

- **Trip Report** -

**TOWARD ENACTMENT OF MEDIATION LAW
IN
TIMOR-LESTE**

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I. INTRODUCTION

This report describes the result of the local seminar and the key findings of the field survey in Timor-Leste (East Timor). The seminar, which took place on December 18 and 21, 2015 in Dili, addressed topics related to the mediation in Timor-Leste. In Timor-Leste, efforts have been made toward the enactment of mediation law as an alternative dispute resolution. As of today, however, an official draft law has not yet been submitted to the National Parliament, nor even completed. While multiple institutions provide *de-facto* mediation and other alternative dispute resolution services, a consensus has not yet been reached within the Ministry of Justice (MOJ) or between Ministries and other relevant agencies concerning the basic matters of the legislation, including:

- The areas and types of disputes which should be covered by the law;
- The individuals who should serve as mediators; and
- The purpose and expected benefits of the institutionalization of mediation

As a matter of course, hasty legislation without sufficient understanding and consensus should be avoided. This is especially true for a country with a long history of conflict. At the same time, during our recent visit to relevant institutions, high expectations were expressed toward the enactment of mediation law as an alternative dispute resolution method.

Based on the above background, the International Cooperation Department (ICD) of the Ministry of Justice of Japan dispatched two staff members, Ms. Mihoko Yui and myself to Timor-Leste in December 2015. The purpose of this trip was to conduct interviews at mediation-related institutions and to organize a local seminar in order to promote an appropriate understanding of mediation. We were joined by Professor Hiroshi Takahashi of Kobe University, Graduate School of Law, who gave lectures at the local seminar, and by Ms. Nao Tsujimura, a Tetum-Japanese interpreter, who accompanied us almost all the time during our stay. Please note that any opinions conveyed in this paper are strictly those of my own.

II. OUTLINE OF LOCAL SEMINAR

The seminar was held over two days at the Legal Training Center in Dili. The first day was devoted to the legislative method and drafting technique for officers of the MOJ Legislative Bureau (DNAJL). I myself delivered an introductory lecture on the legislative method based on the civil law tradition, followed by questions and discussion. As a practical matter,

¹ This paper was written in March 2016 during my tenure at the International Cooperation Department.

legislative techniques may be difficult to learn unless they are acquired through actual drafting experiences. In that sense, further experience would be necessary in order for the country to become able to independently draft high-quality legislation.

The seminar on the second day was attended by a wide range of individuals, including private attorneys, police officers and NGOs. The program began with an explanation by MOJ personnel in charge on the outline of the draft mediation law being under consideration. Subsequently, Professor Hiroshi Takahashi, an expert in ADR, provided lectures on the role of mediation in the entire judicial system and other topics on mediation. Following the lecture, the participants had the opportunity to raise issues and present their ideas on the draft mediation law. In response to questions on the draft law, not only MOJ officers in charge answered but also Japanese experts also introduced relevant Japanese experience.

While this local seminar was just one approach with a limited amount of time and participants, it was extremely important in the process of creating a new legislation. It is our sincere hope that a new mediation system which matches the actual situation of Timor-Leste will soon be enacted and properly implemented.



A scene of the local seminar



Local seminar participants

III. RESULTS OF FIELD SURVEY

A. Outline of Visits

Field survey was conducted by visits to the following institutions related to mediation:

- MOJ's National Directorate of Land, Property and Cadastral Services (DNTPSC) in charge of mediation on land disputes;
- The Office of Public Defender (OPD), which provides mediation services as well as legal aid for civil and criminal cases;
- Suco Lauala, Ermera District, as a sample case of traditional dispute resolution functions within communities;
- ALFeLa (Asistencia Legal ba Feto no Labarik), an NGO providing legal assistance concerning problems of women and children including gender-based violence; and
- Dili District Court.

Overall, these institutions expressed high expectations toward the establishment of a simple, speedy and effective dispute-resolution procedure through the enactment of mediation law. At the same time, concerns were also voiced including:

- Information on the contents of the draft law being necessary quickly as it is yet

completely unknown;

- A lack of information being provided as to merits to be created through the enactment of mediation law;
- Legal remedies being necessary as there are cases of non-performance of agreements in spite of being reached through mediation;
- The lack of human resources and the capacity of mediators pose problems when conducting mediation, and thus an effective mechanism for training mediators is necessary.



At the Office of Public Defender

B. Mediation of Land Disputes

This part overviews the background and current situation of land disputes in Timor-Leste, which are required to be addressed in the mediation law.² Generally, land disputes are one of the typical dispute types in developing countries (along with family disputes). In the case of Timor-Leste, however, this issue has become further complicated due to the following factors:

- During over 400 years of colonial era by Portugal and subsequent occupation by Indonesia, overlapping or conflicting land certificates were issued³;
- Most land records were destroyed during the turmoil in 1999; and
- The displacement of a large part of the population.

Consequently, Timor-Leste faces extreme difficulty in identifying land owners, adjusting conflicting land titles and in determining land boundaries.

With regards to the issue of land disputes and land registration, USAID and its partner organizations provided assistance over several years. In particular, the “Ita Nia Rai (Our land)” project which started around 2008 offered extended support nationwide in researching and recording land ownerships, adjusting conflicting rights, and in drafting the land law. The achievements and roles of these assistance activities have been succeeded by the DNTPSC of the MOJ, which in turn provides mediation services on land disputes.

Concerning the land law and other related draft laws which provide criteria for adjusting overlapping land rights, “A Technical Framework for a Transitional Land Law for East Timor” provided the basis for the examination of the draft law.⁴ In 2010, land-related bills were

² There appears to be a need to further examine whether mediation is the necessary and sufficient method to resolve land disputes, in particular disputes on land boundaries. Moreover, since the draft land law currently under consideration also provides for land dispute resolution procedures, it is necessary to consider relationship between the land law and mediation law.

³ During the era of Portuguese colonization and the rule by Indonesia, approximately 3,000 and 47,000 land titles were issued, respectively. Moreover, it is estimated that 10 – 30 % of Indonesian titles were of corrupt issuance (“Land Registration and Justice in Timor-Leste – Culture, power and justice,” Rede ba Rai, pp.24). However, it appears that no official title has been issued on most land parcels.

⁴ “A Technical Framework for a Transitional Land Law for East Timor” (USAID/ARD Strengthening Property Rights in Timor-Leste, Ita

submitted to the National Parliament, but no progress has been made toward their enactment due to the political confrontation.

Against the above background, we conducted interviews with members of the DNTPSC concerning the current situation of land disputes resolution. Below are a few explanations offered in our interview:

- Currently there are approximately 13,000 land dispute cases registered;
- One of the major challenge is the lack of personnel and experience in mediation;
- Mediation is conducted free of charge;
- In cases where no agreement has been reached after three mediation sessions, cases are referred to the District Court.

C. Traditional Dispute Resolution Procedure

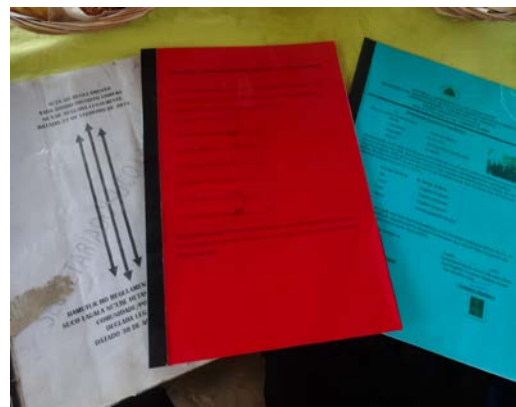
This part summarizes the result of our visit to Suco Lauala, Ermera District. In Timor-Leste, each community has its own traditional rules called “Tara Bandu” which include norms to be obeyed by each community member and rituals for peace maintenance. In Lauala, this type of traditional dispute resolution mechanism which includes both substantive and procedural rules was documented in 2012, and based on which conflicts have been settled within the community. More specifically, when a conflict occurs, a community member in charge or the community leader first engages in its resolution. When the conflict cannot be resolved, the parties offer goods (such as alcohol) and money necessary for conducting a traditional ceremony for dispute resolution. In the ceremony, with the participation of the village leader or elder, a final resolution is reached.

In the case of Lauala, the types of conflicts which often occur are problems between couples or spouses and land (boundaries) disputes. Records on dispute settlement activities are documented with signs of disputing parties. In cases of conflicts which cannot be resolved within the community including injury, murder or rape, cases are referred to the police or the courts.

Overall, Suco Lauala seems to have built up a more systematic and effective dispute resolution mechanism than I expected.⁵ However, some thoughts would need to go into how to incorporate such traditional or customary law into the modern national legal system.



Discussion at Suco Lauala



Documented dispute resolution records

Nia Rai Project, September 2008) provides comprehensive analyses and proposals on the initial land titling process; criteria for adjusting rights among various title holders and long-term possessors; compensation for those who have not been granted titles; handling of customary land, systematic cadastral surveys and dispute resolution system, etc.

⁵ There were also some cases which appeared to entail problems from the viewpoint of modern law and international human rights standard.

IV. CONCLUSION

During our stay in Timor-Leste, we had an opportunity to participate in two special events which were not included in our original plan. One is a CPLP (Community of Portuguese Language Countries)⁶ conference on land and real property which was hosted by Timor-Leste. The Minister of Justice kindly invited us to the opening ceremony and other events in the conference. The other was a year-end event for MOJ staff families on December 22. Though it was our departure day, we were able to spend a few hours at this precious event.

Timor-Leste has just begun its nation-building process after a long-awaited independence, through the lengthy history of conflicts and tragedies. It is our sincere hope to make our humble contributions from long-term perspectives to the establishment of legal systems, strengthening judicial functions and human resource development.



MOJ year-end program



Santa Cruz Massacre Memorial Monument

⁶ The CPLP has eight member countries: Portugal, Brazil, Angola, Mozambique, Guinea-Bissau, Sao Tomé and Príncipe, Cape Verde and East Timor. Japan has participated in the Community with the status of Associate Observer since 2014.