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The Making of Industrial Relations in Timor-Leste

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Abstract

As a new nation, Timor-Leste offers a unique case where formal industrial relations mechanisms have been developed as part of a broader project of state formation. In other words, the transformation of employment relations in the formal sector has taken place as part of regime establishment rather than regime change, as has been the case in other post-authoritarian contexts in Southeast Asia. As this first account of industrial relations in Timor-Leste demonstrates, the state has been concerned first and foremost with encouraging sustainable forms of accumulation, and the employment opportunities that accompany them, rather than with regulating labour relations. Although it has responded to pressure from international organisations to establish what could have been best-practice industrial relations institutions in the country's tiny formal sector, these efforts have foundered as a consequence of a failure to secure employer buy-in and weak enforcement.

Keywords: Comparative industrial relations, employer's associations, institutions, international trade unionism, political science, social change

Introduction

There are few cases in the 21st century where states have had the opportunity to build a formal system of industrial relations from the ground up. Timor-Leste is one such case. The sharp break from the institutional legacies of the Indonesian Occupation (1975–1999) provided a blank canvas for the East Timorese political elite and their international advisors, opening up space for the imagining of an entirely new approach not only to employment relations but to state building. The formal mechanisms of industrial relations in Timor-Leste have thus developed during what Leach and Kingsbury (2013: 2) have described as a 'double transition to independence and democracy'. Accompanying that transition has been a desperate push to reduce poverty through attempts to develop a conducive enabling environment for the private sector, including 'a competent, productive and disciplined labour force' (República Democrática de Timor-Leste (RDTL), 2011: 20).

At the same time that they were seeking to grow the economy, Timor-Leste's founders were deeply aware of the need to maintain legitimacy with Timorese citizens and with their international supporters, some of whom were concerned with ensuring the development of

practices of employment relations that guaranteed adequate representation of employers' and workers' interests. These priorities were reflected in the initial blueprint for the industrial relations system laid out in the Labour Code of 2002, issued by the transitional authority within months of Timor-Leste's formal declaration of independence. Turning that blueprint into reality has, however, been an entirely different question. With formal sector employment at around 10%, the reach of an industrial relations system predicated on a regulated waged relationship is necessarily limited. But even within the bounds of the formal sector, government officials acknowledge that they have struggled with implementation as a consequence of a lack of capacity not only within trade unions and employers' associations, but also within their own institutions (Interview with Director General of SEPFOPE, July 2015). In short, the Timorese state has struggled not so much with the pressures of balancing the logics of accumulation and legitimation (cf. Hyman, 2008) – though these pressures are present – but with cementing the building blocks of its new industrial relations system.

As Hyman (2008: 274) implies in his discussion of countries trying to achieve 'late late development', industrial relations is necessarily a 'marginal phenomenon' in contexts where governments are concerned with external domination, state building, weak civil society and the tensions between modern and traditional economic sectors. In the case of Timor-Leste, the process of industrial relations institution building was driven largely by the United States and the International Labour Organisation (ILO). The country's political leaders agreed to participate in that process, but made it clear that job creation, not industrial relations, was their priority (Interview with former director of the ILO Jakarta Office, August 2015). Although the government agency tasked with operationalising those institutions has made a sincere attempt to do so, employers' lack of understanding and reluctance to engage has compounded the challenges of implementation and enforcement such that the 'system' exists largely in name only.

Drawing on data collected in interviews with government officials, employer bodies and trade unionists in February 2013 and July 2015 as well as discussions with representatives of the ILO, Trade Union Solidarity Support Organisations (SSOs) and a number of Global Union Federations (GUFs) between 2012 and 2015, this first account of Timor-Leste's formal system of industrial relations examines the role of the state and international actors in its making and operation within the context of Timor-Leste's emerging statehood. It begins with a discussion of the political and economic context in which the industrial relations system emerged before describing the architecture of the system and analysing its articulation with the practice of employment relations.

Industrial relations in context

In 2002, Timor-Leste emerged from a long period of colonisation first by Portugal, which controlled the territory from the mid-16th century to 1975, and then by Indonesia, which occupied it from 1975 to 1999. Although the United Nations (UN) held full legislative and executive authority until May 2002, the 'Timorisation' of the administration commenced in December 1999 with the establishment of a National Consultative Council (Gunn and Huang, 2006: 93–94).¹ Government structures were subsequently established over a decade of slow,

often faltering, transition to Timorese rule under the watchful eye of the UN. Successive UN missions brought a great many resources to Timor-Leste but did little to support the establishment of a sustainable economy. Although some very well-paid job opportunities were created for the highly educated, and for workers in the service sector, most UN work was ‘done by foreign workers for foreign companies using foreign supplies’ (Gunn and Huang, 2006: 91). This dual economy was propped up by an aid bubble created by an influx of donor funds, which peaked in 2002 then tailed off as international staff left (Hughes, 2009). The effect was immediate: growth in GDP fell from 16.4% in 2001 to –6.6% in the following year, only returning to positive figures in 2004 (World Bank, 2015).

Rising economic inequality associated with Timor-Leste’s growing pains soon tested social cohesion. Tensions came to a head in 2006 when a dispute within the military escalated into a broader communal conflict in which hundreds of thousands of East Timorese were displaced, and the economy again ground to a virtual halt. While its causes were complex, demographic pressures including rural to urban migration and high levels of unemployment were contributing factors (Dibley, 2014). As a consequence, economic policy was a key political battleground in the 2007 elections. During the campaign, the Revolutionary Front for an Independent East Timor (Frente Revolucionária de Timor-Leste Independente, FRETILIN) focused on Timor’s right to use its oil revenues for economic development, while the National Congress for Timorese Reconstruction (Conselho Nacional de Reconstrução de Timor (CNRT)), led by Xanana Gusmão, emphasised the need for foreign investment, support for business and employment generation (Leach and Kingsbury, 2013; Molnar, 2010). While FRETILIN polled most strongly, CNRT formed a governing coalition with the Timorese Social Democratic Association–Social Democratic Party and the Democratic Party. The new government made cuts to a range of taxes in an attempt to attract foreign investment, and shifted its emphasis from autonomous agriculture towards export-oriented cropping in 2008 (Anderson, 2013). The situation began to improve, driven almost entirely by government spending, which more than tripled between 2007 and 2011 (Sugden, 2012). This public expenditure was financed primarily by the petroleum fund, established in 2005 to manage revenue from the oil and gas industry, which had a balance of US\$41.952bn at the end of 2013 (Ministry of Finance, 2014).

These measures made few inroads in terms of broadening economic opportunities for poorer East Timorese. According to the International Crisis Group (2013: 34), youth unemployment and social inequality remain the ‘two most dangerous potential triggers’ for renewed conflict. For the government, then, the generation of good quality jobs is not just an abstract goal, but a necessity. A key element of the country’s Strategic Development Plan is its focus on the expansion of waged work, particularly in tourism and other service industries, complemented by the development of agribusiness and light industries in food processing, garments, handicrafts and furniture making (RDTL, 2011: 106, 201). This expansion is to be underpinned by growth in the private sector in both rural and urban settings, driven by local and foreign investment, and the development of an increasingly educated and skilled workforce (RDTL, 2011: 201). As the Strategic Development Plan also notes, the achievement of its goals requires ‘certainty and predictability in employee– employer

relationships', to be provided through the national Labour Law (RDTL, 2011: 152). In other words, labour market development and labour regulation have been positioned as part of a broader national strategy of accumulation.

Establishing an industrial relations system

During the Indonesian Occupation, the territory then known as Timor Timur was nominally integrated into the prevailing national industrial relations system, which carried all the hallmarks of authoritarian corporatism (Ford, 1999; Hadiz, 1997). East Timor's lack of an industrial base and the military's tight hold over the province made any kind independent representation of labour's interests in the workplace or in policy-making even less likely than elsewhere in the archipelago, with the possible exception of the other separatist provinces of Aceh and Papua. As the East Timorese referendum for independence coincided with the first year of Indonesia's democratic transition, the contemporary industrial relations systems of the two countries evolved independently.

An important facet of this process in Timor-Leste – as, indeed, in Indonesia (Ford, 2009; Ford and Sirait, 2016) – has been the provision of financial and technical assistance by international bodies. The government has had access to technical support and financial aid, including support for industrial relations institution building from bilateral and multilateral donors. Moreover, although the ILO's primary focus in Timor-Leste has been on vocational education and large development projects, ILO personnel were responsible for the drafting of the Labour Code issued in 2002 by the United Nations Transitional Administration in East Timor (UNTAET) and supported efforts to establish the institutions described within it through a project funded by the United States Department of Labor (Interview with former director of the ILO Jakarta Office, August 2015).² The ILO subsequently facilitated tripartite negotiations around the revision of the Code, culminating in the enactment of Law No.4/2012 (RDTL, 2012), as well as supporting the National Labour Council in the formulation of guidelines to assist with its interpretation (Interview with ILO Head of Mission, July 2013). Employers' associations and the nascent labour movement have also benefited from significant and ongoing funding and technical support from their international counterparts, in the unions' case from the international labour movement, but particularly from Union Aid Abroad–Australian People for Health, Education and Development Abroad (APHEDA), and in the case of employers, from bilateral and multilateral donors who have supported initiatives including the embedding of an international advisor in the Chamber of Commerce and Industry (CCI-TL).

The involvement of the ILO and other international organisations in the establishment of the industrial relations system played an important external legitimating function for the government. It has also left an indelible mark on the structures of industrial relations. It is not surprising, given the ILO's involvement in the drafting of the 2002 Labour Code, that the regulatory framework of industrial relations in Timor-Leste reflects a strong commitment to tripartism. Similarly, the initial involvement of a number of GUFs, and the ongoing commitment of APHEDA and a Norwegian affiliate of the International Transport Federation

(ITF), has very much influenced the form and function of the major trade unions within that regulatory framework.

The regulatory framework

The industrial relations system in Timor-Leste is predicated on the existence of employers' associations, trade unions and a number of tripartite bodies. Under the 2002 Labour Code (UNTAET, 2002), trade unions were guaranteed the right to negotiate on behalf of workers involved in individual disputes and to engage in collective bargaining, and employers were required to provide access to a check-off system upon request. Conditions of work were also regulated. Discrimination on the basis of gender was outlawed and waged workers were guaranteed the right to a written contract of employment. Normal hours of work were set at 44 hours per week and overtime regulated such that the total of normal and overtime hours did not exceed 12 hours per day. Annual leave was set at 12 days per annum, and provisions made for 12 weeks of maternity leave at two-thirds of standard rates of pay, with paid nursing breaks provided on resumption of work. Occupational health and safety (OHS) was to be dealt with under a separate regulation.

Along with government officials, trade unions and employers' associations were to be represented on a Minimum Wages Board, whose task was to set national, district and sectoral wages, and a Labour Relations Board, the focus of which was on dispute resolution. Parties engaged in a dispute arising during collective bargaining were required to engage in mediation and arbitration. Except in cases involving essential services, the parties could engage in strikes or lockouts on the provision of 10 days' notice. If those negotiations failed, the case could be taken to the Labour Relations Board. Members of the Labour Relations Board and the Minimum Wages Board came together in a policy body called the National Labour Board, which was responsible for providing high-level advice on issues affecting employment and employment relations. Implementation proved, however, to be problematic, due to the Code's lack of detail and the challenges of institution building (Interview with Director of Labour Relations, July 2015).

Under the 2012 Labour Law, the Minimum Wages Board, the Labour Relations Board and the National Labour Board were replaced by the National Labour Council and the Labour Arbitration Council. The membership of the National Labour Board consists of three government officials and two representatives each from workers' and employers' organisations. Its task is to advise on policy and labour legislation and to propose a national minimum wage. The Labour Arbitration Council is composed of one representative each from government, labour and business. In addition, significantly more pro-worker provisions have been introduced including an explicit reference to employers' obligation to engage in collective bargaining, a prohibition on lockouts, additional guaranteed rights for trade unions, more substantial provisions for leave, more safeguards against workplace discrimination, fully paid maternity leave and a 13-month salary bonus to be paid on or before 20 December each year. The revised Labour Law also incorporated guarantees of job security for permanent workers including a right to reinstatement in cases of unfair dismissal, except where the court deems it to be prejudicial to the company's operations, and guarantees of

ongoing employment in cases of a change of ownership, as well as provisions related to OHS, including compensation for accidents or death. As noted earlier, these changes were negotiated through a tripartite process in which trade unionists were better prepared than the employers' associations, and the government officials were seeking legitimation both with Timorese citizens and with the ILO.

Yet although the 2012 Labour Law is considerably more detailed than its precursor, it remains a very general document. The absence of Decree-Laws detailing processes means that many cases remain unresolved or are resolved in ways that are legally ambiguous (Interview with Director of the Labour Inspectorate, July 2015). As a consequence a large number of these end up in the civil court (Interview with labour lawyer, July 2015). In addition, however, the system's efficacy is limited by the fragility of its institutions and a lack of capacity on the part of industrial relations actors, including the government agencies that represent the state.

The state as an actor

The state agency responsible for industrial relations is the Secretariat of State for Vocational Training and Employment (Secretaria de Estado Para a Política de Formação Profissional e Emprego (SEPFOPE)), which incorporates two major divisions, one of which deals with labour market management and planning, and the other with vocational education and employment. The Directorate for Labour Market Information sits within the Division of Management and Planning. The Division of Vocational Education and Employment incorporates four directorates, which deal with employment policy, vocational training, labour relations and inspections, respectively. This structure reflects SEPFOPE's attempt to balance job creation and vocational training with its responsibility for industrial relations.

Within industrial relations, the government aims to strengthen tripartism. SEPFOPE is 'very focused on social dialogue', and on educating workers and employers about their duties and rights (Interview with SEPFOPE Director General, July 2015). More broadly, the government has demonstrated its support for trade unions as a core actor within industrial relations. In 2013, for example, the Minister for Agriculture and a number of Secretaries of State spoke at the Fourth Congress of the Timor-Leste Trade Union Confederation (Konfederasaun Sindikatu Timor-Leste (KSTL)) on 27–28 February (observation by author). Trade unionists and observers report, moreover, that the government, through SEPFOPE, has sought to actively involve unions in policy discussions (Interviews, February 2013; Interviews, July 2015). For example, some 30 trade union recommendations were incorporated into the 2012 Labour Law, where they participated more actively than employers (Interview with KSTL General Secretary, July 2015). KSTL is also an active participant in minimum wage setting through the National Labour Council. SEPFOPE has been less successful, however, in ensuring that the Labour Law is implemented.

Employers and employers' associations

While the provisions set out in the Labour Law are designed to cover workers in both formal and informal sector occupations, they, in fact, apply to a tiny proportion of the working

population. As of 2013, close to 24% of the 696,200 Timorese of working age were engaged exclusively in subsistence agriculture (Labour Force Survey (LFS), 2015). Just 213,000 people – or 30% of working-age people – were active in the labour force. Of these, 45% were located in services, 40% in agriculture and just 12% in industry (LFS, 2015). Most were own account workers or contributing family workers. Although waged work has grown dramatically since 2001, just 41.6% of the 189,800 people economically active were in receipt of a wage or salary. Over half of these were employed in the public sector, while nonpetroleum producing businesses employed just 59,000 people, some 81.5% of whom were based in Dili (General Directorate of Statistics, 2014). Significantly, also, most private sector enterprises are small. According to a 2004 survey cited by Das and O’Keefe (2007: 12), over 72% of formal enterprises have fewer than 10 employees, with a further 19% employing fewer than 20. A significant proportion of other waged workers were employed in the informal sector (LFS, 2015).

When Timor-Leste joined the ILO in 2003, employers were formally represented by the Timor-Leste Employers’ Forum (Forum dos Empresarios de Timor-Leste (FETL)), which participated in negotiations on the revision of the labour law but was otherwise not particularly active on industrial relations matters (Interview with Director of Labour Relations, July 2015). FETL was dissolved once the CCI-TL was formed in 2011 (Interview with ILO Head of Mission, July 2015). Representing 19 member associations in different sectors of the economy, the CCI-TL is now the primary organisational face of employers. Its key objectives are to provide business services to its members and to advocate on their behalf with government on issues such as the need for support for the expansion of manufacturing and Timor-Leste’s stated goal of becoming part of the Association of Southeast Asian Nations (ASEAN). Although there is a discernible discourse among some segments of the local and foreign business communities – citing the minimum wage, but also problems with workforce behaviour and productivity – that the government is overly pro-worker, the CCI-TL positions itself as the government’s partner in economic development (Interview with CCI-TL Executive Director, July 2015).

Although CCI-TL has formally been in existence for a number of years, beyond participating in negotiations leading up to the revision of the Labour Law, it has been at best a peripheral actor in employment relations (Interview with SEPFOPE General Director, July 2015). According to its Executive Director, this has been the case because the organisation concentrated primarily on consolidating its membership and its internal processes, and on establishing a strong relationship with government. It is, however, now working to raise awareness of the Labour Law among its members as a first step towards deeper engagement with the industrial relations system’s forums and mechanisms (Interview, July 2015). Raising awareness of the Labour Law is vital since it is predominantly large foreign companies, many of them from Australia, that meet the requirements of the Labour Law. According to the President of the National Union of Small Enterprises, who represents CCI-TL on the National Labour Council, in most other cases employers only consider their legal obligations when disputes arise (Interview with UNAPE President, July 2015).

This assessment of employer compliance with the Labour Law was confirmed by the Director General of SEPFOPE, who added that ‘Sometimes employers don’t even implement provisions that they have agreed to. For example, approved the payment of a thirteen-month wage during negotiations on the revision of the Labour Law, but now they don’t want to pay it’ (Interview, July 2015). The government has responded to these difficulties by attempting to raise awareness of employers’ obligations through media campaigns and other novel strategies; however, in the absence of better enforcement, responsibility for pushing for the implementation of the Labour Law has fallen very much on the trade unions (Interview with UNAPE President, July 2015).

Trade unions

Although Timor-Leste’s trade unions are more established than the CCI-TL, they, too, are very new. Independent Timor-Leste was effectively a greenfield site for trade union organisers (Interview with APHEDA representative, February 2013). There was effectively no labour movement – independent or otherwise – before Timor-Leste gained independence. The Indonesia’s Teachers Association, the Indonesian Nurses Association and the Indonesian Civil Servants’ Corps, all of which had been de-unionised under the New Order, had branches in Timor-Leste. The major alternative trade union of the late Suharto period also had a small presence. After independence, the number of registered trade unions peaked at 12, but as of 2015 sat at eight, including the seven unions affiliated to KSTL (Interview with the Director of Labour Relations, July 2015). The eighth registered union is the Maubere Workers Front (Front Trabalhador Maubere), which is associated with a student group called the Maubere Front (Front Maubere) and has links with a leftist Indonesian union that grew out of the NGO-sponsored workers’ groups of the late Suharto period (Interview with Maubere Workers Front representative, February 2013). There is also a small union linked to the Timor-Leste Socialist Party, which in turn has links to the Indonesian Democratic People’s Party and Australia’s Democratic Socialist Party. Although not formally registered, the Director General of SEPFOPE acknowledges that the latter has ‘strong access’ to workers (Interview, July 2015).

KSTL is the peak body representing the majority of trade unions. Its establishment was first mooted in 2000, when worker activists began collaborating with the Labour Advocacy Institute for East Timor (LAIFET), a labour NGO established the previous year to provide legal representation and other forms of advocacy for workers. LAIFET activists approached APHEDA for help to form a trade union (Interview with APHEDA representative, February 2013; Interview with LAIFET activist, February 2013). The NGO was also instrumental in organising the first East Timor Workers’ Congress on 26–27 February 2001, where the resolution to form the KSTL was passed (La’o Hamutuk, 2001). Upon establishment, KSTL’s initial focus was on continuing the advocacy and organising work previously undertaken by LAIFET. Its second priority was to consolidate the public sector unions and its third to break into the private sector. Once the national tripartite committees were formed, KSTL represented worker interests on them. KSTL is robustly apolitical, though some in the leadership have open connections to FRETILIN, and leaders of some of its member unions have entered parliament (Interview with KSTL President, February 2013).

KSTL acts as an umbrella for the Agricultural Union of Timor-Leste (Sindikatu Agrikultura Timor-Leste (SATL)); the Construction Workers Union of Timor-Leste (Sindikatu Trabalhadores Konstrusaun Timor-Leste (STKTL)); the General Workers Union of Timor-Leste (Sindikatu Jeral Trabalhadores Timor-Leste (SJTL)); the Maritime, Energy and Transport Union of Timor-Leste (Sindikatu Maritima, Energia No Transporte Timor-Leste (SMETTL)); the Nurses Association of Timor-Leste (Associaasaun Einfermeiro de Timor-Leste (AETL)); the Public Service Union of Timor-Leste (Sindikatu da Funsauun Publika Timor-Leste (SFPTL)) and the Teachers Union of Timor-Leste (Sindikatu Professores Timor-Leste (SPTL)). According to reported figures, these unions represent up to 8000 workers (ILO, 2014) or approximately 9% of waged workers in Timor-Leste. The number of dues-paying members is, however, much lower, with KSTL's public sector affiliates collecting no dues at all (Interview with KSTL General Secretary, July 2015).

Although in principle all workers are governed by the 2012 Labour Law, public sector employees are subject to the provisions of separate laws and regulations, which have created uncertainty about the status of their unions (Interview with the Director of Labour Relations, July 2015). The only mention of trade unions in the Civil Service Code (Law No. 8/2004) appears in Article 115, which guarantees the right to membership of a trade union or equivalent organisation, the 'establishment and functioning' of which was to be regulated through a Decree-Law, which has yet to be released (RDTL, 2004). In the absence of this Decree-Law, complaints are dealt with by the Civil Service Commission established under Law No. 7/2009, which makes no reference whatsoever to unions. In practice, according to the General Secretary of SFPTL, civil servants appearing before the Commission may be accompanied by a union delegate, but its decisions are non-negotiable (RDTL, 2009). However, the lack of clear guidelines on the functions of public sector unions leaves civil servants in a vulnerable position (Interview, February 2013).

A similar situation exists for the other public sector unions since teachers and nurses are also regulated under purpose-specific legislation. Decree-Law No. 14/2004 on the Practice of Health Professions makes specific mention of both professional associations and trade unions, noting that the former 'may not carry out trade-union activities'. However, it is internally contradictory, as it also deems that health professionals appearing before the Health Professionals Disciplinary Board can only be represented by a professional association (RDTL, 2008). Decree-Law No. 23/2010 Approving the Statute of Careers for Child Educators and Teachers of Basic Secondary Education regulates the conditions of teachers' employment, wages and working conditions, performance review and advancement within the profession, but makes no mention of associations or trade unions (RDTL, 2010). Given that close to 54% of waged workers – and a much higher percentage of those in secure jobs – are public sector employees (LFS, 2015), the sector represents a potentially important constituency for the nascent trade union movement. However, the lack of clarity described here – but also a lack of leadership internally, and in one case, prolonged elite-level conflict – has meant that while these unions continue to exist, and from time to time have engaged in some form of activity, they have failed to thrive.

Although KSTL continues to acknowledge the importance of the public sector, the difficulties it has experienced in encouraging public sector workers to organise have prompted it to focus primarily on supporting its private sector affiliates in the short to medium term (Interview with KSTL General Secretary, July 2015). At the time of KSTL's formation, the only private sector union in existence in Timor-Leste was the Construction Workers Union (Interview with STKTL General Secretary, February 2013). Construction is one of the largest providers of waged employment in Timor-Leste, employing 9500 waged workers in 2013 (LFS, 2015). As of June 2015, the union had approximately 700 members, 567 of whom are registered as paying dues, a significant proportion of which is collected through an informal check-off system, where the money is deducted from workers' wages by their employers and collected monthly by a union official (Interview with STKTL General Secretary, July 2015). The union tries to focus on larger companies, where it has greater bargaining power, such as road construction projects to the southwest and east of Dili. However, most members are employed in small enterprises.

The second private sector union outside agriculture – the Agricultural Union is still formally affiliated with KSTL, but has been operating separately for some time – is the Maritime, Energy Workers and Transport Union, which was established in 2003. Most of the union's members are in the offshore oil industry, employed by large multinationals like the Australian subsidiary of ConocoPhillips. Although in more recent years the union has since received most support from Industri Energi Norway, the Maritime Union of Australia (MUA) was initially heavily involved, paying for an Australian organiser to work full-time in Timor-Leste. During that period a number of collective bargaining agreements were reached, including one with the Toll Group, then operating as Perkins Shipping, whose local director had been a member of the MUA in Australia (Interview with SMETTL General Secretary, February 2013). The union has a presence in 16 multinational and 17 local companies with a total of 888 members, although the number of members paying dues is considerably lower, at 475 (Interview with SMETTL General Secretary, February 2013).

The third private sector union is the General Workers Union, established in 2008. The General Workers Union has unionised a number of supermarkets and other retail establishments, hotels and bars, service providers in security and banking, and workers in the coffee industry (Interview with SJTL General Secretary, February 2013). As of June 2015, the union had a total membership of 3140 people, of whom 550 were registered as dues paying.³ Most of the union's members are in retailing, primarily in small businesses with five or fewer workers. From 2015, the union has engaged more systematically in collective bargaining, signing four collective bargaining agreements with mid-sized retail outlets in the first half of the year. In smaller workplaces, its strategy is to negotiate the formulation of individual contracts so that they acknowledge the rights of the workers and role of the union in the employment relationship. According to the General Secretary, the bargaining push constitutes a significant shift in the union's tactics from its previous focus on responding to worker complaints as they arose (Interview, July 2015). However, unlike the construction union, the General Workers Union has no access to a check-off system, even in the small

number of larger workplaces where their members constitute a majority (Interview with SJTL General Secretary, July 2015).

Industrial relations in practice

Employers' lack of understanding of their legal obligations, along with poor enforcement, is the principal feature of industrial relations practice within the narrow bounds of Timor-Leste's formal economy. These mutually reinforcing characteristics manifest in many ways. According to the Director of Labour Relations, the most pressing challenge facing SEPFOPE is the need to increase the implementation of the legal requirement that all waged workers have a written employment contract (Interview, July 2015). According to the 2013 Labour Force Survey, just 57% of employees – 74% of which are males and 26% females – have written contracts in place (LFS, 2015). This has implications not only for the achievement of legal guarantees concerning working conditions, but also makes it extremely difficult to prosecute cases in which the employer fails to fulfil his or her responsibilities (Interview with Director for Labour Relations, July 2015). Similar problems are evident in the implementation of the minimum wage and operationalisation of the right to bargain collectively. Although collective bargaining was explicitly recognised in both the 2002 Labour Code and 2012 Labour Law, in practice it is the exception rather than the rule. Most employers are reluctant even to use the template designed by SEPFOPE, let alone engage in substantive bargaining. Likewise, although a minimum wage of US\$115.00 was legislated in 2012, many in waged employment earn below that level.⁴ Employers who fail to pay the minimum wage must pay compensation, but the provision is seldom enforced (Interview with Director of Labour Relations, July 2015).

These difficulties with implementation are exacerbated by the under-resourcing of the Labour Inspectorate (Interview with the Director of the Labour Inspectorate, July 2015). As of July 2015, the Inspectorate employed just 22 inspectors, 12 of whom are based in six of the 12 districts outside Dili. The 10 inspectors based in Dili are responsible for the capital and the six districts where no inspectors are permanently based. As a consequence, many workplaces are seldom, if ever, inspected. In an absence of acculturation to the industrial relations regime set out in the Labour Law, inspectors have also found it difficult to gain traction with employers. In the early years of the Inspectorate's operation, employers found to be in breach of the Labour Law ignored repeated summonses to SEPFOPE. In an attempt to increase awareness, inspectors travelled to the districts to explain the function of the Labour Inspectorate before initiating inspections. They also focused on educating employers through the issuing of warnings only in the first few years of operation, with sanctions enforced from 2012 (Interview with Director of Labour Inspectorate, July 2015).

In the absence of better enforcement, Timor-Leste has experienced relatively high levels of industrial unrest, much of it prompted by employers' failure to meet legal requirements, particularly in dismissal cases. Between March 2001 and December 2014, 1924 industrial disputes were reported to SEPFOPE by KSTL. A number of these were larger cases involving strike action, such as a dispute with a Chinese construction company that was forcing workers to regularly work 12-hour days (Interview with STKTL General Secretary,

July 2015); a dispute involving the Australian aviation company, Air North, which was requiring baggage handlers to unload charter flights without additional compensation (Interview with SMETTL General Secretary, February 2013); and a dispute with Bank Mandiri following the unfair dismissal of three senior employees (Interview with SJTL General Secretary, February 2013). Strike action has even occurred in the public sector, in the form of a two-week strike by the teachers' union in the district of Baucau, demanding that honorary teachers be recruited as permanent staff and an end to discrimination against non-Portuguese speaking teachers (Interview with SPTL General Secretary, February 2013). This campaign was unsuccessful; however, in the same year (2008), the union's goal of securing separate wage scales for nurses and teachers was achieved through Decree-Law No. 23/2010 (RDTL, 2010).

Of the 1924 cases brought to SEPFOPE to December 2014, 85% were resolved through negotiations between the union and employer, 8% through conciliation or mediation. The remainder were dealt with by the Arbitration Board or the courts, or remain unresolved (unpublished KSTL data provided to the author, July 2015). While most cases continue to be resolved at the workplace level, use of mediation services has increased in recent years. In 2013–2014, a total of 586 disputes involving 190 local and 396 foreign-owned companies and a total of 1351 workers were dealt with by SEPFOPE. The majority of these were resolved through mediation or conciliation, with a total of 46 being referred to arbitration (unpublished SEPFOPE data provided to the author, July 2015). SEPFOPE staff responsible for mediation have struggled with this load, both as a consequence of the lack of detailed legislative guidance and a lack of expertise in mediation (Interview with Director of Labour Relations, July 2015). Nevertheless, there appears to have been some growth in awareness of SEPFOPE's role in dispute resolution, although serious concerns remain about the efficacy of their processes, with employers questioning the legitimacy of mediation, and both government informants and trade unionists identifying serious weaknesses in the arbitration system (Interviews, July 2015).

Conclusion

The experience of Timor-Leste offers insight into the difficulties of effective institution building, even in what may appear to be a relatively manageable context, given the size of Timor-Leste's formal economy. As a newly independent country, Timor-Leste was always going to struggle with the challenge of increasing formal sector employment in the service sector and non-oil and -gas-related industries while at the same time building a skilled workforce and protecting workers' rights; however, the government and its international allies had an important opportunity to establish best-practice industrial relations institutions in the tiny formal sector. The fact that the industrial relations system remains embryonic despite considerable international support is in part explained by the political and economic specificities of the colonial and post-independence experience of Timor-Leste. However, it is also testament to the complexities of building robust institutional actors and industrial relations mechanisms in an environment where there is no history of a functioning formal system of industrial relations.

The case of Timor-Leste also reveals the dilemmas faced by state agents concerned both with accumulation and legitimation (Hyman, 2008). In the absence of a functioning labour market, the Timorese state is not concerned so much with the pacification of organised labour as with finding a way to encourage sustainable forms of accumulation (and the employment opportunities that accompany them) as a way of maintaining the broader peace. From the perspective of the state, the biggest risk to this enterprise is not the form of the industrial relations system laid out in the Labour Law, nor employers' protestations that the law is overly skewed towards the interests of labour. Rather, it is the challenges presented by implementation, in part caused by a failure to secure employer buy-in even among relatively large-scale enterprises in the formal sector, and in part caused by the marginal status of industrial relations in 'late late' developing Timor-Leste.

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Notes

¹ Timor-Leste officially became independent on 20 May 2002, but it was not until 20 May 2004 that the Timorese authorities assumed full responsibility for operational matters (Molnar, 2010).

² The ILO has organised training on topics such as freedom of association, organising, collective bargaining and service provision. In 2013, it also supported a joint initiative by the unions and the government to train police officers, who had been arresting workers engaged in legal strike action (Interviews with ILO Head of Mission, February 2013 and July 2015).

³ The General Secretary acknowledges that he does not remove the details of former members from the register, thus the first figure is clearly inflated (Interview, July 2015).

⁴As of 2013, average wages were highest in mining and quarrying, at US\$1427.50 per month, and lowest in hospitality at US\$186.60 per month. The Labour Force Survey records an average wage of US\$80.00 per month for real estate, but this represents a miniscule proportion of the workforce (LFS, 2015: 113, 131).