

Timor-Leste's judicial lurch could worsen domestic violence trauma



Photo: David Swanson/IRIN

Judicial purge could moot new domestic violence law

DILI, 15 December 2014 (IRIN) - Timor-Leste's efforts to reduce the prevalence of domestic gender-based violence through criminalization and prosecution, already hampered by a general lack of trust in the formal court system, have suffered a fresh setback with the enforced departure of 11 foreign judicial staff who had played a key role in delivering justice in rural areas.

"Decisions by the Timor-Leste parliament and government to arbitrarily terminate the contracts of foreign judicial officers and judicial advisors will have a negative impact on victims and their right to an effective remedy," said Amnesty International, highlighting that the staff shuffle may result in cases being re-tried, which could further delay proceedings and traumatize victims who

have to testify repeatedly.

"Cases being re-tried include cases of domestic violence and sexual assault, which make up the vast majority of cases before Timor-Leste's courts," Amnesty said. "Victims - mainly women and children - may be subjected to further traumatization and victimization if required to testify again in new court cases."

Foreign judges, mainly from former colonial power Portugal, had served in Timor-Leste since it gained statehood in 2002, in the wake of a 24-year military occupation by Indonesia, during which rape and sexual assault were widespread and went largely unpunished.

"Removing judges, prosecutors and other court officials creates more work for our justice system, and at the same time takes away important resources," said Casimiro dos Santos, interim director of the Judicial System Monitoring Project (JSMP), a Dili-based NGO, adding that at least two district courts have ordered re-trials for cases heard by foreign judges.

And in a setting where court procedure delays are common, a combination of reliance on informal dispute resolution mechanisms and intense pressure on female domestic violence survivors to remain with families, can result in them opting out of formal justice mechanisms.

"We have women who come to us for therapeutic services after they experience domestic violence, but then after some time they leave," Manuel dos Santos, director of PRADET, a psychosocial recovery NGO in Dili, told IRIN. "They start to realize how long the wait will be for the court system, and they get pressure from their communities. These things combine and lead them to go home before the case ever activates in court," he said.

Research by The Asia Foundation (TAF), which conducts annual perception surveys of law and justice in Timor-Leste as well as other assessments, suggests similar patterns.

"More and more domestic violence cases are entering the formal justice sector each year, but overall our research shows that a lot of cases are still being sent back to communities," said Todd Wassel, director of safety and security programmes at TAF in Timor-Leste. "What we think is happening in most of the cases is that the police are present, and providing conditions for community-led mediation and dispute resolution to take place."

As Timor-Leste comes under mounting pressure to reverse its decision to expel foreign judges, questions emerge as to whether its fragile justice sector can protect the rights of women amid a hybrid legal system that has yet to show equity to female survivors of abuse.

New law, old practices

When Timor-Leste promulgated the Law Against Domestic Violence in 2010, classifying the offence as a "public crime" was seen as a major step forward in ending the scourge of the socially-accepted battering of women. "The public status of the crime requires the state to respond to domestic violence whether a victim files a criminal complaint or not," explained a 2013 UN Development Programme (UNDP) report.

