Ombudsman started operating in 2006. The Ombudsman is empowered to review an act or omission and forward recommendations to the ‘competent organs’, however it does not have the power to change a decision of a public body or order a new one.<sup>134</sup> Section 27(4) states that the activity of the Ombudsman is independent. The Ombudsman also has an educative function.

Timor-Leste created an Anti-Corruption Commission in 2010. The first Anti-Corruption Commissioner was Adérito Soares, who served in the role from 2010 to 2014. He was replaced in 2014 by Adérito António Pinto Tilman. The Anti-Corruption Commission has been active in pursuing investigations up to the level of Minister in Timor-Leste. However, the country lacks a legal framework to implement the provisions of the *United Nations Convention against Corruption*.<sup>135</sup> In Timor-Leste, the judicial system is still very weak.<sup>136</sup> The Penal Code—while providing definitions of corruption and corruption offences<sup>137</sup>—is not specific to the Convention.

#### E How Effective are the Monitoring Bodies?

In 2011, the United Nations Country Team in Timor-Leste and UNMIT commented that:

[t]he capacity of the Provedoria [...] is increasing, and authorities generally cooperate with investigations carried out by the institution. The Government does however not provide timely responses to the recommendations of the institution as required by law, and few recommendations have been implemented.<sup>138</sup>

In Timor-Leste’s UPR, New Zealand, after noting the A-status of the *Provedoria* according to the International Coordinating Committee of National Human Rights Institutions, observed that responses by the government to the institution’s findings have been late or non-existent.<sup>139</sup>

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<sup>132</sup> Ibid.

<sup>133</sup> *Constitution of the Democratic Republic of Timor-Leste* s 27(1).

<sup>134</sup> Ibid s 27(2).

<sup>135</sup> Interview with Adérito Soares (ANU, 18 August 2015).

<sup>136</sup> Ibid.

<sup>137</sup> *Penal Code* (Timor-Leste) arts 292–294.

<sup>138</sup> United Nations Country Team and UN Integrated Mission in Timor-Leste, above n 11, [47].

<sup>139</sup> *Report of the Working Group on the UPR—Timor-Leste*, UN Doc A/HRC/19/17, [69].

In order to access its own budget, the Ombudsman has to go through a bureaucratic process via the Ministry of Finance, which ‘highly limits its independence [and] [...] hampers its operational effectiveness and capacity to respond to unexpected situations.’<sup>140</sup>

#### *F Cause of Action in Domestic Legislation?*

Section 26 of the Timor-Leste Constitution provides that access to the courts ‘is guaranteed to all for the defence of their legally protected rights and interests.’ Timor-Leste’s Penal Code entered into force in 2009. It incorporates core international criminal law and international human rights standards, and also makes domestic violence a crime.<sup>141</sup> A Timor-Leste Civil Code entered into force in 2011.

The judicial structure in Timor-Leste is largely the same as the one introduced by the United Nations Transitional Administration in East Timor (UNTAET) in 2000.<sup>142</sup> It consists of a Court of Appeal and four District Courts. The Constitution of Timor-Leste provides for a Supreme Court of Justice, mandated to be Timor-Leste’s highest court and empowered to administer justice concerning legal, constitutional and electoral matters.<sup>143</sup> None of the courts prescribed by the Constitution,<sup>144</sup> including the Supreme Court of Justice, have been instituted.<sup>145</sup> The Court of Appeal regularly rules on the constitutionality of Timor-Leste’s legislation.

#### *G How Effective is the Cause of Action?*

In 2011, the UN Country Team in Timor-Leste and UNMIT noted that the increase in the number of criminal cases prosecuted suggests growing confidence in the formal justice system within the country. However, ‘significant reforms and the completion of the legal framework are still required to raise the quality of and access to the formal justice system, in particular for those living in *rural areas*’.<sup>146</sup> This lack of access for Timor-Leste’s rural population is significant—Timor-Leste reported in its National Report to the UPR in 2011 that its population resides predominantly in rural areas, with only one third of its population living in urban areas.<sup>147</sup> Amnesty International has

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<sup>140</sup> United Nations Country Team and UN Integrated Mission in Timor-Leste, above n 11, [47].

<sup>141</sup> *Report of the Secretary-General on the United Nations Integrated Mission in Timor-Leste (for the period from 21 January to 23 September 2009)*, UN Doc S/2009/504 (2 October 2009) [36].

<sup>142</sup> Independent Comprehensive Needs Assessment Team, ‘The Justice System of Timor-Leste’ (13 October 2009) 30 <<http://unmit.unmissions.org/Portals/UNMIT/ICNA.pdf>>.

<sup>143</sup> *Constitution of the Democratic Republic of Timor-Leste* s 124(2).

<sup>144</sup> The Constitution provides for: a) the Supreme Court of Justice and ‘other courts of law’; b) the High Administrative, Tax and Audit Court and other administrative courts of first instance; and c) military courts.

<sup>145</sup> Independent Comprehensive Needs Assessment Team, above n 142, 30.

<sup>146</sup> United Nations Country Team and UN Integrated Mission in Timor-Leste, above n 11, [28] (emphasis added).

<sup>147</sup> Human Rights Council Working Group on the Universal Periodic Review, *National Report Submitted in accordance with Paragraph 15 (a) of the Annex to Human Rights Council*

referred to a large backlog of prosecutions, as well as a lack of adequate staffing and administrative resources.<sup>148</sup> The UN Country Team and UNMIT expressed concern over a law introduced in 2008 concerning the training requirements of private lawyers for its potential to drastically reduce the number of lawyers available within the country.<sup>149</sup> The law obliges all legal practitioners to complete a 15 month full-time training course at the Legal Training Centre followed by nine months of practice.

One of the most significant problems is the lack of knowledge and understanding of Timor-Leste's new laws within the wider population.<sup>150</sup> Laws and regulations are written in Portuguese, which the vast majority of the population do not understand. Few are disseminated or translated into Tetum.<sup>151</sup>

The limitations of the formal justice system, as well as existing cultural practices within Timor-Leste, mean that traditional justice mechanisms are still used widely, particularly cases involving sexual assault and domestic violence. The UN Country Team and UNMIT have noted that 'the use of traditional justice mechanisms remains prevalent, which at times fall short of meeting international human rights standards, particularly those of women and children.'<sup>152</sup>

The independence of the judicial process from political interference has been called into question in Timor-Leste.<sup>153</sup> Amnesty International traces this problem back to longstanding impunity in Timor-Leste for conflict related crimes:

The failure to rebuild the justice system and to bring to justice those responsible for past human rights violations has contributed to an environment where there is no strong deterrent to political violence and human rights violations. The denial of justice through effective criminal proceedings has eroded key pillars of the new state: the rule of law and a strong and independent judiciary.<sup>154</sup>

In November 2014, the United Nations Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, expressed concern over the actions of the Timor-Leste Parliament and government with respect

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*Resolution 5/1—Timor-Leste*, 12<sup>th</sup> sess, UN Doc A/HRC/WG.6/12/TLS/1 (19 July 2011) [7] ('*Timor-Leste National Report to the UPR*').

<sup>148</sup> Amnesty International, 'Amnesty International Submission to the UN Universal Periodic Review' (21 March 2011) 4 <[http://www.upr-info.org/sites/default/files/document/timor-leste/session\\_12\\_-\\_october\\_2011/ai-amnestyinternational-eng.pdf](http://www.upr-info.org/sites/default/files/document/timor-leste/session_12_-_october_2011/ai-amnestyinternational-eng.pdf)>.

<sup>149</sup> United Nations Country Team and UN Integrated Mission in Timor-Leste, above n 11, [30].

<sup>150</sup> See *ibid* [28] and also Pinto, above n 13, 16, where this is discussed in the context of Timor-Leste's Civil Code.

<sup>151</sup> United Nations Country Team and UN Integrated Mission in Timor-Leste, above n 11, [28] and Pinto, above n 13, 16.

<sup>152</sup> United Nations Country Team and UN Integrated Mission in Timor-Leste, above n 11, [29]

<sup>153</sup> *Ibid* [28].

<sup>154</sup> Amnesty International, above n 148, 4.

to the judicial process within the country.<sup>155</sup> In October 2014, Parliament passed a resolution in closed session calling for an audit of Timor-Leste's justice system and providing for the immediate termination of the contracts of all international judicial personnel and advisors working within the country. Though the President of Timor-Leste's Court of Appeal issued a directive that the resolutions were not lawful under the Constitution,<sup>156</sup> Parliament passed a further resolution a few days later, revoking the visas of the foreign judicial personnel concerned and giving them 48 hours notice to leave Timor-Leste. The government sought to justify its actions by referring to the conduct of the personnel in a tax case brought by the government against ConocoPhillips, an American energy company. A report by the Northern Territory Bar Association suggests, however, that the expelled judges 'had nothing to do with the [...] case.'<sup>157</sup> The report instead suggests that the actions may have had something to do with corruption cases brought against eight members of the current government, including the speaker, and other corruption cases before the courts.<sup>158</sup>

Amnesty International expressed its concern over the impact that this action would have on victims whose cases will now be subject to retrials—including cases of domestic violence and sexual assault, which make up the vast majority of cases in Timor-Leste's courts. Victims 'may be subjected to further traumatization and victimization if required to testify again in new court cases.'<sup>159</sup>

The order may also undermine existing efforts towards accountability for human rights violations committed during the occupation and in the context of the 1999 referendum, and disrupt the training of new judges in Timor-Leste. Some of the legal professionals who were dismissed had been teaching at the Legal Training College.<sup>160</sup>

#### *H Use of Individual Complaints Procedures and Number of Communications*

Timor-Leste has only accepted the individual complaints procedure under CEDAW. It has signed the Optional Protocol to ICESCR, but has not ratified it. No individual complaints have been submitted to the Committee on the Elimination of Discrimination against Women by complainants in Timor-Leste.

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<sup>155</sup> 'Timor-Leste: UN Expert Warns Dismissal of Judicial Officials May Have "Chilling Effect"', *UN News Centre* (online), 25 November 2014

<<http://www.un.org/apps/news/story.asp?NewsID=49442#.Vcg4VouJf8s>>.

<sup>156</sup> Section 119 provides for the independence of the courts, while s 121(3) states that '[j]udges have security of tenure and, unless otherwise provided for by law, may not be transferred, suspended, retired or removed from office.'

<sup>157</sup> Alistair Wyvill, 'Revised Report on Relations between the Judiciary and the Government in Timor Leste following Investigations in Country between Sunday 16 November 2014 and Tuesday 18 November 2014' (Northern Territory Bar Association, 22 December 2014) 2 <<http://ntba.asn.au/wp-content/uploads/Revised-Report-on-relations-between-the-Judiciary-and-the-Government-in-Timor-Leste-22-12-2014.pdf>>

<sup>158</sup> *Ibid.*

<sup>159</sup> Amnesty International, 'Timor-Leste: Victims' Rights and Independence of Judiciary Threatened by Arbitrary Removal of Judicial Officers' (Public Statement, ASA 57/003/2014, 21 November 2014) 1.

<sup>160</sup> *Ibid.* 2.

## IV REVIEW OF THE STATE BY THE UPR AND SPECIAL PROCEDURES

### *A The Universal Periodic Review*

Timor-Leste had its first UPR in 2011. Its second UPR is scheduled for October 2016.

In its National Report, Timor-Leste detailed the human rights initiatives that the country has put in place since the restoration of independence. It also, in several areas, acknowledged the significant constraints on achieving best practice human rights performance in the country. For example, regarding access to justice, Timor-Leste details how, since 1999:

the State's infrastructures, including the courts, were destroyed and professionals in the justice sector left the country. Since that time, Timor-Leste has faced massive challenges [...] Among these are limited infrastructure of the courts and other institutions of the justice sector, lack of an adequate number of trained professionals with experience and a national legal order, which is still under construction due to different influences rooted in historical context.<sup>161</sup>

The report also identified the significant problems of violence against women<sup>162</sup> and the excessive use of force by members of Timor-Leste's security and defence forces.<sup>163</sup>

Timor-Leste's claim that freedom of expression is protected in the country was true at the time of its first UPR, but is now at odds with its media law, passed by Parliament in 2014.<sup>164</sup>

The National Report's treatment of 'past violations of human rights' does not address the problem of ongoing impunity within the country.<sup>165</sup> The report also discusses the histories and mandates of the various bodies that have been set up in a non-critical way, and without addressing the various shortcomings that have been identified by other commentators.<sup>166</sup> The many problems with respect to socioeconomic rights in Timor-Leste are, however, addressed in detail.

In its presentation to the Working Group on the UPR, Timor-Leste asked, with reference to the Indonesian occupation, whether the international community

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<sup>161</sup> *Timor-Leste National Report to the UPR*, UN Doc A/HRC/WG.6/12/TLS/1, [44].

<sup>162</sup> *Ibid* [111].

<sup>163</sup> *Ibid* [28].

<sup>164</sup> See *ibid* [32], where the government states '[a]ll persons are entitled to express their ideas directly or via the media, with no barrier but for their own conscience [...] Freedom of the press and independence of the media from political power are assured.'

<sup>165</sup> See *ibid*, from [54].

<sup>166</sup> See, eg, Lia Kent, 'Interrogating the "Gap" Between Law and Justice: East Timor's Serious Crimes Process' (2012) 34 *Human Rights Quarterly* 1021, or Human Rights Watch, 'Justice Denied for East Timor: Indonesia's Sham Prosecutions, the Need to Strengthen the Trial Process in East Timor, and the Imperative of UN Action' (Report, 20 December 2002) <<https://www.hrw.org/report/2002/12/20/justice-denied-east-timor/indonesias-sham-prosecutions-need-strengthen-trial>>.

is 'prepared to raise the issue of an invasion which all know was carried out with the collusion of third countries'.<sup>167</sup> It also raised the issue of external financing and arms sales to Indonesia.<sup>168</sup> At the same time, Timor-Leste acknowledged that the fragile state of social peace within its country would be 'put at risk' if it pursued its accusations against Indonesia.<sup>169</sup> It continued: 'Timor-Leste and its society need[s] to grow in many different arenas, before being in a position to confront its historical past in a dignified and courageous manner.'<sup>170</sup> This type of loaded language is anomalous for a state presentation in the UPR.<sup>171</sup>

In its dialogue with the Working Group, Timor-Leste recognised that it would not be able to take on every recommendation received. It stated that:

at its present development stage, the country [does] not have the financial or technical capacity to immediately take on all the problems raised...<sup>172</sup>

It also commented that 'in the context of transition from a dictatorial regime to a democratic State based on the rule of law, it [is] not surprising that some behaviours which reflect past realities during the occupation [...] persist.'<sup>173</sup>

In the interactive dialogue, most comments by other states in the international community were longer than those generally supplied in other UPRs. Most comments acknowledged in some way the significant difficulties faced by Timor-Leste.

Timor-Leste received 126 recommendations. The recommendations focused in particular on the following issues:

- ratification of the *Convention on the Rights of Persons with Disabilities* and other international human rights instruments which Timor-Leste had not yet ratified;
- violence against women and domestic violence;
- reforms to the judicial system; and
- poverty and development.

Timor-Leste accepted almost all of the recommendations it received focusing on these areas. The exception to this was one recommendation on the judicial system (Recommendation 79.32), discussed in greater detail below.

Timor-Leste rejected seven recommendations in total, and also rejected part of an eighth. It rejected one of them outright in the course of the Working Group, with the others rejected at a later stage.

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<sup>167</sup> *Report of the Working Group on the UPR—Timor-Leste*, UN Doc A/HRC/19/17, [11].

<sup>168</sup> *Ibid.*

<sup>169</sup> *Ibid.* [12].

<sup>170</sup> *Ibid.*

<sup>171</sup> See, for example, the use of language by Sri Lanka in its UPR, discussed in the country study on Sri Lanka that forms part of this paper series (at 19–21). The tone of Sri Lanka's communication is very bureaucratic, in a way that can tend towards obfuscation.

<sup>172</sup> *Report of the Working Group on the UPR—Timor-Leste*, UN Doc A/HRC/19/17, [17].

<sup>173</sup> *Ibid.* [22].

The first recommendation rejected by Timor-Leste was a recommendation by Canada that Timor-Leste '[r]epeal provisions in its legislation which are discriminatory towards women, including in respect of inheritance, land ownership and legal capacity'.<sup>174</sup> No rationale for the rejection was provided at the time. However, Timor-Leste did provide a rationale for a similar recommendation from Italy that it rejected at a later stage. That recommendation called upon Timor-Leste to '[r]eview the legislation having discriminatory consequences on women'.<sup>175</sup> Timor-Leste responded to the recommendation by stating that its Constitution provides for equality between men and women, and that all laws in Timor-Leste must be consistent with the Constitution and international human rights law. It continued, '[i]nequalities between women and men which still exist in some areas in Timor-Leste are **not** the result of discriminatory laws'.<sup>176</sup> This response, which acknowledges that inequality exists in Timor-Leste, suggests that the country's responsibility for equality between men and women does not extend beyond the enactment of laws that are non-discriminatory.

Timor-Leste also rejected the following recommendations:

- to amend the statute of the National Children's Rights Commission so that it can undertake institutional interventions against ministries working with children's rights and receive complaints of violations.<sup>177</sup> This was rejected on the basis that the Commission needs to be part of an executive with interrelated ministries, not separate from it. The portion relating to complaints was rejected on the basis that the *Provedoria* (the Ombudsman's Office) is empowered to deal with complaints related to children's rights;<sup>178</sup> and
- four recommendations to issue a standing invitation to Special Procedures mandate holders.<sup>179</sup>

Timor-Leste partially accepted:

- five recommendations on the implementation of the recommendations of the Commission for Reception, Truth and Reconciliation (CAVR) and the Commission of Truth and Friendship (CTF).<sup>180</sup> Timor-Leste responded:

[a]s it concerns the recommendations addressed to it [of the two Commissions], Timor-Leste considers all approaches with open mind in order

<sup>174</sup> Ibid [80] (Recommendation 80.1).

<sup>175</sup> Ibid 20 (Recommendation 79.20).

<sup>176</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review—Timor-Leste—Addendum: Views on Conclusions and/or Recommendations, Voluntary Commitments and Replies Presented by the State under Review*, 19<sup>th</sup> sess, UN Doc A/HRC/19/17/Add.1 (15 March 2012) [8] ('*Report of the Working Group on the UPR—Timor-Leste—Addendum*') (emphasis in original).

<sup>177</sup> *Report of the Working Group on the UPR—Timor-Leste*, UN Doc A/HRC/19/17, 19 (Recommendation 79.11).

<sup>178</sup> See *Report of the Working Group on the UPR—Timor-Leste—Addendum*, UN Doc A/HRC/19/17/Add.1, [7].

<sup>179</sup> Ibid [11]. For further discussion, see section IV(B) on Special Procedures, at 24.

<sup>180</sup> *Report of the Working Group on the UPR—Timor-Leste*, UN Doc A/HRC/19/17, 20 (Recommendations 79.27–79.31).

to find the most applicable alternative for effective attainment of the objectives of the recommendations, instead of being fixated on prescriptions which may not suit the conditions and realities of the country.<sup>181</sup>

- a recommendation to further strengthen the judicial system by improving the remuneration for public defenders and prosecutors, and take measures to reduce the case load backlog.<sup>182</sup> Timor-Leste rejected the portion of the recommendation relating to improving salaries, stating that the pay levels of defenders and prosecutors were not the cause of any delays in processing criminal proceedings, and were already ‘considerably higher’ within the civil service of the country.<sup>183</sup>
- a recommendation to strengthen the government response to violence against members of religious minority groups.<sup>184</sup> In its response, Timor-Leste said it agreed in principle that ‘any action which infringe[s] upon the right of any person to freedom [of] worship shall acquire immediate attention from law enforcement authorities’.<sup>185</sup> However, Timor-Leste disagreed with the way that the violence was characterised. It noted:

there have been incidents where problems such as ones related to land ownership have manifested themselves in conflicts among members of communities which happen to profess different faiths. These incidents are mere criminal acts [...] any attempt to depict them as religious conflicts represents a lack of knowledge of the real situation, or is a flagrant misrepresentation of the facts.<sup>186</sup>

This reluctance to characterised incidents of violence occurring in Timor-Leste as motivated by religious discrimination appears to be an effort on the part of the government to sanitise difficult issues.

As at August 2015, Timor-Leste has not signed the *Convention on the Rights of Persons with Disabilities*, despite its commitment to do so in its UPR.<sup>187</sup>

### *B Interaction with Special Procedures*

Timor-Leste has not issued a standing invitation for all thematic special procedures mandate holders. As stated above, in its UPR, Timor-Leste rejected four recommendations urging it to issue a standing invitation.<sup>188</sup>

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<sup>181</sup> *Report of the Working Group on the UPR—Timor-Leste—Addendum*, UN Doc A/HRC/19/17/Add.1, [13]

<sup>182</sup> *Report of the Working Group on the UPR—Timor-Leste*, UN Doc A/HRC/19/17, 21 (Recommendation 79.32).

<sup>183</sup> *Report of the Working Group on the UPR—Timor-Leste—Addendum*, UN Doc A/HRC/19/17/Add.1, [16].

<sup>184</sup> *Report of the Working Group on the UPR—Timor-Leste*, UN Doc A/HRC/19/17, 21 (Recommendation 79.36).

<sup>185</sup> *Report of the Working Group on the UPR—Timor-Leste—Addendum*, UN Doc A/HRC/19/17/Add.1, [20].

<sup>186</sup> *Ibid.*

<sup>187</sup> See *ibid* [4].

<sup>188</sup> Recommendations 79.16–79.19, see *Report of the Working Group on the UPR—Timor-Leste*, UN Doc A/HRC/19/17, 20.

Timor-Leste stated that, though it will continue to welcome special procedures mandate holders,

this will need to be done on an *ad hoc* basis according to the demands of the situation. This will allow for a proper coordination between the receiving State and the mandate holders in order for the visits to achieve the intended objectives.<sup>189</sup>

No rationale beyond this was given.

Since 1998, Timor-Leste has received the following visits from special procedures mandate holders:

- Joint Mission of the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the question of torture, and the Special Rapporteur on violence against women (1999);
- Representative of the Secretary-General on internally displaced persons (2000);
- Representative of the Secretary-General on internally displaced persons (2008)
- Working Group on disappearances (2011); and
- Special Rapporteur on human rights and extreme poverty (2011).

Though it was agreed that a joint visit of the Special Rapporteur on summary executions and the Representative of the Secretary General on internally displaced persons would take place in August 2006, the visit was ‘dropped by Timor-Leste and replaced by [an] international commission of enquiry’.<sup>190</sup> A UN Independent Special Commission of Inquiry for Timor-Leste was set up in 2006 to establish the facts and circumstances surrounding the political violence that took place earlier in the year.<sup>191</sup> The Commission published its report in October that year.<sup>192</sup>

Requests were sent to Timor-Leste for visits from the Special Rapporteur on torture in 2006, and the Independent Expert on minority issues in 2013.

## V NGO ASSESSMENTS

A large focus of the NGO commentary on Timor-Leste is the ongoing impunity for crimes committed during the Indonesian occupation.<sup>193</sup> In 2002, Human

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<sup>189</sup> *Report of the Working Group on the UPR—Timor-Leste—Addendum*, UN Doc A/HRC/19/17/Add.1, [11].

<sup>190</sup> Office of the High Commissioner for Human Rights, *Country and Other Visits by Special Procedures Mandate Holders since 1998* (30 July 2015) <<http://www.ohchr.org/EN/HRBodies/SP/Pages/CountryvisitsN-Z.aspx>>.

<sup>191</sup> Secretary-General, ‘Secretary-General Names Members of Independent Special Commission of Inquiry for Timor-Leste’ (Press Release, SG/A/1011, 29 June 2006) <<http://www.un.org/press/en/2006/sga1011.doc.htm>>.

<sup>192</sup> See *Report of the United Nations Independent Special Commission of Inquiry for Timor-Leste* (2 October 2006) <<http://www.ohchr.org/documents/countries/coitimorleste.pdf>>.

<sup>193</sup> See, eg, Human Rights Watch, above n 166; Amnesty International, *Time to Establish Fate of Timor-Leste/Indonesia Disappeared* (15 July 2014) <<http://www.amnesty.org.au/news/comments/35043/>>; and Amnesty International, *Timor-*

Rights Watch published a report discussing the shortcomings of the Serious Crimes Investigation Unit (SCU) and the Special Panels for Serious Crimes (SPSC) in the Dili District Court, with a particular emphasis on Indonesia's resistance to the prosecution or extradition of its own nationals for crimes committed.<sup>194</sup> Other NGO reports have focused on the unresolved fates of the many disappeared in Timor-Leste,<sup>195</sup> the need for accountability for the Santa Cruz massacre (1991),<sup>196</sup> or how many of the perpetrators of violence in Timor-Leste have received promotions in Indonesia, and, in one instance, been hosted by Australia on a military training course in Perth.<sup>197</sup>

Similarly, the problem of impunity for international crimes was the first issue cited by Amnesty International in its 2015 World Report. There, it noted the Timorese government had not yet implemented recommendations from the Commission for Reception, Truth and Reconciliation (CAVR), nor the Indonesia-Timor-Leste Commission of Truth and Friendship (CTF).<sup>198</sup> The report also noted:

- deficiencies in the justice system, including the arbitrary arrest of individuals, excessive use of force, and the termination by parliament of contracts of foreign judicial officers and advisers;
- high levels of domestic violence and the fact that courts tend to hand down suspended prison sentences or fines for domestic violence offences rather than terms of imprisonment; and
- the new media law, imposing severe restrictions on journalists and freedom of expression.<sup>199</sup>

Recent NGO commentary has been dominated by concern over this new media law, which was passed by Parliament in December 2014,<sup>200</sup> as well as Parliament's decision in late 2014 to dismiss all international judicial personnel from the country.<sup>201</sup>

## VI RIGHTS RITUALISM

Though Timor-Leste has acceded to seven of the nine major human rights treaties, the majority of the norms contained therein have not been implemented in domestic legislation. This is also true of other international treaties to which Timor-Leste is a party. A report of the Judicial System Monitoring Program authored by Mariana Pinto uses the example of the 'Convention on Inter-country Adoption'—though Timor-Leste ratified it in 2009,

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*Leste: Santa Cruz Massacre – Still Waiting for Justice 20 Years Later* (11 November 2011) <<http://www.amnesty.org.au/news/comments/27224>>.

<sup>194</sup> Human Rights Watch, above n 166.

<sup>195</sup> Amnesty International, *Time to Establish fate of Disappeared*, above n 193.

<sup>196</sup> Amnesty International, *Santa Cruz Massacre – Still Waiting for Justice*, above n 193.

<sup>197</sup> Elaine Pearson, 'We Should Take the Lead on Human Rights in South-East Asia', *The Age* (online), 18 January 2010 <<http://www.theage.com.au/federal-politics/political-opinion/we-should-take-the-lead-on-human-rights-in-southeast-asia-20100118-mfpk>>.

<sup>198</sup> Amnesty International, above n 28, 366

<<https://www.amnesty.org/en/documents/pol10/0001/2015/en/>>.

<sup>199</sup> *Ibid* 366–67.

<sup>200</sup> See section III(C)(1) at 5 and section IV(A) at 21.

<sup>201</sup> Amnesty International, above n 159.

'there continue to be no clear rules as to exactly what procedures the judicial authorities and the social services should follow in international adoption cases.'<sup>202</sup> This lack of clarity about the relationship between international law and domestic law characterises Timor-Leste's engagement with its human rights treaties as well.

The problems associated with domestic implementation are inextricably linked to the limited capacities of a rebuilding state, and the nascent state of much of Timor-Leste's governance infrastructure. Timor-Leste's Penal Code was only enacted in 2009, and its Civil Code in 2011. UN bodies have commented on how the development of a strong human rights culture is hampered in Timor-Leste by limited resources.<sup>203</sup> Similarly, in Timor-Leste's UPR, it noted that 'the international community should be aware that it takes time to train doctors, judges and teachers.'<sup>204</sup>

It is also important to acknowledge the role of the UN which, up until 2012, had a peacekeeping and capacity-building presence within the country. Unlike many other countries, responsibility for the implementation and enforcement of human rights standards cannot be traced directly to the institutions of government, but instead requires a more nuanced approach that takes into account Timor-Leste's long period of occupation, the different legal systems which have been in place within the country, the role of the resistance, and the more recent intervening role of the UN. This all forms a caveat to the discussion that follows.

Rights ritualism is particularly apparent in Timor-Leste's approach to accountability for occupation-era crimes, and the political violence that occurred in 1999 and 2006. A number of accountability bodies have been set up since 2000. With the support of the UN, the SCU and the SPSC were set up in 2000. These were mandated to ensure accountability for the most 'serious crimes' committed during the period of Indonesian occupation and the violence surrounding the referendum in 1999. The Serious Crimes Process was, however, hampered in a number of important respects. It could not prosecute perpetrators based in Indonesia, and the Indonesian government was unwilling to cooperate with requests by the SCU for information and extradition.<sup>205</sup> According to one SCU staff member:

[t]he United Nations Transitional Administration in East Timor (UNTAET) was unwilling to bring political pressure to bear on the Indonesian government to cooperate with the Serious Crimes Process through the UN Security Council or foreign embassies. The UN Department of Peacekeeping Operations (DPKO) and the UN Security Council were similarly reluctant...<sup>206</sup>

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<sup>202</sup> Pinto, above n 13, 14.

<sup>203</sup> See, eg, United Nations Country Team and UN Integrated Mission in Timor-Leste, above n 11, [47].

<sup>204</sup> *Report of the Working Group on the UPR—Timor-Leste*, UN Doc A/HRC/19/17, [19].

<sup>205</sup> Quoted in Kent, above n 166, 1026–27.

<sup>206</sup> *Ibid* 1027.

The Serious Crimes Process was ‘extremely under-resourced’,<sup>207</sup> and community awareness was marred by the difficulty of reaching people living in remote and inaccessible areas.<sup>208</sup> There were inadequate trial transcripts and translation services, insufficient professional training for the judiciary, and the defence suffered from a lack of resourcing and inadequate training in the area.<sup>209</sup> The SCU had a selective investigative and prosecutorial strategy—it decided to focus on the period from January to October 1999 and select ten ‘priority cases’.<sup>210</sup> In May 2005, the activities of the SCU and the SPSC were terminated, despite the fact they had not finished their work.<sup>211</sup>

In 2006, the UN established a Serious Crimes Investigation Team (SCIT) which was mandated to investigate serious crimes committed in 1999.<sup>212</sup> As at 2011, the Timorese Prosecutor General’s Office had responsibility for prosecuting cases investigated under SCIT, but only one indictment had been filed.<sup>213</sup> SCIT’s mandate expired in December 2013 with approximately 60 investigations into human rights violations left incomplete due to lack of resources.<sup>214</sup>

Accountability is also undermined by clemency measures enacted by the government. Former President Ramos-Horta made a series of Presidential pardons, most recently in 2010 when he pardoned 23 people who had been convicted of involvement in the violence of 2006.<sup>215</sup> In 2011, only one of the individuals convicted of serious crimes committed in 1999 was serving a prison sentence.<sup>216</sup> In August 2009, the government released the indicted militia leader Maternus Bere at the request of Indonesian authorities. Bere had been charged by the SCU in 2003 for exterminating civilians and for other crimes against humanity.<sup>217</sup> He was transferred to Indonesian territory.

In relation to truth-telling and reparations, in 2001 the government established the CAVR, mandated to investigate human rights abuses occurring between 1974 and 1999. The CTF was set up with the Indonesian government in 2005. Its mandate was to:

establish the conclusive truth in regard to the events prior to and immediately after the popular consultation in 1999, with a view to further promoting reconciliation and friendship, and ensuring the non-recurrence of similar events.<sup>218</sup>

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<sup>207</sup> Ibid 1028.

<sup>208</sup> Ibid.

<sup>209</sup> Human Rights Watch, above n 166.

<sup>210</sup> Kent, above n 166, 1029.

<sup>211</sup> Amnesty International, above n 148, 2.

<sup>212</sup> Ibid.

<sup>213</sup> Ibid.

<sup>214</sup> Genser, above n 31.

<sup>215</sup> Amnesty International, above n 148, 4 <[http://www.upr-info.org/sites/default/files/document/timor-leste/session\\_12\\_-\\_october\\_2011/ai-amnestyinternational-eng.pdf](http://www.upr-info.org/sites/default/files/document/timor-leste/session_12_-_october_2011/ai-amnestyinternational-eng.pdf)>.

<sup>216</sup> United Nations Country Team and UN Integrated Mission in Timor-Leste, above n 11, [25].

<sup>217</sup> Amnesty International, above n 148, 3.

<sup>218</sup> *Terms of Reference for the Commission of Truth and Friendship*, art 12 <<http://www.etan.org/et2005/march/06/10tor.htm>>.

NGOs have criticised the CTF for provisions in its mandate that allow for amnesties for perpetrators of serious crimes. The treatment of victims and witnesses during hearings has also been criticised.<sup>219</sup> In 2010, draft legislation on establishing a national reparations programme and setting up an 'Institute for Memory'—in furtherance of recommendations of the CAVR and CTF—was presented for public consultation. The laws were due to be debated in Parliament the same year, however they have been continually postponed.<sup>220</sup>

The Independent Special Commission of Inquiry, established in 2006 to investigate the crisis of that year, recommended that a number of individuals be prosecuted for the violence that occurred. Although all cases recommended were investigated, only a limited number were brought to trial. Of those, a number of people were acquitted due to lack of evidence.<sup>221</sup> As at 2011, six of the nine individuals that had been convicted benefited from clemency measures, while the remaining three received suspended sentences or were released on parole.<sup>222</sup>

Thus, notwithstanding that Timor-Leste has set up several bodies with the specific mandate of examining and accounting for the severe human rights violations that have marked the country's past, their efficacy has been compromised by a lack of adequate funding and a lack of political will within Timor-Leste, as well as resistance from Indonesia. The international community has also failed to demand that those who committed serious crimes are sanctioned. An outward commitment to accountability masks inherent failures in relation to punishing perpetrators and providing some relief to victims. This is an instance of rights ritualism.

Rights ritualism is also evident in the attitude of the government to progressing the rights of women in some areas. Notwithstanding s 17 of the Constitution, providing that women and men shall enjoy the same rights and duties, and the *Law on Domestic Violence* enacted in 2010, the government's staunch refusal to repeal discriminatory provisions in its legislation,<sup>223</sup> or to engage with the potential discriminatory effect of its laws in the context of its UPR,<sup>224</sup> demonstrates it has a ritualistic approach to gender equality. In particular, its assertion, made in the context of its UPR, that any inequality between men and women that exists in Timor-Leste is not the result of discriminatory laws, shows that it is not interested in engaging with the underlying causes of inequality.

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<sup>219</sup> Amnesty International, above n 148, 3.

<sup>220</sup> Amnesty International and The Timor-Leste National Alliance for an International Tribunal, 'Timor-Leste/Indonesia: Governments must Expedite Establishing Fate of the Disappeared' (Public Statement, ASA 57/001/2014, 15 July 2014) <<https://www.amnesty.org/en/documents/ASA57/001/2014/en/>>.

<sup>221</sup> *Report of the Secretary-General on the United Nations Integrated Mission in Timor-Leste (for the period from 21 September 2010 to 7 January 2011)*, UN Doc S/2011/32 (25 January 2011) [42].

<sup>222</sup> United Nations Country Team and UN Integrated Mission in Timor-Leste, above n 11, [25].

<sup>223</sup> *Report of the Working Group on the UPR—Timor-Leste*, UN Doc A/HRC/19/17, 21 (Recommendation 80.1).

<sup>224</sup> *Report of the Working Group on the UPR—Timor-Leste—Addendum*, UN Doc A/HRC/19/17/Add.1, [8].

## ADDENDUM: STATUS OF INTERNATIONAL HUMAN RIGHTS TREATIES

<i>Treaty</i>	<i>Date of signature, ratification or accession</i>	<i>Reservations / Declarations?</i>
ICCPR	Accession 18.09.03	No
First OP	No	
Second OP <sup>225</sup> (Death Penalty)	No	
ICESCR	Accession 16.04.03	No
OP	Signed 28.09.09; not ratified	No
<i>OP Art 11 inquiry procedure</i>	No	
CRC	Accession 16.04.03	No
OP 1 <sup>226</sup>	Accession 16.04.03	No
OP 2 <sup>227</sup>	Accession 02.08.04	Declaration pursuant to art 3, para 2 that the minimum age for voluntary recruitment into the Timor-Leste national armed forces is 18 years, as specified by domestic law.
OP 3 <sup>228</sup>	No	
<i>OP Art 13 inquiry procedure</i>	No	
CAT	Accession 16.04.03	No
<i>Art 20 inquiry procedure?</i>	Yes	
<i>Art 21 declaration?</i>	No	
<i>Art 22 declaration?</i>	No	
OP	Signed 16.09.05; not ratified	No

<sup>225</sup> *Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty*, signed 15 December 1989, 1642 UNTS 414 (entered into force 11 July 1991).

<sup>226</sup> *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, opened for signature 25 May 2000, 2171 UNTS 227 (entered into force 18 January 2002).

<sup>227</sup> *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, opened for signature 25 May 2000, 2173 UNTS 222 (entered into force 12 February 2002).

<sup>228</sup> *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure*, opened for signature 19 December 2011, UN Doc A/RES/66/136 (entered into force 14 April 2014).

CERD	Accession 16.04.03	No
<i>Art 14 declaration?</i>	No	
CEDAW	Accession 16.04.03	No
OP	Accession 16.04.03	No
<i>OP Art 8-9 inquiry procedure?</i>	No	
CMW	Accession 30.01.04	No
<i>Art 76</i>	No	
<i>Art 77</i>	No	
CRPD	No	
OP	No	
<i>OP Art 6-7 inquiry procedure?</i>	No	
CED	No	
<i>Art 31 declaration?</i>	No	
<i>Art 33 inquiry procedure?</i>	No	