

**Universal Periodic Review of Timor Leste
40th Session
January – February 2022**

**Report on Timor Leste regarding the human rights of LGBTIQ
persons**



Kaleidoscope

Human Rights Foundation

Email: paula.gerber@monash.edu

Kaleidoscope is a not-for-profit organisation based in Australia that seeks to advance the human rights of lesbian, gay, bisexual, transgender, and intersex people in the Asia Pacific region

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1 EXECUTIVE SUMMARY

- 1.1 This report has been prepared by Kaleidoscope Human Rights Foundation.¹ It highlights shortfalls in Timor-Leste's continued efforts to adequately protect the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI+) persons.
- 1.2 While Timor-Leste has taken substantial steps in recent years to protect the rights of LGBTI+ individuals, further work is required in order to safeguard members of the LGBTI+ community from entrenched community violence and discrimination. Despite announcing an intention to engage in legislative reform in 2017, Timor-Leste has not substantially altered its laws relating to discrimination on the basis of sexual orientation, gender identity and intersex status. Bias based on gender identity and intersex status continues to not be treated as an aggravating factor in sentencing.

2 SUMMARY OF RECOMMENDATIONS

This report makes 7 recommendations for reforms that Timor-Leste make in order to comply with its international human rights obligations to protect the rights of LGBTI+ people. These 7 recommendations are summarised below.

1. ***Timor-Leste should: Take tangible legal and practical steps to enact constitutional and/or legislative change to implement the above 2016 UPR recommendations that were accepted by the State.***
2. ***Amend Article 52 of the Penal Code to include gender identity and intersex status as factors to be considered in sentencing where crimes were motivated by bias towards gender diverse and intersex persons.***
3. ***Conduct sensitivity training for all members of the public service, with a specific focus on those engaged in the health, education and justice systems to enable them to effectively protect LGBTI+ victims of crime and discrimination. And build on existing progress in the education system by implementing lesson plans which place a greater focus on LGBTI+ rights and awareness-raising.***
4. ***Facilitate the establishment of "safe spaces" and outreach clinics to enable LGBTI+ individuals to connect and support one another, regardless of age and social status.***
5. ***a) Enact comprehensive anti-discrimination legislation that prohibits discrimination on the basis of sexual orientation, gender identity and intersex status in all areas of***

¹ Kaleidoscope Human Rights Foundation is a not-for-profit organisation based in Australia that works to promote and protect the human rights of lesbian, gay, bisexual, transgender and intersex people in the Asia Pacific region.

public life, including health care, education and housing.

- b) Amend Article 16(2) of the Constitution to include sexual orientation, gender identity and intersex status as prohibited grounds of discrimination.**
- c) Hold an official inquiry into allegations of ill-treatment of disabled and LGBTI+ patients at the national hospital in Dili and take positive steps to counter stigma, stereotypes, and prejudice against LGBTI+ people.**
- d) Ensure LGBTI+ families are included in government-supported programs, especially during the COVID-19 pandemic.**

6.

- a) Amend the Labour Code to prohibit discrimination on the basis of sexual orientation, gender identity and intersex status in all areas of employment.**
- b) Take positive measures, including anti-discrimination campaigns among the public administration and private enterprise, to promote the inclusion of LGBTI+I workers in the public and private sectors.**

7. Enact legislation that allows individuals to change the gender on their identity cards and official documents so that they reflect their gender identity.

3 POSITIVE STEPS TAKEN BY TIMOR-LESTE

3.1 Consensual same-sex sexual conduct is not criminalised in Timor-Leste, and there is no distinction between the age of consent for heterosexual sexual conduct and same-sex sexual conduct.² Timor-Leste has ratified several international human rights treaties³ that prevent discrimination against persons on the basis of their sexual orientation, gender identity and intersex status.

3.2 In 2011, Timor-Leste became one of the only countries in Asia to sign the joint statement on "Ending Acts of Violence and Related Human Rights Violations Based on Sexual Orientation and Gender Identity" (the **Joint Statement**).⁴ The Joint Statement remains the most unequivocal piece of state-sanctioned multilateral action that endorses the notion that the rights of LGBTI+ people are included within the international human rights framework.⁵ By signing the Joint Statement, Timor-Leste, together with the other signatories, acknowledged its responsibility to end human rights violations against individuals who are vilified because of their sexual orientation or gender identity.

3.3 Timor-Leste voted in favour of the 2013 Asian and Pacific Declaration on Population and Development, which saw members of the United Nations Economic and Social Commission for Asia and the Pacific pledge to "work to reduce vulnerability and eliminate discrimination

² Office of the Provedor of Human Rights of Timor-Leste, Report to the Regional National Human Rights Institutions Project

on Inclusion, the Rights to Health and Sexual Orientation and Gender Equality (April 2013)

³ The International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child.

⁴ UN Human Rights Council, *Joint Statement on Ending Acts of Violence Related Human Rights Violations Based on Sexual Orientation and Gender Identity*, 22 March 2011, available at: <http://www.refworld.org/docid/4eb8f32e.html>.

⁵ International Gay and Lesbian Human Rights Commission, UN Human Rights Council: A stunning Development Against Violence (23 March 2011).

based on sex, gender... HIV status, sexual orientation and gender identity, or other status."⁶

- 3.4 Timor-Leste is to be commended for the 2018 hosting of a three-day seminar, during which the Timorese Minister of Education agreed to pursue the adoption of a more inclusive school uniform policy to support LGBTI+ youth. The seminar also saw government officials agree to proactively strengthen the relationship between police and members of the LGBTI+ community.⁷
- 3.5 The 3rd annual LGBTI+ pride parade was celebrated in Dili in July 2019, with President Francisco Guterres supporting the initiative and urging citizens to "see diversity as our nation's wealth".⁸
- 3.6 In 2017, the Timorese Government announced its intention to adopt the following two recommendations included in the 2016 UN Universal Periodic Review:
 - 3.6.1 strengthening Timor-Leste's legal framework to ban discrimination on the grounds of sexual orientation and gender identity; and
 - 3.6.2 developing legal and administrative mechanisms to ensure that incidents of discrimination and violence against LGBTI+ persons are properly investigated and punished.⁹

However, tangible legislative reforms are yet to be implemented and government agencies require better resourcing and training to effectively respond to instances of discrimination.

4 VIOLENCE AGAINST LGBTI+ PERSONS

- 4.1 Article 52 of the *Penal Code* provides that crimes motivated by discriminatory sentiment on the basis of "gender" and "sexual orientation" (among other grounds) constitute aggravating circumstances which may incur greater penalties.¹⁰ However, crimes motivated by prejudice based on gender identity or intersex status are not subject to any penalty enhancement.
- 4.2 The non-recognition of gender identity as an aggravating factor within Article 52 of the *Penal Code* is particularly problematic given that transgender people experience high levels of physical and symbolic violence and hate crimes in Timor-Leste. Historically, they have suffered inhuman and degrading treatment by close relatives and the police force when reporting injuries and seeking protection.¹¹
- 4.3 The State's non-recognition of gender identity bias as an aggravating factor within the *Penal Code* fails to provide an adequate deterrent against hate crimes and violence on the basis of gender identity. Moreover, the reaction of police to reports of gender identity-based violence

⁶ Economic and Social Council, Report of the sixth Asian and Pacific Population Conference, UN Doc E/ESCAP/APPC(6)/3 (18 November 2013).

⁷ "Countering discrimination against LGBTI youth people", *Asia Pacific Forum of National Human Rights Institutions* (Web Page, 1 November 2018) <<https://www.asiapacificforum.net/news/countering-discrimination-against-lgbti-young-people/>>.

⁸ Andrew Potts, "East Timor Celebrates Third LGBTIQI Pride Parade", *Star Observer* (Web Page, 19 July 2019) <<https://www.starobserver.com.au/news/international-news-news/east-timor-celebrates-third-lgbti-pride-parade/184693>>.

⁹ Rede Feto, Research Report on the Lives of Lesbian and Bisexual Women and Transgender Men in Timor-Leste (August 2017), 7.

¹⁰ Article 52 of the Penal Code states "(i) General aggravating circumstances may include the following: (A) The crime imotivated by racism, or any other discriminatory sentiment on grounds of gender, ideology, religion or beliefs, ethnicity, nationality, sex, sexual orientation, illness or physical disability of the victim."

¹¹ In August 2014, a transgender woman, Ijha, was beaten in Aileu District due to her gender expression; In October 2014, a transgender woman, Joelha, was stabbed and beaten by her brother, after suffering physical violence from her family. Instead of assisting her, the police ridiculed her when she reported the matter to them. In 2014, another transgender woman, Toty, was regularly assaulted and tortured by her family due to her gender identity and expression. Upon reporting the crime, police treated her in a discriminatory and intimidating manner, <http://isean.asia/wp-content/uploads/2014/11/TDoR-TL.pdf>.

represents a further failure by the State to protect transgender people against violence.

- 4.4 A 2017 research report found that 86% of the Timorese lesbian, bisexual, transgender and intersex women interviewed had been subject to forms of physical and psychological violence, including corrective rape, ostracism and marginalisation.¹² The lack of designated "safe spaces" amplified the challenges faced by the LGBTI+ community and prevented individuals from being able to congregate and provide support to one another.¹³

Recommendation 2

Timor-Leste should:

Amend Article 52 of the *Penal Code* to include gender identity and intersex status as factors to be considered in sentencing where crimes were motivated by bias towards gender diverse and intersex persons.

Recommendation 3

Timor-Leste should:

- (a) **Conduct sensitivity training for all members of the public service, with a specific focus on those engaged in the health, education and justice systems to enable them to effectively protect LGBTI+ victims of crime and discrimination.**
- (b) **Build on existing progress in the education system by implementing lesson plans which place a greater focus on LGBTI+ rights and awareness-raising.**

Recommendation 4

Timor-Leste should:

Facilitate the establishment of "safe spaces" and outreach clinics to enable LGBTI+ individuals to connect and support one another, regardless of age and social status.

5 DISCRIMINATION AGAINST LGBTI+ PERSONS

- 5.1 Timor-Leste does not have any laws prohibiting discrimination on the basis of sexual orientation, gender identity and intersex status. Article 16(2) of the Constitution of Timor-Leste prohibits discrimination on a variety of grounds, but does not explicitly include sexual orientation, gender identity and intersex status. In December 2001, the Constituent Assembly specifically voted against the inclusion of sexual orientation as a non-discrimination ground in Article 16(2) of the Constitution.
- 5.2 The lack of specific legislation is a contributing factor to the discrimination experienced by LGBTI+I persons in all areas of public life in Timor-Leste. In particular, there have been reports of discrimination against transgender people and men who have sex with men (MSM) when accessing health checks in hospitals and clinics. In Timor-Leste, transgender people and MSM experience high levels of stigma in health care settings. The difficulties in accessing health care in a safe and non-discriminatory manner discourages LGBTI+ people from accessing health care and impinges upon their right to health under the international human rights instruments that Timor-Leste has ratified.
- 5.3 On 2 April 2019, the Timorese Minister of Legislative Reform and Parliamentary Affairs called for an end to discrimination against LGBTI+ people saying, "Barbaric laws and discriminatory

¹² Rede Feto (n 11) 3 and 5.

¹³ Ibid 19.

treatment of marginalized groups have to end". Moreover, the Minister announced that he would request an official inquiry into allegations of ill-treatment of disabled and LGBTI+ patients at the national hospital in Dili.¹⁴

- 5.4 During the COVID-19 pandemic, the biggest challenge facing LGBTI+ people in Timor-Leste is exclusion from government support. Most of the LGBTI+ couples living separately as families are not included in the definition of *Uma Kain* (households). The non-recognition of their living status excludes them from the food basket program.¹⁵

Recommendation 5

Timor-Leste should:

- (a) Enact comprehensive anti-discrimination legislation that prohibits discrimination on the basis of sexual orientation, gender identity and intersex status in all areas of public life, including health care, education and housing.**
- (b) Amend Article 16(2) of the Constitution to include sexual orientation, gender identity and intersex status as prohibited grounds of discrimination.**
- (c) Hold an official inquiry into allegations of ill-treatment of disabled and LGBTI+ patients at the national hospital in Dili and take positive steps to counter stigma, stereotypes, and prejudice against LGBTI+ people.**
- (d) Ensure LGBTI+ families are included in government-supported programs, especially during the COVID-19 pandemic.**

Discrimination in employment

- 5.5 Timor-Leste does not currently prohibit discrimination against LGBTI+ people in employment. While the *Labour Code* prohibits discrimination on a variety of grounds, these do not include sexual orientation, gender identity or intersex status.¹⁶
- 5.6 Timor-Leste's lack of anti-discrimination legislation is particularly worrying given that the previous *Labour Code*, enacted in 2002 and repealed in 2012, prohibited discrimination on the basis of sexual orientation in employment.¹⁷ Therefore, Timor-Leste's current legislative situation represents a step backwards which leaves LGBTI+ workers open to discrimination and harassment and interferes with their right to work.

Recommendation 6

Timor-Leste should:

- (a) Amend the *Labour Code* to prohibit discrimination on the basis of sexual orientation, gender identity and intersex status in all areas of employment.**

¹⁴ The Minister was referring to complaints made in Parliament by two deputies of cases in which citizens with disabilities were treated badly in hospital and treatment was refused to transgender people. <https://www.dn.pt/lusa/governo-timorense-vai-exigir-inquerito-a-hospital-por-maus-tratos-a-deficientes-e-lgbti---ministro-10751006.html>; <https://e-global.pt/noticias/lusofonia/timor-leste/timor-leste-governo-exige-inquerito-a-hospital-por-maus-tratos-a-deficientes-e-lgbti/>.

¹⁵ Ahmed Saleem, "In Timor-Leste, reducing stigma and discrimination against the LGBTI community", *Spotlight Initiative* (Web Page, 20 November 2020) <<https://www.spotlightinitiative.org/news/timor-leste-reducing-stigma-and-discrimination-against-lgbti-community>>.

¹⁶ Labour Code, Law 4/2012, Article 6(2).

¹⁷ Labour Code of the Democratic Republic of Timor-Leste, UNTAET/REG/2002/5. Section 9.4 of the Code prohibited "discrimination in employment and occupation", while section 2 defined "discrimination" to include "any distinction, exclusion or preference based on ... sexual orientation".

- (b) Take positive measures, including anti-discrimination campaigns among the public administration and private enterprise, to promote the inclusion of LGBTI+I workers in the public and private sectors.**

6 LACK OF LEGAL GENDER RECOGNITION

- 6.1 Timor-Leste does not have any laws or policies that allow transgender persons to change their gender identity on their identity cards and documents. This results in the gender identity and expression of transgender people not aligning with their legal gender.
- 6.2 The lack of legal gender recognition opens transgender people up to significant discrimination in all areas of life where gender information is required, including employment, health care, education and access to justice.

Recommendation 7

Timor-leste should:

Enact legislation that allows individuals to change the gender on their identity cards and official documents so that they reflect their gender identity.