

Timor Leste Unions and the right to strike?

Chris White¹

Introduction

I demonstrate by describing four industrial relations disputes that the right to strike for Timor Leste unions has been undermined by the police. Such unwarranted police intervention against workers' rights makes the successful bargaining by Timor Leste unions more difficult.

I do not here give the history of the struggle for independence, nor the history of unions since 2000 or the context of Timor Leste capitalist development and the formation of the working class, nor workers' lives on a minimum wage \$85 US per month in 2012 lifted to \$150 per month.

Zito Jose da Conceicao da Costa, Zito, President of the KSTL, Konfederasaun Sindikato Timor Leste demonstrates my argument about one aspect of the new Timor Leste repressive state apparatus on developing employment relations. Zito's reaction to the police intervention against the SJT-TL union, Sindikato Jeral Trabalhadores Timor Leste, in the Mandiri Bank strike - that I deal with below – was:

The police stopped our legal strike. This prohibits workers to organise a strike and is against our right to strike. The Government and the police have become accomplices and protectors for employers, especially foreign companies such as Mandiri Bank. This is far from the only case in which the government and the police have acted to protect employers. Police action against legal industrial action has occurred five times in 2004-2009, and twice in 2011. The government has neither addressed the issue of police violence nor taken action against exploitative employers. Without the government to protect workers' rights, workers are increasingly subject to unfair and arbitrary treatment by their employers.²

The right to strike

The Portuguese and Indonesian governments banned unions. Workers had no employment rights.

The KSTL was formed and held its first Congress in 2001, assisted by APHEDA (Australian People for Health, Education and Development Abroad) the ACTU's overseas aid agency and Australian

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² There is not any academic literature on this topic, but I have in the references articles on the right to strike. I adopt an active research position as a supporter of Timor Leste unions, the KSTL and SJT-TL. The KSTL (like the Australian Council of Trade Unions ACTU) is the peak union body in Timor-Leste. The SJT-TL is the General Workers Union. This presentation is based on interviews with Zito KSTL and Almerio Vila-Nova, Secretary, SJT-TL. The SJT-TL and the right to strike - parts one, two, and three. In part one is an introduction to the KSTL <http://chriswhiteonline.org/2012/11/sjt-tl-and-the-right-to-strike-part-one/> My SJT-TL 2nd National Congress Report Dili October 17th 18th 2012 recounts the SJT-TL history from 2008, the union coverage and challenges and my speech. <http://chriswhiteonline.org/2012/10/sindikatu-jeral-trabalhadores-timor-leste-2nd-congress/> My report of KSTL union challenges at their 2013 Congress is in <http://chriswhiteonline.org/2013/03/kstl-kongresu-most-democratic/>

unionists. Importantly, in the Timor Leste Constitution, all parties agreed to section 51 for the right to strike:

1. Every worker has the right to resort to strike, the exercise of which shall be regulated by law.
2. The law shall determine the conditions under which services are provided, during a strike, that are necessary for the safety and maintenance of equipment and facilities, as well as minimum services that are necessary to meet essential social needs.
3. Lock-out is prohibited.

In 2001, the first Timor Leste Government with PM Alkatiri and the KSTL and employer representatives worked together with the International Labour Organisation (ILO) to apply ILO principles and agreed on the first ever Labour Code. The Transitional Administrator in the UNTAET Regulation No 2002/5 on the Establishment of a Labour Code of East Timor enacted this on 1 May 2002. The Labour Code was updated in 2012 by Parliament.

Lawful rights for workers in unions with the right to strike in collective bargaining for agreements were agreed. It is important to record these lawful collective bargaining rights and the right to strike in the Labour Code in order to demonstrate my argument.

24.1 A Registered Trade Union shall have the right to represent its members in a particular workplace for purposes of collective bargaining or for dealing with an employer including on matters concerning terms and conditions of employment. ...

24.3 A Registered Trade Union may request the employer concerned to enter into negotiations concerning the terms and conditions of employment. The employer shall provide a reply within reasonable time, which shall not be later than 30 (thirty) days after receiving the request for negotiations. ...

24.5 The parties to collective bargaining shall bargain in good faith and shall make every reasonable effort to conclude an agreement.

24.6 In order to facilitate collective bargaining, the parties shall disclose, share and exchange all information relevant to the negotiations with each other...

24.7 Employers shall allow reasonable time off during working hours, without loss of pay, for the Workers' Representatives to enable them to participate in collective bargaining negotiations and to hold discussions with Registered Trade Union members.

24.8 Where an employer...in replying, has refused the request, and where after the commencement of negotiations the parties fail to reach agreement, either party may seek the assistance of the Conciliation and Mediation Service. If no agreement is reached ...any of the parties may file the necessary application to the Board for binding arbitration.

24.9 If a dispute has remained unresolved after recourse to collective bargaining procedures, either party may take action by exercising the right to strike or to lockout after observing the prescribed cooling-off period. A party to a dispute who is intending to exercise the right to strike or to lockout shall give a written notice to the other party and to the Conciliation and Mediation Service, at least 10 (ten) days before taking such action.

24.10 The Transitional Administrator may proscribe or otherwise restrict the right to strike...in cases involving Essential Services. ...

24.11 An employer shall not employ a person to perform the work of an employee participating in a strike or who is locked out, unless such work is necessary to maintain minimum maintenance service or services the interruption of which would result in material damage to the working area or machinery.³

Workers and their unions do, when necessary as a last resort, use strike action to collectively bargain. Since 2000, the KSTL and unions have been developing as unions,⁴ but it has been “like pushing molasses up a mountain” admitted Peter Jennings, continuing:

³ Timor Leste Labour Code 2002: from the ILO translated from Portuguese; my copy from Peter Jennings, Executive Officer of APHEDA.

⁴ The unions are: The Teachers Union with Secretary Francisco da Costa Fernandes; the Maritime Transport Energy Union with Secretary Paulino da Costa; the Construction Union with Secretary Tito Geronimo; the Nurses Union with

When you look back and reflect, Timor Leste unions have done well comparatively in the short 13 years after sitting around with APHEDA people to discuss forming unions in 2001. The real problem is that this good legislation has not yet effective institutions, such as a strong arbitration system, or proper enforcement or education by the government on workers' rights; e.g. to be in a union, to bargain and with the right to strike without the police intervening.⁵

I now deal with key lawful strikes and peaceful worker assemblies that were broken up by police repression.

The Mandiri Bank dispute

The SJT-TL with KSTL support, in December 2011, organised workers at the Indonesian Mandiri bank to strike over the unfair and unlawful dismissal of three staff who were union delegates and involved in union activities. After a number of unsuccessful meetings with the Indonesian Mandiri Bank for reinstatement, Almerio Vila-Nova explains:⁶

The union then gives consideration for a strike. But first we seek a mediation conference, but there is no response. As required, we gave 10 days' notice of the strike. The three sacked union officials, myself and Zito had two meetings with the Mandiri Bank but there was no change saying the dismissal was because the three union officials were not doing their jobs properly.

Almerio disputed this as an unjustified reason. He illustrated that the staff were dismissed because they were acting as unionists. Such dismissals are against Article 50 'no dismissal without just cause', and Article 52 'trade union freedom' in the Labour Code. He complained to the National Labour Department to assist reinstatement, but to no avail.

The SJT-TL's press statement on the 14th December 2011 was on the front page of the paper.⁷ The SJT-TL held a meeting of the 47 bank workers who were upset over the dismissals. They voted to have the strike:

Secretary Bernardo Amaral do Rosario; the Public Service Union with Secretary Ramalho da Costa; SJT-TL General Workers Union with Secretary Almerio Vila-Nova; the Agricultural Union with Secretary Joa Cabral.

⁵ Peter Jennings, in an interview by Chris White, Monday April 8th 2013 at the APHEDA office Sydney. APHEDA was created in 1984 as the ACTU overseas aid agency. APHEDA first assisted the formation of the KSTL in 2000-2 (the history not related here) and continues to support and fund Timor Leste unions. APHEDA

<http://www.apheda.org.au/cgi-bin/search/search.pl?ss=Timor+leste&x=25&y=11>

The International Trade Union Confederation ITUC confirms my argument. In their 2011 East Timor report on Union violations, they report: "Although fundamental trade union rights are guaranteed, areas of concern exist in the labour law. Freedom of association is secured in the Constitution and the Labour Code, and in 2009 Timor Leste ratified the two ILO core conventions on trade union rights. While termination of employment for union activity is explicitly prohibited in law, the protection is partly undermined by another provision, which allows for financial compensation in lieu of reinstatement if the employer refuses to reinstate the worker. Furthermore, trade union activities are hampered by provisions in the Freedom, Assembly and Demonstration Act. Protests are not allowed within 100 meters of certain buildings, including government offices and diplomatic missions, as well as of infrastructure such as ports and key parts of transportation. The Minister has an absolute right to prohibit or restrict a strike in "essential services". The unstructured economy is a barrier to organizing. More than 80% of the active population of East Timor work in the informal economy. Given the difficulties that workers face to find paid employment, few dare to speak out against employers. The problem is compounded by their limited knowledge of trade union rights." ITUC <http://survey.ituc-csi.org/Timor-Leste-East-Timor.html?lang=en#tabs-3>

⁶ My interviews are with Almerio Vila Nova SJT-TL Secretary, in three parts, covering these disputes <http://chriswhiteonline.org/2012/11/sjt-tl-and-the-right-to-strike-part-one/> and parts, 2,3,4. Almerio here relates the explanation of the dismissals and the union steps taken.

⁷ <http://chriswhiteonline.org/2012/01/union-arrests-in-timor-leste/>

Zito notifies all unions for solidarity.⁸ The strike started on Dec 19th. On the second day workers on strike assembled on the premises. Then the police came. That was a surprise because before we had notified the police on the details of the strike and we thought the police respected the strike process. The police said they came for security. We said we did not want them as third parties. The police interrogated us to get more information. The police want us to stop the strike action saying that we did not get permission for the demonstration that had to be within 50 metres away from the bank. But we replied that this was not a demonstration and we think the police do not understand the legal strike. This police intervention occurred after a two-hour meeting between Police Commander Longuinhos Monteiro and the General Manager of Mandiri Bank, Mohamad Yani, at the Mandiri Bank offices. The Police commander did not say any word to the workers. He sent in the Special Forces, who said you have to stand outside the Bank. But no, we stayed inside and then the many police took all the banners and forced us out from the premises.

The KSTL and SJT-TL promptly contacted the Secretary of State for Vocational Training and Employment. It became clear that the government sided with Mandiri Bank management and no settlement was reached during the mediation.

I asked Zito his reaction: “The police did it as a strategy to stop the strike action. This prohibits workers to organise a strike and is against our right to strike.”

The Kmanek Supermarket strike

Almerio Vila-Nova relates, the SJT-TL first strike.⁹ Here is first the context:

After the SJT-TL was established in October 2008, we have ...the education campaign explaining the union, our objectives, our values and our rules and we find so many problems, so many violations to workers' rights.

Workers from the Kmanek Supermarket were one group...they had many complaints. During 8 years workers had no contracts at all, just what the boss said to do their job and no papers to regulate the conditions...all joined the union and agreed to negotiate for the collective agreement for pay and conditions. We met with the management and told them that the workers had to have their conditions improved and in a collective agreement. At that time, we had good communication with the management and they agreed to discuss the union recommendations. ...But they did not like the collective agreement saying our draft it is too much. They said some points are OK but they insisted only individual contracts. We refused, saying no, we have the right to make this collective agreement... We discussed this with them three more times.

This is our first campaign for a collective agreement. We do not want to lose. We said we will have a strike. But management was very tough and not afraid of our ultimatum. We had on 3rd October 2008 long discussions with members and they agreed on the strike.

We gave 10 days notice to the company, to the government and to the police. I was worried, as I have no experience working with the union and my first SJT-TL strike. Then on the 15 November the strike commenced. About 90 workers were on strike and on the picket...After 3 days Clarence Lee the Supermarket owner contacted us and we met. He still did not want a collective agreement but would put terms into each individual contract. On the last day, Clarence said I have some information to discuss with you, so I agreed. At the meeting he said he would dismiss three of his staff, the union delegates, because they do not respect me, they used bad language against me during the strike. I said no, I never heard this, I said no I am controlling the situation and I never heard someone use such language. But he dismisses our 3 delegates because they are very vocal on the union. We objected...after that we again continue with our working strike. On 18th November the strike happened again and continued because of the injustice to our 3 members.

⁸ APHEDA press release http://apheda.labor.net.au/news/1326070405_23333.html

⁹ <http://chriswhiteonline.org/2012/11/sjt-tl-and-the-right-to-strike-part-three/>

Almerio then describes the police intervention:

The police came to destroy our strike. Ten came first in three cars, then 20. We said the police knew of the details of the strike but unfortunately they got their request from the company. The police took down and out all our union banners. The police made threats that if we have no agreement to move then the special police will come to destroy you. They are supposed to be for the criminal, for breaking the law. These BOP special police are like a military with guns and they used them as a threat. They said they could not control the picket even though it is peaceful. They said this demonstration this protest is too many and too hard to control. I was distressed with the police.

Almerio showed me a photo of a policeman formally a commander of the Liquique District police. “He had a gun at the supermarket. He threatened me and I was scared in the stomach, this was no good.” Almerio showed me photos of workers holding the banners.¹⁰ “We are on the picket line” “Clarence we need our jobs back”, “Clarence please respect our law.”:

The police became violent...with Zito’s arm being pulled up... Then another delegate and worker were arrested. I protested and was arrested. We were all in the police car and taken to the police station where they treated us like criminals, ordering us to sit on the floor, to take off our shoes, to empty out our pockets, everything was taken out. So we are in the corner and had to put our hands and turn to the wall.

We explained to the police our rights based on ...the Labour Code and our right to strike in the Constitution. After a while they said they understand but they received their orders from their Commander. We explained again the violation of workers’ rights, the violation of our human rights. We were able to put out a call for union solidarity not only in Dili but also throughout solidarity union networks around the world. We were in the police station about 3 hours, and we were not put in the gaol but in the room. The police dispersed the workers.¹¹

We were let out because the Prosecutor General said our actions were legal and we followed the law.

Almerio concludes on the outcome of the dispute:

Finally after further discussions, we reached a settlement with the company. Our Collective Agreement was not successful as a Collective Agreement, but I think it was successful because our terms were put inside all the individual contracts, so we may call them a collective agreement. Their salaries were adjusted eventually based on the minimum. Before the workers had no annual leave, had too long working hours, had no over-time, no public holidays. The workers are now with permanent contracts; 44 hours a week, over 6 days, 5 days at 8 hours per day, they now have days off, some sat/sun over 7 days a week the supermarket is open. All the conditions now comply with the Labour Code.

Unfortunately for the three dismissed, the company only offered compensation. We discussed this and as it is in the Labour Code and we did not want to prolong the case, we had to accept this.

I agree with Zito’s assessment. He said: “This police action is to intimidate workers. Workers are scared that we cannot strike as we will be arrested and we will lose not only our wages during the strike but we can be put in the police cell. The police prohibit workers to organise a strike.”

¹⁰ <http://chriswhiteonline.org/2012/11/sjt-tl-photos-part-4/>

¹¹ The KSTL press release:

“Union Leaders Arrested in Timor Leste to intimidate strikers. On Tuesday 18 November, the President of the KSTL and the Secretary of the General Workers’ Union, were arrested by police while taking part in a peaceful protest...Timor-Leste’s union believe that the motivation for the arrest was to intimidate both union officials and the striking workers...The constitution and Labour law of Timor-Leste clearly state that a company cannot dismiss any workers without reason, and also clearly state that workers have the right to form and join a union, and have the right to strike.”

*The Ministry of Justice dispute*¹²

The strike against the Government Minister of Justice and police intervention is another illustration of the denial of workers' rights. This is summarised in the press release by Almerio Vila-Nova:

On Tuesday 11 October, the General Secretary and the National Organizer of General Workers' Union including 17 workers were arrested by police while preparing for a peaceful protest at the office of Ministry of Justice.

The protest was being staged in support of the demand of 19 workers that been dismissed unfairly by the Justice Ministry. These two union officials, the Secretary General Mr. Almério Vila Nova and the National Organizer Mrs. Henita Casimira of the SJT-TL and the 17 workers are now still in the cell of Police in Caicoli-Dili. The workers were engaged in the preparation of protest were dismissed from the Turismo Hotel because of the unfair decision of the Justice Ministry towards their management in closing the business.

Timor-Leste's union believes that the motivation of the arrest is to protect the government member - Justice Minister Mrs. Lucia Lobato and to intimidate workers to not speak up their right and to not protest the government members. Formal protests are being lodged by the union with the Government of Timor-Leste and the parliament over the intervention of the police and the attitude of the Minister in causing dismissal of the workers, and urge the National Police to immediately release the union officials and the workers. The KSTL and the SJT-TL criticises the intervention of the police with arrests. The police should not be involved.

The California Hotel dispute

Here I show my argument by citing first the APHEDA headlines 4 February 2011:

Hotel workers in Timor denied contracts. There is growing alarm that management of a leading hotel in Dili have chosen to dismiss trained and long serving staff instead of following local law and providing written contracts for their workers.

Now Almerio continues to describe what happened:

On 2nd January 2011, seven female workers took Xmas Day and New Year Day to be with their families. The boss then said 'you are not coming in, no need' and he locked them out.

The employer of the California Hotel, Dili, dismissed them in a dispute when they had requested written contracts of employment. Their union, the General Workers' Union are standing up for these workers' rights and asking the hotel to follow the law. The Labour Code of Timor-Leste states that: "Both workers and employers have the right to a written Contract of Employment.

The SJT-TL notified a strike on 17 January 2011 and gave the California Hotel 10 days' notice to reconsider their position. But the Hotel management still refused to meet and discuss the issue. Workers went on strike on 27 January 2011 to protest against these dismissals, to seek reinstatement and to demand that the hotel follow the Labour Code of Timor-Leste. Almerio Vila- Nova, General Secretary said:

Our members are only asking for a written contract. We are alarmed that management have chosen to dismiss trained and long serving staff instead of following the law. We will fight to ensure that the hotel

¹² <http://chriswhiteonline.org/2012/11/sjt-tl-and-the-right-to-strike-part-three/>

reinstates our members who were unfairly dismissed. The police unnecessarily came and intimidated us, but here there were no arrests.¹³

Conclusion

I was able to make my arguments at the SJT-TL Conference in 2012 and the KSTL Congress 2013, as an invited guest, to applause:

Workers have a right to join a union, to organise, rights to collective bargaining and to use the strike for your interests. I am a strong supporter of the right to strike for workers.

I am very concerned about your police when they illegally try to bust up your lawful strikes.

Your police are not allowed to be on the side of the employers. Your police are not allowed to intimidate the workers. Your police are not allowed to arrest workers on a lawful strike.

We ask the Xanana Gusmao government to ensure the police do not intervene in your strikes and threaten the workers.

The Labour Code is accepted by all political parties and employers and is positive for employment relations. However, that depends on the police not intervening to deny the effectiveness of the right to strike. This may be resolved after a recent 2013 “training session” for the police with the KSTL and SJT-TL on union rights including the right to strike. This Timor Leste ‘right to strike’ question is only an illustration of one of the many employment relations challenges.

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¹³ <http://chriswhiteonline.org/2012/11/sjt-tl-and-the-right-to-strike-part-three/>. In 2004, in the East Timor Plumbing and Gas dispute, the police disrupted the strike by construction workers with just Zito, the KSTL involved. This was before the Construction Union formed. I do not relate other strikes e.g. by the Teachers’ Union in Bacau or Maritime Union that the police did not disrupt.

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