



The Impact of Migration on Timor-Leste and its Security Sector

Research Question: What is the impact of migration on Timor-Leste's peace and development and how does this affect the Timor-Leste security sector?

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Photo Fundasaun Mahein, 2017.

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Executive Summary

1) This report will consider the impact of migration on the Democratic Republic of Timor-Leste's (RDTL) peaceful development and how this affects the Timor-Leste security sector. Since independence, Timor-Leste has experienced an influx of regular and irregular migrants, working primarily in the construction, service and commerce sectors. This has been due to both a lack of skilled human resources and a dollar-based economy, combined with an extensive frontier with the Republic of Indonesia (RI), which has made the monitoring, and regulation of migration difficult.

2) The purpose of this report is to determine migration flows into Timor-Leste, the impacts of this on Timor-Leste's development and security, and how effective security actors have been in addressing this on both an operational level and through legislation and policy. The research methodology for this report involved initial desk-based research of these factors, followed by a series of key-informant interviews with relevant civil society, government and international actors in order to clarify certain trends and conclusions that were derived from desk-based research. The key research findings and recommendations were then discussed during a Security Sector Discussion (SSD) by the FM Research Team to reach a consensus on the research findings and recommendations.

3) The impacts of migration that are most of concern for the Timor-Leste security sector are twofold. Firstly, there is a perception of competition between local and migrant workers in urban environments, with young Timorese workers and graduates facing strong competition in a labour market that calls upon significant skilled human resources from migrant workers. The potential danger in this is that such competition may become a driver for conflict due to the horizontal inequality this creates between local and migrant workers, especially when considering Timor-Leste's youth bulge and high levels of youth unemployment. Secondly, there is the issue of trafficking in persons for forced labour and sex work, with Timor-Leste being a source and destination country as well as experiencing internal trafficking in persons. The relevant institutions responsible for regulating migration and both preventing and investigating migration related crime can be found after the introduction.

4) Migration flows into Timor-Leste remain difficult to determine due to a number of factors. Firstly, migration involves both regular and irregular migrants, with regular migrants' entry and stay being authorised by the state, and irregular migrants lacking legal status for their stay within the state. Whilst regular migration can be quantified to a degree using statistics published by the Migration Service, this is also unreliable as it is hard to determine the number of migrants working on tourist visas, or how many migrants granted tourism visas were later issued with longer term visas. Secondly, what is clear is that due to the ambitious development process Timor-Leste has engaged in since independence, the lack of local skilled human resources has led to an influx of regular and irregular skilled migrants working in the construction, commerce and tourism sectors, notionally whilst local expertise is developed. Thirdly, due to the RDTL's porous land border with the Republic of Indonesia and its maritime frontiers, the RDTL security sector has been hard pressed to patrol Timor-Leste's borders due to a lack of coordination, capacity and resources, which impacts on their ability to regulate and control migration.



Finally, it is important to qualify that irregular migrant workers are likely to avoid official inquiries by the RTDL, which further complicates the analysis of migration data in Section III, Migration Flows.

5) For the Timor-Leste security sector to respond effectively to these challenges three broad responses are required. Recently introduced legislation and policy must be properly implemented, a new interdiction strategy must be introduced to combat irregular migration and trafficking in persons (TiP), and prevention of TiP must be mainstreamed via socialisations in vulnerable communities.

6) Law No.11 2017, Migration and Asylum Law provides some greater clarity on the new visa granting regime, and notionally allows for migrants to apply for work-related visas from outside of Timor-Leste, thereby avoiding the precedence of migrant workers entering on tourist visas and working illegally. However, this has yet to be properly implemented, with such visa applications still occurring in-country, with the Secretariat of State of Professional Training and Employment and Migration Service often being aware that applicants are already working on tourist visas whilst their working visa applications are being processed. The failure to implement this process properly continues to distort data on the number of migrant workers in Timor-Leste, and makes it harder for migrant workers to legitimise their legal status in Timor-Leste and for the State to regulate migration.

7) In regard to combatting and preventing TiP, Law No.3 2017 on Preventing and Combatting Human Trafficking provides for: a greater scope for prosecutions, a higher level of protection and support for victims of trafficking (VoT), wider public accountability for state officials, mandating police protection and immigration support for victims, the notional strengthening of prevention by the State as well as establishing the legal framework for the Commission for Combatting Trafficking in Persons (CLCTP). The latter is responsible for the national coordination of stakeholders involved in combatting and preventing TiP under the 2016-2018 National Action Plan (NAP) against Human Trafficking in Timor-Leste alongside international coordination and cooperation.

8) The NAP is the strongest policy measure so far by the RTDL to combat and prevent TiP and protect and support VoT. Overseen by the Ministry of Justice, the NAP provides for an inclusive strategy to combatting and preventing TiP, inclusive of RTDL and civil society actors towards achieving the outcomes of prevention, protection, prosecution and partnerships. It has allowed for the participation of relevant stakeholders in the development of legislation, delineated implementing actors, established the partnership between Government and civil society, strengthened training for security actors and civil society and established a line of funding for NAP partners.

9) However, the current interdiction model to combat and prevent TiP requires adjustment to become effective. This would involve; enhanced intelligence sharing arrangements to leverage the surveillance capacity of regional neighbours for monitoring of Timorese waters and terrestrial frontiers, cross-border and cross-agency cooperation with the Republic of Indonesia and socialisations of security



actors and communities towards building awareness and resilience against TiP. Additionally, the NAP stakeholders responsible for prevention must be allocated by Government the level of funding necessary to mainstream socialisations on the prevention of TiP, to properly engage and educate communities on the signs and risks of TiP, and strengthen their relationships with local security actors so they can effectively respond to and prevent potential cases of TiP.

10) Recommendations

- a. A refocus of the Education system towards generating graduates with practical working skills to reduce reliance on skilled migrant workers and provide greater employment opportunities for Timorese nationals.
- b. Alteration of the current interdiction model for counter-trafficking to include increased intelligence-sharing arrangements to leverage the surveillance capacity of regional neighbours for monitoring of Timorese waters and terrestrial frontiers, cross-border and cross-agency cooperation with the Republic of Indonesia, socialisations of security actors and communities towards building awareness and resilience against trafficking in persons.
- c. Provision of Government funding for Human Trafficking Working Group stakeholders focusing on prevention to enable greater community engagement and resilience.
- d. Socialisations of current legislation on migration for Timorese nationals and the international community in Timor-Leste, towards effective implementation of this legislation.
- e. An efficient and transparent process for applying from outside of Timor for a Work Visa, a Visa to Establish Permanent Residence (which is the precursor to a Residence Permit), a Research Visa, Volunteer Visa etc. outside of Timor-Leste should be made available as soon as possible so that migrants are not obliged to start their work in Timor illegally. Until this is in place, migrants who have submitted an application for a non-tourism visa should not be required to renew tourism visas, in order to properly clarify the number of migrant workers in Timor-Leste and avoid the continuing use of Tourist Visas for work purposes.
- f. A Working Group is established between Migration Service, the Ministry of Foreign Affairs and Cooperation and the Secretariat of State of Professional Training and Employment, to develop migrations policy and enhance coordination regarding Visa applications, issuing and monitoring.
- g. The Migration Service, as a minimum and as a matter of urgency, provides full information on which foreign nationals may be denied entry in Timor-Leste and why, on the Migration website and directly to Embassies of affected countries.
- h. Tourist Visas on arrival to include 1, 2 and 3-month Visas, in order to facilitate more accessible tourism and decrease the bureaucratic process for visa extensions.



Introduction

Since Timor-Leste gained independence, it has had an influx of regular and irregular migrants, working mainly in the construction, service and commerce sectors¹. This has been a result of several factors, including “the lack of skilled human resources within the country and a dollar-based economy with positive growth rates²”. Timor-Leste also “shares a 228km long border with Indonesia, and has several Indonesian islands near its coastline, making its border porous and difficult to monitor³”. Additionally, Timor-Leste is subject to the global trend of rural-to-urban migration, and located in a region “characterised by high levels of irregular migration in general⁴”.

This report will consider immigration flows, the impacts that regular and irregular migrant labour is having on Timor-Leste’s development and security, and how effective the legislative and policy responses of the Democratic Republic of Timor-Leste (RDTL) have been in addressing these challenges. Before considering these factors, the main issues resulting from regular and irregular migration must be considered.

Firstly, there is a perception of competition between local and migrant workers within urban environments. This has been due to the requirement in urban centres such as Dili for skilled workers in the construction, service and commerce sectors, where young Timorese workers face considerable competition when trying to enter a labour market that has available to it significant skilled human resources in migrant workers, whereas new Timorese workers lack their level of experience and expertise. There is perhaps an even greater danger in this, in that this competition over employment with migrant workers may become a driver for conflict due to the horizontal inequality this creates between local and migrant workers, with the International Crisis Group holding that the two most dangerous potential triggers for conflict as the population expands are youth unemployment and social inequality⁵.

Secondly there is reason to be concerned with the issue of trafficked men and women arriving by air, land and sea and placed in situations of forced labour⁶.

¹) Santos, Tania & Florindo, Carlos Alberto, *New Country, New Needs, New Responses: Irregular Labour migration to Timor-Leste*, Brussels, ACP Observatory on Migration, 2013. p. xv

² Santos & Florindo, p. xv

³ Migration Policy Institute, *East Timor: Old Migration Challenges in the World’s Newest Country*, 2004. Retrieved 22/5/16, <http://www.migrationpolicy.org/article/east-timor-old-migration-challenges-worlds-newest-country>

⁴ Office of the Provedor for Human Rights and Justice (PDHJ), Democratic Republic of Timor-Leste, *Complementary NHRI report on the implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*. 2015 P. 4

⁵ International Crisis Group, *Timor-Leste: Stability at What Cost?* Asia Report No 246, Brussels, 2013. P. 34

⁶ Santos & Florindo, p. xvi



Although the number of cases remains relatively low, when “taking into account the country’s geographical position and its economic situation, trafficking situations are expected to continue⁷”.

The measures the security sector must take are threefold: 1) strengthening legal and policy frameworks to regulate migration and combat trafficking in persons, 2) enhancing security sector responses aimed at combating human trafficking and 3) mainstreaming prevention via socialisations in order to educate communities regarding the signs and risks of human trafficking.

Legislation and policy passed in 2016 and 2017 provide for stronger mechanisms to regulate migration and combat trafficking in persons and will be analysed in depth in Sections VI and VII. The second factor to be considered here is what capacity building is required for the National Police of Timor-Leste (PNTL) and the Migration Service (SM) to be able to effectively counter human trafficking both from an external security and internal security perspective. So far, the PNTL’s Border Patrol Unit has been hard-pressed to counter human trafficking and illegal border crossings⁸, due to an interdiction model⁹ that lacks the necessary level of intelligence information, cross-border and interagency cooperation and community engagement. Finally, prevention must be considered, with socialisations coordinated and conducted by Government and Civil Society Organisations (CSO), in order to educate communities regarding the risks and signs of human trafficking, and develop resilience against traffickers.

Methodology

The research methodology for this report involved initial desk-based research of the factors discussed in the introduction, followed by a series of key-informant interviews with relevant civil society, government and international actors in order to clarify certain trends and conclusions that were derived from desk-based research. The key research findings and recommendations were then discussed during a Security Sector Discussion (SSD) by the FM Research Team in order to develop a consensus on the research findings and recommendations.

Relevant Agencies

1. Migration Service (SM)

Under the Decree Law No.31 of 13 August 2008, “Organic Structure of the Ministry of Defense and Security” the mandate of the Migration Service (SM) is outlined. The Migration Service is responsible for controlling the movement of people at the borders; controlling the entry, permanence, and activity of foreigners in the national

⁷ Santos & Florindo, p. xvi

⁸ ACP Observatory on Migration, *Overview on South-South Migration and Development Trends and Research Needs in Timor-Leste*, Brussels, 2010. P.6

⁹ Interdiction Model refers to a plan of action to intercept and prevent irregular migration and trafficking in persons. See Recommendations



territory; preventing and repressing crime related to illegal immigration and trafficking in people; and instituting the proceedings for granting equal status to immigrants and refugees¹⁰. Furthermore, Decree Law No. 30 of 18 November, 2008, Organic Law of the Migration Service, Article 2 separated the Migration Service from the PNTL as part of security sector reforms¹¹. It is the primary agency responsible for regulating the entry of foreigners into Timor-Leste at border crossings, airports and sea ports through surveillance and documentation checks, controlling and monitoring the presence of foreigners, especially in relation to their visa conditions, and investigating crimes stipulated under the 2003 Immigration and Asylum Act such as irregular migration, human trafficking and associated crimes¹², with these roles reaffirmed by Law No. 11, 2017, Immigration and Asylum Act, promulgated on 19 May 2017¹³.

2. Border Patrol Unit (UPF)

The role of the PNTL's Border Patrol Unit is defined in the Organic Law of Timor-Leste's National Police. Their mandate is : a) To conduct patrolling and surveillance along the land border in coordination and cooperation with F-FDTL; b) To cooperate with the Migration Service in controlling the entry and exit of people and goods through the land border; c) To cooperate with the other administrative authorities with a view to ensuring compliance with fiscal, custom, and sanitary laws; d) and to undertake any other tasks in line with the mission legitimately entrusted to it¹⁴. The UPF is therefore more involved with the physical surveillance of Timor-Leste's land borders, and the interception of irregular migrants and human traffickers, who would then be passed onto Migration Services for processing and potential prosecution.

3. Maritime Patrol Unit (UPM)

The Maritime Patrol Unit (UPM) is the maritime counterpart of the Border Patrol Unit, and under the Organic Law of the PNTL it "is a force with the specialized skills and powers of a Maritime Police¹⁵". Its mandate as part of the Maritime Authority System is to "provide surveillance and monitor coastal areas¹⁶" within the maritime domain. Its missions are:

- a) To prevent and combat crime, including drug-trafficking, illegal fishing, trafficking in human beings, terrorism and piracy;
- b) To prevent and combat clandestine immigration;

¹⁰ Fundasaun Mahein, *Border Management and Immigration Control*, Fundasaun Mahein, Dili, 2013, P.8

¹¹ *Border Management and Immigration Control*, 2013. P.9

¹² *Border Management and Immigration Control*, 2013. P.9

¹³ Democratic Republic of Timor-Leste, Law No.11, 2017, *Immigration and Asylum Act*, Dili, RDTL, 2017.

¹⁴ Democratic Republic of Timor Leste, Decree Law No.9, *Organic Law of the National Police of Timor-Leste* (PNTL) Article 33, Dili, RDTL, 2009

¹⁵ *Organic Law of the Timor-Leste National Police* (PNTL) Article 33

¹⁶ *Border Management and Immigration Control*, 2013 P.10



- c) To provide security to coastal areas and to the maritime public domain;
- d) To monitor, preserve and protect the marine environment, natural resources, and underwater heritage and resources;
- e) To prevent and combat marine pollution;
- f) To safeguard human life on the sea and to provide maritime rescue services;
- g) To provide civil protection on the sea and in coastal areas;
- h) To protect public health;
- i) To provide surveillance along the maritime borders, in coordination and cooperation with other authorities and entities integrating the Maritime Authority System, particularly the Naval Component of the F-FDTL;
- j) To define training requirements with the Police Training Centre;
- k) To perform other tasks that is in line with the nature of its mission and legitimately assigned to it, namely those falling within the purview of the Maritime Authority System¹⁷.

4. FALINTIL-Timor Leste Defence Force (F-FDTL)

The primary mandate of the F-FDTL is national defense, namely “to guarantee national independence, territorial integrity and the freedom and security of the populations against any aggression or external threat, in respect for the constitutional order¹⁸”. It is expected to defend air, maritime and land borders, execute maritime search and rescue, assist civil authorities in improving the quality of life of the Timorese people, support the Constitutional Order if there is a declaration of a State of Emergency or a State of Siege, and support the population in the event of natural catastrophe or public calamity¹⁹. Internationally it is required to support the foreign policy of Timor Leste through technical and military cooperation and participation in Peacekeeping and Humanitarian Operations, and other operations established within the framework of international agreements²⁰.

It should be noted that the F-FDTL has no legal mandate or authority to engage in law enforcement operations or border management outside of times of crisis or natural emergencies²¹, therefore the presence of the F-FDTL Military Police in proximity to the border with West Timor is questionable, considering their mandate is specific to the protection of military facilities and command personnel,

¹⁷ *Organic Law of the National Police of Timor-Leste (PNTL) Article 33*

¹⁸ *Border Management and Immigration Control, 2013 P.11*

¹⁹ *Border Management and Immigration Control, 2013 P.11*

²⁰ *Border Management and Immigration Control, 2013 P.11*

²¹ Democratic Republic of Timor-Leste, Law No. 3, 2010, *Law on National Defence*, Articles 4 & 5, Dili, 21 April 2010



investigations of crimes of a military nature, internal discipline within the F-FDTL and the prevention of crimes²².

5. Criminal Investigative Service (SIK)

The PNTL Criminal Investigative Service (SIK) is mandated to investigate, gather evidence and prevent common crimes and surveil suspicious individuals and locations believed to be linked with criminal activities²³. If SIK encounters potential cases of trafficking in persons they should refer them to the Public Prosecutor, who would then call on the Scientific Police for Criminal Investigations (PISK) to conduct the investigation.

6. Vulnerable Persons Unit (VPU)

The Vulnerable Persons Unit (VPU) is currently under the authority of SIK, yet their role remains unclear under legislation and the PNTL Strategic Plan 2014-2018. Their roles and responsibilities were framed within Law No.7 2010, Law on Domestic Violence. This involves the provision of “information deemed appropriate to the protection of his or her rights²⁴” and the provision of specialized assistance services to victims of domestic violence (this includes sexual violence) inclusive of facilitating access to shelter, immediate medical and psychological treatment and initial reporting to the Public Prosecution Service on observations made, evidence collected and measures adopted.²⁵ In practice though, they also provide these services for victims of trafficking.

7. Scientific Police for Criminal Investigations (PSIK)

The Scientific Police for Criminal Investigation (PSIK) is part of the Ministry of Justice (MoJ) rather than the PNTL, and is mandated to investigate and prevent complex crimes and crimes involving organised crime groups (OC) as well as international cooperation with INTERPOL and foreign police forces. It therefore has a leading role in investigating and preventing trafficking in persons (ToP) by OC²⁶. PSIK also maintains a unique capacity for forensic investigation of crimes scenes²⁷.

Summary

²² Democratic Republic of Timor-Leste, Decree Law 26, 2009, *Organic Statute of the Military Police*, Article 6, 9 September, 2009

²³ *Organic Law of the Timor-Leste National Police (PNTL)* Article 35

²⁴ Democratic Republic of Timor-Leste, Law No. 7 2010, *Law on Domestic Violence*, Article 7, Dili, 21 June 2010.

²⁵ *Ibid*, Article 24

²⁶ Democratic Republic of Timor-Leste, Law No 15, 2014, *Organisation of the Scientific Police for Criminal Investigation*, Dili, 14 May, 2014

²⁷ Interview with the Director General of the Scientific Police for Criminal Investigation, Vincente Fernandes Brito, 7 February 2018.



This description of the relevant agencies responsible for border management reveals which agencies are most involved in detecting and regulating the entry of irregular migrants into Timor-Leste. The first line of detection is primarily served by the Border Patrol Unit along the frontier and the Maritime Unit in maritime environments, with some support from the FALINTIL-FTDL. The Migration Service is the primarily agency responsible for regulating and monitoring the entry of people into Timor Leste at official entry points, and investigation of non-compliance with Immigration Law, with monitoring support from Customs within customs zones.

The responsibility for investigation and prevention of complex and organised crime is the responsibility of PSIK, as SIK is legally mandated to investigate and prevent common crimes, whilst PSIC is mandated to investigate and prevent complex and organised crime. However, on the operational level there is a still a degree of competition between these two security actors regarding criminal investigations. The Director General of PSIK, Vincente Fernandes Brito, indicated that the draft legislation titled 'Law for the Organisation of Criminal Investigations', which has been submitted to Parliamentary Committee A by the Ministry of Justice would help to clarify such jurisdictional issues²⁸. This proposed legislation was aimed at regulating the conduct of criminal investigations by PSIK and SIK, however, due to the ongoing political stability following the 2017 Parliamentary Elections; this legislation has not been debated by the National Parliament²⁹. Finally, the VPU is operationally responsible for providing specialised support and protection for victims of trafficking, however this is again unclear as their role is only mandated for providing such services to victims of domestic violence.

Migration Flows

Before considering the immigration flows in Timo-Leste it is necessary to define what an irregular migrant is. According to the International Organization for Migration (IOM), an irregular migrant is “a person who, owing to unauthorized entry, breach of a condition of entry, or the expiry of his or her visa, lacks legal status in a transit or host country³⁰”. Irregular migration “takes place outside the regulatory norms of the origin, transit and destination countries³¹”. This does not necessarily have a negative impact for Timor-Leste, as despite the illegality of their residence in Timor-Leste, irregular migrants can play a major role in “the development of destination [...] countries through [...] creating businesses and sharing knowledge, ideas and information³²”.

²⁸ Interview with the Director General of the Scientific Police for Criminal Investigation, Vincente Fernandes Brito, 7 February 2018.

²⁹ Ibid

³⁰ International Organization for Migration, *World Migration: Managing Labour Migration in the Evolving Global Economy*, Geneva, IOM, 2008 p. 495

³¹ IOM, p.495

³² Santos & Florindo, p.11



In fact, irregular migration is often a consequence “of political development not keeping pace with economic and demographic development³³”. More specifically, political development in this situation “refers simply to the nature of governance and whether the policy system responds to changing economic and social realities³⁴”. In the case of Timor Leste, the question is how effectively the RDTL has balanced the needs of the state in executing national development, *vis-à-vis* the need for skilled migrant workers in certain critical sectors, without undermining local capacity building and denying employment opportunities for citizens. This will be analysed in greater detail in the section on policy responses.

Economic and geographical factors for migration must also be considered. Since independence Timor-Leste has embarked on ambitious development process inclusive of infrastructure creation, and a growing tourism and commerce sector. The lack of local expertise in these areas resulted in an influx of skilled migrant workers to undertake these projects whilst local capacities were improved. Furthermore, as Timor-Leste shares a porous border with West Timor, and the UPF lacks the necessary capacity to prevent illegal border crossings, geography poses limitation in the RDTL’s ability to monitor and prevent irregular migration. The regional availability of skilled human resources in the sectors critical to Timor-Leste’s development has been a structural factor for the presence of migrant workers in the country.

Determining the extent of irregular migration flows into Timor Leste continues to be “difficult to assess due to the scarcity of information and data³⁵”, especially considering that irregular immigrant workers are likely to avoid official inquiries made by RDTL agencies. Although the 2010 census determined that “the foreign population in Timor Leste represents around 1 percent of the total population,³⁶” it doesn’t provide a breakdown of the citizenship or visa status of foreign nationals. The preliminary results of the 2015 census also make no mention of the number of foreign nationals in Timor Leste, nor their country of origin or legal status.

The Labour Inspectorate of the Secretariat of State of Professional Training and Employment (SEFOPE) has been able to provide a clearer and more current indication of the number of irregular migrant workers in Timor Leste, without determining their country of origin. They determined that “between 2009 and 2011, a total of 871 foreigners were identified as working in an irregular situation in Timor Leste: 662 were men, and 209 were women³⁷”. It should also be noted that between 2009 and 2011, there was a drop of almost 28% in the number of irregular migrants discovered working without the correct visa³⁸. More recent figures presented at a

³³ Ron Skeldon, *Managing irregular migration as a negative factor in the development of East-Asia*. Working Paper 18, ILO Asian Regional Programme on Governance of Labour Migration, Bangkok, 2009, P.11

³⁴ Skeldon, p.12

³⁵ Santos & Florindo, p.21

³⁶ Santos & Florindo, p.22

³⁷ Santos & Florindo, p.45

³⁸ Santos & Florindo, p.45



seminar held by the Alola Foundation provide a clearer indication of irregular migration flows into Timor Leste during this period, notably with reference to the countries of origin of irregular migrants.

No.	Country	Year									
		2003	2004	2005	2006	2007	2008	2009	2010	2011	Total
1.	Indonesia	24	70	225	23	54	169	30	270	418	1283
2.	China		33	95	12	22	104	19	54	91	430
3.	Philippines	2	5	20	4	3	1	1	19	106	156
4.	Timor-Leste	1	11	1	3	6	15		14	25	64
5.	Sri Lanka					4	17		3	27	51
6.	Thailand		15		4	2		4		17	42
7.	India		1	2		7	7		6	17	40
8.	Vietnam		3	2	3	1	1		11	17	22
9.	Malaysia			3		7	5		9	3	20
10.	Bangladesh					3	2		11		18
11.	Myanmar					3	2		11		16
12.	Singapore		5	3		2	2			1	13
13.	Pakistan			1		1	1	1	4	5	13
14.	Afghanistan	2		4			1		2	1	9
15.	Australia	2		4			1		2	1	9
16.	Brazil				1				1	7	9

Figure 1: Cases of Irregular Migration in Timor Leste from 2003-2011³⁹

However, this data is not representative of the actual number of irregular migrant workers in Timor-Leste because of structural issues inherent to RDTL processes aimed at regulating migration, which are both inefficient and ineffective. Under both the 2003 Immigration and Asylum Act and the 2017 Migration and Asylum Law, foreigners are obliged to apply for work visas and visas to establish permanent residence from outside of Timor-Leste. However, this application process is still primarily only occurring in Timor-Leste, where the process is lengthy, inconsistent and often unsuccessful for applicants. The inevitable consequence of this is that migrants on Class I (tourism and business) visas are working illegally. Tourist visas are issued on arrival for one month, and can be extended for another two months. Migrant workers therefore leave Timor-Leste every three months, and return on a fresh tourist visa to continue working, whilst their working visa applications are still being processed⁴⁰. This issue will be analysed in greater detail in Section VI, Legislative Responses.

Considering the admittedly unreliable evidence that up to 60 000 tourist visas were issued in 2014, when compared to the number of working visa applications in 2014, it is likely that an overwhelming majority of these visas were not for tourist purposes⁴¹. It should also be noted that UN staff, diplomats and their dependents usually enter the country on tourist visas before they are able to switch to Special

³⁹ Presentation of Director of Migration Service Jose de Costa, on Migrant Control and Human Trafficking in Timor Leste. Seminar Held by the Alola Foundation, 12 September 2012

⁴⁰ PDHJ, p.7

⁴¹ PDHJ, p.6



Stay Visas. Statistics are not available on how many tourist visa grantees were subsequently granted Special Stay Authorisations. Data from SEFPOPE during 2014 indicates that only 616 work visa applications were submitted⁴², revealing the discrepancy between the number of migrant workers attempting to normalise their work within national law, and those potentially working on tourist visas.

Data from the Migration Service (MS) for the first six months of 2017 reveals 35 990 Tourists Visas, 7240 Working Visas and 2715 Special Stay Visas were issued during this period⁴³, MS was unable to clarify how many of those migrants issued with Tourist Visas were later issued Work Visas, nor why both “Work” and “Class IV Work Visas” were separately listed.⁴⁴ MS indicated this was due to the current system whereby the Ministry of Foreign Affairs and Cooperation (MNEC) is responsible for issuing Work and Special Stay Visas, with SEFOPE responsible for monitoring the adherence to visa conditions for migrants issued with Work Visas⁴⁵. This reveals the systemic problem wherein three different government agencies are responsible for issuing and monitoring visas, with MS suggesting that greater coordination is required between MS, MNEC and SEFOPE regarding the application for, issuing of and monitoring of Work Visas⁴⁶.

Impacts of Migrant Workers

The presence of regular and irregular⁴⁷ migrant workers in Timor-Leste has had several impacts on the nation’s development, both positive and negative. The availability of skilled migrant workers has alleviated critical human resource deficiencies in sectors vital to Timor-Leste’s development, such as construction, services and commerce. It has accelerated the progress of development in these sectors, with resulting advances in human development and national revenue. Consequently, the State likely now has greater resources to develop local capacity through enhanced education and vocational training, which in turn offer greater opportunities for national ownership of and employment in these vital sectors.

Furthermore, the presence of skilled migrant labour has improved local capacity, as many migrant workers have transferred “knowledge and skills to local workers helping to reduce the skills gaps⁴⁸” between nationals and foreigners. Despite this, the reality of competition between migrant and local workers is hard to quantify due to the lack of hard data. Migrants have enhanced “private sector development through the creation of enterprises⁴⁹”. This has also had the effect of improving

⁴² SEFPOPE, *Labour Market Outlook 2014*, p.4, in PDHJ, p.7

⁴³ Migration Service, Migration Data Quarters 1 and 2, 2017

⁴⁴ Interview with Migration 29 January 2018

⁴⁵ Ibid

⁴⁶ Ibid

⁴⁷ See Section on Immigration Flows and the likelihood of foreigners working in an irregular situation under Tourist Visas

⁴⁸ Santos & Florindo, p.58

⁴⁹ Santos & Florindo, p.59



economic ties between the commerce and tourism sectors of their countries of origin and those of Timor-Leste⁵⁰.

However, unemployment and underemployment for Timorese citizens remains high, with SEPFOPE⁵¹ indicating “unemployment across the country has reached 11%, with mostly graduates among the jobless⁵²”. Note that the actual unemployment rate may actually be much higher, if one defines employment as a secure source of income gained through a work position with consistent paid remuneration. Director General of SEPFOPE, Jacinto Barros Gusmao, has expressed concern “that every year unemployment numbers are getting higher because Timor still lacks industry and we only have the Heineken and Timor Cement industries⁵³”. Father Joao Soares, director of the youth commission for Dili Diocese has been critical of the lack of employment opportunities provided by the government⁵⁴. Father Soares has initiated a training program to provide practical working skills for unemployed Timorese, whilst remaining critical of the theory-based education graduates received⁵⁵. These sources would indicate that the lack of employment opportunities is due to a lack of both practical work skills and work opportunities, especially if skilled migrant workers are filling these positions. FM acknowledges that this a long-term process outside of our purview, but is critical to long-term stability, and would serve to limit the potential for conflict over employment between Timorese nationals and migrant workers.

Director of the Centre of Studies for Peace Development (CEPAD) Joao Boavida asserts that, although unemployment is widespread, dissatisfaction is suppressed by politics, due to the patron-client relationships of Government, the patronage-based opportunities it offers, existing social assistance programs, ongoing corruption, collusion and nepotism, and the domination of the political landscape by resistance figures, making it challenging to advance any significant political reform⁵⁶. Hence, while unemployment is a major problem, it is not seen as such by the majority, due to an uninformed populace⁵⁷. Therefore, the Timorese people have yet to have an opportunity to distinguish and appreciate ‘stability’, either as a result of an uninformed populace not agitating for their rights, or the stability that comes

⁵⁰ Santos & Florindo, p.60

⁵¹ Note that this data from SEPFOPE was also unclear on whether these were school or university graduates

⁵² Paulina Quintao, “Unemployment rate in Timor-Leste reaches 11%”, *The Dili Weekly*, 8 July 2015

⁵³ Quintao, “Unemployment rate in Timor-Leste reaches 11%”

⁵⁴ Thomas Ora, “Timor-Leste priest criticizes unemployment record”, *UCA News*, 14 July 2016

⁵⁵ Ora, “Timor-Leste priest criticizes unemployment record”

⁵⁶ Interview with Joao Boavida, Executive Director, *Centre of Studies for Peace and Development* (CEPAD), Dili, Timor-Leste. 7 August 2017

⁵⁷ Ibid



through good governance where the active participation of an informed public advocates for their rights and holds political leaders truly accountable⁵⁸.

The likelihood of competition and/or conflict between Timorese nationals and migrant workers is therefore hard to quantify, due to both the scarcity of data on the number of irregular migrant workers and the realities of underemployment and unemployment in Timor-Leste. This will be dependent on a number of factors, notably, the future level of public awareness of the issues that have been highlighted, the level of political stability following the May 12 2018 Parliamentary Elections, and critically, how effective the State is in generating employment opportunities and practical working skills for future generations.

Human Trafficking in Timor-Leste

A negative element of immigration flows into and, to a lesser degree, out of Timor Leste has been an increase in human trafficking. Trafficking in persons (TiP) is defined by the Palermo Protocol as:

*The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.*⁵⁹

Furthermore, “the consent of a victim of trafficking to the intended exploitation as described above is irrelevant where any of the means, set forth in the above paragraph, have been used”⁶⁰, whilst “the recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in the definition of “trafficking in persons”⁶¹.

Trafficking in persons involves three elements; process, means and purpose for exploitation. ‘Process’ means recruitment, transportation, transfer, harboring and/or receiving a victim with the intent to exploit that person⁶². ‘Means’ involves forcing, threatening, coercing, abducting, subjecting to fraud, deception and/or subjecting to the abuse of power for the purposes of exploitation⁶³. Exploitation may include; forced prostitution, other forms of sexual exploitation, forced labor, slavery, other

⁵⁸ Ibid

⁵⁹ United Nations, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, Article 3 (Palermo Protocol), 2000

⁶⁰ Ibid

⁶¹ Ibid

⁶² Counter-trafficking Training, conducted by International Organisation for Migration, Counter-trafficking Team, Timor-Leste, May 8, 2017

⁶³ Ibid

practices similar to slavery (such as forced military service), servitude and/or removal of organs⁶⁴.

Furthermore, it is important to qualify that not all victims of human trafficking are deceived about the type of work they are being recruited for, but are unaware of the exploitative work conditions they will face. An example of these women who have consensually been recruited for prostitution, but encountered exploitative work conditions such [as] no freedom of choice in client, no freedom of choice in sexual acts, debt bondage to their employers and/or no freedom of movement. This constitutes forced prostitution and is a form of trafficking.⁶⁵

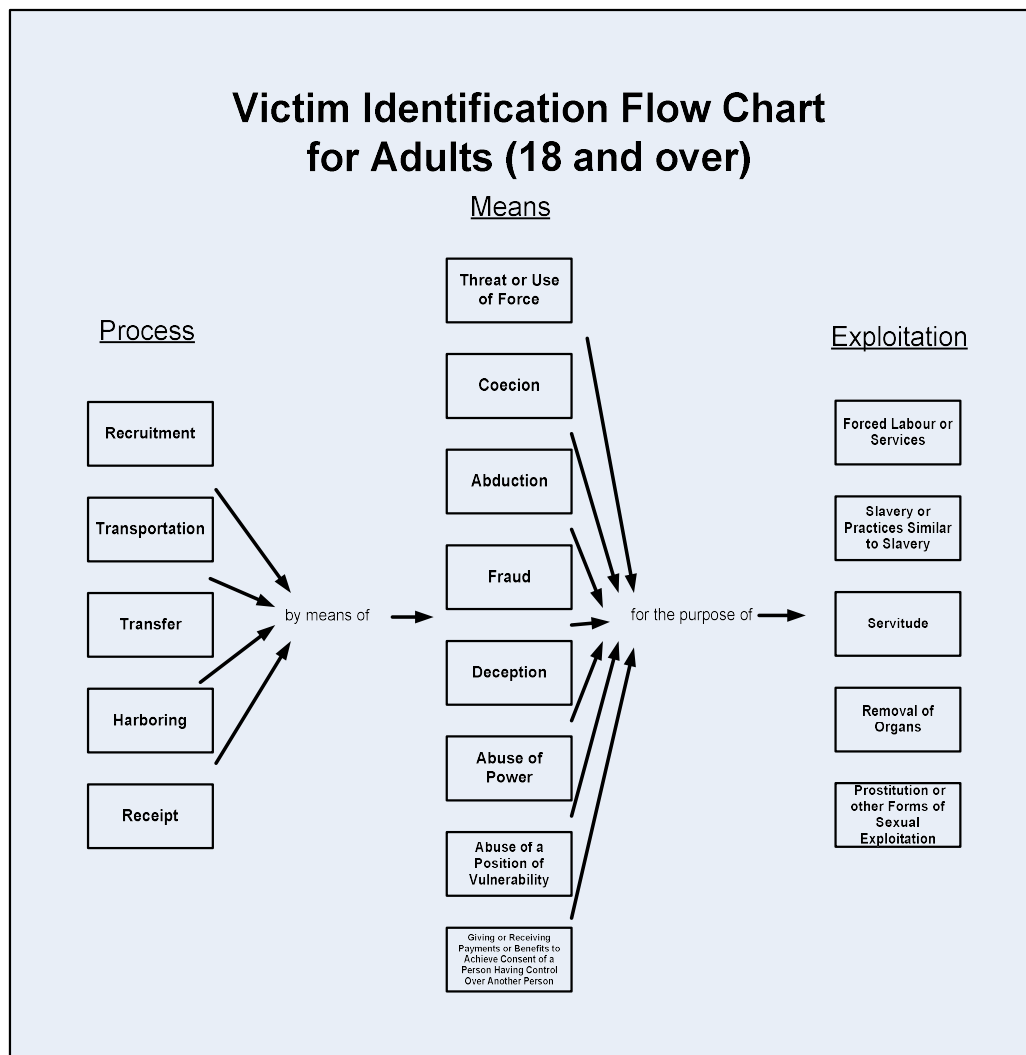


Figure 2: Victim Identification Flowchart for Trafficking in Persons⁶⁶

⁶⁴ Ibid

⁶⁵ Ibid

⁶⁶ IOM, Timor-Leste, May 8 2017

It also vital to note that the standard for proving trafficking in children is much lower than for adults, as this involves only process and exploitation, without the requirement of having used any of the prohibited means.⁶⁷

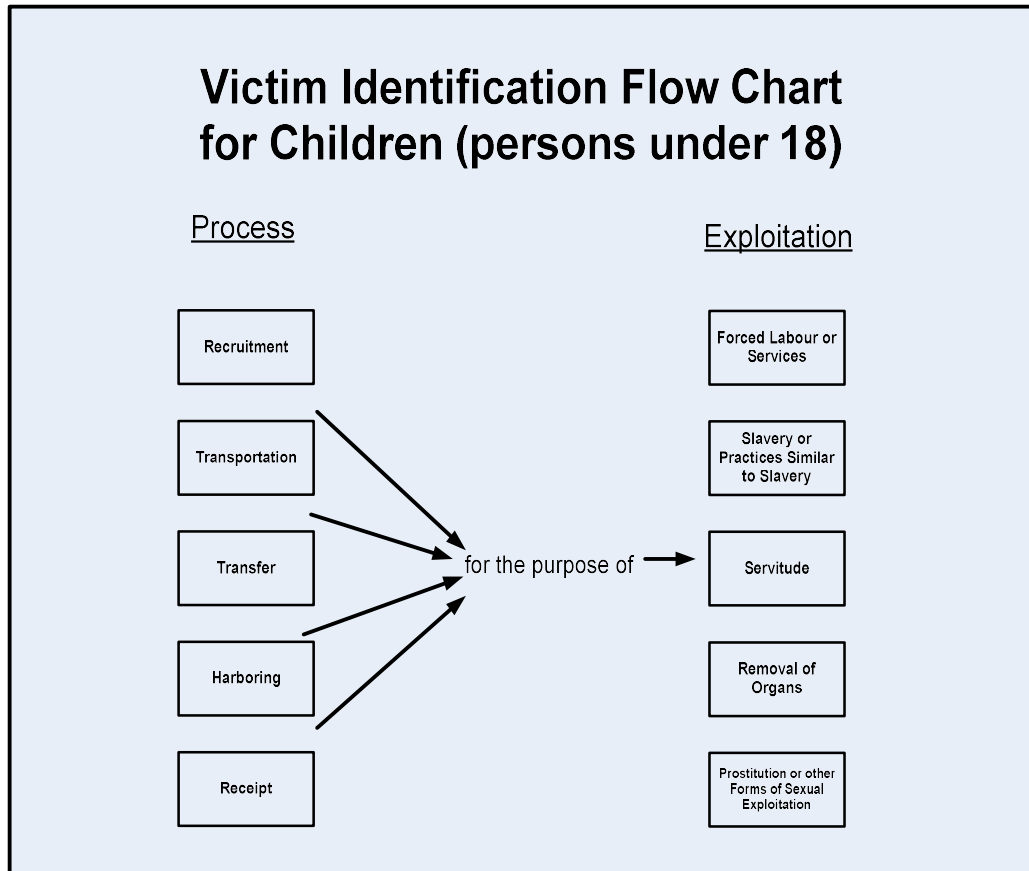


Figure 2. Victim Identification Flowchart for Children⁶⁸

Human trafficking in Timor-Leste has included instances of women and men being trafficked into Timor-Leste for purposes of forced labour as prostitutes and fishermen,⁶⁹ and the trafficking of Timorese nationals abroad for similar nefarious aims⁷⁰. This has serious human rights implications for the victims, and the RDTL has enacted numerous policy measures to counter such actions and protect the rights of victims, which will be outlined in the section on policy responses.

The United States (US) Department of State (DOS) 2016 report on human trafficking has determined that Timor Leste remains “a source and destination country for men, women, and children subjected to forced labour and sex trafficking⁷¹”. Specifically,

⁶⁷ Ibid

⁶⁸ IOM, Timor-Leste, May 8 2017

⁶⁹ Santos & Florindo, p.xvi

⁷⁰ Santos & Forindo, p.60

⁷¹ US Department of State, *2016 Trafficking in Persons Report*, Washington D.C. June 2016. p.368



Timorese girls and women may be being ‘sent to Indonesia and other countries for domestic servitude⁷²’ whilst Timorese from rural areas, both women, girls and sometimes young males have been lured to Dili by the prospect of greater education or employment opportunities and found themselves subject to domestic servitude or sex trafficking⁷³. There have also been instances of Timorese families placing their children in bonded labour, both domestic and agricultural, to pay off family debts⁷⁴. Furthermore, Timor-Leste has been increasingly used as a destination country by human trafficking networks, in particular by transnational traffickers belonging to Chinese or Indonesian organized crime syndicates⁷⁵. Foreign women of Chinese, Indonesian and Philippine origin have also been “vulnerable to sex trafficking in Timor Leste⁷⁶”.

In 2016 alone, there were 65 confirmed cases of human trafficking in Timor-Leste, with 23 cases of trafficking to Timor-Leste, 17-18 from Timor-Leste and 25 cases of internal trafficking. Destination trafficking included 11 cases of sex trafficking and 2 for forced labour on fishing boats. Source trafficking included 7+ cases to Malaysia for ‘work’ and 5/6 cases for ‘education’, whilst internal trafficking involved 13 cases of sex trafficking and prostitution, 6 for indentured labour and 6 for ‘education’.⁷⁷

The number of unreported cases may be much higher, due to a lack of awareness of what constitutes trafficking in persons, fear over reprisals for seeking protection from relevant actors or a lack of faith in the security and justice sectors to properly support and protect victims of trafficking. FM remains concerned that internal trafficking of persons within Timor-Leste is continuing. To address this the RDTL should allocate the necessary resources to the stakeholders of the Human Trafficking Working Group towards enhancing prevention, protection and prosecution.

Legislative Responses

1. International Conventions

The RDTL has implemented an array of legislation in order to manage migration, inclusive of the ratification of international conventions and the creation of local legislation pertaining to foreign nationals living and working in Timor-Leste. The RDTL ratified the UN International Convention on the Protection of the Rights of all Migrant Workers and the Members of their Families in 2004⁷⁸. This convention seeks to protect the rights of migrant workers and their families, by affording them

⁷² Ibid

⁷³ Ibid

⁷⁴ Ibid

⁷⁵ Ibid

⁷⁶ Ibid

⁷⁷ IOM, Timor-Leste, May 8 2017

⁷⁸ United Nations, *International Convention on the Protection of the Rights of all Migrant Workers and the Members of their Families*, 2003, retrieved 4 June, 2016, <http://unesdoc.unesco.org/images/0014/001435/143557e.pdf>



humane living and working conditions, protection from physical and sexual abuse, to ensure their civil rights and freedom of religion, their right to legal equality, access to education and social services and freedom to participate in trade unions⁷⁹. This has helped to establish a legal framework for how migrant workers should be treated in Timor-Leste, be they legal or irregular.

Timor-Leste's 2009 ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime, has served to enhance the RDTL's legal framework in order to counter human trafficking and protect its victims. Not only does this Convention afford greater legal protection to victims and encourage capacity-building for relevant stakeholders, but it also provides greater mechanisms for the RDTL to co-operate with other states to counter the transnational nature of this threat⁸⁰.

In 2009 the RDTL ratified the UN Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the Convention against Transnational Organized Crime⁸¹. However, there is little contained within national legislation towards implementing this treaty, thus representative of a weakness in judicial mechanisms available to prosecute the involvement of organised crime organisations in the smuggling or trafficking of migrants. It is worth noting Article 9,1 of the Constitution which states that "the legal system of East Timor shall adopt the general or customary principles of international law⁸²", which raises the question of why this treaty has not featured more significantly in national legislation. Despite this, the RDTL's ratification of these three international conventions has embedded Timor-Leste into an overarching moral, legal and pragmatic framework on an international level, which ensures the rights of migrant workers in Timor-Leste.

2. National Migration Legislation

The new Migration and Asylum Law, No.11 2017, is the key piece of domestic legislation passed by the RDTL to manage and control the presence of migrants in Timor-Leste, and repeals existing legislation under Law No. 9 2003, Immigration and Asylum Act. It details the rights and obligations of foreign nationals in Timor-Leste

⁷⁹ United Nations, *International Convention on the Protection of the Rights of all Migrant Workers and the Members of their Families*, 2003

⁸⁰ United Nations, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime*, 2004, retrieved 5 June, 2016, https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERE TO.pdf

⁸¹ "Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the Convention against Transnational Organized Crime", retrieved 5 June, 2000, 2016, https://www.unodc.org/documents/southeastasiaandpacific/2011/04/som-indonesia/convention_smug_eng.pdf

⁸² Democratic Republic of Timor-Leste, *Constitution of the Democratic Republic of Timor-Leste*, Article 9, Dili, 2002.



and the penalties for breaching those obligations, as well as migration related crimes. Compared to the 2003 Act, the 2017 Act has more visa categories. But there remain significant obstacles to implementation, such as non-tourist visas which are notionally applied for and processed in Timor-Leste's diplomatic missions overseas⁸³ much as they were under the previous law⁸⁴. However, this has not been realised under either law, with such applications occurring in Timor-Leste whilst the applicants are on tourist visas and already working, which constitutes a breach of Article 35 of Law No.11 2017. This serves to complicate the legal status of migrants contracted to work in Timor-Leste, and further distorts available data on migration flows in 2017 made available by the Migration Service of Timor-Leste. Furthermore, it has been difficult for Migration Service to determine the number of migrants initially issued tourist visas, who later are issued with Working or Special Stay Visas by the Ministry of Foreign Affairs and Cooperation⁸⁵.

This new visa granting regime, whilst notionally providing greater clarity concerning visa conditions, is likely to have both negative and positive impacts for Timor-Leste's development and security, in particular relating to the Tourist Visa, Work Visa, Class I and Class II Businesses Visas, Temporary Stay Visa and Visa to Establish Residence. Firstly, tourist visas are now limited to a maximum of 60 rather 90 days⁸⁶, which represents a disincentive for tourism in Timor-Leste, considering the relatively high cost of travel in Timor-Leste and the increased limitations this places on travelling as a tourist in Timor-Leste, nor will it serve to promote tourism and the associated revenue generation which will be critical for Timor-Leste's sustainable development. The onerous obligation placed on those providing accommodation to foreigners to report their presence to the police, or face a fine, could adversely affect rural tourism. The obligation under the 2003 legislation was merely to keep a record available for inspection, this obligation was never publicised and it appears that inspections were never conducted save for the purposes of harassment.

Under the 2003 Law, Tourism and Business were covered under one Visa. These are disaggregated under the 2017 regime. In theory, the 2003 Tourism/Business visa, granted on arrival, was available for up to 90 days and for multiple entries. In practice only 30-day single-entry visas have been granted, with extensions of 30 days (or 60 days if a double fee was paid). This reality is reflected in the Tourism visa under the new law, which is an advance for transparency.

Work Visa conditions are similar to those under the preceding legislation, with stays of up to one year available with multiple entries, nominally processed outside of Timor-Leste but under certain conditions to be authorised in-country, with the additional requirement for those wishing to volunteer for more than 120 days

⁸³ Democratic Republic of Timor-Leste, Law No. 11, 2017 *Immigration and Asylum Law*. Article 42. Dili, May 17, 2017.

⁸⁴ Democratic Republic of Timor-Leste, Law No.9, 2003, *Immigration and Asylum Act*, Article 39. Dili, 8 October 2003.

⁸⁵ Interview with Migration Service, 29 January 2018

⁸⁶ *Ibid*, Article 35



requiring Temporary Stay Visas⁸⁷. In practice however, such applications are usually filed in country and take up to six months to process, with the Secretariat of State of Professional Training and Employment and Migrations Services likely being aware that the applicants are working on Tourist Visas in breach of Article 35⁸⁸. This also has an economic impact on migrants (including self-funding volunteers) attempting to work legally in Timor-Leste, requiring them to extend their visas after 30 days and leave the country every 90 days to renew their tourist visas, costing them and/or their employers both time and money.

Business Visas under the new law do provide potential positive impacts for economic diversification and foreign investment in Timor-Leste, with Class I Business Visas allowing up to 60 days for foreigners wishing to explore investment prospects or develop business opportunities, whilst Class II Business Visas allows for foreigners to stay for periods of up to 6 months, with possible extensions up to 2 years, to establish business activities in Timor-Leste⁸⁹. This is an apparent improvement over the 90 days allowed for Business Visas under the 2003 Immigration and Asylum Act⁹⁰, as it notionally allows greater opportunities for foreigners to establish businesses in Timor-Leste, with gains for Timor-Leste likely to include critical skills transfers, employment generation and tax revenues. These Visas are complemented by the Visa to Establish Residence, which allows foreigners who have demonstrated intent to migrate permanently to Timor-Leste to conduct professional activity which may provide critical skilled labour. This Visa to Establish Residence has some potential to increase productivity and create employment for Timorese nationals through skills transfers⁹¹. These 3 Visas therefore provide opportunities for migrants to contribute towards much needed private sector development and encourage foreign investment in Timor-Leste. Required conditions for Visa applications are also clearly stipulated under Section III, Visa Application and Grant of Law No.11, 2017⁹².

Finally, Special Stay Authorisations have been reaffirmed under Law No.11 2017, wherein foreigners working directly for the RDTL, the UN, or for cooperation programs between the RDTL and other countries or nationally recognised NGOs for periods of up to one year⁹³ are formally eligible, thereby legitimising the visa application process for migrants working in cooperation with the RDTL. Furthermore, under Article 39 dependants of migrants working under Special Stay Authorisations are also permitted to reside in Timor-Leste for an equal period of time⁹⁴. An error in the drafting of the 2003 law has been perpetuated, so that only a national of the

⁸⁷ Law No.11 2017, Articles 37, 39 and 42

⁸⁸ Ibid, Article 35, 3. A foreigner holding a tourist visa is not authorised to carry on any professional activity in the national territory.

⁸⁹ Ibid, Article 39

⁹⁰ Law No. 9 2003, Article 35

⁹¹ Law No. 11 2017, Article 40.

⁹² Ibid, Section 3: Visa Application and Grant

⁹³ Ibid Article 14.

⁹⁴ Ibid Article 39



country engaged in these cooperation programs is eligible for Special Stay Authorisation⁹⁵. Thus, for example a Canadian working for USAID, or an Australian working for NZAID would be ineligible.

There is also another potential negative impact for Timorese nationals providing accommodation for foreigners under the new law, with the burden to inform either Migration Services or the PNTL of the details of the tenants, with penalties ranging from US\$30-500 per person not officially registered⁹⁶. FM strongly recommends that socialisations regarding this new law be implemented quickly, due to concern that that may have an adverse effect on Timorese nationals who are unaware of these conditions. FM also urges the Migration Service to implement this particular aspect of the law sensitively.

Furthermore, FM monitoring throughout 2017 and 2018 indicates that foreign nationals from certain States are being denied entry into Timor-Leste with no justification. This has involved foreign nationals from South Asia and South Africa being told at Denpasar International Airport by airline staff that citizens of their nationality are not allowed to enter Timor-Leste without an official invitation. This is despite no official notification of such a requirement on the Migration Service website or under the 2017 Migration Law. FM is concerned by the lack of transparency in this, the informal discrimination it is enabling and the negative impact this will have on Timor-Leste's international reputation as a tourist destination. FM calls upon the Migration Service, as a minimum and as a matter of urgency, to provide full information on its website and directly to embassies of affected countries.

Although Law No.11 2017 was promulgated on May 19, 2017, implementation has yet to be properly achieved. Socialisations are required amongst relevant RDTL actors, as well as Timorese and foreign nationals that may be negatively impacted by this legislation. Additionally, the only official version of this law published by the RDTL has been in Portuguese, therefore limiting its accessibility to the majority of Timorese nationals who lack the level of Portuguese required to understand domestic legislation written in Portuguese, and the non-Portuguese speaking international community who often face greater barriers to migration in Timor-Leste.

3. National Legislation regarding Trafficking in Persons

Law No.3, 2017 on Preventing and Combating Human Trafficking makes a number of improvements in addition to the 2009, 2011 and 2013 amendments made to the 2009 Penal Code, with the most pertinent changes discussed below. Article 2, Trafficking in Persons goes beyond the standard TiP definition to also include forced marriage and begging⁹⁷, which provides greater scope for prosecuting some forms of TiP occurring in Timor-Leste. Article 4, Non-application of Sanctions provides a

⁹⁵ Ibid Article 39

⁹⁶ Ibid Articles 16, 146 and 147

⁹⁷ Democratic Republic of Timor-Leste, Law No.3, 2017, *Preventing and Combating Human Trafficking*



higher level of legal protection for victims of TiP, with victims of trafficking unable to be detained or prosecuted for crimes committed as a direct result of their situation, inclusive of illegal residence in Timor-Leste⁹⁸. Public accountability is also increased under Article 5, Non-participation, which holds accountable public officials who have failed to report an instance of TiP, with punishments up to two-thirds of the maximum prescribed penalty for TiP⁹⁹.

The protection of victims and witnesses is also notionally enhanced under Article 10, Protection of Victims and Witnesses, wherein such individuals are provided special protection within witness protection, as well as protection from communication and intimidation from the TiP case defendant¹⁰⁰. Greater access to financial records of those suspected of engaging in TiP and the seizure of accounts are also enabled by Articles 13 and 14¹⁰¹. A wider level of protection and assistance to Victims of Trafficking (VoT) is also mandated under Articles 16 and 17, inclusive of consular support, counselling, translation services, judicial protection, safe accommodation, medical treatment and psychological support¹⁰². Critically, Article 20 mandates police protection for VoT¹⁰³, something which has previously been problematic, with the PNTL failing to provide protection to VoT who had been referred to a local NGO which provides medical treatment, psychological support and shelter for Victims of Trafficking.

A higher level of immigration support is also provided, with Article 23 allowing a 90 day period of reflection for identified VoT, allowing for their recuperation, their escape from the influence of the actors responsible for their trafficking, and for the treatment stipulated in Article 17¹⁰⁴. Furthermore, Article 24 provides authorisation for VoT to granted residence in Timor-Leste for six months, following the period of reflection, dependent on their health and safety, and allowing for time to cooperate in judicial proceedings, whilst Articles 27 and 27 provide for voluntary return assistance to VoT¹⁰⁵. This is further complemented by Article 61 of the 2017 Migration and Asylum Law¹⁰⁶.

Finally, preventative measures are notionally strengthened through Article 28, which calls on the State to raise awareness around TiP through cooperation with Civil Society Organisations (CSO) engaging in socialisations and training aimed at increasing community awareness of vigilance towards TiP¹⁰⁷. Article 30 also establishes the legal framework for the Commission for Combatting Trafficking in Persons (CLCTP) charged with the national coordination of stakeholders for

⁹⁸ Ibid

⁹⁹ Ibid

¹⁰⁰ Ibid

¹⁰¹ Ibid

¹⁰² Ibid

¹⁰³ Ibid

¹⁰⁴ Ibid

¹⁰⁵ Ibid

¹⁰⁶ Law No.11 2017

¹⁰⁷ Ibid



preventing and combating TiP¹⁰⁸. The CLCTP primary duties to include international coordination and cooperation, overseeing the implementation of the National Action Plan against Human Trafficking in Timor-Leste (NAP), 2016-2018, and cooperation with CSO's, towards ensuring that the NAP's priority areas of prosecution, prevention, protection and partnerships are delivered in a coordinated and responsive manner¹⁰⁹.

These Articles effectively represent a significant increase in the legal mechanisms available with which to facilitate investigation and prosecution of individuals and organisations engaged in TiP, whilst also providing a greater level of protection and assistance for VoT. It should also be noted that the original Penal Code of 2009 had only 3 Article's in regards to human trafficking, Article 163, which was limited to definitions of TiP and penalties for engaging in TiP and Articles 162 and which 164 prohibit slavery and sale of persons, with severe punishments for said crimes ranging from 8 to 25 years imprisonment¹¹⁰.

4. Analysis

Despite the strong legal framework that the adoption of these international conventions and domestic legislation has provided, monitoring and enforcement of these laws remains problematic. Fundasaun Mahein (FM) has found this is due to a lack of capacity within and coordination between security actors responsible for border management and investigations of organised crime operations, inclusive of the PNTL Border Patrol Unit (UPF), Migration Services (MS), Maritime Police Unit (UPM) and the Scientific Police for Criminal Investigations (PSIK) combined with instances of corruption which have hampered efforts to control and regulate migration flows into Timor Leste¹¹¹.

Although efforts have been made to engage with the Republic of Indonesia (RI) in a cooperative border management policy, coordination between the aforementioned RDTL agencies and their bilateral engagement with the corresponding RI agencies in West Timor have proven problematic. This has been due to "the limitations of human resources, institutional capabilities, facilities, and equipment at border posts¹¹²". These are areas that require significant attention and resource transfers if the RDTL is to better manage and regulate irregular immigration flows and transnational threats such as human trafficking operations that are likely taking advantage of these weaknesses in border management.

There have also been alleged instances of police corruption in which members of the PNTL have been implicated in assisting efforts by transnational traffickers to

¹⁰⁸ Ibid

¹⁰⁹ Ibid

¹¹⁰ Democratic Republic of Timor Leste, Decree Law No. 19, *Penal Code of the Democratic Republic of Timor Leste*, Dili, 2009, retrieved 11 July, 2016, <http://www.wipo.int/edocs/lexdocs/laws/en/tl/tl006en.pdf>

¹¹¹ Fundasaun Mahein, *Challenges and Tentative Security at the Land Borders of Timor Leste*, Fundasaun Mahein, 23 October 2014

¹¹² *Challenges and Tentative Security at the Land Borders of Timor Leste*, 2014



take advantage of Timor-Leste's border management. This is based on allegations that PNTL officers may have accepted "bribes from establishments involved in trafficking or from traffickers to cross borders illegally"¹¹³. If these allegations were proved to be true, it would represent instances of the PNTL failing to uphold the rule of law and prevent trafficking in persons, made worse by the fact that in 2016 "police have been identified as clients of commercial sex venues investigated for suspected trafficking"¹¹⁴, whilst F-FDTL personnel have also been alleged to frequent such venues. What this reveals is that there are still significant institutional issues within the PNTL, both structural in terms of their capacity to execute responsibility for border management, and agential, in that breaches of internal discipline are still apparent if PNTL officers are both accepting bribes from human trafficking networks, and partaking in the services they provide within Timor-Leste.

Conversely, the 2017 Trafficking in Persons Report released by the US Department of State indicates the RDTL has demonstrated increasing commitment to its counter-trafficking efforts, including an increase in investigations and prosecutions of TiP cases, promulgation of the 2017 Law on Preventing and Combatting Human Trafficking, enhanced cooperation with civil society stakeholders and training for law enforcement actors¹¹⁵.

Policy Measures

The National Action Plan against Human Trafficking in Timor-Leste (NAP), 2016-2018 is the strongest policy measure so far by the RDTL to prevent and combat trafficking in persons (TiP), and provide services and protection for victims of trafficking (VoT). It takes an inclusive approach to countering human trafficking in Timor-Leste, with a strategy based on coordination between relevant RDLT and CSO actors aimed at meeting the outcomes of prevention, protection, prosecution and partnerships, to be overseen by the Ministry of Justice (MoJ)¹¹⁶. Critically, the NAP called for the establishment of an Interagency Human Trafficking Working Group (HTWG) to enable the necessary input to implement and achieve the 4 outcomes of the NAP. This group was established in March 2016, and was able to provide input for the Draft Human Trafficking Law, which was passed by National Parliament as Law No.3, 2017 on Preventing and Combating Human Trafficking¹¹⁷. This can be seen as a policy success as it enabled the necessary level of participation by relevant stakeholders in the development of legislation they will be party to upholding and supporting.

The NAP also clearly delineates the implementing actors and focal points for Prevention, Prosecution and Protection, thereby establishing the necessary Partnerships between Government and Civil Society. This is inclusive of

¹¹³ "2016 Trafficking in Persons Report, Timor Leste: Tier 2", 2016

¹¹⁴ "2016 Trafficking in Persons Report, Timor Leste: Tier 2", 2016

¹¹⁵ "2017 Trafficking in Persons Report, Timor-Leste: Tier 2" 2017

¹¹⁶ Democratic Republic of Timor-Leste, *National Action Plan Against Human Trafficking, 2016-2018*. 2016.

¹¹⁷ *Ibid*



professional development for actors involved in prosecution and protection, recognising international and national law around TiP, and how to conduct victim-sensitive investigation and provide for the protection and confidentiality of VoT and witnesses, with the necessary level of technical and funding support¹¹⁸.

Prevention measures are also enhanced by the NAP to include an information campaign via media to disseminate information on TiP to a wider audience, alongside socialisations for communities and training for at-risk foreign workers and Government staff as a means of increasing knowledge around TiP in Timor-Leste¹¹⁹. It furthermore provides for training for national security officers to improve their capacity to combat human trafficking and established a program coordinated by the MoJ to combat corruption within the security sector related to TiP¹²⁰. Protection of VoT has also been strengthened by the NAP, with a focus on developing PRADET's operations to provide psychological and medical services for VoT, dissemination of information for Standard Operating Procedures for VoT, greater re-integration support for VoT led by the Ministry of Social Solidarity (MoSS) as well as the establishment of line of funding for implementing program activities linked to the outcomes of the NAP¹²¹.

However, the implementation of this policy and the capacity of the security sector to monitor and control migration, and combat and prevent TiP remains problematic. Although the legislative and policy framework exists to legitimise and manage migration to Timor-Leste's benefit, the challenges to implementation identified by this report must be addressed for this framework to be effective. Trafficking in persons will remain an issue until a more effective interdiction strategy is implemented with local and regional partners, complemented by coordinated and properly resourced socialisations that build and sustain community awareness and resilience against trafficking in persons. Furthermore, an education curriculum that properly equips Timorese youth with practical and employable working skills upon graduation may lessen the need for skilled migrant workers, increase employment opportunities for Timorese nationals and lessen the likelihood of misperceptions of competition over employment serving as a driver for conflict

Conclusion

Timor-Leste and its security sector face significant challenges in effectively managing migration, preventing migration related crimes, and combatting and preventing trafficking in persons. Whilst the 2016 Law on Preventing and Combatting Human Trafficking and the 2017 Migration and Asylum Law provide a greater array of legal mechanisms for the State to regulate migration and combat trafficking in persons, the policy supporting the 2016 Law must be strengthened

¹¹⁸ Ibid

¹¹⁹ Ibid

¹²⁰ Ibid

¹²¹ Ibid



whilst the 2017 Law requires actual implementation. The level of cooperation and coordination between security sector actors responsible for this must also be improved, as must cooperation with Timor-Leste's neighbours regarding the interdiction of trafficking in persons to and from Timor-Leste. FM calls on the State to consider the recommendations made in this report to more effectively address these challenges.

Recommendations

1. A refocus of the Education system towards generating graduates with practical working skills to reduce reliance on skilled migrant workers and provide greater employment opportunities for Timorese nationals.
2. Alteration of the current interdiction model for counter-trafficking to include increased intelligence-sharing arrangements to leverage the surveillance capacity of regional neighbours for monitoring of Timorese waters and terrestrial frontiers, cross-border and cross-agency cooperation with the Republic of Indonesia, socialisations of security actors and communities towards building awareness and resilience against trafficking in persons.
3. Provision of Government funding for Human Trafficking Working Group stakeholders focusing on prevention to enable greater community engagement and resilience.
4. Socialisations of current legislation on migration for Timorese nationals and the international community in Timor-Leste, towards effective implementation of this legislation.
5. An efficient and transparent process for applying from outside of Timor for a Work Visa, a Visa to Establish Permanent Residence (which is the precursor to a Residence Permit), a Research Visa, a Volunteer Visa etc. outside of Timor-Leste should be made available as soon as possible so that migrants are not obliged to start their work in Timor illegally. Until this is in place, migrants who have submitted an application for a non-tourism visa should not be required to renew tourism visas, in order to properly clarify the number of migrant workers in Timor-Leste and avoid the continuing use of Tourist Visas for work purposes.
6. A Working Group is established between Migration Service, the Ministry of Foreign Affairs and Cooperation and the Secretariat of State of Professional Training and Employment, to develop migrations policy and enhance coordination regarding Visa applications, issuing and monitoring.
7. The Migration Service, as a minimum and as a matter of urgency, provides full information on which foreign nationals may be denied entry in Timor-Leste and why, on the Migration website and directly to Embassies of affected countries.
8. Tourist Visas on arrival to include 1, 2 and 3-month Visas, in order to facilitate more accessible tourism and decrease the bureaucratic process for visa extensions.



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