



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA MONITORIZASAUN BA SISTEMA JUDISIÁRIU

**The Obligations of the State of Timor-Leste in the
recruitment process and the workplace: Progress and
challenges in implementing the Convention on the
Elimination of all Forms of Discrimination Against Women
(CEDAW)**

26 October 2018

Table of Contents

Introduction 3

Relevant legal basis 4

Timor-Leste Constitution..... 4

Statute of the Public Service..... 4

Labour Law..... 5

JSMP Findings..... 7

Secretary of State for Employment Policy and Vocational Training (SEPFOPE)..... 7

Challenges..... 9

Public Service Commission 9

Progress 9

Challenges..... 13

Conclusions and Recommendations..... 13

Introduction

The international Convention on the Elimination of Discrimination Against Women (CEDAW) is an international statement on women's rights. CEDAW sets out principles on the rights of women, as well as norms, standards and obligations for State Parties that have ratified and promised to uphold this convention.

CEDAW was adopted by the General Assembly of the United Nations in 1979 and came into force on 3 September 1981. The State of Timor-Leste is a State-Party to the convention because it was ratified in 2003.¹

As a State-Party, Timor-Leste is obliged to comply with the provisions set out in this convention. This paper focuses on the obligations of the State of Timor-Leste in accordance with this convention to ensure protections and guarantees for women in the labour market or women in employment and to identify common violations that occur in the workplace. The aim is to find out what efforts the State of Timor-Leste has taken after ratifying this convention. In particular, what has been done by the Secretary of State for Employment Policy and Vocational Training and the Public Service Commission to combat and eliminate discrimination and bad practices such as sexual harassment against women in the recruitment process as well as in the field of employment.

The Public Service Commission was established via Law No. 8/2004 as an independent State institution free from political intervention, or free from intervention from any political entity. The Public Service Commission carries out its work by upholding the principles of impartiality and merit. This means that the Public Service Commission oversees the recruitment process by considering people's expertise and does not consider if a person belongs to a certain group or party. The Public Service Commission also oversees appointments to positions in directorates and management such as director generals, national directors, district directors, department heads and section heads.

Article 8.1 of the Statute of the Public Service states that "*Efforts shall be made in the public service to select and recruit qualified candidates without discrimination, and according to assessment solely based on a candidate's skills and performance*".

Law No. 4/2012 (Labour Law) which was approved and promulgated by the National Parliament on 21 February 2012, sets out the fundamental principles of labour relations between employers and workers in the work place, as well as all of their rights and responsibilities. At the very least this law gives serious attention to the

¹ Please find more detailed information about this resolution at:
http://www.mj.gov.tl/jornal/public/docs/2002_2005/resolucao_parlamento/12_2003.pdf

protection of the basic rights of female and male employees in the area of work relations.

This paper is aimed at commenting on the implementation of CEDAW, particularly in relation to the issue of discrimination against women in the area of employment, the obligations of the State of Timor-Leste in accordance with this convention, through the relevant ministries or public institutions.

Relevant legal basis

Timor-Leste has achieved progress in a range of important areas, because it has set out basic human rights principles and values in the Constitution. In addition, Timor-Leste also ratified the international conventions that set out human rights principles, including CEDAW. CEDAW is a treaty that specifically deals with women's rights. This Convention has three fundamental principles. Firstly, the principle of substantive equality, secondly, the principle of non-discrimination, and thirdly the principle of state obligations. This Convention is aimed at guaranteeing all women's rights and eliminating acts of discrimination against women in all areas including employment. Specifically, Timor-Leste has its own law to guarantee and protect women's rights including the right to work.

[Timor-Leste Constitution](#)

The Constitution is the highest law in Timor-Leste that sets out fundamental principles. The Timor-Leste Constitution guarantees the work rights of women and men. Article 50 (1) of the Constitution states that: *Every citizen, regardless of gender, has the right and the duty to work and to choose freely his or her profession.*

[Statute of the Public Service](#)

Also, specific articles in the Statute of the Public Service provide guarantees and protect women from acts of discrimination in public administration, namely Article 8 and Article 111.

Article 8.1 of the Statute of the Public Service states that "Efforts shall be made in the public service to select and recruit qualified candidates without discrimination, and according to assessment solely based on a candidate's skills and performance". Article 8.2 states that: Civil servants shall all earn the same salary for the same work, and 8.3 states that: No civil servant shall be discriminated against in employment compensations, entitlements, benefits or privileges.

In addition to providing guarantees and protecting women against discrimination, the Statute of the Public Service also guarantees protection against abuse. Article 111 states that:

1. Every civil servant or agent of the public administration shall have the right to adequate protection against threats, abuse, insults or defamation that may be directed at him or her in the exercise of his or her functions.
2. Public authorities shall be under an obligation to ensure effective protection against any abuse directed at a civil servant or an agent of the public administration in the exercise of his or her functions, and necessary action shall be taken to repair any damage resulting from any such abuse, as required by applicable rules.

The Statute of the Public Service also adopts a policy for a 30% quota for women in public administration. Therefore the Public Service Commission has an obligation to promote women's participation. If the recruitment process does not uphold the requirements of this law, the Public Service Commission shall give priority to women. These practices and policies demonstrate good progress in the recruitment process by giving priority to women in public administration.

Law No. 7/2009 on the Establishment of a Public Service Commission states that every year the Public Service Commission shall report to the National Parliament. A copy of this report shall be given to the Government, and the Public Service Commission normally carries out its day to day work with the Government because the work of the public administration is a government responsibility. Article 103 of the Constitution states that: The Government is the organ of sovereignty responsible for conducting and executing the general policy of the country and is the supreme organ of Public Administration.

Also, the Public Service Commission had introduced a policy on the prohibition of sexual harassment against public servants working in all ministries across the entire territory of Timor-Leste. This policy on sexual harassment includes the application of sanctions against staff who commit sexual harassment or violate the rights of public servants. These sanctions include transferring the public servant to another location, disciplinary measures from a superior, as well as missing out on opportunities for promotion to management positions in the directorates.

[Labour Law](#)

The Labour Law sets out the basic principles relating to treatment in the work place and suitable environments, as well as all of the rights and responsibilities of employees and employers. This law firmly emphasises the protection of the basic rights of female and male employees and also encompasses the private sector in the employment of workers, both national and international.

Article 6 on the principle of equality states that:

1. All workers, men and women, have the right to equality of opportunities and treatment insofar as access to employment, training and capacity building,

work conditions and remuneration are concerned.

2. Nor worker or employment candidate may, either directly or indirectly, be benefited, negatively affected, deprived of any right or exempted from any duty on the basis of colour, race, civil status, gender, nationality, ascendancy or ethnical origin, social position or economic status, political or ideological convictions, religion, physical or mental condition, age or health status;

Also, Article 7 deals with prevention and protection of women against violence and sexual harassment in the work place:

1. Harassing a job applicant or a worker shall be prohibited.
2. Harassment shall mean any undesired behaviour that affects the dignity of women and men or that is considered to be offensive either verbally, nonverbally or physically, or that results in an intimidating, hostile, humiliating and destabilizing work atmosphere for the harassed person.
3. Sexual harassment shall mean any undesired behaviour of a sexual nature that affects the dignity of women and men or that is considered to be offensive, in a verbal, non-verbal, or physical manner, such as contact or insinuations, commentaries of a sexual nature, exhibition of pornography and sexual demands, or that creates an intimidating, hostile, humiliating and destabilizing work environment to the harassed person.
4. The employer must take all necessary measures to prevent cases of harassment, notably sexual harassment, at the workplace.

The Inspectorate-General for Labour is a directorate under the Secretary of State for Employment Policy and Vocational Training (SEPFOP) that was established via Decree-Law No. 19/2010 with the competence to carry out inspections into both local and foreign companies in relation to working conditions such as security, hygiene and health in the workplace and social security. Inspections have found that some companies have not adhered to the Labour Law (Law No. 4/2012) and some irregularities have resulted in sanctions/fines from inspectors pursuant to Decree-Law No. 19/2010. These sanctions or fines are to be complied with in accordance with the wrongdoing of the company and are to be paid directly into State coffers. SEPFOP has its own policy in the area of training in regards to how to provide training to build the capacity of East Timorese citizens, particularly female and male employees.

Recommendations made in the concluding observations of the CEDAW Committee

The recommendations made in the concluding observations of the CEDAW Committee praised the positive steps taken by the State of Timor-Leste, but continued to highlight concerns for the State that need to be addressed and corrected. In particular Recommendation No. 29 (b) and (c), where the CEDAW Committee recommended:

(b) Adopt measures to eradicate discrimination in the recruitment and promotion of women, including effective mechanisms to ensure and monitor compliance with existing legislation in the public sector and private sector;

(c) Reinforce programs aimed at reducing women's unemployment and promoting women's access to employment in the formal sector and social security coverage, adopt a gender sensitive employment policy including a focus on women with disabilities, and monitor the employment conditions of women in the informal economy, specifically in agriculture, with the idea of ensuring their access to social protection, including relating to the maternal protection;

JSMP Findings

In relation with the recommendations of the CEDAW Committee, JSMP has approached key entities in the relevant areas of public institutions such as the Secretary of State for Employment Policy and Vocational Training and the Public Service Commission. This approach was aimed at examining if the Government of Timor-Leste has taken steps and adopted policies to implement the recommendations made by the CEDAW Committee in number 29 of the concluding observations relating to the combined second and third periodic reports from Timor-Leste.

Secretary of State for Employment Policy and Vocational Training (SEPFPOE)

Discrimination in the Recruitment Process of Public Servants and in Employment

Within SEPFPOE itself there has not yet been an act of discrimination against women during the recruitment process, because SEPFPOE has abided by Article 50 of the Timor-Leste Constitution that states that women and men have equal rights to work and choose their profession.² SEPFPOE has also given a lot of attention to training such as the Sinai Centre in Tibar. This training centre, as well as other training locations, have always involved women and not just men. Therefore when SEPFPOE carries out recruitment they always give priority to the issue of gender.

For example, SEPFPOE has a relationship and cooperative working agreement with the Government of Australia. In relation to the recruitment of employees, SEPFPOE always involves women and always gives priority to women to compete in recruitment.

SEPFPOE has the National Directorate for Labour Relations (DNRL), which is a neutral and competent body, that carries out mediation or conciliation in accordance with the Labour Law (Law No. 4/2012) for cases involving the termination of employees. Employees have the right to make a complaint to this directorate.

² Interview with the Director General of SEPFPOE, on 6 September 2018

Mechanisms to oversee Public Servants and employees in the Ministries and Companies

SEPFOPPE, through the National Directorate for Labour Relations and Inspectorate-General for Labour, always disseminates information about the Labour Law across the entire territory of Timor-Leste through workshops and seminars so that employees and employers in rural areas can also understand and know their rights and responsibilities.

In addition, SEPFOPPE always increases awareness about the law and provides explanations about rights and responsibilities to provide protection to employees in accordance with the law, such as protection for women, with consideration of working hours, breaks, minimum wages, etc. The Department of Social Dialogue within the Directorate for Labour Relations is responsible for raising the awareness of all companies in Timor-Leste about the Labour Law.

Protection against Sexual Harassment in the Workplace

Sexual harassment is a very important issue for SEPFOPPE, and therefore when employees attend training SEPFOPPE always explains about this issue and the consequences based on regulations issued by the Public Service Commission.

SEPFOPPE also has a Directorate for Discipline that oversees all staff, and in particular deals with inappropriate behaviour such as sexual harassment against female staff in the workplace.

Efforts to Promote Gender Equality in the Workplace

Decree-Law No. 7/2015,³ that revokes Decree-Law No. 3/2008, the Organic Law of SEPFOPPE, also states that the issue gender is an important issue for SEPFOPPE. This is important for the establishment of a separate office to specifically deal with gender issues that will answer to the Secretary of State with the aim of examining the policies of SEPFOPPE, especially on the issue of gender.

SEPFOPPE has its own policy in the area of training in regards to how to provide training to build the capacity of East Timorese workers. SEPFOPPE also has its own policy to give priority to this issue because it is an important one. SEPFOPPE has been acknowledged and appreciated by the Secretary of State for Equality and Gender as a government institution that has been effectively carrying out its work in relation to gender.

³ Please refer to the following law: http://www.mj.gov.tl/jornal/public/docs/2015/serie_1/SERIE_I_NO_31.pdf

Challenges

Even though there have been efforts to respond to the recommendations of the CEDAW Committee, as well as obligations under the law, JSMP has observed that in practice discrimination against women continues to occur.

JSMP has observed that even though there are laws and regulations to protect staff and workers, discrimination against women continues. For example, discrimination against women has occurred in some shops in Dili, specifically in relation to the termination of women's employment contracts. Between January-November 2018 the National Directorate for Labour registered disputes from a total of 160 female applicants and 148 female workers suffered from having their employment terminated without justification.⁴

In addition, some companies always give priority to male workers on the basis that the work performed by the company is heavy in nature, especially in the field of civil construction. However, there are also some shops employing women who continue to discriminate against women on the basis that they are lazy, absent from work, but the employers do not provide written justification about such irregularities.

For example in 2018, SEPFOPE through the Directorate for Mediation and Conciliation, received a number of complaints from shops in Dili submitted by female employees that they demanded their salaries from the shop owners but their contracts were terminated and then males were employed in these locations. This shows a high level of discrimination by shop owners against workers.

JSMP also noted that many women also lack qualifications to compete for work. Even though SEPFOPE itself offers and facilitates a lot of training for both women and men, it appears that women do not yet occupy high positions in private companies or shops. In particular, women in the districts lack information about employment opportunities.

Public Service Commission

The Public Service is the agent of public administration. In relation to public servants and agents of public administration, JSMP has collected information and data from the 2017 Annual Activity Report from the Public Service Commission.

Progress

Overall Analysis of Public Administration in Timor-Leste by the Public Service Commission

⁴ Interview with Mr. Angelo dos Santos; National Director for Labour, 19 October 2018

Public Administration in Timor-Leste has undergone significant changes, especially in 2017 with the shift from the VI Government to the VII Government. This change has resulted in a reduction of members of government because some institutions have closed and staff have been transferred to new institutions with new names. These changes have resulted in a decrease in the number of public servants and public administration agents because of limited funds. In light of these changes the Public Service Commission has analysed the number of people in the work force in 2017.

By the end of 2017, the public administration had a total of 34,142 public servants and public administration agents. From this total 1,971 held positions in Directorates and Management with a total of 409 women (an increase of 25 (5%) in comparison with 2016, with a figure of just 384).

The following table summarises the distribution of public servants and public administration agents based on gender and career.

Description	Men	Women	Total
Positions in Directorates and Management	1,562 (79%)	409 (21%)	1,971
Anti-Corruption Specialists	44 (79%)	12 (21%)	56
Police Scientific Criminal Investigations	80 (76%)	25 (24%)	105
Inspectorate-General For Labour Regime	14 (67%)	7 (33%)	21
Auditors Regime	21 (70%)	9 (30%)	30
UNTL Lecturers	307 (78%)	86 (22%)	393
Judicial Officer Regime	271 (77%)	79 (23%)	350
Teachers Regime	7,024 (64%)	3,969 (36%)	10,993
Health Professionals Regime	1,665 (46%)	1,961 (54%)	3,626
General Careers Regime	11,288 (68%)	5,270 (32%)	16,558
Parliamentary Regime	19 (49%)	20 (51%)	39
Total	22,295	11,847	34,142

This data shows that the issue of gender needs further attention because women represent only 34% of total public servants and public administration agents (even though there has been an increase of 1%). There are only two regimes where women represent more than 50%, namely the Health Professionals Regime where 54% are women and the Parliamentary Regime with 51%.

Evolution of the number of public servants and public administration agents from 2015 until 2017:

Year	Permanent Staff			Fixed Term Employment Contract		
	Men	Women	Total	Men	Women	Total
2015	19,165	8,672	27,837	2,342	2,185	4,527
2016	18,657	8,886	27,523	2,498	2,417	4,915
2017	17,318	8,683	26,001	2,458	2,427	4,885

When considering the table above in relation to the issue of gender, the dynamics of the labour force can be seen over a three year period. The table shows that the number of male public servants decreased from 2015 to 2017, however women's participation is still limited.

Evolution of the percentage of women between 2012-2017:

Year	Men	Women
2012	71%	28%
2013	70%	29%
2014	67%	32%
2015	66%	33%
2016	66%	33%
2017	65%	35%

The information above shows that the percentage of men decreased from 71 to 65 between 2012 and 2017. Meanwhile the percentage of women increased from 28% in 2012 to 35% in 2017. This shows that in 6 years (2012-2017) there was an 8% increase of female staff.

Steps taken by the Public Service Commission to protect women and prevent sexual harassment in public administration

The Public Service Commission has an instruction guide on the disciplinary administrative process as well as a Manual entitled “*Say No to Sexual Harassment*” Guideline No. 12/2017. In addition the Public Service Commission has also partnered with UN Women to sign an agreement on “law enforcement” for dealing with the issue of “*Say No to Sexual Harassment*”, and how to assert the role of the Public Service Commission on the issue of “*Say No to Sexual Harassment.*”

The Public Service Commission also has its own internal rules with sanctions that apply to public servants or public administration agents who violate or disrespect

disciplinary rules and the policy of “*Say No to Sexual Harassment*”. Some public servants and agents have received sanctions from the Public Service Commission such as dismissal and suspension.

The Public Service Commission also seeks ways to avoid any abuse of power within the sphere of recruitment, but acknowledged that these problems occurred in the past and currently it uses a system of merit based selection or processes using computer technology.

The Public Service Commission also has a policy on “*Regulation on Parental Responsibility*” and “*Need to provide food assistance*” as a way to protect families, women and children.

With these efforts the Public Service Commission has adopted strict measures to protect and develop women in the public service and public administration.

Disciplinary Process for acts of sexual harassment

- Department of Ethics and Discipline: The Head of the Department of Discipline can initiate Disciplinary procedures;
- There is an Audit Office that can conduct preliminary investigations; and
- The Head of the Department of Dissemination shares information with the public.

Complaints can come from victims, NGOs or ordinary citizens who have knowledge about violence or any inappropriate behaviour.

When the Public Service Commission has knowledge about a violation of public service regulations, it will conduct a disciplinary procedure and when there are indications that a crime has occurred it will send the matter to the Public Prosecution Service to be investigated in accordance with the law and the criminal process.

In addition to these efforts the Public Service Commission has partnered with UN Women to sign an agreement to protect women and prevent acts of sexual harassment.

Other steps taken by the Public Service Commission include partnering with UN Women to develop technology to receive complaints about violence and sexual harassment against women in the workplace. UN Women will collaborate with the Public Service Commission to share information about this technology with the public and NGOs before launching it to inform and encourage everyone not to be afraid of making a complaint when any disciplinary violation occurs in the workplace.

Challenges

Even though the aforementioned progress has been achieved the Public Service Commission, it has also encountered challenges in these processes, particularly the recruitment process for management positions. The following challenges have been encountered:

- Limited human resources to disseminate information to rural areas;
- Other mechanisms to encourage women's participation in development;
- Women's participation in the management process continues to be weak or lacking;
- Lack of capacity building through seminars, workshops, trainings for women, especially for women in the municipalities.

Conclusions and Recommendations

The Timor-Leste Constitution, Labour Law and Public Service Law set out the rights of citizens to employment and protect them from violations committed by employers in the workplace. In Timor-Leste women are vulnerable when they talk about seeking employment, especially women in rural areas. The Government of Timor-Leste continues to endeavour to protect and prioritise women in public administration processes, and also in the recruitment of national and international workers to ensure their right to employment.

Timor-Leste has ratified CEDAW which sets out the obligation of the State as a State-Party, including women's rights to access the labour market without discrimination. In addition, State institutions and NGOs continue to seek ways to disseminate information and improve policies to protect and encourage women to participate and gain employment.

JSMP has observed that legal procedures have resulted in massive changes in our nation to value and prioritise women to compete in all areas of employment. However, JSMP has also noted challenges faced by the Government to comply with its obligations according to the law. Therefore, JSMP provides the following recommendations to the Government, and in particular relevant institutions, for their consideration:

1. SEPFOP needs to partner with civil society to ensure that information is provided to the public and companies from the private sector, especially new companies, by increasing awareness about the Labour Law to ensure the rights of female workers.
2. SEPFOP needs to establish a Department for Women in the Labour Commission, to make women feel safe to make complaints about treatment and violations against the rights of female workers in the workplace.
3. Implement the Labour Law by investigating if companies or employers are complying with this law, including women working in the domestic sphere, in shops, working with tailors, etc.

4. The Secretary of State for Equality and Inclusion should conduct a full range of inter-ministerial monitoring to ensure the mainstreaming of gender in all ministries to guarantee the rights of female workers, at the Government level and the private sector.
5. The Civil Service Commission and SEPFOPE should improve systems in the recruitment process to increase the percentage of women in employment.
6. SEPFOPE should continue to regularly disseminate information about the Labour Law in rural areas.
7. Recommend for the Public Service Commission to create a new system or mechanism to give priority to women to compete for employment.
8. Recommend for the Public Service Commission to disseminate information about Public Service Commission policies to protect women, so that communities can have knowledge about existing policies and mechanisms.
9. Recommend for the Public Service Commission to encourage women to compete for employment and take part in employment in all sectors, including both the public and private sectors.
10. Recommend for the Public Service Commission to establish a good relationship with NGOs to protect women's rights and develop women's capacity, so they can share information and ideas between State institution and NGOs on how to further improve mechanisms and encourage women to actively participate in the sphere of employment.

For more information please contact:

Luis de Oliveira Sampaio
Executive Director of JSMP

Email: luis@jsmp.tl

www.jsmp.tl

...