

Post- conflict rule of law in east timor research paper

[Law](#), [Criminal Justice](#)



Post- Conflict Rule of Law in East Timor

Introduction

East Timor is a country that was under Portuguese colonial rule for hundreds of years. Later, it suffered from 25 years of severe brutal occupation by Indonesia. In 1999, the country voted for its independence in a referendum that was administered by the UN. However violence ensued for several months and in the year 1999 to 2002 the UN tried to transition the country's governance smoothly through peace keeping and civil administration. In 2002, the country became the world's youngest nation. However after only four years, weaknesses in the political, economic and legal infrastructure caused the country to descend into violence and conflict in April and May 2006. An Australian-led foreign troop team arrived in the country to reestablish security. However it has been a long road for the country towards the establishment of the rule of law. The progress has been impeded by several challenges.

Challenges towards the rule of law

A rule of law assessment in the country of Timor in 2007 and 2009 revealed the following challenges:

Breakdown in the judicial system: There are cases that fail to be solved through the formal court system causing the people to give up. This is because of impunity prevalent at all levels of society. Many litigants await for their case to be heard while being pressured not to get their cases settled formally.. There are those who have chosen to engage in criminal activity

and administer their own kind of justice. They use crime to advance economically and socially (USAID, 2007)

Lack of order and security: It is impossible for rule of law to flourish where people fear

for their safety as the streets are full of crime. Families ensure they are at home early. Certain streets are avoided. Crime has increased highly due to several reasons. The poor judicial system fails to persecute the youth engaged in crime. There are no sufficient detention facilities so the offenders end up being released. There is still animosity between the citizens, between those of Eastern and Western backgrounds.

Youths have joined groups committed to violence such as gangs and martial art groups. There is no effective policing on the streets. The high level of impunity causes the youth to even commit more crimes. People do not report crimes due to fear of retribution. There is no witness protection law. There is even no security within the judicial system. There are reported cases of destroyed crime files, equipment and infrastructure.

Lack of legitimate systems: The country is plagued by unclear procedures in law with the people not even understanding the law. It is not a transparent and democratic system. The laws are not reviewed properly by the parliamentary body before they are voted in as they are not clear. The people complain also about the source of the laws. Much comes from international sources yet they want laws that are within the cultural Timorese context (US Department of Justice, 1997). In solving cases and trying to get rid of backlog, the judicial system can rely on European legal traditions, drafted domestic laws while others ignore the current laws

causing confusion.

Lack of adequate checks and balances in the government and judicial system: The rule of law is provided by the government and judicial systems having separate powers and independence in order to demand accountability of each other.

The country lacks this. Oversight institutions such as Superior Councils and prosecutor's office lack resources and competent staffing. There is also overlap and ambiguity in duties of legislature and judicial system. The civil society bodies such as NGO's are not able to really check on government potential abuse (Funaki, 2009).

Lack of Fairness: In the country, women and other vulnerable groups have trouble accessing the courts. Gender-based violence is the most frequent type of crime in the country. Women however are unable to get help due to the fact that domestic violence is perceived to be a private matter to be sorted out by family or community representative. There is also a strong prevailing culture of patriarchy in the society. They do not receive fair and equal treatment. The police are corrupt and unprofessional (Collantes, 2003).

Furthermore there is a high level of impunity enjoyed by some political actors. The public or the litigants are also not able to access the court documents in a timely. The main language used in the courts is Portuguese yet only 7% of the population understands the language especially the legal terms. Those who lack educational and economic opportunities have no information on accessing the courts as they are illiterate. There is a high

level of poverty in the country so many of the people are illiterate. The country does not have a system for the treatment of juvenile offenders. Lack of effective application in the judicial system: There is a shortage of judges in the country. First of all the majority of the judicial activity of the country takes place in the capital city of Dili. Although there are trainee judges, the judges in Dili have been presiding over activities in the non-Dili courts. Access to justice for the citizens living outside the capital is therefore hampered. In the courts there is also lack of proper budgeting, strategic management or human resource management. There is also shortage of the private bar and public defenders and prosecutors (USAID, 2009).

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