

IHRP Final Internship Report

Charu Kumar

Introduction

This past summer I was awarded a 15-week internship by Canadian Lawyers Abroad to work with the United Nations Development Programme (UNDP) in Dili, Timor-Leste. More specifically I worked within UNDP's Access to Justice (A2J) Unit, which as per the UNDP's strategic plan strives to ensure that "individuals and groups obtain quick, effective and fair response to protect their rights, prevent or solve disputes and control the abuse of power, through a transparent and efficient process, in which mechanisms are available, affordable and accountable." ¹ While working within this Unit, I was assigned a number of projects by my supervisor, Andrew Harrington. The particulars of each major project are outlined below.

Projects

1. Social Context Education Project

Of all my projects, my primary one was a legal research-based assessment studying if and how Timor-Leste's justice actors account for social context considerations during their judicial decision making process so as to ensure substantive equality before the law. ² The final assessment considered the concept of *social context* and the application of this concept with respect to the legal and social realities of Timor-Leste. It considered how the disparate and divergent social contexts of the nation pose a barrier to justice for many Timorese citizens and a hindrance to equality before the law. It also assessed the extent to which such contexts can or should be taken into account by the country's judiciary in legal proceedings, and the extent to which they are incorporated into the provision of legal training. Consequently, the assessment considered the extent to which *social context education*, which trains justice actors when and how to consider social contexts in legal proceedings, may promote equality and access to justice rights as mandated by national and international law. The assessment concluded that while social context is a crucial element of legal analysis in the diverse society of Timor-Leste, the current provision of legal training in social context may be inadequate to ensure equal access to justice. Accordingly, the assessment suggested that comprehensive social context education can and should be both institutionalized and systematized through a *Social Context Training and Education Program* for justice actors.

On the basis of this conclusion, I drafted a proposal that outlined the various ways in which social context education could be integrated into the legal training curriculum in Timor-Leste. The proposed programming options were carefully devised after a

¹ *United Nations Development Programme*, "Justice Sector Strategic Plan" (2010): p. 31.

² Social context considerations refer to an individual's unique personal characteristics and circumstances; considerations of a community's historical background and cultural environment; and, considerations of a justice actor's personal beliefs and guiding assumptions. To the extent that a legal system is aware and discerning of social context is often the extent to which it is able to achieve its own goals, namely equality, fairness, and the protection of individual rights. Consequently, many justice systems around the world have institutionalized social context training mechanisms in the interests of improving equitable decision-making and ensuring equality rights are upheld in judicial proceedings.

series of interviews with key judicial figures in Timor-Leste (i.e. the court of appeal judge), and with leading legal training centers around the world (i.e. Canadian National Judicial Institute, Philippine Judicial Academy, and the University of Cape Town's Faculty of Law). Andrew Harrington will present this proposal to key legal training institutions in Timor-Leste later this year.

2. Mobile Justice Proposal

Shortly after arriving to the country, I was asked to assist in the drafting of a proposal requesting that the three primary legal institutions in Timor-Leste permit select students to take part in the mobile justice initiative. This initiative is part of a broader attempt to improve access to justice for those residing in the country's rural areas. Presently, the Timor-Leste houses only four district courts – despite the nation comprising 13 districts altogether. As a result of this institutional shortage, many individuals across the nation simply do not have the financial means to access courts, and thus justice. The mobile court initiative seeks to mend this issue by taking courts and all necessary personnel to the people. As such, every few months, mobile courts are set up in rural areas across the country and cases (both civil and criminal) are heard and resolved. This initiative is of great practical and educational value for legal trainees, as it exposes them to remote legal matters they may otherwise not encounter during their legal education. As such, the UNDP requested that some students from all three legal training institutions be allowed to observe these mobile court sessions.

3. Critique of Recent Appeal Court Decision

I edited and revised a critique of a recent court of appeal decision in Timor-Leste. The decision pertained to a case of domestic violence in which the court forced the victim to testify. This case raised a number of issues regarding the interpretation of Article 125 of the Timorese Criminal Procedure Code, as it is argued by some that it is clearly stated that both witnesses and victims *cannot* be forced to testify in court.

4. Research on the Codification of Local Laws

A few weeks before the conclusion of my internship, I began assisting another member of the A2J Unit carry out field research regarding the codification local level laws, as there is presently much debate surrounding this issue. There are currently two systems of justice at work in Timor-Leste – the formal and informal. While the formal system promulgates laws advanced by the state, the informal system relies on enforcing largely uncodified and oral laws constructed at the local level. In many instances, the laws advanced by the two systems blatantly contradict each other.³ While the law makers and enforcers have begun to acknowledge the importance of traditional forms of justice, they have nevertheless found it very difficult to reconcile it with the formal justice system. A frail understanding of traditional mechanisms by formal justice actors inadvertently bars much of the Timorese population from

³This contradiction can be explained partly by the fact that the two systems of justice are premised on very different principles. While the formal system places emphasis on the individual, the informal focuses on mutually acceptable outcomes, and community-wide reconciliation. However, despite this contradiction these informal laws are quite influential and play an important role in Timorese society.

accessing justice. This is because most Timorese –particularly those residing in rural areas—are regrettably bound by two systems of justice.

Over the past few years, many local authorities as well as local and international institutions have begun supporting, and even demanding, the codification—and thus legitimization—of these local laws. In fact, some units within the UNDP have already offered logistical and financial support for this initiative. This has spurred much anger and frustration among other UN bodies and the national government. As a result, to get a better handle on the issue—namely regarding *why* some institutions are choosing to support this initiative—the A2J Unit began its own research at the end of July 2012. I accompanied a few UNDP members to interviews and conducted preliminary research on the matter. I had to leave this project a few weeks later since I had reached my internship end date.