

TIMOR-LESTE

1. Discriminatory family code

The 2011 Civil Code of Timor-Leste regulates marriage and recognizes three forms of union under Article 1475 (1): civil, catholic or traditional. The Civil Code requires registration of all marriages of Timorese citizens inside or outside the country in order for the marriage to be officially recognized.¹ It establishes equality between spouses, levelling the minimum **legal age of marriage** for both men and women to 17 years old, and it does not differentiate between men and women on legal capacity.² However, the law also authorizes marriage of an individual under 17 and over 16 years, when the parents or tutor authorizes it; although marriage under 16 years old is explicitly prohibited.³ It is accepted that **early marriage** continues to take place in Timor-Leste, mainly in cases where a marriage has been arranged at birth or as a result of extreme poverty where *'barlake'* (bride-price) can be agreed.⁴

The United Nations reports, based on 2009 data, that 8.1% of girls between 15 and 19 years of age were married, divorced or widowed (down from 10.6% in 2003); compared to 0.4% of boys in the same age range (down from 0.6% in 2003).⁵ This supports the government's report in 2013 that the age of marriage was falling, particularly amongst urban and wealthier families.⁶

The government claims that the law in Timor-Leste provides for equal rights and responsibilities in marriage, including for **parental authority**.⁷ However, discriminatory customary practices mean that equality is not practiced in reality. Men are assumed to be the head of the family and women are expected to defer to their husbands on most matters and be careful not to bring shame to the family.⁸ The main responsibility of women in the family is to bear children while the husband leaves home to find work and provide for his children.⁹ Customary practices also persist, that see children go to the husband rather than the wife upon **divorce**.¹⁰

The law and practice on women's **inheritance** rights is unclear.¹¹ In 2009, the government reported that women and men have equal rights to inheritance. For instance, the government reported that the law provides that when the husband dies first, the inheritance will be divided

¹ CEDAW (2013) p.65; Law No. 10/2011 approving the Civil Code, Article 1538

² CEDAW (2013), p.11

³ Law No. 10/2011 approving the Civil Code, Articles 1500, 1493, 1490

⁴ CEDAW (2008) p.33

⁵ UN (2012)

⁶ CEDAW (2013), p.65

⁷ CEDAW (2008), p.34

⁸ CEDAW (2008), p.32

⁹ CEDAW (2008), p.16

¹⁰ Ferguson (2011), p.60

¹¹ CEDAW (2009a)

between his wife and the children, or the inheritance will go to the wife only if they have no children.¹² However, non-governmental organisations report that sons are generally recognised as the heads of family and recipients of family inheritance.¹³ A 2004 survey on inheritance rights of unmarried women found that women do inherit land differently under matrilineal and patrilineal systems. In the instance where women did inherit land under patrilineal systems (30% of respondents), it was expected that the land would pass to the woman's brother if she married.¹⁴

More

Polygamy is outlawed for Catholics under the Civil Law but the practice continues.¹⁵ The 2009-2010 Demographic Health Survey (DHS) found that 2% of currently married women are in a marriage with co-wives. The data further shows that women in the youngest age group (15-19) and older women (40-49) are more likely to be in polygamous unions than women aged 20-39.¹⁶

The government reports that 'first' wives are neglected as husband's time and money are spent with and on their other families.¹⁷

Bride price is not illegal and still observed in many districts with exchange of goods between the man's family and the woman's family seen as most important in the act of marriage. It is reported that the practice has negative ramifications for gender equality such as domestic violence as women are seen as the property of their husband.¹⁸ In 2008, the government reported that due to lengthy negotiations between families on the appropriate sum of '*barlake*' to be paid, young people may often find themselves in a 'de facto' or customary union for many years, while the dowry is still being negotiated, before entering a Church marriage or obtaining legal recognition of their relationship. It is possible for a young girl to be betrothed at 15, married in a traditional ceremony at 17, before being married in the Church in her twenties or thirties, often after having several children.¹⁹

The Civil Code provides for **divorce**.²⁰ However it contains discriminatory provisions for the period of time to be awaited to re-enter in a marriage after divorce or death of a spouse: 180 days for men and 300 days for women unless the women can prove before a court that she is not pregnant.²¹ Timor-Leste, as a strong Catholic society, does not advocate divorce and women are not supported if they wish to divorce. Another common customary practice after the death

¹² CEDAW (2009b), p.15

¹³ NGOs Working Group (2009), p.61

¹⁴ CEDAW (2008), p.136

¹⁵ CEDAW (2008) p.32

¹⁶ Demographic Health Survey (2010), p.80

¹⁷ CEDAW (2008), p.32

¹⁸ CEDAW (2013), p 29; Khan and Hyati (2012), p. 41

¹⁹ CEDAW (2008) p.57

²⁰ Law No. 10/2011 approving the Civil Code, Article 1650

²¹ CEDAW (2013), p.68; Article 1494

of a spouse and not covered or addressed by the Civil Code is the forced remarriage of the widow/widower with either the brother or sister in-laws of the deceased spouse.²²

2. Restricted physical integrity

The Law against Domestic Violence passed in 2010²³ made any form of **domestic violence** a public crime punishable by the formal criminal justice system. The law supplements the provisions in the Timorese Criminal Code which came into force in June 2009 that make domestic violence a public crime²⁴ and provisions in the Law on Community Authorities (Decree Law No. 5/2004) that require village chiefs (*chefe de sucos*) to promote awareness of and prevent domestic violence. The State is obliged to investigate and prosecute crimes of domestic violence whether or not the victim files a complaint. The law defines domestic violence broadly to include physical, mental, economic and sexual mistreatment.²⁵ It also provides protection to family members, including spouses and ex-spouses, ascendants/descendants and domestic workers.²⁶ Under the law, victims of domestic violence are eligible to receive rehabilitative services, including shelter access, legal representation, medical and psychological assistance, and emergency maintenance provisions. Police officers are obligated to investigate domestic violence cases, refer victims to legal and medical services and keep them informed of the status of their cases.²⁷ The law also criminalizes marital rape through provision on sexual violence “even within a marriage”.²⁸ To combat the issue of geographic isolation, the Government has instituted mobile courts in four district courts in order to cover Timor-Leste’s 13 districts.²⁹

However, a number of factors have limited the implementation of the law, including lack of access to services; an over-reliance on donor funding; the capacity and legal knowledge of law enforcement officials; and delays in the justice system (for example, in 2012 there were 4,723 cases carried over from the previous years).³⁰ Light sentences may also undermine the law: as one study noted that courts often apply suspended sentences in all cases that carry a prison sentence of less than three years.³¹ The government also reports on consultations that have found that many people turn to ‘*adat*’, (traditional justice) mechanisms to deal with cases of domestic violence with the belief that abusers should not be incarcerated for their wrongful actions, rather undertake community work or be publicly shamed.³² Concerns have been raised about women’s access to justice through ‘traditional justice’ mechanisms where women are not normally included in traditional proceedings and where any compensation is given to male members of the victim’s family.³³ Access to justice is also frustrated by linguistic barriers

²² CEDAW (2013), p.68

²³ Law N° 7/2010 Law on Domestic Violence

²⁴ Law N° 7/2010 Law on Domestic Violence, Article 36

²⁵ Law N° 7/2010 Law on Domestic Violence, Article 2

²⁶ Law N° 7/2010 Law on Domestic Violence, Article 3

²⁷ Ferguson (2011)

²⁸ Law N° 7/2010 Law on Domestic Violence, Article 2(1)

²⁹ CEDAW (2013), p.28

³⁰ CEDAW (2013), p.25

³¹ Khan and Hyati (2012), p.58

³² CEDAW (2008), p.58

³³ CEDAW (2008), p.29

presented by the formal system. The language of the law and the courts is Portuguese, spoken by less than 10% of the population, making the trial process incomprehensible and intimidating.³⁴ In addition, the impact of the period of civil conflict has had the effect of worsening rates of sexual and gender-based violence, including domestic violence, as poverty, displacement, uncertainty and the assertion of 'traditional' gender roles exacerbate gender inequalities.³⁵

Nevertheless, the government reports that domestic violence is the most common form of gender-based violence in Timor-Leste, and has largely prevented women in participating actively in all aspects of development.³⁶ From September 2009 to January 2010, incidents of domestic violence constituted about 60% of all crimes reported to the police (which may be attributable to the implementation of the Domestic violence law in 2009).³⁷ However, this may only represent a fraction of cases, since less than 25% of women who have experienced violence seek help at all, and only 4% go to the police.³⁸ The 2009-2010 Demographic Health Survey (DHS) found that 35% of women aged 15-49 have experienced physical violence in their lifetime, with 29% of women experiencing physical violence often or sometimes in the past 12 months.³⁹ Of these, among ever-married women, 74% reported that a current husband or partner committed the physical violence against them, while 6% reported that they experienced physical violence by a former husband/partner.⁴⁰ With respect to emotional abuse and control of women within relationships, 31% of ever-married women reported that their husbands insist on knowing where they are at all times and 31% said that their husbands get jealous or angry if they talk to other men.⁴¹

Social acceptance of domestic violence also impedes the implementation of the law. 2009-2010 DHS data indicates that violence against women in Timor-Leste is a pervasive problem. The survey found that about 3% of women aged 15-49 have experienced sexual violence.⁴² In 2012 the government conceded that the use of physical force by a man in an intimate relationship is still not systematically viewed as an offense by both men and women, and considered an ordinary domestic occurrence.⁴³ The government reported in 2013 that it has embarked on a series of 'socialization programmes' under the National Plan of Action on Gender-Based Violence (2010-2014) on the domestic violence law to facilitate its implementation; however information on the effectiveness of these activities is not yet available.⁴⁴

³⁴ Ferguson (2011), p.58

³⁵ Ferguson (2011), p.58

³⁶ CEDAW (2013), p.22

³⁷ CEDAW (2013), p.22

³⁸ CEDAW (2013), p.29; Demographic Health Survey (2010), p.245

³⁹ Demographic Health Survey (2010), p.228

⁴⁰ Demographic Health Survey (2010), p.230

⁴¹ Demographic Health Survey (2010), p.235

⁴² Demographic Health Survey (2010), p.233

⁴³ CEDAW (2011), p.11

⁴⁴ CEDAW (2013), p.24

Rape is prohibited under Articles 171 and 172 in the Indonesian Penal Code, providing a punishment of up to 12 years' imprisonment.⁴⁵ The law also provides that any person, who out of marriage has "carnal knowledge" of a woman who has not yet reached the age of 15 years old shall be punished by a maximum imprisonment of 9 years.⁴⁶

However, a number of factors still impede the implementation of sexual violence laws in Timor-Leste. In 2013 the government reported to the UN Committee on the Elimination of Discrimination against Women (CEDAW) that the Law on Protection of Witnesses passed in 2009 but was still inoperative.⁴⁷ The 2009-2010 DHS also revealed that 3.4% of women have experienced sexual violence. The main perpetrators of sexual violence against ever-married women are their current (71%) or former husband/partner (9%).⁴⁸ Although marital rape is now a crime under the domestic violence law (see above), the government reported in 2013 that the police and the Office of Prosecutor General reported that there have not been any cases registered as marital rape to date.⁴⁹

In 2012, the government passed a new Labour Code that makes harassment at work of any kind, including verbal, non-verbal or physical conduct as well as all forms of **sexual harassment** unlawful.⁵⁰ However there is no available data on the effectiveness of these provisions.

There is no indication that **female genital mutilation** (FGM) is practised in Timor-Leste.

More

Limitations on women's reproductive rights also infringe upon women's physical integrity in Timor-Leste. Although the recent and current Penal Code in paragraphs 1 and 2 of Article 141 maintains **abortion** as a crime with a prison sentence, paragraph 4 provides the circumstances in which abortion will be allowed, including: when there is the risk to the mother's life; as long as the procedure is authorized by a medical certificate signed by 3 doctors; and performed by a doctor or health professional.⁵¹ The opinion of the father is required.⁵² In 2009, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern that the continued criminalization of abortion may lead women to seek unsafe abortions, which may risk their health.⁵³ The 2009-2010 Demographic Health Survey (DHS) found that maternal mortality in Timor-Leste is high relative to many developed countries. The survey also found that more than 22% of currently married women are using a method of family planning, with 21% using a modern **contraceptive** method.⁵⁴ The Government reported in 2012 that, although this rate has improved from 10% in 2003, knowledge of any contraceptive is very

⁴⁵ CEDAW (2013), p.23

⁴⁶ CEDAW (2008), p.33

⁴⁷ CEDAW (2013), p.9

⁴⁸ Demographic Health Survey (2010), pp. 232-233

⁴⁹ CEDAW (2013), p.24

⁵⁰ CEDAW (2013), p.45

⁵¹ CEDAW (2012), p.9

⁵² CEDAW (2012), p.9

⁵³ CEDAW (2009a) p.8

⁵⁴ Demographic Health Survey (2010), p.112

low amongst both men and women in Timor-Leste.⁵⁵ There has been a significant increase in unmet need for family planning over the past seven years by seven times, with unmet need rising from 4% in 2003 to 32% in 2009-2010.⁵⁶

3. Son bias

The Central Intelligence Agency (CIA) reports that Timor-Leste has a male-to-female **sex ratio** at birth of 1.07 and in the working age population (15-64) it is 1.03.⁵⁷

There is evidence to suggest that Timor-Leste is a country of low incidence of **missing women** given elevated sex ratios at birth.

More

The 2009-2010 Demographic Health Survey (DHS) questions on vaccination coverage found that male infants are slightly more likely to be fully vaccinated than female infants. This suggests the possibility of preferential treatment of sons with respect to access to vaccinations. However, the survey data on child nutrition does not provide evidence of son preference in household allocation of nutrition.⁵⁸ While there is no data on children's time-use, the government reported in 2008 that young girls who collect water early in the morning are often too tired to participate in education, suggesting that there may be a preferential treatment of sons with respect to the allocation of housework.⁵⁹

The government reports that for every 10 boys enrolled in primary and secondary school, there are 9 girls.⁶⁰ There is also evidence of high drop-out rates of girls from pre-secondary school level onwards, which provides some evidence of son preference in access to education.⁶¹

4. Restricted resources and assets

The law on women's **access to land** in Timor-Leste is unclear.⁶² The 2011 Civil Code provides that women and men enjoy equal rights to inheritance of land, as well as succession.⁶³ Whether in terms of personal effects or property (**non-land assets**) produced by marriage, the law establishes equality between spouses, both in rights and duties.⁶⁴ And yet, despite the provisions of the Civil Code, the inheritance system continues to follow traditional matrilineal and patrilineal lines, especially in rural areas.⁶⁵ In matrilineal families, it was found that a woman can buy, sell or lease urban or *suco* land; however, by contrast the vast majority of respondents in the survey from patrilineal homes (approximately 80%) indicated that women may not be

⁵⁵ CEDAW (2012), 12

⁵⁶ CEDAW (2013), p.3

⁵⁷ CIA (2014)

⁵⁸ Demographic Health Survey (2010)

⁵⁹ CEDAW (2008), p.264

⁶⁰ CEDAW (2013), p.41

⁶¹ CEDAW (2008), p.43

⁶² CEDAW (2008), p.136

⁶³ CEDAW (2013), p.66

⁶⁴ CEDAW (2013), p.67

⁶⁵ CEDAW (2013), p.66

involved in any land transactions.⁶⁶ A 2004 Land Law Programme survey found that at least half of all women from both matrilineal and patrilineal lines aspired to a greater access of land-related options than those presently open to them.⁶⁷

The new 2011 Civil Code establishes equality between men and women on legal capacity. Each spouse may manage his/her own assets, and has user rights of joint goods.⁶⁸ While there are no reported legal restrictions on women's **access to financial services**, including credit, the government reports that women have virtually no access to credit. Women often need references, husband's signature or have difficulty filling out the forms due to illiteracy and, as such, experience barriers in applying for loans.⁶⁹ Further, lending facilities tend to target what they consider productive activities and largely neglected activities in the informal sector, where the vast majority of women work.⁷⁰ In 2013 the government reported that 49% of Institute of Support for Business Development clients were women in 2012, receiving business and financial planning support.⁷¹

5. Restricted civil liberties

With respect to women's freedom of **access to public space**, the law in Timor-Leste provides that women are obliged to follow their husband in terms of residence.⁷² As noted in the physical integrity section, the 2009-2010 Demographic Health Survey (DHS) found that women's movements are controlled by their husbands in some circumstances. For instance, 31% of ever-married women reported that their husbands insist on knowing where they are at all times and nearly 1 in 10 women reported that their husbands do not allow them to meet with their female friends.⁷³

The breadth and number of women's organisations involved in Timor-Leste's alternative report to the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) suggests that there is a strong and growing women's movement, despite the challenging circumstances of building a new nation after decades of conflict.⁷⁴

With respect to political participation, an amendment of the Parliamentary Electoral Law in 2011 established a **quota** of at least one woman per group of three candidates. The Parliamentary Election in July 2012 saw 25 women elected out of 65 seats, raising the proportion of women parliamentarians to 38%.⁷⁵ However, in 2013 the government reported that women's participation in politics at the local level is still very low. Women make up only 2% of village chiefs,⁷⁶ although they make up 28% women in the Village Councils.⁷⁷ The

⁶⁶ CEDAW (2008), p.268

⁶⁷ CEDAW (2008) p.136

⁶⁸ CEDAW (2013), p.11

⁶⁹ CEDAW (2008) p.128

⁷⁰ CEDAW (2008) p.127

⁷¹ CEDAW (2013), p.10;

⁷² CEDAW (2008) p.138

⁷³ Demographic Health Survey (2010), p.232

⁷⁴ NGOs Working Group (2009)

⁷⁵ CEDAW (2013), p.11

⁷⁶ CEDAW (2013), p.12

governments has identified the common and persistent barriers for women to enter leadership roles as: lower education and literacy compared to men; discrimination in recruitment; negative stereotypes and attitudes towards women's participation in public life; attitudes to women's traditional role in the home; little support from families and political parties, especially little support for women to engage in politics as independent candidates without political party support; low solidarity between women; low civic awareness, and low confidence to put themselves forward as candidates.⁷⁸

More

In 2012 the government passed a new Labour Code that makes gender discrimination in the workplace, including dismissal due to maternity, an offence punishable in law by a fine or compensation awarded to the victim.⁷⁹ However these protections are not available to those in the informal sector, where the government estimates that 26% of women work.⁸⁰ The new Labour Code also guarantees paid **maternity leave** for the minimum period of 12 weeks, 10 weeks of which shall necessarily be taken after delivery, without loss of remuneration and seniority rights.⁸¹

⁷⁷ CEDAW (2013), p.38

⁷⁸ CEDAW (2013), p.39

⁷⁹ CEDAW (2013), p.44

⁸⁰ CEDAW (2013), p.48

⁸¹ Law 4/2012 Labour Code, Article 59

Sources

ADB and UNIFEM (2005) Gender and Nation Building in Timor-Leste: Country Gender Assessment, available at <http://www.adb.org/Documents/Reports/Country-Gender-Assessments/cga-timor-leste.pdf>, (last accessed March 2014).

CEDAW (2008) Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Initial periodic report of States parties, Timor-Leste, CEDAW/C/TLS/1, New York.

CEDAW (2009) Implementation of the Convention on the Elimination of All Forms of Discrimination against Women In Timor-Leste Prepared By NGOs Working Group On CEDAW Alternative Report March 2009, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/298/69/PDF/N0929869.pdf?OpenElement> , (last accessed March 2014).

CEDAW (2009a) Concluding observations of the Committee on the Elimination of Discrimination against Women: Timor-Leste, CEDAW/C/TLS/CO/1, New York.

CEDAW (2009b) Responses to the list of issues and questions with regard to the consideration of the initial periodic report: Timor-Leste, CEDAW/C/TLS/Q/1/Add.1, New York.

CEDAW (2012) Committee on the Elimination of Discrimination against Women Fifty-fourth session Concluding observations on the initial report of Timor-Leste, adopted by the Committee at its forty-fourth session (20 July–7 August 2009) Addendum Information provided by Timor-Leste on the follow-up to the concluding observations of the Committee 11 February – 1 March 2013, CEDAW/C/TLS/CO/1/Add.1.

CEDAW (2013) Consideration of reports submitted by States parties under article 18 of the Convention Combined second and third periodic reports of States parties due in 2013, Timor-Leste, 23 December 2013, CEDAW/C/TLS/2-3.

Central Intelligence Agency (CIA) (2014) 'The World Factbook: Timor Leste', <https://www.cia.gov/library/publications/the-world-factbook/geos/tt.html>, (last accessed March 2014).

Demographic Health Survey (2010) Timor-Leste Demographic and Health Survey 2009-10, http://www.measuredhs.com/pubs/pub_details.cfm?ID=1040&ctry_id=117&SrchTp=custom, , (last accessed March 2014).

Ferguson, P., (2011) 'Progress in legislating domestic violence and gender based violence in Timor-Leste' Malaysia Journal of Society and Space 7 issue 1 (53 - 64).

Khan, Nasrin and Selma Hyati, 'Bride-Price and Domestic Violence in Timor-Leste', April 2012, <http://countryoffice.unfpa.org/timor-leste/drive/Bride-PriceandDomesticViolenceinTimor-Leste.pdf>, (last accessed March 2014).

NGOs Working Group (2009) Alternative Report to CEDAW, <http://www2.ohchr.org/english/bodies/cedaw/cedaws44.htm>, (last accessed March 2014).

United Nations (UN) (2011) 'World Abortion Policies 2011', UN Department of Economic and Social Affairs, Population Division, New York, <http://www.un.org/esa/population/publications/2011abortion/2011wallchart.pdf>, (last accessed March 2014).

UN (2012), 'World Marriage Data 2012', UN Department of Economic and Social Affairs, Population Division, New York, NY, <http://www.un.org/esa/population/publications/WMD2012/MainFrame.html>, (last accessed March 2014).

US State Department (2013) '2013 Country Reports on Human Rights Practices: Timor Leste', <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, (last accessed March 2014).

US Department of State (2013b) 'Trafficking in Persons Report 2013' Department of State, Bureau of Democracy, Human Rights and Labor, Washington DC, <http://www.state.gov/documents/organization/210737.pdf>, (last accessed March 2014).