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A 'good enough' rule-of-law transfer and adaptation?

A case study of transnational rule-of-law promotion in East Timor

Reheem Shaila, Sapna

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A ‘good enough’ rule-of-law transfer and adaptation?

A case study of transnational rule-of-law promotion in East Timor

By

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DECLARATION

I confirm that the work submitted is my own, except, where referenced and otherwise indicated in the text. Parts of the work appear in the *Brazilian Journal of Institutional Studies* (2019), and in the *Cambridge Handbook of Foreign Judges on Domestic Courts* by Anna Dziedzic and Simon Young (eds.) forthcoming.

Sapna Reheem Shaila
April 2022

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All artistic work, like all human activity, involves the joint activity of a number, often a large number of people. Through their cooperation, the art work we eventually see or hear comes to be and continues to be. The work always shows signs of that cooperation.

Becker (1982), *Art Worlds*, p. 1.

Although not an art piece of any sort, Becker's words resonate with how this dissertation has finally come to be in its current form. Many people played significant roles in shaping my thinking, supporting and helping me during my doctoral research and writing-up phases. Of them all, my primary supervisor, Professor David Nelken, has been the most inspirational support system I have had for the previous five years. David's writings had influenced my thinking even before I joined him as his supervisee, but while at King's, under his guidance, my ideas expanded and now, because of him, I look at the world through a slightly different lens. David has not only been a demanding mentor – pushing me beyond my comfort zones by challenging my knowledge and assumptions – but he has been someone who has placed unwavering belief in me and in my project, even when I felt discouraged. From reading multiple drafts, jumping onto Skype calls, or replying to my email queries whenever I felt lost amidst the mountain of academic literature, David has always been around for me during my PhD journey. Words cannot fully capture my gratitude towards him, but I can only hope I carry forward the zest to push academic boundaries that he instilled in me.

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ABBREVIATIONS

ADB: Asian Development Bank
AJAR: Asia Justice and Rights
AMP: Alliance of Change for Progress
CAC: Anti-corruption Commission
CEPAD: Centre of Studies for Peace and Development
CNRT: National Congress for Timorese Reconstruction
CoC: Council of Coordination for Justice
CPLP: Community of Portuguese Language Countries
CSO: Civil Society Organisation
DFAT: Department of Foreign Affairs and Trade, Australia
FRETILIN: The Revolutionary Front for an Independent East Timor
GIZ: Deutsche Gesellschaft für Internationale Zusammenarbeit
ICNA Report: Independent Comprehensive Needs Assessment Report
IIMS: Integrated Case Management System
IMF: International Monetary Fund
JICA: Japan International Cooperation Agency
JSMP: Judicial System Monitoring Program
JSP: Justice System Program
JSSP: Justice Sector Strategy Plan, Timor-Leste
KHUNTO: Kmanek Haburas Unidade Nasional Timor Oan
KOICA: Korea International Cooperation Agency
KPK: Corruption Eradication Commission, Indonesia
LTC: Legal Training Centre
MoJ: Ministry of Justice Official
PDHJ: Office of the Provedor for Human Rights and Justice
PDO: Public Defenders' Office
PLP: People's Liberation Party
PSD: Social Democrat Party (PSD)
RENETIL: National Resistance of Students from East Timor
UNDP: United Nations Development Program
UNMISSET: United Nations Mission of Support in East Timor
UNMIT: United Nations Mission in Timor-Leste

UNODC: United Nations Office on Drugs and Crime

UNTAET: United Nations Transitional Administration in East Timor

UNTL: National University of Timor-Leste

USAID: United States Agency for International Development

ABSTRACT

This dissertation is a study of transnational rule-of-law promotion in context. I investigate what happens when ‘global scripts’ such as the transnational rule-of-law standards are taken to a particular setting through a network of international and local actors. What kind of changes do they bring, how should we examine those changes, and what roles do internationals and locals play in bringing those changes – these are some of the questions that guide my research. Following the rule of law as a set of normative ideals and aspirations that are taken to particular contexts to bring social change, my research examines an understudied area of *what* actually happens in those settings. I unpack how transferred rule-of-law ideals and aspirations affect the local context, what roles do transferors and recipients of transnational rule-of-law aspirations play in influencing change; and how can international and local actors work together to facilitate desired changes.

Other scholars have also inquired about legal transfers, social change, and the role of internationals in the context of rule-of-law promotion initiatives. Those who have engaged with these questions, particularly on the rule-of-law transfers, provide a bleak picture. They inform us that rule-of-law transfers have mostly ‘failed’ because they did not bring substantial changes or have ended up ‘imposing’ solutions. In the policy sphere, international organisations promoting the rule of law monitor and evaluate the changes their activities bring in specific contexts. Their monitoring and evaluation exercises identify some changes: increase in number of courts, training of judicial officials, computerisation (to list a few). Such exercises point out details about their project outputs rather than informing us about what happens on the ground. Both these accounts present a fragmented understanding of the kinds of changes that are possible and the role of international and local stakeholders who are trying their best to bring a difference to a particular setting.

In contrast to these engagements, I examine the role of internationals and local stakeholders, and rule-of-law changes in context against the standard of what is necessary to assist a society to adopt and adapt to the newly transferred norms and standards. Considering insights from sociologists and sociology of law scholars, I argue why we must reframe what we understand as a ‘successful’ rule-of-law promotion and adaptation in the context of rule-of-law transfers. I argue that any evaluation of the ‘successes’ or ‘failures’ of rule-of-law transfers and adaptation must consider the experiences of those who are in the field transferring, adopting and adapting new normative standards, behaviours and institutional arrangements.

I pursue my arguments through a case study of rule-of-law promotion in East Timor. I advance three primary arguments.

First, the rule of law is a phenomenon that must be observed in conjunction with the social context. Since the rule of law underpins notions of legality, adherence to law, and reliance on legal institutions, any initiatives to promote the phenomenon need to factor in how these aspects can be strengthened in society. In addition, the sociological dimensions of the rule of law require us to observe and analyse the phenomenon beyond its legal aspects.

Second, transnational rule-of-law promotion initiatives aim at re-ordering how power is used and tackled in the public sphere. For the desired changes to occur nation-states, officials, and ordinary citizens must see arbitrary use of power in the public sphere as a problem and adhere to certain standards of how power ought to be used in the public sphere. State institutions and officials within them need to also align their actions to their prescribed professional roles. For a society that has not been socially ordered as above, time is essential for people, officials, and judicial actors to adopt and adapt to new norms and standards. I argue, the adaptation of transnational rule-of-law standards is fluid, and therefore, accounts of ‘successes’ or ‘failures’ of transnational engagements, especially in a post conflict setting should take this into account.

Third, successes and failures of initiatives to strengthen the rule of law must then consider the gradual shift in normative standards and attitudes. Consequently, we need to move away from observing ‘successes’ of the rule-of-law transfers as an all-or-nothing matter. Instead, I propose an alternative framework – ‘good enough’, for observing and evaluating transnational rule-of-law engagements and the incremental changes on the ground. I propose that the ‘good enough’ framework allows us to move beyond looking for the perfect rule-of-law transfers and adaptation (where the transferred laws, norms, and institutions are adopted with the same meanings and functions). Rather the good enough framework recentres our attention to the realistic policy interventions necessary for a society to progress *towards* the rule-of-law aspirations rather than *away* from them.

The data for the research was collected through five-months of fieldwork – from February to August 2018 – in East Timor. Semi-structured interviews, focus group discussions, field observations, and documentary analysis of policy documents were used for gathering data and triangulating findings. I give a ‘thick’ description from the field as to how transnational aspirations

for strengthening the rule of law in particular settings were transferred, received and adapted in East Timor. Using the field data, I argue that those who are promoting and receiving the rule-of-law reforms at the first level are the people who are caught between the extremes: aspiring for the 'ideal' standards, but at the same time constrained by the realities of their immediate settings. By focusing on these actors who are in the field, who must work around the nuances and particularities of their contexts and make the lofty idealisms of the transnational rule-of-law aspirations a reality in the local setting – my research fulfils the 'cartography of a terra incognita for social scientists' (Halliday and Carruthers, 2009, p. 27). I illustrate how this 'first-level' of stakeholders navigate the uncomfortable in-between spaces, negotiating the best possible outcomes for attaining the adopted rule-of-law aspirations in the longer run. As a result, a case is made as to why any articulation of successes or failures of rule-of-law transfers and adaptation should consider the experiences of these actors and what makes it possible for them to carry out their roles in strengthening the rule of law in particular settings.

The dissertation also bridges the discussions on rule-of-law transfers and adaptation in the policy and academic spheres. It highlights the dissonance between 'idealism' and 'reality'. By demonstrating how changes happen in the 'real' world, I argue that policymakers must consider the academic exchanges on legal transfers, adoption and adaptation, and the role of international actors in bringing changes. Demonstrating the challenges and social realities within which the internationals and local actors transfer, receive, adopt and adapt new norms, I argue why academic scholars must take into account the mundane life of rule-of-law promotion and reception in particular settings while evaluating the successes and failures of transnational rule-of-law promotion.

CHAPTER I: INTRODUCTION

In a world divided by differences of nationality, race, colour, religion and wealth, [the rule of law] is one of the greatest unifying factors, perhaps the greatest, the nearest we are likely to approach to a universal secular religion.

Lord Tom Bingham, *The Rule of Law* (2011)

The rule of law has emerged as a “global prescription” (Dezalay and Garth, 2002), a “global law” (Walker, 2014; Goodwin, 2012) – whatever one may term it – emphasising the “placeless” nature of the value as a relevant norm for all times and contexts (Dezalay and Garth, 2002, p. 1-12). Despite the contested definitions of what rule-of-law entails, legal and political philosophers accept its significance as a foundational value for a liberal democratic state (Tamanaha, 2012; Waldron, 2002). A “rule-of-law industry” (Humphreys, 2010) has also emerged transnationally with bilateral and multilateral institutions funding and supporting nation-states in strengthening the rule of law globally, making it as Lord Bingham noted, as one of the “greatest unifying factors” of current times. In this dissertation, I examine what happens when external actors who are invested in strengthening the rule of law globally transfer certain normative ideals, institutional arrangements and aspirations attached to the rule of law to a particular setting; how do they influence adoption and adaptation of transferred norms, institutional arrangements in a local context; and what kind of change do they bring; these are some of the questions that anchor my research.

I. Transnational rule-of-law promotion and transferring aspirations of tackling arbitrary power through law

The rule of law is a phenomenon that has been widely transferred to different social settings through international networks. As part of colonial missions, the rule of law was transferred to countries through colonial administrators. In the colonies, laws on treason, sedition and expanded police powers were transferred under the umbrella of rule of law to maintain order and quash the unruly population (Vyas, 1992). After the cold war, law and development practitioners led the rule-of-law missions (Newton, 2006). The rule-of-law initiatives after the 1970s, initiated by the development practitioners in the World Bank and the Ford Foundation, introduced legal reforms to bring economic prosperity, democratic values, and human rights. In ex-Soviet states, rule-of-

law practitioners prescribed “best” laws and institutional arrangements for ending the perceived “telephone justice” model that benefited the party elite (Carothers, 1998; 2006). Similarly, rule-of-law reforms in other emerging independent nations in Latin America, Africa, and Asia dealt with weak institutions, patronage networks, and the dominance of elite groups (Czarnota and Krygier, 1999).

But the transnationalisation of the rule of law, a process that has been accelerated by globalisation, is distinct from the colonial or post-cold war era projects (Halliday and Shaffer, 2015a). As a “transnational project”, rule-of-law engagements carry with them conceptions of justice, equity, fairness, and law (Rajah, 2015; Halliday and Shaffer, 2015b), and as such they can be distinguished from the motivations of rule-of-law projects in the colonies.¹ First, there is a global consensus that having the rule of law is good for every society (Dezalay and Garth, 2002). Even dictators and authoritarian rulers vouch for strengthening the rule of law. Second, a constellation of powerful international actors has emerged globally to monitor, defend and enforce adherence to the rule of law (Rajah, 2015; Urueña, 2015). Moreover, the transnationalisation of the rule of law is legitimised through the “soft law” of international declarations by the UN (Block-Lieb and Halliday, 2017). In 1993, the UN General Assembly at its World Conference on Human Rights in Vienna underscored the rule of law as a relevant norm for all nation-states. In the same year, a permanent rule of law assistance unit was established in the UN Secretariat to promote the rule of law and deepen consensus amongst nation-states to adopt it (United Nations and the Rule of law, n.d.). Such transnational rule-of-law engagements are a “meta [transnational legal order] that frames and contextualises all efforts to manage and regulate.... conceptions of legality in the sphere of the transnational” (Rajah, 2015 quoted in Halliday and Shaffer, 2015b, p.494).

The UN General Assembly has adopted various annual resolutions (Resolution No. 61/39; UNGA 62/70, UNGA 63/128, UNGA 64/116, UNGA 65/32, UNGA 66/102, UNGA 67/1, UNGA 67/97, UNGA 68/116, UNGA 69/123), which have been followed by Member States committing to 400 pledges to advance the rule of law in their jurisdictions (United Nations and

¹ Rule-of-law promotion in local settings can take neo-colonial forms by perpetuating established power hierarchies where professionals from wealthy donor countries can impose their views, assumptions and solutions on their local counterparts without sharing equal authority over knowledge/ expertise (see Mattei and Nader, 2008; Kennedy, 2006; Kothari, 2019). In East Timor – the case study for the research – some of these ‘neo-colonial dynamics’ were visible in the institutional and technical arrangements adopted as part of the rule-of-law reform initiatives. However, it is important to note that whether or not rule-of-law reforms transpire as ‘imposing’, ‘paternalistic’ or ‘neo-colonial’ initiatives must be examined in context through rich qualitative studies.

the Rule of Law, n.d.). By 2012, the UN had provided rule-of-law assistance to over one hundred and fifty Member States situated in different contexts (developing, conflict and post-conflict situations); and seventeen of its peace operations included rule-of-law mandates (Eliasson, 2012).

The United Nations has defined the universal elements of the rule of law:

[the rule of law is a] **principle of governance** in which all persons, institutions, and entities, public and private, including the State itself, are **accountable to laws** that are **publicly promulgated, equally enforced** and **independently adjudicated**, and which are **consistent with international human rights norms and standards**. It requires, as well, measures to ensure adherence to the **principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness** and **procedural and legal transparency**. [emphasis added]

(United Nations and the Rule of Law, n.d.)

Nation-states, irrespective of their political, social and cultural nuances, have conceded (at least rhetorically) that state-based laws and institutions matter, that there are core standards of behaviour that government officials ought to adhere to, that no one is above the law, and that there are guarantees in place for an accessible impartial and independent judiciary (Rodrigues-Garavito, 2011). More importantly, at the local, national and international levels, there is now a consensus that arbitrary power is adverse to economic and social development, and that laws should be used for tackling such power (Krygier, 2001; 2009; 2016; 2017; 2019).

Thus, transnational rule-of-law projects in contemporary times aim to “strengthen” and “transform” (UNDP, 2016) a targeted society to a “new social order”² tied to the conceptions of law, justice, and fairness for tackling arbitrary power (Rajah, 2015, p. 343). An array of rule-of-law actors – international and local – are involved in initiatives to build momentum on shifting normative attitudes and behaviours of citizens and public officials. They hope to create a new social order where people align to the normative limits set by law and resort to the courts when there is a deviation from the expected standards. In contexts where such conditions do not exist, the multibillion-dollar rule-of-law industry intervenes by targeting those situated “above, below, beside and within the state” (Slaughter, 2002, pp. 12-13) to bring changes. Thus, rule-of-law promotion is not a sole ‘international’ effort anymore. Ordinary citizens, local civil society organisations (CSOs), media, and politicians who are situated within a local context can form networks and alliances with partners outside the boundaries of the nation-state who are committed

² Following from Halliday and Shaffer’s conception of “rule of law order”, which means “ordering” societies through laws to adopt certain normative standards for tackling arbitrary powers, see Halliday and Shaffer (2015b, pp. 475-528).

to establishing principles and norms that pave way for the authority and supremacy of law for tackling certain identified social problems (Halliday and Shaffer, 2015a).

For this study, I approach rule-of-law reforms as a “transnational” project transferring aspirations of tackling arbitrary power through state-based legal institutions to specific contexts.³ I have narrowed down the transnational rule-of-law aspirations as tackling arbitrary power for two reasons. First, tackling arbitrary use of power in the public sphere is fundamental to attaining other emancipatory goals attached to the rule of law like pursuit of human rights and equality (Krygier, 2009a, see Chapter II). In any society, where capricious leaders or groups ‘rule’ without constraints to their power, rights and freedoms of the powerless and marginalised will be usually under threat. Therefore, it is inevitable that laws and institutional arrangements to tackle arbitrary power in the public sphere must be adopted. Second, pursuing social change through legal and institutional reforms has been consolidated as a practice through reforms led under colonial rule (Mamdani, 2018), law and development efforts (Newton, 2006; Trubek and Galanter, 1974; Trubek and Santos, 2006), and in recent years as statebuilding initiatives (Roxborough, 2012).

By narrowing transnational rule-of-law aspirations as tackling arbitrary power, I do not mean that it is the *only* universal aspiration attached to the rule of law. Rather, my argument is, of the many substantive ends that are associated with the rule of law, tackling arbitrary power through the means of law as a goal has the broadest universal support from states with have diverse cultural and political systems (Krygier, 2009a, Halliday and Shaffer, 2015b; Rajah, 2015; see Chapter II). I also do not take it for granted that there is a universal consensus amongst international rule-of-law promoters on the functions and meanings of the rule of law. More than often budget constraints, donor-institutional interests, local elite interests shape what ideals and aspirations attached to the rule of law are transferred to a local context. Despite these limitations and challenges, my argument is that at a macro-level, rule-of-law promotion initiatives are guided by an idealism for rearranging how power is exercised and managed in a society, with laws determining its limits and excesses.

Consequently, as a transnational effort, rule-of-law promotion initiatives target settings that are perceived as having ‘weak’ or ‘absent’ institutional and legal arrangements for tackling arbitrary

³ Despite the variations in legal cultures there seems to be a converging consensus that arbitrary power is a problem, and that it needs to be tackled through specific institutional arrangements. As for the primacy of state-based law and institutions, even authoritarian leaders and governments rely on them to legitimise their arbitrary acts. For example, in recent years, the ruling government in India has amended established constitutional provisions by surpassing conventional procedural routes of amendment to incorporate Hindu nationalist, libertarian policy agenda, see Khaitan 2020.

power. By transferring aspirations of tackling arbitrary power through state-based institutions and laws in such settings, those promoting and receiving reforms aim to re-order/ introduce a new set of rules of how power ought to be exercised and managed in a society. Consequently, transnational rule-of-law reform initiatives are pursued predominantly in countries emerging out of conflict as part of statebuilding missions (Roxborough,2012). War-torn countries or countries emerging out of conflict, are settings where political, social, economic ‘power’ are in *flux*. Approaching war-torn, post-conflict settings as a “vacuum” or as a “tabula rasa”, reformers can easily transfer institutional arrangements, laws and roles to manage power and channel its abuses through rational bureaucratic processes (Call, 2003; Roxborough, 2012). Thus, post-war moments or conflicts act as “ruptures” or “turning points” where new rules of the game can be negotiated and introduced (Cheng, Goodhand and Meehan, 2018; Roxborough, 2012). Post-war moments are also phases when a society can discard old goals and adopt new aspirations. Thus, war-torn/ post-conflict settings are ‘ideal’ spaces for transferring transnational rule-of-law aspirations with the hope of bringing social change (Shaffer,2012). As part of statebuilding initiatives, international actors encourage post-conflict societies to adopt measures that channel exercise of power through political arrangements (Call and Cousens, 2008; Call and Wyeth, 2008; Sisk, 2014), and its abuses to be tackled through state-based legal avenues (Shaffer, 2012; Halliday and Shaffer, 2015a). In the justice sector, reforms include institutional and legal provisions for an independent and impartial judiciary, laws that guarantee human rights, equality and access to justice with an emphasis on combating arbitrary governance and corruption (Sannerholm,2007).

In the current study, I examine what happens when transnational rule-of-law aspirations are transferred to a post-conflict setting. By doing so, I follow what are considered as the ‘thin’ aspects of the rule of law to particular contexts, and I examine how are they adopted and adapted as part of transnational rule-of-law engagements. I investigate what role international actors play in transferring new norms and institutional arrangements as part of statebuilding and strengthening the rule of law efforts. I also examine how the international rule-of-law transferors work alongside local stakeholders in translating transferred aspirations to tangible change. Thus, the focus is on

transnational actors⁴ – internationals and locals – who are in the field, making distant legal ideals of tackling arbitrary power through the means of law a ‘reality’⁵ on the ground.

i) Transnational rule-of-law aspirations in a local context: East Timor as a case study

To study transnational actors and their role in strengthening the rule of law in a specific context, I use rule-of-law promotion in East Timor as my case study. East Timor (now popularly known as Timor-Leste)⁶ was considered a ‘tabula rasa’, a ‘rule-of-law void’ (Strohmeyer, 2001) by the United Nations when they established its transitional administration in 2000. East Timor was a Portuguese colony until 1975.⁷ On 28 November 1975, Portugal declared East Timor an independent republic after increased calls for independence from FRETILIN (Revolutionary Front for an Independent East Timor), a Timorese political party. However, for the Timorese, the taste of independence was short-lived. In just nine days, Indonesian military forces invaded the small island nation and occupied it as the 27th province of Indonesia. What followed afterwards was a twenty-year civil war with approximately 150,000 Timorese – a fifth of the population – killed (Kiernan, 2003). The situation continued until 1999, when the UN Security Council backed an independence referendum in which the majority of Timorese voted for their independence from Indonesia.

In 1999, when the referendum results were announced, violence broke out between the pro-Indonesian Timorese militia, the Indonesian military and pro-independence Timorese supporters. Buildings and other infrastructure built during the Indonesian occupation were destroyed, and those who worked in the state administration were forced to flee the capital city, Dili. International

⁴ I use ‘transnational’ to define a community of people bound together by their commitment to certain idealisms that have emerged internationally, irrespective of their citizenship or linkages to a specific socio-political, cultural setting. Transnationals could be local “recipients” or international “transferors” – they network, exchange, and transfer normative standards and attitudes around the rule of law, and they agree on tackling arbitrary power as the common problem (Merry, 2006, pp. 38-51; Halliday and Shaffer 2015b, pp. 475-528).

⁵ Note that when I refer to ‘reality’ and ‘real’, I do not mean to suggest that there is one objective reality ‘out there’. Rather, I take the position that reality is socially constructed. Social worlds, their meanings and functions, are interwoven by individuals and groups. In this study, the social world under examination is that of the transferors and recipients who must navigate the challenges of the immediate social contexts and yet work towards a common goal: strengthening the rule of law. And the ‘reality’ of the impact of transnational-rule-of-law initiatives is co-constructed through the narratives of internationals and local stakeholders of their experiences of transferring, adopting and adapting new norms. See Berger and Luckmann (1966), but note that the authors are reluctant to use “social construction” as a term because of potential misrepresentations. Although finding an ‘objective’ reality may be impossible, Charmaz (2000; 2006) suggests it is possible to have realist ontological aspirations and yet embrace epistemological humility. By gathering data on how identified participants and groups carry out their roles, make meanings, interact with one other, and the wider social conditions can lead us to observe how certain social phenomena come to exist consequent to such actions.

⁶ Used interchangeably in this thesis.

⁷ Other colonial powers also controlled the Timorese territory in varying degrees over the years. The Portuguese first settled in Timor in 1520, followed by the Spanish in 1522, with the Dutch taking possession of the western portion of the island in 1613. The Dutch, controlling the Indonesian archipelago, and the Portuguese in East Timor had many wars to assert their authority over the territory. Portuguese sovereignty over the eastern half of the island – now known as East Timor – was settled by treaties in 1860 and 1893. The Portuguese continued their rule until 1975.

peacekeeping forces, mainly from Australia, were swiftly deployed to control the conflict. The violence was so severe that the international peacekeeping missions termed its aftermath a “ground zero situation” (Strohmeyer, 2001, p. 59). For the international community, East Timor epitomised fragility. They noted that the state had no laws or institutional structures left after the conflict, as a result, the international efforts in strengthening the rule of law began from “scratch” (Strohmeyer, 2001).

The Timorese elite leaders *aspired*⁸ to adopt international standards and maintain good relations with the international community. After the re-declaration of independence, East Timor signed and ratified international conventions and adopted new laws in accordance with international legal standards. A Constitution with guarantees for a democratic society based on “the rule of law, the will of the people and respect for human dignity” was adopted (Article 1, the Constitution). The drafters of the Constitution included provisions that established new ground rules for the Timorese citizens. The Constitution also recognised that the Timorese government and citizens would respect judicial independence, the supremacy of law and the separation of powers. To enforce this new social order, Timorese courts were given “full powers to [administer] justice on behalf of the people, implement laws and its decisions” with impartial and independent judges as the final decision-makers (Article 123, paragraph 5, of the Constitution of the RDTL).

New courts were also established during the initial phase. With the support of the UN and other international development partners, a Court of Appeal in Dili; four district courts in Dili, Baucau, Suai and Oecussi; three prisons (in Baucau, Dili and Gleno); an Office of the Prosecutor General (OPG, Superior Councils of the Judiciary (SCJ)) and an Office of the Public Defender (PDO); were instituted. East Timor’s adoption of the rule-of-law norms, which are transnationally laid down, helped the country win the title: “UN’s poster child”. The country was touted internationally as a role model for other fragile states that were transitioning into democracies. It elevated the nation as a leader of the G7+ group of fragile states.

⁸ Although there was initial support for the UN transitional administration’s initiatives in East Timor (UNTAET) among the resistance and diplomatic front, Kent (2012) and Nygaard-Christensen (2017) note that it slowly waned with the UN pushing the ‘old guard’ to adhere to the new laws and encouraging serious crimes tribunal to carry out prosecutions against Indonesian military officials and pro-Indonesian militia members. Although these tensions emerged after the internal conflict in 2006 between the international and the elite resistance leaders (Kent, 2012; Nygaard-Christensen, 2017; Engel, 2021), during the initial phase of statebuilding, there was consensus, especially among the elite leaders to adopt and adapt transnational rule-of-law standards. Hence, I point out that the Timorese elite leaders, who agreed on the new constitutional provisions *aspired* to adopt and adapt transnational expectations of an independent judiciary, and an anti-corruption commission in the country. Within the war to peace transitions scholarship, elite leaders and their roles in charting out the new path for a post-conflict society are well-documented (Cheng, Goodhand and Meehan, 2018; De Waal, 2009; Driscoll, 2015; Slater, 2010).

East Timor's perceived success in swiftly adopting the institutional and legal aspects of the rule-of-law is worth examining. Even though the international community approached the state-building and rule-of-law promotion as a mission from "scratch", other scholars have shown that East Timor's legal system was far from being a "tabula rasa" (Grenfell, 2013, 2006; Silva and Simião, 2012). They note that traditional law and customary practices have always been embedded in Timorese society (Grenfell, 2013, 2006; Silva and Simião, 2012). Moreover, until 1999, most citizens chose to live outside the grips of the state justice system introduced by the Indonesian administration (Babo-Soares, 2003). So, how did this situation change in a span of twenty years? In addition, many of the Timorese leaders who led the resistance fight against the Indonesian army are still alive. They are considered as "living heroes" (field notes, 2018) and they continue to hold revered positions in the society, often as "elders" who are entrusted to make the final decisions for the independent state of East Timor (Kent, 2012; Ingram, 2018). How has their presence impacted the adaptation of the new social order where judges have taken roles as the final decision-makers? After the re-declaration of independence, Timorese society is expected to follow the newly adopted laws and align their attitudes and behaviours to the new standards. What roles did transnational actors have in fostering and nurturing notions of legality and establishing the legitimacy of a state-based justice system in the country? These are a few of the preliminary questions that guide my research.

For my research, a society is understood as being on a *path towards* the transnational rule-of-law aspirations,⁹ when:

- i) It has clear, predictable, stable laws and institutional arrangements that can constrain arbitrary power.
- ii) Those situated in a local setting concede that the arbitrary use of power, irrespective of its source, is a problem that needs to be tackled.
- iii) There are impartial and independent third-party adjudicators who can enforce the normative standards (within a state-based system, this would be courts and other judicial institutions).

⁹ For my research, I follow the 'thin' aspects of the rule of law as part of the transnational rule-of-law engagements. As Twining (2005) notes, the 'thin' elements travel more easily and are also the foundational aspects that are transferred as part of transnational rule-of-law engagements (Trebilcock and Daniels, 2008). By focusing on the 'thin' elements I does not suggest that the 'thick' aspects of the rule of law do not travel through transnational networks. But what 'thick' substantive aspects of the rule of law have travelled as part of transnational exchanges must be unpacked from the field. Since this goes beyond the scope of my research, I have limited the focus of my study to examining the transfer of 'thin' elements associated with the transnational rule-of-law aspirations and their adaptation.

- iv) Ordinary citizens, lawyers, and civil society members have confidence and trust in the existing institutional and legal arrangements to tackle arbitrary power.
- v) Ordinary citizens, lawyers, and civil society members rely on existing laws to constrain arbitrary power.

A society may have **varying degrees of adherence** to the five aspects identified above at any point in time. Without continuous engagement by those in power, ordinary citizens, NGOs, lawyers, judges and the media, the rule of law in a society can deteriorate. Taking into consideration these points, the rule-of-law promotion in East Timor will be studied through the following aspects: what new institutional, legal arrangements were transferred to curb abuse of power; what social aspects hinder those within and outside of the legal system from using laws to address excesses of power and how have the international community worked alongside those within the government, judicial institutions, and citizens to apply the newly adopted laws to tackle abuse of power. In the context of East Timor, transnational rule-of-law aspirations can be considered fully adapted when those who have held power in the society outside of the state-structures channel their use of power through state structures, and when the newly adopted legal and institutional arrangements are able to limit and constrain when and how such elites use their power.

At the outset, the study sits complementary to the emerging scholarship on transnational legal ordering that highlights the significance of studying how international standards travel and settle in local settings as a result of transnational networks (Aaronson and Shaffer, 2020). Additionally, my study goes further than the highlighted scholarship by demonstrating the challenges that international and local actors face while transferring and adapting transnational standards locally. In the context of my case-study I also identify what makes transnational engagements a ‘success’ on the ground.

II. Why must we study transnational rule-of-law transfers and adaptation through a sociological lens?

Many scholars have studied international actors and their roles in transferring the rule-of-law to other countries (Trebilcock and Daniels, 2008; Mattei and Nader, 2008; Humphreys, 2010; Armytage, 2012; Chalmers, 2019; Taylor, 2016). And others have provided ‘local’ accounts of the rule-of-law transfers (Nicholson, 2007; Grenfell, 2013). So why do we need another study that investigates the same phenomenon? As I will demonstrate, the existing scholarship engages with the ‘successes’ or ‘failures’ (however reluctant we may be to identify successes or failures) of

transnational rule-of-law engagements in narrow ways. In Chapter III, I examine scholarship on rule-of-law promotion in particular contexts, as well as on the status of the rule-of-law in specific settings to reveal two trends i) the different conceptions of the rule of law in the studies, and the approaches taken to study the phenomenon ii) the varying parameters on what constitutes as ‘success’/ ‘failure’ in the context of rule-of-law promotion.

Interconnecting networks between those situated within nation boundaries and outside of them as well as the proliferation of powerful transnational organisations, complicate what is considered a ‘success’ or ‘failure’ of transnational rule-of-law transfers. For instance, with globalisation many actors with diverse interests are now involved in transferring new normative standards and institutions to different settings. They have varied goals and thus different ideas of ‘success’. Therefore, as Nelken (2001) points out, any inquiry on ‘success’ or ‘failure’ of transnational legal transfers must unpack what aspects are evaluated, what are the criteria, and who is evaluating it? For instance, some may find ‘success’ to be the mere transfer of institutional and legal arrangements (Watson, 1974), whereas for others ‘success’ could mean transferring exact meanings of law – only that they also consider it impossible (Legrand, 2001). Or for others it could be that the origins of the transferred norms must be forgotten (Jettinghoff, 2001). For the imperial powers, their legal interventions were ‘successful’ when they displaced existing traditional orders. But for those who were subjected to the new rules in the colonies, the situation was far from a ‘successful’ intervention (Nelken, 2001, pp. 351- 354). Looking at ‘success’ from one perspective may not equate to ‘success’ from another. Therefore, referring to ‘successes or ‘failures’ can be problematic. Even though, such is the case it is possible to disentangle how we can constructively discuss about ‘successes’ or ‘failures’ in the context of transnational rule-of-law transfers. But to do so, we must approach ‘successes’ or ‘failures’ of transnational engagements through a sociological lens. In the sections below I explain why a sociological lens is necessary to describe and evaluate whether transnational rule-of-law transfers and adaptation have been successful.

- Studying ‘successes’/ ‘failures’ of transnational rule-of-law transfer and adaptation through a sociological lens?

Transnational rule-of-law initiatives aim to amend old and existing ways of social ordering in societies to a new social order: where power is concentrated in the executive and the legislature, with a judiciary that checks and balances that power, and laws prescribe how power should be distributed and used. And under transnational rule-of-law promotion initiatives, there is an emphasis that laws should rule every society. That is, laws should set clear and transparent

normative limits that allow people to identify what laws prohibit, permit and require (Fuller, 1964; Raz, 1979; Halliday and Shaffer, 2015). However, laws and institutions do not operate in a vacuum. Social forces can re-draw and re-shift the normative limits (Friedman, 1986; Nelken, 1998) functions (Adams and Griffiths, 2012) and meanings (Gillespie and Nicholson, 2012) of law. Many sociologists have theorised about the interconnectedness between law and society. For instance, they note that law evolves with society (Durkheim, 2014 (1895); Weber, 1962). Even notions about legality, and relevance of law – elements of the transnational rule-of-law aspirations, are theorised to undergo similar evolutionary changes as societies transition from traditional to more capitalistic modes of production (Neumann, 1957, 1986; Cotterrell, 1996). Thus, “laws are social” (Calavita, 2016, p. 13). Any initiative that aims to bring social changes through law, therefore, requires new norms, standards, behaviours, institutions to be adopted and adapted at the ‘institutional’ as well as ‘social’ levels.

As part of rule-of-law reforms, judiciaries are entrusted to impartially and independently apply laws, and ordinary citizens, officials, and political leaders are expected to follow the decisions as final. Rule-of-law reforms also aim to set new standards on how power should be exercised in the public sphere, and if there are deviations, how they should be tackled. The reforms, thus, aim not only to re-order ‘internal’ professional practice in the legal field but also ‘external’ social attitudes and reliance on law.¹⁰ Some of the sociology of law scholars have drawn attention to the ‘social’ elements necessary for law to ‘rule’ in a society. Cotterrell (2008, p. 116) writes,

[t]o speak of a society governed by the [r]ule of [l]aw is hollow talk unless law’s protection in practice reaches all sections of a population, giving enforceable rights and powers as well as imposing duties and constraints... the [r]ule of [l]aw as an embodiment of mutual trust between those who make laws and regulations and those who are subject to them requires for its fulfilment positive action to create and extend the conditions of this mutual trust – to enhance the conditions of reciprocity between rulers and ruled.

Cotterrell notes that laws alone will not establish the rule of law. It needs conditions beyond legal arrangements that provide an environment of mutual trust between those making the laws and those using the law. Similarly, Krygier also notes that for law and its affiliated institutions to reach their full potential, people need to rely on it and support the legal system (Krygier, 2001; 2009a; 2011). Krygier (2009a) recommends that explanations of the rule of law should start from the

¹⁰ Friedman makes the distinction between “internal” and “external” legal culture, where internal legal culture engages with the culture of the profession and the external deals with opinions and pressures brought by wider social groups. I also rely on the “external” / “internal” distinction to distinguish between the ‘legal’ and the ‘social’ system. See Friedman (1986; 2019).

“telos” – philosophical foundations or the intrinsic reasons as to why it is essential – and then to its “legal” and “social” factors.

These discussions lead us to note that for laws to truly take hold in a society or ‘rule’, as Cotterrell points out, ordinary citizens, lawyers, civil society members, media and other judicial actors should feel confident to rely on the legal provisions and institutions whenever there is a deviation from the legal standards (Toharia, 2003). For this, people need to acknowledge that the existing laws are legitimate and that they can trust those who are applying and dispensing justice. At the same time, a legal system must simultaneously consolidate its procedures and norms to find autonomy from other social systems. In societies with many years of stable legal institutions (where legal institutions and lawyers operate autonomously (to an extent) from other sections of the society), the ‘external’ social elements required for the rule of law may be less visible. But in settings where law has been used as an oppressive force, and where state institutions are notorious for corruption and partiality, strengthening the rule-of-law requires ‘external’ social conditions that are favourable for law and its institutions to take root, as well as ‘internal’ reordering of how judicial actors carry out their roles.

To set these standards, having laws that are equally applicable, clear, predictable, and stable, where no one is treated partially – as Fuller (1964) and Raz (1979) noted – helps, to establish legitimacy and trust in institutions (Beetham, 1991). Laws that are publicly promulgated and legislated through open, clear procedures by elected representatives can strengthen perceptions of the legitimacy of laws (Toharia, 2003). A competent and skilled judiciary builds confidence in relying on the judges to apply the laws. Furthermore, a predictable legal system aids a continuous practice, leading to building trust through frequent and recurrent adherence to expected behaviours and attitudes. Continuous and predictable applications of norms and practices thus help new institutions and laws to become embedded in society (Beetham, 1991).

When expected normative standards and behaviour are consistently observed over time, it can help ordinary people to build their trust in judicial institutions as legitimate spaces for addressing grievances. Maintaining the separation of powers, allowing recruitment and dismissal processes to be carried out according to predetermined rules, and ensuring that the court’s decisions are final and binding – all assist towards establishing public confidence in the legal system. This is not to discount instances where powerful people can “game the system” by following a “pseudo constitution” or “imitating” institutional checks and balances (Uitz, 2015; Adams and Janse, 2019,

pp. 1-8). Despite this probability, only a predictable, stable and consistent legal system can strengthen ‘external’ trust and legitimacy in legal institutions (Fuller, 1964; Raz, 1979).

Any inquiries into rule-of-law transfer and adaptation in a particular setting, therefore, calls for a sensitive reflection on the varying interactions and interconnectedness between law and society (Nelken, 1998, 2006; Moore, 1973; Friedman, 2019). It must be noted that other scholars disentangle different ‘social’ elements of the rule of law from what I have highlighted above. Therefore, it is pertinent to clarify the sociological dimension of the rule of law that guides the focus of this research. For instance, Cotterrell (1996) engages with the sociological aspects of the rule of law by relying on Neumann’s historical study of societal transformations. Cotterrell observes how changing social conditions and economic factors alter the relevance of law in society. Following a traditional law and society approach (seeing law as a mirror of society), Cotterrell (1996, p. 452) describes the rule of law as a “Durkheimian index of social solidarity”. He sees the rule of law as values that progressively take hold in a society as it transitions from a traditional to a capitalistic one. Or we could say, Cotterrell relies on the stability of laws as a “mirror” to inform the status of the social system.¹¹

For Tamanaha (2004, 2011), the social aspects of the rule of law are the historical, economic, cultural and political factors. He explains that these external social factors can influence meanings and functions of the law in particular contexts (Tamanaha, 2011). Thus, Tamanaha’s concerns are more about how external factors shape the meanings and functions of law. Similarly (but more theoretically focused), Příbáň (2020) considers the sociology of “power”, “legality” and “legitimacy” – notions associated with the rule of law and how they are affected by social factors. He makes a case that we need to go beyond the legal aspects of the rule of law and instead investigate how formal ideas derive their legality and legitimacy in society. In contrast to these studies, I focus on the social conditions that encourage ordinary people and officials to shift from their existing ways to new standards set by law and encourage them to rely on laws to solve issues. I follow Krygier’s observations – the sociological aspects of the rule of law are the requisite ‘external’ social conditions that allow for the ‘internal’ functions of legal system to settle in a society (Krygier, 2009a; 2011; 2016; 2017). Krygier’s thesis helps us situate ‘external’ social factors influencing the ‘internal’ functions of the law.

¹¹ This idea can be traced to the structural-functionalist accounts that conceptualise society as constituted by “different parts undergirded by the logics of integration and stability” (Anleu, 2010a, p. 3). Also see Parsons (1951).

There also other reasons as to why a sociological approach must be adopted while examining ‘successes’/ ‘failures’ of rule-of-law transfers and adaptation. Normative expectations attached to the rule of law may travel easily to different contexts through transnational rule-of-law networks; however, changes brought by such transfers can be slow. Prevalent attitudes, existing power arrangements, embedded norms and everyday practices cannot be rapidly erased (Kurkchiyan, 2003; Merry, 2006; Levitt and Merry, 2017; Trubek and Galanter, 1974). Changes happen gradually and incrementally (Sztompka, 1993; Shaffer, 2012; see Chapter II). Adoption of new laws and institutional arrangements may happen at the institutional level, but those at the official and citizen level may not yet have shifted their attitudes and behaviour (Halliday and Shaffer, 2015). It is also possible that nation-states can adopt the expected normative standards without making any active efforts to bring changes on the ground (Serban, 2015). Moreover, especially in post-conflict states, those transferring and receiving new norms, with every step that they make towards realising transnational rule-of-law aspirations they would have to take a few steps backwards by making other compromises. Therefore, to talk about ‘success’ and ‘failure’ as definitive end-points is challenging in a society where adaptation of new norms and standards are in transition. However, applying insights from social change scholarship, we can observe that a ‘successful’ transnational engagement happens when initiatives by transnational actors have led to conditions that facilitate a society to gradually shift towards transferred rule-of-law standards. A ‘successful’ transnational rule-of-law transfer happens when the initiatives have been able to encourage those in power, ordinary citizens, and judicial actors to adopt certain predetermined rules and realign from existing attitudes and behaviours that are contrary to the transnational rule-of-law aspirations. Therefore, it is not just about the formal legal ‘adoption’ but conditions that facilitate broader ‘adaptation’ to the norms and standards by those within and outside of the legal field. As for the role of transnational actors in bringing about that ‘successful’ change, we need to examine the different engagements on the ground by placing both the rule-of-law promoters’ and recipients’ experiences in tandem to examine how these actors work together to build a new social order based on transnationally set rule-of-law ideals. These aspects can only be unpacked by studying transnational rule-of-law transfers and adaptation in context (Banakar, 2000).

- Whose accounts of successes or failures?

Since I engage with the issue of ‘success’ / ‘failure’ here, it is crucial to point out whose accounts of success/ failure that I am referring while using the terms. Usually, discussions on ‘success’/ ‘failure’ of rule-of-law initiatives are visible amongst three interest groups i) rule-of-law practitioners at the international level ii) elite leaders/ political actors/ and other stakeholders at

the local level iii) academic scholars. Depending on the interests, goals and aims, different actors have varied parameters for defining what constitutes as success/failure of transnational rule-of-law engagements. As will be shown in Chapter III, academics and practitioners, albeit in varied ways, have evaluated ‘successes’ or ‘failures’ of rule-of-law transfers. Academics consider rule-of-law industry through a critical lens, where the promoters are considered as part of hegemonic structures that impose neo-liberal ideas on a targeted society (Mattei and Nader, 2008; Humphreys, 2010). Maintaining their gaze on the rule-of-law promoters, the critics provide a bleak account of internationally led initiatives to strengthen the phenomenon on the ground. They describe rule-of-law transfers as “imposing” and “reviving neo-colonial” imperial dynamics (see Chapter III). In their efforts to call out the rule-of-law industry on its lofty idealisms, these scholars exclude the experiences of the recipients. On the other hand, those who look at the ‘recipient’ perspectives target the rule-of-law industry for overlooking local interests (Trubek and Galanter, 1974; Tamanaha, 2004, 2009; Grenfell, 2013). These scholars criticise rule-of-law promoters in mindlessly transferring what they perceive as “best practices” from the Global North to the Global South (Trubek and Galanter, 1974; Tamanaha, 2004, 2009; Grenfell, 2013). According to them, rule-of-law transfers ‘fail’ because the promoters ignore local realities and instead transfer solutions that do not ‘fit’ local contexts. On the other hand, rule-of-law practitioners provide details of their training for judges, case management tools, and sometimes even meeting project deadlines, as accounts of the ‘successes’ of rule-of-law projects (to list a few reasons; see Chapter III and VI). They describe their activities and outputs as measures of ‘successes’ of their engagements in recipient societies.

Such existing accounts of ‘success’/ ‘failures’ from academics and practitioners are limited in informing us what happens when transnational rule-of-law aspirations are taken to particular settings. They do not engage with questions such as have the targeted officials shifted their attitudes and have they undertaken roles congruent to the transnational rule-of-law expectations, do they use laws in an impartial and independent manner, have citizens started relying on laws/institutions to tackle certain identified problems like abuse of power (especially in countries where state justice institutions were weak before rule-of-law interventions), do decision-makers act in accordance with the normative limits set by law?

Taking into consideration the limitations of existing accounts of ‘success’/ ‘failure’ of transnational rule-of-law engagements from the different actors, I put forth my arguments of ‘successes’ and ‘failures’ of transnational rule-of-law engagements. In contrast to the existing accounts, I make a

case for why accounts of ‘successes’ or ‘failures’ of transnational rule-of-law engagements need to “[place] the legal reforms and legal reformers in their broader social context” (Dezalay and Garth, 2002, p. 3) and the recipients adopting and adapting those reforms in the same space. Such accounts of a third-party, who can observe both transferors and recipients of transnational rule-of-law aspirations as actors who are pursuing same aspirations can provide a comprehensive understanding of what happens when transnational aspirations are taken to local contexts. Thus, by examining the experiences and efforts of transnational actors who are actively trying to bring changes on the ground, I illustrate how international and local actors need not always be in opposition, rather they can be in consensus. This brings us to the core argument advanced in the dissertation: what constitutes ‘success’ in the context of transnational rule-of-law transfers.

III. The argument: A ‘good enough’ rule-of-law transfer and adaptation

Studying the activities, concerns, and challenges of transferors and recipients enables us to observe the messy and complicated reality of what needs to happen on the ground to strengthen the rule of law (or in other words, for the adaptation of transferred norms and institutions). It also highlights the impossibility of finding definitive successes and failures especially in recipient settings. This is why we need data from the field that can inform us whether transnational engagements have actually made (or making) any difference. Thus, collecting data from those who are in the field, taking on new roles and relying on laws to advance the rule of law, is vital in informing us whether transnational rule-of-law engagements have paved the way for favourable conditions for a recipient society to adopt and adapt the transferred standards (see Chapter V).

As for the transnational rule-of-law engagements, successes of the transfer and adaptation of the aspired rule-of-law norms must be evaluated taking into account of the sociological elements that are necessary for the aspired norms to take root in a society. Especially in post-conflict settings, where transnational rule-of-law transfers are common, they are contexts where social, political, and economic realities are in flux. Even in what are perceived as ‘stable’ settings, rule-of-law adaptation is a fluid phenomenon, and it is entangled with the social and political realities of the society. For instance, rising authoritarianism and eroding respect for human rights and constitutional values in countries that were once considered states with the rule of law – Poland, Hungary, Brazil, and India – show that the phenomenon can change. Even in countries that are perceived to have “established” the rule of law (Palombella, 2009), like the United States and the United Kingdom, events following the Capitol Hill attack and the targeting of the judiciary by media post-Brexit prove that the rule of law can wane if there are no robust institutions and

committed rule-of-law defenders (Wright, 10 January 2021; Joe Biden's Speech, 16 January 2021; van Zyl Smit, 24 September, 2019). Some scholars observing these trends define them as “rule of law backsliding” (Uitz, 2015), or “rule of law decay” (Adams and Janse, 2019). Terms like ‘decay’ and ‘backsliding’ also suggest that rule of law order is not static, and that rule-of-law progress can be undone without continuous engagements by those in power, ordinary citizens, NGOs, and the media, fighting for its survival. But the existing scholarship on transnational rule-of-law engagements approach the rule-of-law as a static phenomenon. Accordingly, it evaluates the ‘successes’ or ‘failures’ of rule-of-law reforms on whether a society has adapted all the transferred rule-of-law norms (see, for instance, Carothers, 2006). Once we recognise that every society is advancing (or stalling or regressing) towards (or away from) the rule-of-law, we can study rule-of-law adaptation as a fluid phenomenon rather than a static reality that exists out there (see Chapter II).

Moving away from definitive conceptions of ‘success’/ ‘failure’ also mean that we need to separate the ‘ideal’ conceptions of rule-of-law adaptation from what happens when ‘ideals’ are transferred to the ‘thick’ and complex realities of everyday life. Those promoting and receiving new norms are not in an ‘ideal’ reality. Rather they must make tough choices, compromises, and decisions that ensure a society is moving towards the aspired rule-of-law norms rather than away from them. Therefore, while evaluating ‘failures’ and ‘successes’ of transnational rule-of-law engagements, we should consider the gradual and imperfect journey of societies to adopt and adapt transferred rule-of-law standards. Looking for ‘ideal’ versions and making proposals that cannot be “materialised” can result in losing “the legitimacy and value [of the ideal] as a regulative standard” (Adams, Ballin and Meuwese, 2017, p. 17). Instead, we should approach the “ideals as indispensable regulative ideas” that allow us to “move through the field of values and norms” (Adams, Ballin and Meuwese, 2017, p. 18). The ‘ideal’ conceptions of the rule of law in this way should be a regulative idea that establishes the crucial elements and desirable constraints that every society should aspire towards (Adams, Ballin and Meuwese, 2017, p. 17). Here the aspired ideal of transnational rule-of-law engagements is to build societies that rely on state based legal institutions and laws to tackle arbitrary power in the public sphere [why state based legal institutions are crucial to transnational rule-of-law initiatives is explained in Chapter II].

Another way to explain why a good-enough transnational rule-of-law engagement would be to use the Weberian ‘ideal-type’ framework, where the actions of those transferring and receiving new norms and standards are compared against the aspired rule-of-law ideal where all the transferred

norms, institutions are adopted and adapted as intended. As in the Weberian model, transnational rule-of-law aspirations remain as the “mental construct” which cannot be found “empirically anywhere in reality”, and “remains a utopia” (Weber, 1949, p.90). And “good enough” engagements, as initiatives exist in-between the aspired ideal and the reality. But, for the purposes of the dissertation I have steered away from relying on the Weberian ideal type as the basis for developing my ‘good enough’ framework as most of the scholarship on the rule of law and good governance has used the Weberian prototype as yardsticks, i.e., investigators arrive at an interpretative understanding of a concrete empirical observation by comparing its differences with their initially constructed yardstick (Ongaro, 2017, p. 247-248). Those who have used the Weberian ideal-type framework in their research design to study about the rule of law have either focused on theory building or identifying typologies of the rule of law. They do not offer insights on social or policy action for change (Ongaro, 2017, 249; see chapter III discussions on empirical research that follows the Weberian ideal-type framework to theorise on rule-of-law typologies).

Transnational rule-of-law engagements aspire to construct an ‘ideal-type’ reality where legitimacy and authority lie in the supremacy of law instead of charismatic or traditional authority. But relying on the ‘ideal-type’ framework to examine ‘successes’/ ‘failures’ of transnational rule-of-law engagements is challenging as the focus is on the process rather on a particular phenomenon such as the rule of law. Consequently, I have not used the Weberian ‘ideal-type’ as the focus is on whether transnational rule-of-law engagements in East Timor have been successful in assisting the Timorese society to move *towards* adapting transnational rule-of-law aspirations of the supremacy of law in a society. With these points in mind, I propose a ‘good enough’ framework (see Chapter IV) to observe and evaluate whether transnational rule-of-law engagements assist a society to progress towards adapting transnational rule-of-law aspirations. I argue that the ‘good enough’ framework provides us with a comparative lens that is contextually sensitive for observing how societies navigate their particularities to reach the aspired rule-of-law goals. Their contingencies and challenges may vary, which means rule-of-law transferors must assist a society to move towards its transnational rule-of-law aspirations taking into account the unique challenges that particular post-conflict contexts raise. Therefore, what may be a ‘good enough’ transnational engagement in one setting may not be ‘good enough’ in another. Where transnational initiatives assist targeted local stakeholders in overcoming their immediate challenges to progress towards adopting and adapting transferred rule-of-law goals, they are ‘good enough’, and where they result in moving away from the rule-of-law aspirations, transnational initiatives are ‘not good enough’

(see Chapter IV). Such evaluations of whether transnational rule-of-law engagements have been good enough or not must be done from the field.

I demonstrate these arguments through a case study of transnational rule-of-law promotion in East Timor. The ‘good enough’ framework will be applied to transnational rule-of-law initiatives for strengthening judicial independence and curbing corruption in East Timor. Although the case study of East Timor helps us to observe, analyse and gather ‘thick’ data from the ground about the Timorese experience, the findings are equally relevant in informing what happens when transnational aspirations are taken to local contexts, and what kind of transnational support matters that facilitate meaningful adaptation of transferred norms. At the outset, the case study illustrates the necessary compromises transnational actors must make to consolidate the rule-of-law phenomenon in local settings.

IV. Terms used

- State laws/non-state laws

A socio-legal framework is a broad theoretical framework to operate from (Banakar and Travers, 2013, pp. 1-31). It depends on the starting point of what law means, what ‘law’ pursues, and whether law and society are captured as independent variables. In this dissertation, ‘law’ refers to state-based laws, as the transnational rule of law order aims to tackle arbitrary power in the ‘public’ sphere with an independent judiciary enforcing the normative rules. Furthermore, the transnational rule-of-law promotion attempts to reshape existing power structures in targeted societies and channel them into one central unit: the state. And through state institutions, power is enabled and disabled according to the legal rules.

It must be clarified that my focus on ‘state laws’ in this dissertation should not lead one to think that the rule of law is a phenomenon that is co-dependent on having arrangements for a nation-state (Scott, 2009) or state-based laws or institutions (Hertogh, 2016). However, as a transnational project, the rule of law initiatives cannot be divorced from the state or its institutions. The rule-of-law industry has also promoted state-based institutions and laws as solutions for tempering power (Krygier, 2017; Carothers, 1998). Principles of separation of powers, an independent judiciary, and anti-corruption laws have become the commonly prescribed ‘legal solutions’ for tackling abuse of power. In a survey carried out by Melton and Ginsburg (2014), the authors underscore that most countries formed post-1960s, regardless of their political history, have

adopted constitutions that guarantee separation of powers, independence of the judiciary and protection of fundamental rights.

Focusing on state-based laws and institutions also does not mean that only a society with a governance structure and political system like the Westphalian model can set effective normative standards and regulate behaviour. Lee and DeVore's (1968) study of Kung San hunter-gatherers of the Kalahari Desert shows that gossip, ridicule, shunning, and other informal mechanisms can build normative consensus and prevent community members from deviating from a norm. Similarly, Malinowski's (1922) study of the Trobriand islands shows that law is not just an enterprise limited to privileged Western societies: the islanders had their own civil and criminal legal systems through which they set norms and managed social order. Such rich ethnographic accounts from the ground-up demonstrate that even through non-state mechanisms, it is possible to set limits for what is acceptable behaviour and what is not.

However, using non-state mechanisms to tackle arbitrary power in the public sphere has many limitations. There must be a broad consensus among officials, lawyers, and citizens about what constitutes arbitrary power. These stakeholders must agree on what constitutes digressions from acceptable ways of using power and how such deviations should be punished. A unified state-centred legal system can harmonise normative expectations and standards for a society to align with more quickly than a non-state system, which by its nature may be fragmented and can vary from one local setting to another. Furthermore, in East Timor, the focus of state-building has been to assist in developing a democratic state that upholds the rule of law (Strohmeyer, 2001). Aspirations for independent statehood were fundamental to the Timorese self-determination claims. Thus, ambitions to adopt state institutions and laws cannot be separated from the political struggle for an independent state of East Timor. Therefore, I will be focusing on state-based laws, courts, and other judicial institutions. I investigate the extent of power given to the government, the limits laid out for those in power to make decisions, and whether officials and ordinary citizens have aligned with the newly set standards.

- Transferor/Recipient

I rely on the transferor/recipient categorisation that comparative law scholars use (Watson, 1983) to refer to international rule-of-law promoters and the Timorese stakeholders. Like legal transfer projects, the international rule-of-law promoters in East Timor were hoping to assist the state in 'getting back on its feet' by initiating legal reforms, institutional building and technical assistance

(Strohmeyer, 2001). The internationals also took mentorship roles. They assisted the Timorese in drafting new laws, training the local judiciary and providing technical assistance to the parliament, prosecutor's office, public defender's office and courts. In this way, the direction of the transfer of the new norms was mainly from the internationals to the Timorese, with the latter receiving them.

Recipients, as a category, also indicates the proximity to local concerns and interests. They were the stakeholders who were situated locally and had to navigate the demands and realities of their immediate social settings and the expectations of their international partners. I acknowledge that relying on the traditional comparative frames of transferor/recipient limits my study in that it does not capture complexities of "glocalised identities" (Goodale, 2007). I attempt to bridge this limitation by using the term 'transnational' wherever applicable, to define a community of people bound together by their commitment to transnational idealisms, irrespective of their citizenship or linkages to a specific socio-political, cultural setting. Accordingly, 'transnationals' as I refer to them, are local 'recipients' or international 'transferors' – they network, exchange, and transfer normative standards and attitudes around the rule of law (Merry, 2006), and they agree on tackling arbitrary power (Merry, 2006; Halliday and Shaffer, 2015b).

In the empirical chapters, I have distinguished the voices of the 'transnational' actors from the 'local official' accounts, for lack of a better term, to differentiate between the participants in this study. In diametrically identifying the accounts as being from 'transnationals' and 'locals', I do not mean to suggest that the latter was disengaged from the transnational processes. Elite local Timorese leaders never disengaged with the international community completely – their feelings of proximity may have worn off with time. International engagements have also made it impossible for the elite leaders not to *respond or react* to its dynamics. Therefore, I acknowledge the limitations of using 'local' to label voices, contrasting them with those who are aligned with the transnational rule-of-law aspirations.

'Local' also signifies where the voices were meant to be heard – spatially *in* East Timor. In contrast, the 'transnational' voices targeted communities placed *inside* and *outside* the country, whose voices aligned with transnational idealisms. The 'local' and 'transnational' categories, as I will demonstrate, also reveal the varying power disparities in social, knowledge, and economic capital that these groups had internationally and locally.

- Diffusion/Transfer

Comparative scholars rely on “diffusion” as a term to refer to the flow of laws, legal ideas and solutions between nation-states (Twining, 2005). I use the term diffusion to refer to the circulation of legal paradigms, normative standards, and ideas across local, national and international boundaries. Similarly, “transfer” is used to suggest instances where new normative standards are introduced by “external” actors through legal technical assistance programmes to a recipient society (Nelken, 2001).

- Adoption/Adaptation

To describe what happens when transnational norms are taken to local settings, I have relied on terms used by comparative scholars to describe the outcomes of legal transfers. I use ‘adoption’ and ‘adaptation’ to study the consequent norm change set in motion because of transnational engagements. I rely on ‘adoption’ to suggest the implementation of an institutional and legal framework and ‘adaptation’ to reflect the broader social change – shifts in attitudes, behaviour, and normative standards in accordance with the law.

Halliday and Shaffer, engaging with similar concerns, use “settling” as the term to capture how transnational norms “settle” in a recipient society. Their focus is on what happens to transnational norms as they enter local settings rather than enquiring how they are adopted and adapted by the recipient stakeholders. Furthermore, “settling” as a metaphor is misleading about the process of norm change in society. It alludes to a static nature of social change, where a dominant normative order replaces the other or pushes existing norms outside. But, as Sztompka theorises, the process of norm change is not linear, and a recipient society could have varied trajectories of changes. The dynamics of norm change through transnational engagements are entangled. Local and international actors enter into multiple epistemic contestations. They go through many cycles of recursive conflicts to determine what aspects fit and do not fit locally. These reasons lead me to resort to ‘adaptation’ as the preferred term for referring to the fluid process of change that is intrinsic to influencing, reshaping, and re-ordering societies through transnational norms

V. Contributions

The contributions of this research can be broadly summarised as below

- i. My research elucidates Cotterrell’s (1996) and Krygier’s (2009) observations that many core elements for strengthening the rule of law are located ‘outside’ the legal field. For the rule-of-law phenomenon to take root in a society, not only must a recipient society adopt new

institutional structures and laws that reorder how power should be used and abuses of power should be tackled, but it must also have a conducive environment that allows laws to operate to their full normative potential. This involves competent, well-trained officials in the court and state bureaucracy who are confident and brave to apply laws and enforce them, and a committed citizenry that trusts state institutions and are willing to rely on state-based laws to tackle abuses of power.

- ii. Moving away from the legal and philosophical discussions on the rule of law, or policy prescriptions on how rule-of-law reforms *ought* to be carried out on the ground (USAID, 2002; Trebilcock and Daniels, 2008; USAID, 2008; United Nations Secretary General, 2004), this dissertation is one of the few empirical accounts that studies what happens when rule-of-law norms are transferred to a particular setting (other similar research studies are Nicholson, 2007; Gillespie and Nicholson, 2012). My study is also distinct in bringing accounts of ‘local’ and ‘international’ actors who are working towards bringing *similar* aspirations on the ground.¹²
- iii. Contrary to the existing scholarship on rule-of-law reforms that tends to focus predominantly on the institutional and legal arrangements that are necessary –thus, prescriptive – ,for strengthening the rule of law in society (Trebilcock and Daniels, 2008; USAID, 2008; USAID, 2005; Transparency International, 2008; United Nations Secretary General, 2004), my dissertation gives ‘thick’ accounts of what happens when such prescriptions are *transferred* as part of rule-of-law reforms, how they are *adopted* and *adapted* by the recipient societies.
- iv. Considering how adapting to transnational rule-of-law standards is a slow and gradual process, I put forward a new framework for evaluating ‘successes’ and ‘failures’ of transnational rule-of-law transfers and adaptation. I argue, considering that the aim of transnational rule-of-law engagements is to transfer new normative standards, institutional

¹² Gillespie and Nicholson (2012) note that the Vietnamese rule-of-law recipients interpreted and applied transferred laws differently from the intended meanings attributed to them by the rule-of-law transferors. More recently, Leach (2021) similarly argues that even among the international rule-of-law promoters there is no consensus on the meanings and purposes of rule-of-law reforms. In these studies, the authors assume that it is possible to transfer *same* meanings and functions as part of legal transfers. These authors overlook the varying cultural, historical, and social contexts that make transferring same meanings and functions challenging. Rather than chasing *exact* meanings and functions as ‘successes’ of rule-of-law transfers and adaptation, my argument is that we need to look at transnational rule-of-law engagements as reforms that are intended to shift existing practices and norms to new ones that align with transnational aspirations of tackling arbitrary power in public space through state-based institutions. However, such a shift in creating consensus on the authority of law, *when* and *where* should it be applied, and for *what*, take time to settle among those ‘inside’ and ‘outside’ of the legal field. Thus, drawing on insights from the sociology of legal transfers and adaptation scholarship, my research approaches rule-of-law adaptation as a process where meanings, functions, shifts in attitudes and behaviours, are gradually shifted with time through continuous and meaningful transnational engagements that ‘fit’ the needs of local contexts.

and legal arrangements that align with certain transnational aspirations then ‘success’/ ‘failures’ of transnational engagements must be evaluated against the standard of how far transnational actors have been able to assist a society to move *towards* aspired transnational standards

- v. I introduce a ‘good enough’ framework for evaluating ‘successes’ and ‘failures’ of transnational rule-of-law engagements in the interim. Relying on the findings from the case study, I argue that practitioners must distinguish between pursuing the transnational rule-of-law ideals/aspirations from what is ‘ideal’ for a society to adapt the aspired rule-of-law standards in the long run. This finding underscores the paradox between the compromises and the imperfect engagements that may be necessary for rule-of-law transfers in order to enable the adaptation of the new norms in the long run.

- vi. My research furthers Halliday and Shaffer’s (2015) theoretical observations on the “settling” of transnational legal norms from international to local levels. Halliday and Shaffer propose that when a transferred transnational legal order “aligns” with problems at the national and local level, it leads to the “settling” of international standards within local settings (2015, p. 51). In their hypothesis, transnational norms “settle” linearly, moving from international to national and local levels (Halliday and Shaffer, 2015, pp. 51-54). They note that even though there may be contestations as new norms travel to local settings, with time, those norms backed by powerful transnational actors would emerge as dominant normative standards locally (Halliday and Shaffer, 2015, pp. 51-54). Following the transfer of transnational standards of an independent judiciary and anti-corruption, in East Timor, I show that the process of “settling” was not linear. The legal and institutional arrangements guaranteeing judicial independence and tackling corruption may have “settled” at the institutional level. But their “settling” or adaptation (as I refer to them) at the official and local levels was uneven. I argue that such an asymmetrical process of settling should not be assumed to be a failure of transnational rule-of-law transfers. Rather, the uneven and gradual process of settling bought *time* for the Timorese and international stakeholders in the field to slowly build momentum for change from the bottom up. I show that successful “settling” of the transnational rule-of-law standards happens when both the local and international stakeholders are recursively engaged, informing each other and reshaping the normative boundaries of transferred norms that can “settle” at a particular time.

- vii. The findings from my case study challenge the traditional structures of rule-of-law assistance programmes. Usually, the rule-of-law programmes are designed for isolated interventions where the international and local stakeholders are brought into contact for transferring and receiving a “standard menu of reforms” (see Kleinfeld, 2012 for a summary of rule-of-law reform practices). Through my case study, I demonstrate that the transnational support necessary to strengthen the rule of law varies from one setting to other, and that the international and local stakeholders may need to engage in varying degrees and at different stages, while the targeted society moves towards the rule-of-law ideals.
- viii. My case study adds to the emerging literature on the rule of law that investigates the phenomenon in particular settings through empirical methods (Jensen and Heller, 2003; Peerenboom, 2003a, 2003b; Cheesman, 2015, 2018; Massoud, 2013; Rajah, 2012; Gowder, 2016). However, my research design diverges from existing scholarship in two ways. The existing scholarship use qualitative methods to observe and evaluate different kinds of rule-of-law, or types of rule of law. For instance, rule-of-law ethnographies study the rule-of-law as a phenomenon ‘in action’, they compare the rule-of-law realities in different settings with an ‘ideal’ rule-of-law conception and conclude that rule-of-law experiences on the ground are distinct from the ‘ideal’ (Cheesman, 2015; Rajah, 2012). Or they are empirical studies that demonstrate how law is manipulated, abused, and misused by those in power to pursue ends other than rule-of-law ideals (Massoud, 2013; Cheesman, 2015; Rajah, 2012) which follows a law in action. Contrary to these studies, I distinguish the rule-of-law as an aspirational concept, the contours of which are set by transnational institutions and the rule-of-law changes as the reality that is situated in the in-between space (see Chapter III and Chapter V). Consequently, I make a case to study rule-of-law transfers and adaptation through the lens of “law as a practice-based activity”, whereby sociological methods are used “to describe and analyse legal practice without reducing it to legally irrelevant observations” (Banakar, 2000, pp. 283-284). Such an approach permits us to study systematically, through empirical methods, the “limits of institutional action, while learning from the law about society and its own paradigmatic limitations” (Banakar, 2000, p. 284).
- ix. I study the people involved in the movement and reception of law, pay attention to the power and politics that are involved in shaping the law, and build empirically grounded,

detailed accounts of how legal change occurs (Goldbach, 2019, p. 594). Gathering data from internationals who were supporting the Timorese to strengthen the rule of law on the ground as well as from the Timorese stakeholders on their experiences, I provide ‘thick’ (Geertz, 1973) accounts of legal and social change in the given context.

- x. My proposal for a ‘good enough’ framework emphasises why ‘thick’ qualitative accounts of the experiences of rule-of-law transfers and adaptation must be captured to understand whether or not transnational engagements have been successful. Through the case study, I show how the data gathered through field observations, interviews, and focus groups can inform us whether local and international stakeholders are doing all they can to strengthen the rule of law or whether they are “gaming the system” through superficial transfers and reception (Serban, 2015).
- xi. My research provides insights into why researchers studying transnational norms in local contexts must remain reflexive.¹³ Since transnational engagements offer opportunities for multiple actors – international and local – with diverse interests and varying agendas to interact with each other, it is crucial to consider who is involved, what influence they have to bring changes locally, and what strategies they use to increase their influence. I show that not all international rule-of-law promoters had the same influence over the Timorese stakeholders – some were more visible¹⁴ in certain areas and on specific issues compared to others. For instance, the Portuguese rule-of-law promoters (Community of Portuguese Speaking Countries – locally referred to as the CPLP partners) had more influence over the developments in the Prosecutor’s Office, courts, legal training centre and the Parliament. In contrast, other international partners took key roles as technical advisers in areas outside the core justice institutions. The American rule-of-law promoters were involved in anti-corruption reforms. Brazilians were active in the Public Defenders’ Office, providing technical assistance within the institution, whereas the Australians engaged primarily with security-sector reforms (to list a few visible dominant international players in East Timor). Each of these actors’ influences in their chosen fields of assistance could be traced through the numbers of lawyers, judges or other technical advisers sourced from

¹³ I am aware that reflexivity in sociology has been involved in many debates; see Nelken (1998). Here I rely on the term to mean observing, analysing, and finding out why laws and institutions do not function as we expect, and reflecting on the reasons for those limitations (see Cotterrell, 1998; Nelken, 1998).

¹⁴ I use ‘visible’ because a few international donors chose to stay in the background by providing funding for books in law libraries, e.g. the Spanish government providing funding from the EU aid budget to provide books at the Provedor office.

the donor country, along with training materials and seminars organised according to donor agendas. Similar to the internationals, the influence of Timorese stakeholders also varied. Charismatic resistance leaders who were part of the “old generation” possessed more authority than the Timorese from the “in-between” generation in the local judiciary and government. As for the “new generation”, they have the least authoritative voice in the country for now (see Chapter V for extensive discussion). This finding reminds researchers to remain reflexive in relation to the varying social capital of actors (Dezalay and Garth, 2002; Garth, 2020) in different social settings and whose political will is required for a society to transition to a new social order.

- xii. Findings from the case study also illuminate why researchers must remain reflexive of the limits of travelling norms in particular settings. As normative boundaries of legal concepts solidify at the international level, a researcher must reflect on the sources of data, their legitimacy, and the different kinds of data one may have to seek to study a transnational norm in a particular context. For instance, judicial independence is globally measured through *de facto* and *de jure* arrangements that separate the judiciary from the government. But sources of interference could vary from one setting to the other. In East Timor, it was the charismatic leaders’ presence, combined with the lack of language and technical skills of the local judges that threatened the independence of the judiciary. And questions about whether or not normative standards associated with judicial institutions have settled must be answered against whether judges in a particular setting can act as independent and impartial judicial actors rising above the local challenges. My research adds to the calls from other scholars (Nelken, 2010, pp 71-87; Twining, 2004; 2005) how researchers studying transnational norms in local contexts must not limit their data collection by looking for predetermined sources of data. Instead, a researcher must investigate the particularistic sources that can inform about a transnational normative standard ‘in action’ in a specific context.
- xiii. My dissertation offers an in-depth understanding of what happened as a result of rule-of-law promotion in the Timorese justice sector. To date, studies on rule-of-law reforms in East Timor have focused on the conflicts between traditional law and the state system (Grenfell, 2013; Babo Soares, 2003) or the transitional justice mechanisms (Hohe and Nixon, 2003; Linton and Reiger, 2001). While the engagement of the international development community in the country, its structure and problems, are well-documented

(Engel, 2021; Silva and Simião, 2012; Silva, 2008), not enough attention has been given to the involvement of internationals and their roles in the development of the justice sector. Grenfell's (2013; 2016), Kent's (2012) and Silva's (2012; 2013) interventions on the involvement of internationals in the justice sector target how the state-focused reforms introduced by the UN were in tension with traditional Timorese practices. These authors focus on legal pluralism and criticise how the international community has overlooked traditional law. Although these critical engagements are necessary to pinpoint the limitations of international "state-building" initiatives focusing on the state institutions, they do not investigate the kinds of changes (if any) brought by the introduction of state-based institutions. A reason for the oversight described above may be because traditional dominant donors like the World Bank and USAID are involved in sectors other than the judiciary. In contrast, the Community of Portuguese Language Countries (CPLP) and UNDP are the primary donors in the justice sector. My dissertation is the first comprehensive study of the transnational rule-of-law engagements in the formal justice sector, which looks beyond transitional justice.

- xiv. My dissertation gives a detailed account of the transnationally led reforms on judicial independence and anti-corruption in East Timor. More importantly, despite the roadmaps that have been drafted to develop the justice sector (Justice Sector Strategic Plan for Timor-Leste 2011-2030: RDTL, 2010; Independent Comprehensive Needs Assessment Report: UNMIT, 2009), there has been no evaluation of the rule-of-law progress in the country. The UNDP's Justice Sector Program (JSP) has carried out evaluations of its projects. Apart from this initiative, USAID and the Asia Foundation carried out surveys in 2004 and 2008 (TAF surveys, henceforth). The authors of the TAF surveys emphasise that their exercise is not an evaluation of the rule of law progress in the state (Asia Foundation-USAID survey, 2004, p. 1). Instead, the surveys evaluate perceptions of justice by ordinary Timorese citizens across the following axes: justice and rights; knowledge of the legal system; familiarity and comfort with legal institutions; experience with law and justice; women and law; legal information sources; media use; and language. Thus, there has been no comprehensive evaluation of the international efforts in strengthening the rule of law [even in its 'thin' form] within the justice sector. My research fills this gap. From the field, I describe how international actors have supported the Timorese stakeholders in strengthening their judiciary and anti-corruption regime since independence. My research design does not take the citizen-centric approach that TAF proposed in monitoring and

evaluating the rule-of-law progress. I concede that this is also a limitation of my research. Comprehensive citizen-focused research on the perceptions of the justice sector can further consolidate the findings within this dissertation, and I leave this for other inquiries to explore. However, focusing on the ‘first’ level of targeted local stakeholders – judges, lawyers, prosecutors, public defenders, ombudsmen, anti-corruption commissioners, parliamentarians, law students, and civil society members – I show whether these stakeholders have been able to adopt and adapt to the new transferred norms. By focusing on these actors, I provide accounts of the compromises they have had to make while traversing between the demands of their international partners and the realities of their immediate social contexts.

- xv. The presence of resistance leaders and the impact charismatic leaders have in influencing the legitimacy and authority of law and state institutions while they ‘settle’, especially in transitional settings, have not received enough attention in existing scholarship. In broader scholarship, charismatic leaders and their influence is understood through the Weberian frame of traditional authority (Weber, 1962, pp. 71-72). In the Weberian conception, a charismatic leader derives their authority by commanding influence over their followers through heroic and exemplary acts. A society that has adopted a “bureaucratic rational-legal authority” by adopting state laws and institutions is assumed to move away from these traditional sources of authority. Under the Weberian framework, societies with non-bureaucratic structures are identified as *deviations* from the ‘ideal’ rational model. Consequently societies with ‘strongmen/strongwomen’ or charismatic personalities are categorised as spaces with an ‘authoritarian rule of law’ or as ‘rule by law’ spaces (Ginsburg and Moustafa, 2008). Internationally led rule-of-law reforms can also be considered as exercises where existing modes of authorities are targeted to be replaced by a rational legal authority (Roxborough, 2012; Malejacq, 2016). Especially in post-conflict settings, we can observe that both charismatic and rational-legal authority can co-exist simultaneously. In East Timor, charismatic resistance leaders are still alive, and they live alongside ordinary citizens who look up to them and revere their leaders for their sacrifices. Their presence (especially Xanana’s) impacts the authority of law and its normative limits (Leach, 2008; 2002). However, these leaders are also significant for building democratic values, maintaining peace and stability through their charismatic leadership (Leach, 2002; Ingram, 2018; Scambary, 2019). The case study provides ‘thick’ descriptions of why charismatic resistance leaders are vital for enabling rule-of-law engagements in the country as well as

how their presence works as a double-edged sword stabilising and destabilising the adaptation of new norms in the country.

- xvi. The existing scholarship on strongmen identifies their threats to the rule of law only when they are in power – taking positions such as President (Pech and Scheppele, 2017), Prime Minister (Khaitan, 2020), or party leader (Kahn, 2008) of a country. These scholars inform us that those strongmen or strongwomen use their positions of power to manipulate laws, to coerce those in judicial institutions through overt or covert means, thus weakening the rule of law. In contrast to these studies, my case study throws light on how the weakening of the rule of law can also happen *outside* the corridors of parliament or a ruling leader’s office. The charismatic leaders in East Timor use their influence in “many less total and more mundane forms” (Lukes, 2005, p. 27): through the process of socialisation, recollecting their sacrifices during the resistance and through constant reminders of their role in regaining Timorese independence.

My research, in these ways, provides a comprehensive account of the role of transnational actors in transferring the ‘thin’ aspects of the rule of law – laws, institutional arrangements, new normative standards –, to the ‘thick’ realities in the recipient societies where particularistic challenges and obstacles must be navigated in order to adapt even the ‘thin’ aspects of the rule of law as part of the everyday life.

VI. Overview of Chapters

In **Chapter II**, *Situating the research*, I discuss the theories that guide my research question, data collection and analysis. In this chapter I explain what the rule of law as a norm do, what are its normative and conceptual limitations, and the necessary conceptual strategies that ought to be taken while studying the rule of law as a travelling norm that aims to bring change in particular settings. The chapter underlines how studying the rule of law as ‘a norm on the move’ enables a researcher to take into account the dynamics of norm construction, norm transfer, and the role of transnational actors who are in the ‘middle’– transferring transnational aspirations to local contexts.

In **Chapter III**, *Rule of law and rule of law progress in context: Literature review*, I analyse how existing scholarship has studied the rule-of-law and rule-of-law transfers in particular settings. The chapter provides a review of the existing empirical scholarship on the rule of law in particular settings and

documents its limitations. From the literature review, I argue that the current scholarship that attempts to study the rule of law in specific contexts, either focuses on evaluating the status of the phenomenon on the ground against an ‘ideal’ or proposes alternate ways to study the concept ‘in action.’ Authors that fall in the former category compares rule-of-law realities on the ground against a normative ideal without reflecting on the ‘gaps’ in ‘law in books’ and ‘law in action’ even in established democracies. Whereas those who fall in the latter category acknowledge differences in rule-of-law meanings in varied societies, and in response suggest new normative conceptions of the phenomenon. From the literature review I point out that these authors are uninterested in unpacking what may be necessary for the *adaptation* of transferred rule-of-law norms in a particular setting as they are mainly focused on studying the status of the phenomenon on the ground. As result, they overlook the ‘first level’ of actors who are involved in transferring and receiving new norms. They also exclude studying what aspects maybe necessary for institutional strengthening, r for transferred laws to operate as expected. The literature review underscores why it is necessary to have clarity on rule-of-law conceptions, methods for collecting data on the rule of law, and the sources of data to understand the limits and possibilities of empirical studies of rule of law. The literature review underscores why field-based qualitative research that is reflective of how rule-of-law norms travel, what aspects of these norms travel, what happens when new norms are introduced to a specific context are important to inform u

I also review scholarship that engages with the role of internationals in strengthening the rule of law in particular settings. These studies, I argue evaluate the ‘successes’/ ‘failures’ of transnational rule-of-law engagements overlooking discussions on how legal transfers and adaptation happen. They also tend to disregard the roles of international and local actors who can influence the trajectory of legal change and its adaptation. I emphasise why we must aim to study the role of transnational actors and the successes/ failures of rule-of-law reforms against whether they have been able to assist a society to adopt and adapt new norms, institutional arrangements that further the transnational rule-of-law aspirations on the ground.

In **Chapter IV**, *Studying the transnational rule-of-law progress in context: A good enough framework*, in this chapter, I propose a new analytical framework – good enough – for evaluating transnational engagements contextually. I review studies that have used good enough to unpack how the framework can help us observe whether those promoting and receiving the norms are actually doing their best to strengthen the rule-of-law, despite their challenges. Relying on the good enough framework, I argue that sometimes pursuing ideal or perfect modes of support for strengthening

the rule of law cannot happen because of resource constraints and/or other contextual factors in a post-conflict society. I identify some general factors that allow transnational actors to provide ‘good enough’ support to those situated locally to move towards the transnational rule-of-law aspirations

In **Chapter V**, *On data collection*, following the discussions in Chapters III and IV, I discuss how qualitative data from the field can provide us ‘thick’ descriptions of whether transnational engagements have been ‘good enough’ in assisting a society to adapt to new norms and standards. I also explain why I have used specific qualitative methods for collecting data about transnational rule-of-law engagements in East Timor. The methodological dilemmas that arose during data collection and the details of the (anonymised) research participants are included in the dissertation’s appendix.

In **Chapter VI**, *Transnational rule-of-law initiatives in East Timor: A review of monitoring and evaluation documents*, I review policy documents, especially from international stakeholders on the rule-of-law in East Timor. From the documents, I demonstrate how Timorese and international stakeholders monitored and evaluated rule-of-law transfer and adaptation in the country. The chapter engages with the limitations of the existing monitoring and evaluation initiatives for studying transnational rule-of-law engagement in East Timor. In line with the findings from my literature review, I point out how donor mandates have impacted what aspects are studied as part of rule-of-law adaptation in the country. The chapter highlights how the existing monitoring and evaluation reports on rule-of-law reforms in East Timor do not inform us whether or not the aspired rule-of-law standards have been *adapted* in the country.

In **Chapter VII**, *Judicial independence in waiting*, I study transnationally led reforms to strengthen the independence of the Timorese judiciary. Following discussions and debates on what is described as a “failed” international intervention (by the ruling government in 2014), I investigate whether transnational rule-of-law engagements have ‘failed’ in consolidating judicial independence on the ground. In the chapter I focus on a 2014 tax case between the ruling government and a private multinational company. Through the case, I analyse what happened and why the ruling government at the time retaliated with the revocation of work visas of international judges. The case provides a lens to analyse *why* the judges, even though, they exercised their normative roles were moving away from the aspired transnational standards of judicial independence.

In **Chapter VIII**, *Anti-corruption in transition*, I focus on transnational engagements to strengthen the anti-corruption regime. Again, following discussions and debates on why transnational initiatives in the area are described as a failure (particularly by the new generation” of Timorese), I examine whether that has been the case. Here the data builds on the work of anti-corruption commission and the challenges the commission faces in carrying out its mandate. The chapter provides an overview of the procedural, legal, resource related, and other external factors that limit the Commission from carrying out its mandate. From the interviews and observation from the field, I describe how the internationals and the Timorese stakeholders are working towards building a consensus from the bottom up as to what acts constitute as corrupt acts and how they must be tackled.

Finally, in **Chapter IX**, *Analysis: A good enough rule of law transfer and adaptation*, I analyse the empirical data from Chapters VII and VIII and apply the ‘good enough’ framework. I explain *why* transnational efforts to strengthen the judicial independence of Timorese judiciary failed in contrast to the anti-corruption reforms. I conclude transnational engagements for strengthening judicial independence were ‘not good enough’ as the transferors were unable to assist the Timorese judiciary to apply and interpret laws confidently or establish their authority and legitimacy in the long run. In contrast, transnational engagements in the area of anti-corruption focused on strategies to build the technical expertise of Timorese officials, and a consensus among the local population what constitutes as corruption and how they should be tackled. I argue innovative measures taken outside of the institutional and legal arrangements in the area enabled for a positive trajectory of norm adaptation. The chapter also illustrates the unique support required in the judiciary and the anti-corruption commission to adopt and adapt the aspired transnational rule-of-law standards. I emphasise why recursive engagements between the international technical advisers and Timorese stakeholders, ‘localising’ justice-sector policy interventions, and continuous engagements between the internationals and the ‘first-level’ of Timorese actors were crucial for the adaptation of transferred rule-of-law standards in East Timor.

CHAPTER II:

SITUATING THE RESEARCH

In this chapter, I expand the theories that inform my research question, data collection, and analysis. Transnational rule-of-law engagements are “multi-faceted, heterogeneous and multidirectional” processes (Heydebrand, 2001). To study transnational rule-of-law engagements in an increasingly interconnecting world, we must move beyond singular theoretical frameworks that either inform us about the phenomenon in a national context, or as an international development tool (Humphreys, 2010). Laws within nation-states are not only shaped by the dynamics of the local community (Silbey, 2005); they are also susceptible to influences from the outside. Legal concepts, standards and expectations now travel easily from international to national settings through transnational networks. Global ideas have also come to “saturate daily life” (Goldbach, 2019, p. 594) in local settings (Eslava, 2015). Holding to a socio-legal framework that focuses on law and actors in context; or comparative law that investigates the dynamics of legal transfers; or transnational law that engages with the formation and the movement of international norms, as standalone theories cannot fully explain how distinct norms, practices and institutions are transferred to specific contexts under the umbrella of rule-of-law reforms; and the divergent legal and social changes that are set in motion consequent to such transfers. First, we need a theory that explains what rule of law as a norm on the ‘move’ entails: what normative ideas associated with the rule of law move easily cross-jurisdictionally; what practices are involved in moving rule-of-law ideas across borders; what roles do international and local actors take in transferring and receiving new norms in a globalising world (Kalinic, 2015; Twining, 2004; Nelken, 2010, pp. 71-87; Golbach, 2019); what kinds of reforms are they able to bring; and, more importantly, how do they enable those transferring and receiving reforms to adapt to desired changes? Therefore, to study what happens when transnational actors transfer rule-of-law aspirations to a local context, we need a research paradigm that allows us to ‘observe’ and ‘comprehend’ the dynamics that are at play at the local, national and international levels. Keeping these points in mind, I address the theories that inform my research design in the following sections.

I. The rule of law as a concept on the ‘move’

The rule of law is a contested concept (Waldron, 2002). Moving away from its association with the law and politics within nation-boundaries, the rule of law has instead come to represent a set of normative ideas associated with how legal systems ought to operate in a society (Johnson Phillips,

2009). Furthermore, as a norm on the ‘move’, the rule of law is a ‘global script’, promoted and institutionalised within and through transnational organisations (Taylor, 2016). Asserting that the rule of law on the ‘move’ is a set of “unified” normative standards and institutional arrangements is a *deviation* from the arguments made in many contemporary studies where the authors argue that there is no consensus on the conceptual, normative and institutional arrangements associated with the rule of law even amongst the “rule-of-law practitioners” (see Santos, 2006; Evers, 2010; Grasten, 2016; Leach, 2021). I do not contest the findings in the above-mentioned studies that demonstrate the divergent views held by rule-of-law practitioners and local stakeholders on what is meant by the term rule of law, its functions or purposes. Rather, my claim is that despite the divergent views there is a broader consensus on certain general aspects associated with the rule of law. As a travelling norm, the rule of law carries with it a set of rationales and idealisms of the authority of state-based laws and institutions as the legitimate instruments for tackling arbitrary power and for pursuing rights and justice. As Simion points out, the rule of law may have “competing definitions...[however] we find features of a model among these shattered elements that inform the work of rule of law practitioners active in the development field...” (Simion, 2021, p.52). The presence of global governance institutions, international treaties, conventions, best practices, legislative guides, and model laws has consolidated the ‘shattered elements’ of the rule of law at the transnational realm. It is also through these “soft technologies” that the rule of law as a travelling norm has gained its authority as a legitimate aspiration of all societies (Simion, 2021, p.30-53). As a result of the transnational momentum, idealisms attached to state-based legal institutions and laws as the main tools for tackling arbitrary power and providing justice in a society have settled globally (Block-Lieb and Halliday, 2017; Halliday and Shaffer, 2015b; Rajah, 2015).

Therefore, unlike the studies on the rule of law that aim to examine what the phenomenon is, or the status of the phenomenon in particular contexts (see Chapter III), my study approaches the rule of law as a ‘norm on the move.’ Consequently, I engage with a different set of questions in my research. I examine how distinct theories and ideas associated with the rule of law have now come to shape externally-led social and legal reform policies, what they do in settings where they are applied, and how they influence change – these are some of the questions I pursue in this research. Studying the rule of law as a norm on the move also signifies the limited conceptual, theoretical and normative movement across national borders. It also enables us to observe the role and agency of individual actors, organisations, groups, who are involved in transferring and receiving rule-of-law reforms (Simion, 2021). Moreover, studying the rule of law as a travelling

concept facilitates the examination of how transferred norms, and institutional arrangements affect the local settings where they are implemented (Berger, 2017).

In the sections below I unpack how I conceptualise the rule of law as a travelling norm for the purposes of my research. I explain why it is necessary to separate the normative discussions on the rule of law from the rule of law as a ‘norm on the move.’ As a concept on the ‘move’, the rule of law is a set of principles and normative aspirations for tackling arbitrary power through law; it is also a tool for bringing social and legal change in societies where local realities do not align with the transnational rule-of-law aspirations. A study that examines what the rule of law as a travelling norm does in a particular setting, therefore, must disentangle how transnational rule-of-law aspirations can be ‘translated’¹⁵ to a particular setting to bring about desired changes: i.e., adapting state-based legal institutions that can constrain and enmesh sources of distinctive arbitrary power in a society.

i) The rule of law as a ‘travelling’ concept

As concepts travel, not all aspects associated with it travel well (Twining, 2005). Usually, the rule of law is discussed as a core criterion of all national legal systems, where there are guarantees for separation of powers and there are fair, just and equal laws (Dicey, 1982; Thompson, 1975; Fuller, 1964). Lawyers and political philosophers, who have dominated the discussions on the rule of law, give ‘thin’ and ‘thick’ conceptions of the phenomenon. The ‘thin’ definitions of the rule of law point to any legal system’s essential institutional and legal criteria (Rawls, 1971; Raz, 1979; Fuller, 1964). In contrast, its ‘thick’ definition includes what law ought to pursue in a society (Sunstein, 2001; Hayek, 1944; Gowder, 2016; Bedner, 2010; Palombella, 2009; Krygier, 2009). In its ‘thin’ form, Rawls defines the rule of law as a formal justice. He writes that the rule of law is “simply the conception of formal justice applied to a legal order or system” (Rawls, 1971, p. 235), which is addressed to rational persons “to [regulate] their conduct and [provide] a framework for cooperation” (Rawls, 1971, p. 235). In contrast to Rawls, Raz points out that the moral content of the law is as important as the formal aspects. Accordingly, Raz incorporates eight principles that are fundamental to the rule of law. He writes that laws must be prospective, open and clear; laws must be stable; there should be transparent law-making processes; an independent judiciary; laws must represent natural justice; courts must be accessible and vested with the powers of judicial review; and finally, crime-preventing agencies must limit their roles to the confines of the laws

¹⁵ Anthropologists who have studied ‘global’ norms in ‘local’ contexts resort to ‘translation’ as the term to describe the varied strategies (Levitt and Merry, 2017) and reinterpretations (Berger, 2017) carried out by the actors who are in the ‘middle’— transferring and receiving ‘global’ norms.

(Raz, 1979, pp. 214-18). Fuller (1964) gives us an alternate list for the rule of law to exist. He writes that laws must be general because the rules must be clear in specifying what kinds of behaviour are prohibited or permitted. Laws must be publicly accessible, prospective, and clear, as they are all crucial for people to identify what laws prohibit, permit and require. Fuller adds that laws must be non-contradictory, that they should not ask for the impossible from the citizens and should not be incongruent. To conclude, Fuller emphasises that laws in the books and how officials apply the laws should be the same for the rule of law to exist. In contrast to these ‘thin’ definitions, the proponents of the ‘thick’ conception argue that the rule of law pursues more significant ends. Hayek (1944) writes that having clear, predictable and stable laws is not enough to attain the rule of law. He emphasise that laws must be able to uphold liberal principles of freedom and equality. Sunstein (2001) adds that there must be a democratically elected legislature that passes laws according to the procedures of a democratic constitution. Others suggest equality (Gowder, 2016), freedom of speech (Rajah, 2012), tempering arbitrary power (Krygier, 2009a; Bedner, 2010; Rajah, 2015), protection of private property (de Soto, 2002; Bedner, 2010), or liberty (Palombella, 2009) as the ends of the rule of law. These debates on the ‘thin’ and the ‘thick’ aspects of the rule of law remain vested in establishing the normative and substantive aspects that *ought* to be pursued under the umbrella of the rule of law.

In contrast, we can observe that the rule of law on the ‘move’ does not include all these ‘thin’ and ‘thick’ elements as a set of theories and ideas that inform and guide the practice of rule-of-law practitioners. This is because as a norm that travels to different settings, normative ideas and aspirations attached to the rule of law must ‘fit’ diverse contexts and realities (Twining, 2005; Trebilcock and Daniels, 2008). Consequently, the theoretical and normative discussions that I mentioned above on the rule of law continue to target the rule-of-law industry at the international level with the hopes of re-shaping the policy and practice of rule-of-law reforms (Trebilcock and Daniels, 2008). However, as an instrument for guiding transnational rule-of-law initiatives for bringing social and legal change in particular settings, the rule of law’s theoretical and normative boundaries are drawn narrowly (Twining, 2004).

If we disentangle rule of law as a global script, we can see that the ‘thin’ aspects – the legal and institutional arrangements – have diffused widely (Trebilcock and Daniels, 2008); while the “thick” substantive elements have found sustained resistance, as they continue to be perceived as value-laden (Twining, 2005). For example, countries which have distinct political and legal traditions – like China with one political party, or Saudi-Arabia with sharia laws as state laws – consider pursuits

of freedom of speech, democracy and even human rights as liberal agendas wrapped in the guise of neutrality and universality (Sandel, 1998; Barry, 1990). Notwithstanding the limitations in finding support for “thick” elements of the rule of law, one issue has found a global consensus: constraining arbitrary power. Abusing power, where a corrupt or capricious leader or group decides contrary to the majority’s interests, has historically invited instability, disorder, and chaos. Observing this, Krygier (2016) notes, no society – irrespective of its political, social or cultural differences – can tolerate abuse of power where an individual or elite group uses their positions to benefit themselves.

Rajah (2015) provides some background context on how the above standard of tackling arbitrary power through state-based legal institutions has emerged transnationally as a problem that needs to be tackled through law. She notes post-cold war era politics, and the subsequent transitions of Eastern European states played a pivotal role in shaping the normative contours, the social and cultural expectations attached to the “transnational rule of law order” (Rajah, 2015). In addition, Newton (2006) also points out that the engagements of multilateral/bilateral organisations like the UN, the World Bank and USAID in Latin America and Eastern Europe have further shaped the conceptual boundaries of the rule of law. These historical and political moments have impacted the formation of transnational rule-of-law aspirations to a cluster of legal attributes, with its core concerns being arbitrariness, authoritarianism, the rule of lawlessness in politics and markets (Halliday and Shaffer 2015a, p. 10).

ii) The rule of law as a travelling concept in particular settings

As I noted above, the rule of law as a travelling norm is a set of normative ideas and aspirations to address arbitrary power through law. As a norm that is taken to particular settings, it guides policies and reforms that are targeted at transforming existing practices, attitudes, behaviours and institutional arrangements for tackling abuses of power in a society where they are perceived as ‘weak’. While at the ‘global’ level, discussions on the rule of law must remain abstract and formal enough to find legitimacy and authority in varied social, cultural and political settings (Stinchcombe, 2001), but when it is taken to ‘local’ and ‘national’ settings, these abstract normative ideals and aspirations must be translated to actionable policies, legal and institutional arrangements that enable ‘localising’ transnational rule-of-law aspirations locally.

The philosophical element of the transnational rule-of-law aspirations – tempering arbitrary power (Krygier 2001; 2009a; 2011; 2016; 2017) – and the ‘legal’ elements – clear, predictable and stable

laws and an independent judiciary (Twining, 2005; Adams, Meuwese and Ballin, 2017a, pp. 3-33; Trebilcock and Daniels, 2008) – travel without any issues to diverse settings. But the social element of tackling arbitrary power must be unpacked in relation to what constitutes arbitrary power in a particular context; how law can constrain that power; and what limitations and challenges exist locally that hinder the full normative application of the law. This is because, power is an “endless process of social construction and deconstruction, always caught in a precarious balance between the reproduction of the social structure and the transformation of the social structure” (Castells, 2016, p. 2). And power configures the foundations of interpersonal relationships and the dominant interests of institutions in the society (Castells, 2016). Those who hold dominant positions can use their power to permeate all dimensions of human activity and perpetuate patterns of social conduct. This helps them survive by institutionalising their power through laws and institutions. Who has the power, therefore, can determine the configurations of dominant institutions and the limits of its operations in a particular setting.

As a travelling norm, rule-of-law reforms follow the Weberian bureaucratic rational legal authority as the main end goal. The generalised framework that guides policy and reform decisions of rule-of-law practitioners identify government and government officials as the common sources of arbitrary power (Dicey, 1982; Fuller, 1964; Raz, 1979; Tamanaha, 2004; Rajah, 2015; Halliday and Shaffer, 2015b). Or it is assumed that arbitrary power in a society would be exercised through state-based legal and political institutions (Roxborough, 2012). In post-conflict settings where rule-of-law ideas and theories often travel to as part of state-building initiatives, they aim to set new rules of the game in the society where power usually is exercised outside of the state-machinery. However, despite the varied realities of the contexts where the rule of law as a travelling norm reaches, rule-of-law reform documents identify *three kinds* of abuse of power that it aims to tackle. Krygier (2019, pp. 762-763) summarises them to be:

- i) when those who hold, power are not subjected to regular control or accountability;
- ii) when those who hold power act unpredictably.
- iii) when those who hold power make decisions that impact others, and the people who are impacted are denied the means to question the decision.

Issues like ‘telephone justice’ – where the judiciary and the bureaucracy were perceived to be under the influence of the top Communist Party officials in ex-soviet states (Carothers, 1998; Krygier and Czarnota, 1999) – political interference into judicial appointments (Hammergren, 1998; 2014), non-compliance with judicial decisions and legal provisions (Adams and Janse, 2019); and

corruption (Twining, 2005; de-Sardan et al., 2008) are often highlighted as examples of abuse of power that fall within the above categories. These identified instances of abuse of power are overt, where a ruling party or top officials fail to restrict their actions in accordance with the law. Here, the officials exercise their decision-making powers in an unpredictable manner. Such overt (ab)use of power is anticipated to be tempered through codified laws and independent judicial institutions. In Lukes (2005, pp. 14-60) theory of power, this is just the “one-dimensional” manifestation of power – where only visible conflicts are addressed (Lukes, 2005, pp. 16-20).

In recent years, a few scholars have brought attention to other distinct ways in which abuse of power can occur. These studies show that a government can (ab)use power through methods other than overt means (Jensen and Heller, 2003; Cheesman, 2018). Scholars highlight that abuse of power can happen through ‘legal’ means, where decision-makers can act within the legal limits but still erode rule-of-law principles. Rajah’s (2012) research in Singapore describes how the government uses law to restrict speech and dissent in the country. Khaitan (2020), in the context of India, meticulously makes a case of how the ruling BJP government is systematically using constitutional provisions to chip away fundamental constitutional values to bolster authoritarianism. Pech and Scheppele (2017) also provide a similar account of a “gradual erosion” of constitutional idealisms in Hungary and Poland through systematic populist policies promoted through amendments and new laws by illiberal government officials.

The abuse of executive power as revealed in Singapore, India, Hungary or Poland cannot be captured if arbitrary exercise of power is observed through a “one-dimensional” lens of power (Lukes, 2005). The studies mentioned above show that decision-makers can abuse their power covertly. In contrast, those in the government can undermine the rule of law through legal means without any observable conflict. For instance, Rajah’s empirical account of the rule of law in Singapore informs us of a government that uses its *authority* and *force* to restrict certain individual freedoms. Highlighting different aspects of how power is abused, Khaitan, Pech and Scheppele engage with how a ruling party/illiberal leaders have used their *influence* (Bachrach and Baratz, 1970, p. 44) to suppress or thwart any latent or manifest challenges to their interests. These scholars show us what Lukes terms a “two-dimensional” understanding of how power works in society (Lukes, 2005, pp. 20-25). They focus on decision-making (Rajah, 2012) and non-decision-making (Khaitan 2020; Pech and Scheppele, 2017) by officials who shape how policy preferences and grievances play out. Through their rich empirical accounts, these scholars show how governments mobilise bias through ‘the rules of the game’. By operating “systematically and consistently to the

benefit of certain persons and groups at the expense of others” (Bachrach and Baratz, 1970, pp. 43-44), Rajah, Khaitan, Pech and Scheppele show how those in power establish predominant values, beliefs, rituals and institutional procedures.

As we move across different social contexts, we can also observe that power, and arbitrary use of power can also emerge from different sources (Krygier, 2019). Aside from ‘political’ sources, traditional leaders (Grenfell, 2013), charismatic figures (Mommsen, 1997; Eatwell, 2006; Schram, 1967) or even multinational corporations can influence institutional agendas, including setting the normative limits of the rational legal system. In their recent paper, Mehmood and Seror (2021) provide another example of religious leaders leveraging their positions to influence courts. Therefore, societies where rule-of-law aspirations are transferred to may have distinct sources – individuals and/or groups – that hold excessive power, and whose power work even in ‘intangible’ ways. As Lukes writes that the most pernicious (ab)use of power arises when the powerful make the ordinary people and officials “accept their role in the existing order of things, either because they see it as natural and unchangeable” (Lukes, 2005, p. 28). In such instances, people can act in ways contrary to their interests, without influence or coercion from those abusing their power. Here, power is not just the ability to prevail over others in conflict of interests, but it also sets the agenda of what such conflicts are about when those who possess power secure dependence, deference, allegiance, or compliance, even without needing to act (Lukes 2005, pp. 25-28). Lukes categorises such (ab)use of power as “three-dimensional”: where power operates in intangible ways and there is no covert/overt conflict. Lukes reminds us that the exercise of power can be invisible, where it does not have to be positive, planned, targeted or managed actions by the powerful. Instead, it plays out in ways where it can stop ordinary people from having grievances in the first place by “shaping their perceptions, cognitions, preferences in such a way that they accept the role in the existing order of things” (Lukes, 2005, p. 28). Charismatic leaders, religious figures, and political organisations, for example, can use their influence in these ways to shape perceptions among their supporters and can impact the normative limits of law.

Especially, in post-conflict settings such as East Timor, where power and its arbitrary use are not yet fully managed through state-based laws and institutions, the rule of law as a travelling norm aims to guide reform initiatives that tackle these weaknesses by transforming the existing system to withstand incursions from different sources who wield power. Therefore, examining the rule-of-law as a traveling norm and what it does in particular contexts need a broader theoretical approach that captures a range of varying sources of arbitrary power as well as how those in

decision-making positions (*inside/outside* of the government) interfere with the laws and institutions. Only a broader theoretical understanding based on sociological insights of how arbitrary power works and operates in different contexts can inform us whether norms, laws and institutional arrangements that are transferred as part of transnational rule-of-law engagements can actually temper power, or whether the sources of arbitrary power continue to remain outside the limits of law, thus restraining transnational rule-of-law aspirations to fully take hold in specific contexts. Following from the above observations, I cast a wide-net approach to inquire into potential sources of arbitrary power and how abuse of power transpires in East Timor. I analyse how sources (*outside and inside* of the government) use power to reconfigure and reshape the normative limits of laws and institutions, and their impact on the rule-of-law adaptation locally.

II. Transnational Legal Ordering (TLO) theory and the role of transnational actors

The TLO theory provides an overarching theoretical framework for this project. It allows to place internationals, nationals and local actors in the same analytical frame. With the “settling” of perceived problems and standards at the international level, TLO theory proposes that transnational networks transfer mechanisms and tools to tackle the identified problem in national and local settings (Halliday and Shaffer, 2015a). Consequently, by applying the TLO theory to transnational rule-of-law promotion we can identify that the rule-of-law experts, technocrats at bilateral and multilateral institutions, INGOs, and local civil society members act as channels for transferring and receiving transnational standards. They communicate, network, and share norms and ideas for re-orienting “social expectations and behaviour” (Halliday and Shaffer, 2015a, p. 7). Thus, TLO theory allows us to examine the roles of actors who are beyond nation-states, and within the boundaries of nation-states, promoting new standards of acceptable use of power and transferring/receiving technical and institutional support to tackle any deviations (Halliday and Shaffer, 2015a, pp. 475-52.). These actors rely on a range of ‘soft’ mechanisms to nudge governments and targeted societies to adopt and adapt to changes. Rule-of-law indicators (Urueña, 2015), capacity building efforts (Heupel, 2012), trade tariffs (Halliday and Osinsky, 2006), aid conditionalities (Pahuja, 2011), technical exchanges (Slaughter, 2000), and periodic committee monitoring at international organisations (Kruckenberg, 2012) are ways through which they set in motion a momentum of change. Therefore, unlike comparative scholarship that has studied legal transferors and recipients as entities ‘distanced’ from each other or in opposition, TLO theory sees their experiences and interests as reciprocal. This theoretical shift opens new possibilities to study how people who are genuinely invested in bringing rule-of-law changes can progress in their efforts.

i) Transnational rule-of-law engagements and norm change in particular settings

Since the research question focuses on what changes transnational actors bring through legal transfers, and the role of transnational actors in bringing those changes, it is pertinent to explain how these aspects are understood in this research. As pointed out at the beginning of this chapter, social change through law is not just confined to the dynamics of local settings. Rather, internationals and local stakeholders can engage in ways that can advance or slow changes (Nelken, 2001). At the same time, social change in particular settings is dependent on local realities (Sztompka, 1993). To study social change facilitated as a result of transnational rule-of-law engagements, we need a theoretical framework that allows us to observe how transnationally induced social change happens while simultaneously taking note of the sociological dynamics of change within a context. Keeping these points in mind, I understand the role of international actors in bringing changes, and what kind of changes transpire as a result of their initiatives as follow:

ii) Role of international actors bringing social change

Scholars who have engaged with the role of international actors bringing social change through legal transfers have either taken a pessimistic or an optimistic stance. Within comparative scholarship, Legrand (2001) observes, internationals cannot transfer “legal epistemes”: meanings and functions of law to different contexts. Legrand (2001) emphasises that laws are products of particular legal cultures.¹⁶ Gillespie and Nicholson (2012), in an ethnomethodological study on rule-of-law transfers in Vietnam, note that the Vietnamese recipients reinterpreted and reshaped the transferred laws and institutions according to local demands (Gillespie and Nicholson, 2012, p. 5). They argue that such reformulations and retranslations make it impossible for internationals to bring intended changes on the ground.

In contrast to these observations, international relations scholars are optimistic that transnational networks can bring changes through their initiatives. According to world society scholars, the diffusion of ‘universal’ norms has made it impossible for nation-states to stay indifferent to international norms. They observe that a state’s international reputation, business interests, and trade opportunities hinge on whether it can demonstrate to other states that it is a trustworthy party that will comply with the internationally set normative standards (Boyle and Meyer, 2002).

¹⁶ Note that Legrand’s concerns are more associated with the limitations of transferring meanings and functions of laws than about variations in legal culture, which have been the concern of sociology of law scholars.

Finnemore and Sikkink (1998) theorise this process as “cascading”. They note that once dominant norms emerge at the international level and powerful INGOs and multilateral and technocratic institutions back them, these norms eventually ‘cascade’ to domestic settings, either in response to international pressure or a domestic coalition pressing for change. Then, professionals situated inside and outside nation-states who subscribe to transnational values can push for the internalisation of the norms within the domestic setting (Finnemore and Sikkink, 1998).

In line with Finnemore and Sikkink’s observations, Risse et al. propose a “spiral theory” of how internationals situated outside the national setting can bring changes locally (Risse, Ropp and Sikkink, 1999). According to Risse et al., norm change happens through five stages, and that too “spirally”. The first step involves “repression and activation of networks”, which informs international actors about a norm violation (Risse, Ropp and Sikkink, 1999, p. 22). It is then followed by shaming the repressive state. In a state’s ongoing “denial” to recognise human rights norms, internationals double their efforts to open channels for dialogue between the offending state and the international community (Risse, Ropp and Sikkink, 1999, p. 22). The state is then asked to make “tactical concessions” and show (relatively) greater tolerance for public demonstrations and human rights claims, which eventually strengthen the local civil societies (Risse, Ropp and Sikkink, 1999, p. 25). Such concessions allow space for local pressure groups to become stronger, setting in motion a “boomerang” effect calling on the repressive state to ratify international human rights standards (Risse, Ropp and Sikkink, 1999, p. 29). Eventually, the close engagements between the transnational and local community lead to “rule consistent behaviour”, where internationally prescribed norms (human rights in Risse, Ropp’s and Sikkink’s edited collection) are ‘successfully’ adopted by the targeted state (Risse, Ropp and Sikkink, 1999, p. 31).

Considering these observations, some legal scholars also conclude optimistically that the interconnecting linkages among lawyers, activists and judicial actors beyond national boundaries are leading towards a ‘shared global legal culture’ (Husa, 2018; Shetreet and Forsyth, 2011; Slaughter, 2000). A global legal culture, where a common set of principles, attitudes and normative standards govern the relations and interactions between systems of law, the state and ordinary citizens (Goodwin, 2012;¹⁷ Walker, 2014).

¹⁷ Goodwin gives the example of an individual asserting individual rights in a local context., she notes whether before a juridical court or a traditional forum, whether or not an individual refers to a human rights document or constitutional jurisprudence from another system, they are asserting their right. Goodwin writes, “[b]y simply asserting a right, this individual, consciously or not, is speaking to the history and sociology of rights talk, and it is that makes it an instance of “global law.”

Such pessimistic and optimistic accounts of the role of international actors in bringing social change within local settings concentrate on dynamics at different levels. Those who are pessimistic about social change through legal transfers (Legrand, 2001; Gillespie and Nicholson, 2012) pay more attention to the local realities, whereas the optimists are more attentive to the dynamics at the international level. Keeping their focus either at the local or international level, the highlighted scholars above theorise the role of international actors as detached from the local contexts.

However, a few scholars in recent years (Simion, 2021; Berger, 2017; Hithcock, 2017; Merry, 2006) have demonstrated that internationals and the locals engage in the same space, often working together and translating global aspirations into local realities. These scholars show how external actors can influence the trajectory of reception and adaptation of legal norms in particular settings. Halliday and Shaffer's transnational legal ordering theory (2015a) provides (to an extent) a nuanced understanding of changes that can happen through transnationally initiated legal transfers. Halliday and Shaffer define "settling" as a "common understanding of the meaning in the texts that are promulgated by international and transnational organisations" (Halliday and Shaffer, 2015a, p. 43). The authors theorise that settling" happens at two different levels: international; and national/local levels.

Halliday and Shaffer hypothesise that once a dominant norm is taken to local settings by powerful multilateral and bi-lateral actors like the UN, INGOs and other international institutions, these norms will face contestations, conflicts and recursive struggles. They further theorise that when the transferred dominant norms "closely align" with the problems at the local level, they are more likely to settle (Halliday and Shaffer, 2015a, p. 51). Sometimes, the transferred norms find it hard to "settle" because competing normative orders exist locally, such as tradition or religion (Halliday and Shaffer, 2015a, p. 51). According to Halliday and Shaffer, despite the possibility of contestations and conflicts that can happen at the local setting when a new normative order is introduced, they hypothesise that often the dominant transnational norms backed by powerful actors emerge successfully without too many substantive changes. They add that "settling" can have possible variations with some levels – institutional and social – "more settled" and others "less settled" (Halliday and Shaffer, 2015a, p. 43, 52).

In all these accounts, norm change through transnational networks is portrayed as a *linear* process where norms trickle down from international to national and local levels. Although Halliday and

Shaffer move forward from world society and international relation theorists by providing an alternate conceptualisation of recursive engagements between those situated locally and internationally, they limit their analysis to explaining the journey of transnational legal orders from international to local contexts.

The TLO theory to a large extent, overlooks what actually happens on the ground: where international, national and local actors engage and influence each other to adopt and adapt to new normative standards. This limitation of Halliday and Shaffer's TLO theory is intrinsic to the purpose for which it was conceived. Halliday and Shaffer's TLO framework is for studying the increased movement of legal orders globally. Their research agenda,¹⁸ and that of the scholars who followed their framework, has been to demonstrate how transnational legal orders are constructed (Genschel and Rixen, 2015; Ivory, 2020), dismantled (Payne, 2015), and enforced (Merry, 2015) in different settings, rather than engaging with how transnational normative orders induce changes on the ground.

To overcome the limitations of the TLO theory, I understand the variations in “settling” of transnational normative orders at the “legal, institutional and attitudinal levels” (Halliday and Shaffer, 2015a, p. 43) as differences in “legal change”/“legal adaptation” and “social change”/“social adaptation”. These distinctions are necessary to observe and analyse the simultaneous and asynchronous nature of changes that happen within the legal and social system, and how they influence the boundaries of law (Nelken, 2001). Sometimes transnational initiatives can lead to the adoption of new laws and institutions, but the norms, attitudes and behaviours of lawyers, judges and court clerks might not have transformed (Nicholson, 2007). Or it could be that legal adoption and changes within the legal field may have happened, but the public at large has not fully adapted to the new norms (Harding, 2007).

Furthermore, adapting to transnational normative expectations requires substantial changes at different levels of society. Lawyers, citizens, and officials need to re-shift and re-align from “established ways of life, rules and laws” (Sztompka, 1993, p. 270) to seeing and observing certain acts as problematic. So, changes can be asynchronous, as awareness of new standards percolates to different levels of the society. Sometimes changes can happen swiftly due to social mobilisation, political and cultural transitions, or demands from smaller, narrow pockets of social groups in a

¹⁸ However, the authors seem to recognise that there are broader empirical questions that can be pursued under the TLO framework, see Halliday and Shaffer (2015b, pp. 475-524).

society (Sztompka, 1993, pp.1-24, 274-296), but often changes are gradual and incremental (Kurkchian, 2002).

Observing changes as *fluid* allows us to note that sometimes a society can have ‘positive’ changes when it is moving towards desired ends, or it could be a ‘regressive’ change (Sztompka, 1993). In referring to ‘change’, I acknowledge that change is never static or one-directional. It can be either progressing or regressing change— towards or away from the transnational rule-of-law aspirations. Whether or not the transnational engagements have initiated and directed a society towards desirable changes needs to be empirically captured. Therefore, internationals and local stakeholders can engage in varied ways to bring about reforms. What matters is to tease out what kind of changes have been set in motion, and whether they are desired changes.

Therefore, in this dissertation, when I refer to ‘successful change’ brought about by rule-of-law initiatives, what I mean is that transnational engagements have assisted a society to progress towards the transnational rule-of-law aspirations to curb arbitrary power through ‘legal’ solutions. Different societies may need varied forms of support to tackle abuse of power, and this needs to be contextually analysed: who wields power in a society, how do they use that power and in what ways laws and the legal institutions fail to tackle it, are all relevant aspects that determine the extent of adaptation of transnational rule-of-law aspirations locally. When transnational engagements are not aiding in addressing arbitrary power, then a society is undergoing a negative change. Applying the above theoretical lens, I study the role of transnational actors in strengthening the rule of law in East Timor. I gather evidence of gradual, incremental transformations. How judges handle cases that involve abuse of power, how civil society members rely on legal provisions to point out deviations from legal standards, or how ordinary citizens demand accountability through the laws, as units through which changes on the ground, can be observed.

Conclusion

In this chapter, I have discussed the theories that guide my research design. I argued why we need to move beyond a singular theoretical framework for explaining what happens when transnational norms enter local settings. I also engaged with why we must reflect on the rule of law as a norm on the move, and the implications of studying the phenomenon in particular settings. Finally, I highlighted why we need to pay attention to the insights from sociologists who have drawn our attention to the fluid nature of change. Thus, I made a case that to construct a realistic framework that facilitates us to gather evidence of what actually happens on the ground as a result of

transnational rule-of-law exchanges, we need to observe and analyse the experiences of the transferors and the recipients in the same space who are genuinely working towards improving the rule of law.

CHAPTER III:

THE RULE OF LAW, RULE-OF-LAW PROGRESS, AND THE ROLE OF RULE-OF-LAW PROMOTERS IN CONTEXT¹⁹: LITERATURE REVIEW

Amidst this host of new uncertainties, there appears to be widespread agreement, traversing all fault lines, on one point, and one point alone: that the “rule of law” is good for everyone... support for the rule of law is not exclusive to the West... It has been endorsed by government heads from a range of societies, cultures, and economic and political systems... Notwithstanding its quick and remarkable ascendance as a global ideal, however, the rule of law is an exceedingly elusive notion.

(Tamanaha, 2004, pp. 1, 3, 4)

In this chapter, I review academic literature and other documents that study the rule-of-law, rule-of-law promotion, and the role of rule-of-law promoters in different societies. At the outset, I point out three dominant trends that emerge from the highlighted strands of scholarship. First, scholars who have studied the rule of law in specific contexts disagree on the conceptual starting points of the phenomenon. Second, the methods used for data collection and the data that is gathered to explain whether the rule of law exists in a society vary between studies. Third, academic and policy evaluations on the rule of law in particular contexts diverge because of varying definitions and evidence used by researchers, who draw their research design on different theoretical bases. Overall, I point out from the literature review why it is necessary to study the transnational rule-of-law promotion in context.

The first section of the chapter provides a review of scholarship that examines the status of the rule of law in particular contexts. While reviewing this strand of academic literature, I paid attention to how researchers have conceptualised the phenomenon and the methods they have used for gathering evidence on whether the rule of law exists on the ground. How other researchers have conceptualised the rule of law reveal the normative and theoretical parameters that are pre-set as part of their research design, and against which, the rule of law in a setting is studied. Furthermore,

¹⁹ The phrases ‘in context’ and ‘in action’ are used interchangeably in this research. Following the discussions from the legal realism movement, I examine how philosophical notions about the rule of law have been represented *within* the legal field, but how law as applied finds relevance in a society. Some scholars have distinguished divergences emerging within both strands (Selnick, 2003), but for the purposes of this dissertation, the terms are used interchangeably to emphasise the entanglements between law, society and the specific contexts in which legal phenomena play out.

examining the methods used for gathering evidence on the rule of law can reveal what aspects of law's authority, functions and purposes are collected to describe the status of the rule of law in a particular context. I show that while the existing scholarship rightly guides our attention to how law operates in reality and why it must be considered in the discussions on the rule of law, they overlook other issues. The scholars take different conceptual starting points to study the rule of law in particular settings. Consequently, their interventions focus on informing us of the typologies of the rule of law in different societies based on 'ideal' rule-of-law prototypes predefined by the authors (Peerenboom, 2003b; Rajah, 2012; Cheesman, 2018).

A few scholars have taken a different approach in studying the rule of law in context. Within this strand, researchers identify certain aspects of the rule of law that are universally applicable, and comparable (similar to how I have approached the current study, see Gowder, 2016). Other suggestions include a grounded-theory approach to study the rule of law from the 'bottom-up' (Cheesman 2015; 2018). In all these iterations, researchers focus more on defining what the concept means; and in their conceptions they approach the rule of law as a phenomenon that is 'static', which exists out there. My research by examining the rule of law as a set of aspirations emphasise that the rule of law is not a static phenomenon, rather it is a set of attitudes, norms and principles that must be continuously maintained. Consequently, my study examines the rule of law as a phenomenon that must be studied within a context: where laws, institutions, officials, and citizens operate; and how officials and citizens rely on laws to move towards transnational rule-of-law aspirations than away from them.

In the latter section of the chapter, I review scholarship on international rule-of-law promotion and its failures and successes. The existing scholarship on the role of international actors in promoting the rule of law identifies such interventions to be failures rather than successes. There are four broad reasons that emerge from this scholarship on why rule-of-law reforms fail: **i)** imposing neo-colonial dynamics; **ii)** overlooking local interests and social factors; **iii)** inability to bring quick substantial changes through law; and **iv)** the impossibility of transferring the same meanings through law. I argue that criticisms **i)**, **iii)** and **iv)** overlook insights from sociology of law scholars on how changes can happen through law, and that while criticism **ii)** takes into consideration the relationship between law and society, it ignores the possibility of change through legal transfers. The rule-of-law promoters within the international organisations articulate 'failures' by tying it to project deadlines and internal policy objectives of the donor organisations. Overall, the existing accounts of transnational rule-of-law engagements evaluate 'success'/ 'failures' of

transnational rule-of-law engagements against different parameters. Their evaluations overlook the long and imperfect journey even countries with established rule-of-law had to take to adapt the desired legal and social changes. Moreover, they fail to take into account what may be required to translate transnational rule-of-law aspirations into concrete social and political reality (Adams et al., 2017, p. 13).

I. Empirical accounts of the rule of law

In the following sections, I review scholarship that has studied the rule of law as a phenomenon that exists beyond the legal texts. While reviewing the academic literature, I consider how researchers have conceptualised the rule of law, what methods they have used to gather evidence of the phenomenon and their conclusions on the status of the rule of law in specific contexts.

i) Qualitative studies on the rule of law

Bringing together ten comparative empirical accounts of the rule of law, Jensen and Heller's edited collection is the first key scholarly contribution that moves beyond the doctrinal discussions on the rule of law (Jensen and Heller, 2003, p. 2). These empirical accounts rely on social research methods to demonstrate how rule-of-law reforms operate on the ground. They explain "what courts and their alternatives actually do; what courts and their alternatives can reasonably be expected to do; and why, when where and how reform interventions can make a difference" (Jensen and Heller, 2003, p. 18).

In studying the rule of law in context, the scholarship that Jensen and Heller bring together demonstrates that legal systems vary from country to country and that they are dependent on social, political, cultural and economic factors. The empirical studies in their edited collection challenge optimisms of rule-of-law promoters who believe in reforming societies solely through legal and judicial reforms. The contributors use empirical accounts to remind rule-of-law promoters that transferring even the best laws and institutions may not be enough in many settings. They emphasise the interconnectedness of law and society and the different resource constraints, as well as the varied trajectories of change that rule-of-law reforms can set in motion in specific contexts.

While Jensen and Heller focus on rule-of-law reforms in practice, other scholars, such as Massoud (2013) and Rajah (2012), have studied the rule of law in particular settings. Massoud studies rule of law in South Sudan while Rajah focuses on Singapore, through ethnographic, archival, and

interview methods. Massoud (2013) relies on archival research and interviews to show that different South Sudanese actors – colonial, NGOs, and current administrators – rely on law, in what is assumed to be a ‘fragile state’, to pursue their diverse interests. Massoud uses his rich empirical data to contest assumptions that incorporating more laws leads to the rule of law. He writes that law-building programmes in fragile states operate on two primary assumptions: firstly, that in these spaces there is no law, and secondly, through foreign assistance and capacity building, states may build up a legal order rooted in the rule of law that assists them in moving from authoritarianism and war to democracy and peace (Massoud, 2013, p. 4).

Massoud demonstrates that repressive regimes fighting civil wars tend to use laws and legal resources quite effectively to their own benefit. He also points out that in such instances, law allows an “illegitimate government to appear more moderate, thereby augmenting its authority” (Massoud, 2014, p. 4). Furthermore, civil society actors can adopt legal tools as strategies to contest their oppression from the bottom up. Massoud, thus emphasises that “law’s normative character is not inherent and should not be taken for granted, [d]ifferent political actors insert their own distinct moral predilections into the law to manufacture a range of tools to build up stability or security” (Massoud, 2013, pp. 4-5). Therefore, he concludes that law cannot be detached from the political systems and behaviours (Massoud, 2013, pp. 4-5). Massoud’s interventions show that addressing who uses the law, how they use it and how they infuse their agenda into law are significant factors to consider while studying the rule-of-law phenomenon in particular contexts.

In a similar way, Rajah (2012) challenges Singapore’s proclamations as a nation-state that follows the Diceyan conception of the rule of law. Using critical discourse analysis of statutory texts, legislation, and political speeches, Rajah argues that Singapore may have a liberal rule-of-law framework for commercial matters, but for civil and political rights, the country is far from the Diceyan rule-of-law ideal. Rajah observes that the Diceyan ideals have been “symbolically captured” (Rajah, 2012, p. 39) through constitutional guarantees of separation of powers, the supremacy of law and equality of all before the law, and institutional governance structures designed to maintain separation of powers and independence of the judiciary. However, on the ground, Rajah points out that the Singaporean government readily appropriates legal forms and procedures to correspond with the interests of the dominant political party. Consequently, citizens are left without meaningful and substantive redress or methods of restraining the state (Rajah, 2012, p. 41). She underscores that even the ‘thin’ rule of law in Singapore “selectively obstructs the public accessibility and general applicability of ‘law’, discards meaningful restraints on state

actors and strategically scripts opaque and uncertain ‘laws’” (Rajah, 2012, p. 42). Thus, she argues that legal instrumentalism cannot be treated as value-neutral and that in the case of Singapore it is impossible to separate law from political motivations.

Massoud and Rajah use their empirical findings to demonstrate that laws alone cannot establish the rule of law, unless those using the law pursue substantive ideals associated with it. They challenge widely held assumptions by political philosophers who have linked the presence/absence of laws that are passed through robust procedures as evidence of the rule of law on the ground (Dicey, 1982; Fuller, 1964; Raz, 1979). Through empirical research in South Sudan and Singapore, these scholars argue that studying the rule of law ‘in action’ through legislation or governance structures does not provide a fair account of what actually happens in a specific setting. Rather, we need to engage with the ways in which those in power use laws and institutions in a particular setting as well as how their interests reshape laws to pursue perverse interests.

ii) Indicators and the rule of law

In contrast to the studies mentioned above, which investigate the rule-of-law phenomenon in particular contexts, indicators on the rule of law attempt to study the phenomenon across different countries. At least seven indicators measure the rule of law in varied settings (Skaaning, 2010). Most of the indicators evaluate the rule of law in relation to economy and democracy (World Bank Governance Index, Bertelsmann Transformation Index), and political freedom and judicial independence (Freedom House Nations in Transit Index, Freedom in the World ranking). Amongst them, two focus solely on the rule of law – the World Justice Project’s Rule of Law Index (WJP’s RoL) and the Vera-Altus Justice Index. These indices are mainly used to compare or evaluate rule-of-law across different contexts (Merry et al., 2015). To identify and gather evidence about the rule-of-law phenomenon, the indicators rely on certain units. I focus on the WJP RoL and Vera Altus Justice indices to understand how they define, measure, and observe the rule of law ‘in action’. While reviewing the two indices, I pay attention to the normative conceptions of the rule of law that underlie these projects and analyse what data is collected to inform us about the rule of law in particular settings.

- The World Justice Rule of Law Index (WJP RoL index)

Urueña (2015) provides a comprehensive summary of how the WJP’s RoL Index conceptualises the rule of law. He notes that the WJP’s RoL index tries to navigate the extremities between the “thick” and “thin” definitions of the rule of law. The “thick” version of the rule of law is defined

as that requiring substantive characteristics such as respect for self-governance and fundamental rights (criticised as Western-centric), and the “thin” definition as requiring only certain formal characteristics of the law, without any normative criteria to evaluate it (Urueña, 2015, pp. 85-86). To dispel the criticism of following too “thick”, Western-centric conceptions or being apologetic to a “thin” understanding of the rule of law, the RoL index breaks down the concept into four principles:

- i) the government and its officials are accountable under the law;
- ii) laws are clear, publicised, stable, and fair; and they protect fundamental rights including the security of persons and property;
- iii) the processes by which laws are enacted, administered, and enforced are accessible, fair, and efficient;
- iv) access to justice is provided by competent, independent, and ethical adjudicators, attorneys or representatives and judicial officers who are of sufficient number, have adequate resources and reflect the makeup of the communities they serve.

Botero and Ponce, the architects of the Index, add that the above four aspects “rotate around the principles that political power must be exercised in accordance with law rather than in arbitrary or self-interested manner and that disputes among private individuals and between them and the Sovereign must be subject to independent adjudication” (2011, p. 5).

In measuring the value, the Index attempts to capture the “law in action” contrary to the “law on the books” (Botero and Ponce, 2011, p. 108). The RoL index measures all four factors through certain sub-factors from two perspectives: **a)** a general population poll conducted by local polling companies using a sample of 1,000 respondents; and **b)** expert polls in civil, commercial, criminal, public health, and labour law, which are run yearly (Botero and Ponce, 2011, pp. 14-15). The respondents are asked a set of questions and scores are given to answers, which are then attributed to one or several subfactors of the RoL index. The average of such scores is calculated with a weight of 50 percent given to both the expert opinions and poll results (Urueña, 2015, p. 82). The subfactors are then aggregated to form a score for each factor, which is added to create scores for each principle.

For instance, to measure whether the government, its officials and agents are accountable under the law (**principle 1**), the principle is broken down into **factor 1**: limited government powers. To gather evidence as to whether the government powers are limited through the legislature, the general population is given hypothetical vignettes, one of which is:

Please assume that one day the President decides to adopt a policy that is clearly against the [COUNTRY] Constitution: How likely is the National Congress/Parliament to be able to stop the President's illegal actions?

(Botero and Ponce, 2011, p. 39)

While the experts are asked whether:

- i) The President, Prime Minister of (Country) rules without regard to legislative checks
- ii) The Government's power is not concentrated in one person, but distributed amongst different branches, for instance, the President or the Prime Minister, the Congress or Legislative Body and the Judges
- iii) Opposition parties can freely express opinions against government policies
- iv) Opposition factions within the dominant party can freely express opinions in public without fear of facing substantial negative consequences

(Botero and Ponce, 2011, p. 39)

Similarly, to measure whether the judiciary can effectively limit government powers, the general population is again given a hypothetical vignette:

- i) Assume that one day the President decides to adopt a policy that is clearly against the (Country) constitution: How likely are the courts to be able to stop the President's illegal action
- ii) According to you, most judges decide cases according to: What the government tells them to do/what powerful private interests tell them to do
- iii) Assume that a government officer makes a decision that is clearly illegal and unfair and people complain against the decision before the judges, in practice how likely is that the judges are able to stop the illegal decision?

(Botero and Ponce, 2011, p. 39)

While the experts are asked whether:

- i) The Government's power is not concentrated in one person, but distributed amongst different branches, for instance the President or the Prime Minister, the Congress or Legislative Body and the Judges
- ii) The government obeys decisions by the court even when they disagree with the decisions
- iii) How the judiciary operates a) When legal questions or possible violations are raised, the judiciary reviews executive actions and uses its power to declare government actions illegal or unconstitutional b) the judiciary reviews executive actions, but is unwilling to take on politically sensitive issues and/or limited in its effectiveness c) The judiciary does not effectively review executive policy d) Don't know/NA
- iv) The national courts are free of political influence in the application of power
- v) Lack of independence of the judiciary from the government's power
- vi) Of all the cases in which the government had an interest as a litigant or third party in what % of them did the government exercise undue influence to affect the outcome of the case

(Botero and Ponce, 2011, p. 39)

Substantively, as we can see above, the vignettes provided by the Index maps arbitrariness of power emerging from the executive/legislature. It also inquires whether the three branches follow the conventions attached to the separation of powers. All these details are sourced from opinion polls of the public and experts. As Urueña (2015, pp. 87-89) points out, the Index relies on the

opinion of the public and the experts as ‘facts’ of equivalent importance. The architects emphasise that giving equal weightage to public perceptions and expert opinion is a reminder:

not to trust formal expression of the rule of law (“law on the books”), and neither [...] data describing how the justice system [...] works (for example, number of courts, judges, prosecutors, or number of days to have a conviction).

(Urueña, 2015, p. 87)

This is how the Index attempts to study the rule of law as a ‘living’ phenomenon in a society. Furthermore, as Urueña points out, overall, the WJP’s RoL index has a descriptive and normative role. It is descriptive, because the Index shapes how the respondents think of the rule of law within their immediate setting by collecting certain ‘facts’ about the law and institutions within a context. And the Index is normative because the WJP, through identifying specific principles, factors and sub-factors, has set the criteria for what it means to adhere to the rule of law globally (Urueña, 2015, p. 88).

Conceptually (see example survey questions mentioned above), the sub-factors for principle 1: accountability of government, is defined as separation of powers between the three branches of the state. The Index architects assume that the legislature, judiciary, and the executive function with similar degrees of independence from each other in all modern societies. Asking the general population whether a President can get away with a policy that is illegal, the question maps perceptions of ordinary citizens as to how far they think that their Parliament can act separately from the President. As for the experts, their evidence assists in providing data on the legal and institutional facts. Thus, the architects of the RoL index define principle 1, based on certain assumptions of an ideal prototype society where abuse of power by the governmental and private entities can be restrained through the legislature and the judiciary. These vignettes cannot capture the rule-of-law phenomenon as conceptualised in societies where political power is in flux and the legitimacy of the institutions have not been fully settled.

Urueña (2015, p. 86) also points out that despite the claims from the WJP RoL index’s architects, the Index still carries with it notions of “liberal legalism” (Trubek and Galanter, 1974, pp. 1071-1081). This means that a “legal system is an integrated purposive entity which draws on the power of the state but disciplines that power by its own autonomous and internally derived norms. With some slippage and friction, the Index assumes that social behaviour is aligned with and guided by legal rules and that behaviour can be consciously modified by appropriate alternations of these rules” (Trubek and Galanter, 1974, p. 1072). Thus, the Index measures whether a society is

adhering to this liberal rule-of-law ideal. Where it is not, it indicates how far a society is *deviating* from those ideal standards incorporated as part of the indices design.

In contrast to these assumptions, in different social settings, there could be instances where those cases against the political party in power may not even arise as a problem for the legal system to tackle at any level. As Nicholson (2007) demonstrates, in her study on Vietnamese courts, cases that involve the interests of the Communist Party are never addressed before the courts for resolution. Nicholson explains that the Vietnamese judges, like their Chinese counterparts, prefer to leave political issues to be resolved by the Party while exercising their independence extensively for commercial and private matters (Nicholson, 2007; Gillespie and Nicholson, 2012). Although this is a challenge for the rule of law, the WJP's RoL index would not be able to gather data on the deference of judicial actors to the Party.

Furthermore, gathering evidence from population polls cannot always provide a full picture of the rule-of-law reality on the ground, unless those gathering data reflect on where and from whom the data is collected. An example of this can be seen in India: in 2019, when Modi's government amended the Citizenship Act that targeted Muslim minorities in alignment with the ruling party's Hindu nation policy (BBC, 11 December 2019), the Parliament and the judiciary carried out their duties in accordance with the constitutional provisions. However, they failed to stop the amendment (Human Rights Watch, 9 April 2020). Although there was widespread condemnation from human rights lawyers and activists against the government's policies, a large section of the population backed the government (Evans, 5 August 2021). For many supporters, the government's actions were not contrary to the Constitution or the rule of law, despite the amendment undermining secular principles enshrined within the Constitution. Therefore, knowing whose perceptions and opinions are sought to inform about the rule-of-law phenomenon is as important as knowing whose rule-of-law reality is constructed through the indicators.

- **Vera-Altus Index**

Another indicator, the Vera-Altus Index – developed by the United Nations Department of Peacekeeping Operations, the United Nations High Commissioner for Human Rights and the Vera Institute of Justice – aims to bridge some of the limitations of the RoL index (Parsons et al., 2008, p. 2). The architects of the Vera indicator note that the methods used for gathering information on the rule of law under the RoL index reflect little about the “actual operation of the law and the delivery of public services” (Parsons et al., 2008, p. 4). The authors add that even

though the RoL index carefully attempts to construct the reality of the rule of law on the ground by finding, choosing, organising and classifying relevant facts from diverse settings, the Index risks simplifying complex information and important nuances while aggregating the data. The architects of the Vera-Altus indicator add that the RoL index relies on specific data sources, polls of expert opinion or *de jure* measures of statutes, legislation, or administrative documents. According to them, these sources used in isolation, without contextual knowledge, fail to capture how laws and principles are translated into practice (Parsons et al., 2008, p. 5).

Especially in post-conflict settings, Parsons et al. (2010) underscore the limited applicability of the WJP's RoL index. The authors point out that in post-conflict settings, gathering evidence to measure the rule of law value is challenging because of: i) political instability, legitimacy and corruption; ii) safety and security; and iii) lack of local willingness and capacity to collect necessary data (Parsons et al., 2010, p. 212). Parsons et al. emphasise all these challenges as methodological limitations. For the first challenge, the authors identify that in post-conflict settings where the state is weak and might lack legitimacy, the state may not have the resources or the will to carry out substantial reforms to strengthen the rule of law (Parsons et al., 2010, p. 212). Citizens may also perceive the system as too compromised and subject to the whims of callous officials who might be corrupt and unhelpful (Parsons et al., 2010, p. 212). Added to this, weak civil society organizations yielding to the pressures of the government make it more difficult to collect data from official sources (Parsons et al., 2010).

Additionally, Parsons et al. (2010) note that collecting data within a post-conflict setting where there is a lack of safety and security makes it challenging to gather information about the rule of law and its progress. They observe that in many post-conflict countries, there are 'no-go-zones' controlled by paramilitary groups, drug cartels, or militant groups, making it inaccessible to people to gather information (Parsons et al., 2010). Other constraints include the infrastructure needed for collecting information that has been affected by conflict; or a lack of tradition for gathering data (Parsons et al., 2010). According to the authors, such limitations can further skew the final data on the rule of law.

To overcome the above limitations, Parsons et al. suggest that the existing data collection methods proposed by the WJP RoL index should be supplemented by contextual data, which are "broad and flexible enough to be applied in a variety of legal and cultural contexts based on different governance models and political systems" (Parsons et al., 2008, p. 5). Parsons et al. write that

researchers can take a middle path by gathering data from diverse settings and aggregating wide-ranging measures to inform public debate and reform; they state that it is possible to do this while not losing nuances from the ground (2008, p. 4). This is how the Vera-Altus project imagines complementing the RoL index, by providing a comprehensive methodological tool to gather evidence about the rule-of-law phenomenon in different settings.

Conceptually, the Vera-Altus indicator, like the RoL index, defines the rule of law in the same manner. It also goes further in considering the substantive aspects of the rule of law as defined by the United Nations Secretary General in 2004. This emphasises a legal system that is consistent with international human rights, upholds principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency. However, the architects of the Vera-Altus project do not problematise whether the above conception of the rule of law ‘fits’ post-conflict and other fragile settings where state apparatuses are weak and state-based laws are barely embedded in the society.

Instead, the Vera-Altus project focuses on stripping away the legal aspects from the WJP’s RoL index to ensure a fair comparison of the rule of law in different contexts. According to the project architects, it is the pursuit of seeking similar legal arrangements in dissimilar contexts that lead to unreliable data on the rule of law (Parsons et al., 2008, p. 8). As a result, they encourage studying the rule of law through *de facto* elements rather than *de jure*. The architects of the indicator explain this further:

For example, WJP Index factor 6.1 states, “the laws do not make arbitrary or irrational distinctions based on economic status.” We reinterpreted this as “the operation of the legal system does not make arbitrary or irrational distinctions based on economic status.” This shift focuses attention on the *de facto* delivery of rule of law, rather than *de jure* principles of law.

(Parsons et al., 2008, p. 8)

Thus, the Vera-Altus indicator attempts to bridge the variations in different social settings by collecting information on how law and its institutions are operationalised ‘in action’ rather than assuming its strength through *de jure* elements.

For gathering evidence, like the RoL index, the Vera-Altus indicator also “centers on the need for empirically defensible measures that gauge the *operation* of the rule of law as *experienced* by people” (Parsons et al., 2008, p. 5). The Vera-Altus indicator uses key stakeholders who are responsible for managing justice systems within a country to collect information on the “operation” of the rule of law as “experienced by the people” (Parsons et al., 2008, p. 6). It uses various methods for data

collection that are “sufficiently flexible” and emphasises the significance of “local knowledge and expertise [as] essential” for gathering data on what is happening on the ground. The project also links up with the local research team to contextualise the data that is gathered from the field (Parsons et al., 2008, pp. 23-24). The Vera-Altus project uses a range of methods for collecting data on the rule of law – existing surveys, carrying out new surveys, expert/population polls, legislative reviews – to facilitate a meaningful understanding of the rule of law across place and time.

Parsons et al.’s methodological reflections and their data collection strategy (2008; 2010) help draw attention to the limitations of looking for similar sources of data to measure the rule of law in social settings that are *dissimilar*. As the authors point out, not all indicators can generate equally comparable data about the rule-of-law ‘in action’. But, beyond the methodological issues, Parsons et al. do not problematise how the rule of law of law is conceptualised for studying the phenomenon in particular settings.

For instance, in their pilot study, the architects of the Vera-Altus project focus only on two of the four principles identified by the WJP’s RoL index: Principle III, the process by which the laws are enacted, administered and enforced is accessible, fair and efficient; and Principal IV, operation of the justice institutions. Parsons et al. do not disclose why they chose to include Principle III and IV of the WJP RoL index in their pilot study, overlooking the other two principles. Instead, they write that they focus on principles III and IV because the identified principles “describe the process for enacting, administering, and enforcing laws, equality of access to justice, and the operation of justice institutions” (Parsons et al., 2008, p. 8). In the absence of an explanation from the authors, one can only presume that they consider the process of enacting, administering, and enforcing laws and their delivery through competent, independent justice institutions as core to the rule-of-law phenomenon in all societies.

These two principles are then divided into sub-factors based on the United Nations Covenants, and three or seven indicators are included for each sub-factor, resulting in a total of 60 indicators (Parsons et al., 2008, p. 8). Overall, they state that, for their definition for the rule of law to ‘fit’ diverse settings, they have broken down the definition to minimum standards for data collection (Parsons et al., 2008, p. 8). For example, to measure judicial competence in different contexts, the concept is defined in relation to judicial integrity and the evidence is gathered through the following proxy measures (indicators). See table below for a case study drawn by Parsons et al.

Case Study: Developing Indicators of Judicial Integrity

The WJP Index factor 12 addresses the operation of justice officials and institutions and includes four sub-factors. Three of these relate to law enforcement officials (12.1), attorneys and representatives (12.2), and the judiciary (12.3). The Vera-Altus Indicators add prisons and non-state justice systems to this list. Subfactor 12.4 assesses infrastructure, including courthouses, police stations, and correctional facilities.

Subfactor 12.3 (the judiciary) reads, The integrity of the justice system is upheld by **competent, impartial** judges who have a duty to exercise **independent** judgment and are broadly **representative** of the communities they serve, are **adequately trained**, are of **sufficient number**, have **adequate resources**, abide by **high ethical and professional standards**, and are **selected, promoted, assigned, compensated, funded, dismissed, and subject to discipline** in a manner that fosters both **independence** and **accountability**.

This is a thorough definition. However, there are too many potential indicators for practical measurement, so we distilled it to a small number of underlying principles: (1) good conduct; (2) competence; (3) independence; (4) sufficient resources; and (5) accountability.

These core principles form the basis for the following basket of proxy measures (indicators) of judicial integrity. We balanced the basket by including a range of factors that influence judicial integrity, measured from a range of perspectives, and drawing on a diverse set of data sources.

Indicator 1: Percentage of all cases involving “small” claims: the proportion of minor cases is a proxy for both confidence in the judiciary and the accessibility of the courts. Where there is little of either, potential plaintiffs will not approach the courts unless completely necessary, and therefore, the number of non-serious cases will be minimal.

Indicator 2: The judiciary is perceived as independent: public perceptions of justice agencies are important measures of both conduct and competence. Differences in perceptions between socio-economic groups may detect implicit or explicit bias.

Indicator 3: The government does not overturn judicial decisions: the independence of the judiciary is key to an effective rule of law.

Indicator 4: Number of judges per population for rich versus poor areas: this indicator is a proxy for judicial resources and implicit biases resulting from unequal coverage and resource management. In places with insufficient resources, the disparity is usually greatest in poor area.

Indicator 5: Existence of special procedures or processes for hearing gender-based violence cases: women often have particular difficulty accessing the courts, and problems of gender disparity can be detected by measuring the existence, or non-existence, of specific gender-based policies.

Indicator 6: Ability to appeal judicial decisions in serious offense cases: in order for the judiciary to be held accountable, there should be official mechanisms for appealing decisions.

Source: (Parsons et al.,2008, p. 9)

From the case-study, we can observe that the Vera-Altus project broadens (to an extent) the sources of data collected to inform about the rule-of-law phenomenon on the ground. But it still

does not go far enough in unpacking the rule of law beyond its legal and institutional arrangements. How we conceptualise and define the rule of law is as significant as reflecting on the sources of data. Neither the WJP's RoL index nor the Vera-Alto indicators address the varying relations of law and society in different settings, nor do they tackle the issue of how the rule of law can be undermined through seemingly 'legal' ways (Rajah, 2012; Massoud, 2013). Furthermore, the RoL index, by taking a middle ground, and the Vera-Alto index, by defining the rule of law close to the United Nations definition, do not fully detach from the epistemes and knowledge that have dominated the discourses on the rule of law and the rule-of-law experiences within a particular setting from the rule of law as a travelling norm directed to bring legal and social change.

Both the RoL index and the Vera-Alto project are based on assumptions of how laws and institutions play out in a prototype society – where laws are just, fair and moral; those within the institutions carry out their roles in accordance with the law impartially and independently; people are aware of the laws; and citizens' rights are respected. Where these conditions do not prevail, the indicators create a picture where there is a rule-of-law vacuum because:

- i) The state officials being callous and corrupt (measured through population surveys);
- ii) There is a lack of will from decision-makers to bring substantial reforms or progress (again, measured through expert and population surveys); or
- iii) There is an absence of institutional/legal frameworks (measured through expert surveys, surveys of legislation, case-law).

By defining the challenges to the rule of law according to the above criteria, the indicators limit how we understand, see, and observe the rule of law 'in action' within particular contexts. The indicators narrow our comprehension of the essential elements required for the rule of law. Despite the attempts to move beyond the law on the books to look for the rule-of-law phenomenon on the ground, the indicators do not fully break away from the epistemes of legal instrumentalism.

These limitations of how indicators construct perceptions of complex phenomena in the real world can be linked to the reasons why they are designed in the first place. Indicators, in general, translate complicated concepts into simple, quantified terms that can be broken down to study how it plays out on the ground. Indicators are meant to "represent the past or project performance of different units generated through a process that simplifies raw data about a complex social phenomenon", and they are used to "compare particular units of analysis (such as countries or institutions or

corporations), synchronically or over time, and to evaluate their performance by reference to one or more standards” (Davis, Kingsbury and Merry, 2012, pp. 73-74). As a comparative tool, it seems that the architects of the indices assume laws and institutions in different social contexts function in similar ways. Thus, by gathering ‘similar’ evidence from dissimilar contexts, they aim to inform about the rule-of-law phenomenon in diverse settings. But as Nelken (2019; 2021a; 2021b) points out, comparing social settings that are ‘unlike’ each other is barely constructive.

At the same time, indicators are also used as tools for bringing societies in line with certain standards (Merry and Wood, 2015). As a tool for commensuration, indicators “cannot be rooted in local contexts” (Merry and Wood, 2015, p. 217). Rather they need to be generalised standards that can be imposed on diverse social settings (Espeland and Stevens, 1998; Nelken 2019, 2021b). Thus, by claiming to execute two different functions, the indicators side-line contextual evidence of how the rule-of-law phenomenon plays out on the ground. Even the indicators under the Vera-Altus project, which try to go beyond the methodological limitations of the WJP’s RoL indicators, do not clarify what specific functions they seek to execute through the latter index. For the purposes of this current thesis, it is crucial to acknowledge that beyond the narrow confines of the normative criteria imagined under the indicators, the highlighted indices do not help in providing an understanding of the rule-of-law challenges or its progress in context. These limitations of the indicators as I mentioned above can be tied to the underlying objectives of the indicator projects as tools of comparison and commensuration.

Moreover, the rule of law as conceptualised in the above studies does not fit societies where laws and institutions are unestablished, or notions of legality have not been fully adapted. For instance, the rule of law can be challenged if citizens are not yet ready to align with the normative standards set by state-based laws and institutions in place (Lazarev, 2019; Reheem Shaila, 2019). Or it could be that the population is willing to use laws and institutions, but there are limited skilled legal personnel who can assist them (Justice Sathavy, 19 December 2003). Or it could be that people are not against state laws and institutions but relying on them could rupture their existing social order (Kurkchiyan, 2003). We need a more nuanced understanding of the rule of law *in* society as well as what it takes for the society to adopt and adapt the rule of law (the rule of law *and* society) to understand the phenomenon in a particular setting. Neither the rule-of-law indicators or scholars who have studied the rule of law in particular settings engage with these aspects.

III. Re-conceptualising the rule of law

Some scholars have attempted to tackle the limitations in studying the rule of law in particular contexts through proposing alternative definitions. They provide alternate conceptual frameworks to study the rule of law in diverse social settings, without being bound by the liberal assumptions attached to the concept. They acknowledge the varied experiences of how laws manifest in different social, political and cultural contexts. Peerenboom (2003a; 2003b), for instance, points out that most of the rule-of-law research follows Dicey's, Fuller's, and Raz's definitions, which are based on the political and legal realities of Western liberal democracies. He writes that these conceptions are inadequate to explain law's reality in countries outside of the West (Peerenboom, 2003b). Instead, Peerenboom proposes a different approach, which he terms the "varieties of the rule of law" (Peerenboom, 2003b) to observe and analyse different rule-of-law experiences. He identifies three main versions of the rule of law: liberal, communitarian, and developmental/redistributive (Peerenboom, 2003b). In all these versions, Peerenboom (2003b) argues that the 'thin' aspects of rule of law are applicable: where laws are expected to be promulgated in a constitutionally prescribed manner and there are core state-based institutions. As far as the substantive elements of the rule of law are concerned – democracy, freedom, equality – Peerenboom concludes that there are varying degrees of support and adherence in settings that have communitarian/developmental versions of the rule of law.

Applying the "varieties of the rule of law" conception to his empirical study on the rule of law in China, Peerenboom argues that it is not the rule of law that has failed to take root in the country (2003b). Rather, the country is transitioning to a unique form of rule of law, which he calls "rule by law". Peerenboom notes that the political history of China has shaped and formed a distinct rule-of-law discourse in the country, which follows a communitarian strand of thought. He points out that the communitarian rule of law in (soft-)authoritarian, non-democratic or limited democratic states like China, Malaysia, and Singapore considers economic growth and social solidarity to be of higher importance than individual liberties and freedoms (Peerenboom, 2003b, p. 16).

Differentiating the rule-of-law experiences, as Peerenboom suggests, helps to observe how history and context-specific issues can influence what law can and cannot do within a particular setting. But there are a few limitations to Peerenboom's typology of the varieties of the rule of law. These typologies, similar to the rule of law indicators point to *deviations* from an ideal prototype of the phenomenon. The purpose of such typologies is to provide a comparative point of reference on certain pre-determined institutional equilibria and expectations on law's operations in the society.

However, these typologies are limited in explaining *why* such deviations exist and *how* societies that are identified as “rule by law” or “law and order” settings can be transformed to societies with the rule of law.

Although Peerenboom underlines that the purpose of his typologies is to show that a “one size fit all” conceptual framework is not essential for a society to operate under the rule of law (2003b, p. 2), his conception of the varieties of the rule of law risks labelling and dividing societies into three groups. In practice, this means that a society with laws and institutions in keeping with established liberal democracies like the US or the UK, whose laws further certain normative objectives, could be categorised as those with the rule of law. The other groups could be seen as *deviants* from the liberal rule-of-law framework, potentially leaving them categorised as ‘weak’ or ‘fragile’ states that function with “rule by law” and “law and order.” Such labels can lead to societies being ranked in hierarchies: those most closely resembling the US/UK model placed at the top and the others on the lower rungs.

Devious leaders and governments can also potentially use Peerenboom’s categories to particularise their rule-of-law experiences as *distinct* and unique and use that as a reason not to undertake reforms. They could use culture, politics, and resource constraints as excuses for sticking to a specific variety of the rule of law. Therefore, while Peerenboom’s empirical accounts of the rule of law help to acknowledge the diverse rule-of-law experiences, his typologies of the rule of law do not assist in studying the rule-of-law as a common universal aspiration for tackling arbitrary power through the means of law.

Gowder (2016) and Cheesman (2015; 2018), also attempt to fill the conceptual vacuum through their empirical contributions, albeit in different ways. Gowder (2016), drawing from political philosophy, proposes a reconceptualisation of the rule of law that can be applied to different contexts. He explains that such a reconceptualisation is necessary to define the normative goals that all societies pursue under the umbrella of the rule of law. He argues that his conception of the rule of law is “*emphatically not* capitalism or private property rights”, which the World Bank and USAID promote, instead, it is a

normative principle regulating political states, according to which coercive power – in the first, weaker, version of the rule of law – must be used under rules that give those over whom that power is exercised the opportunity to call the users of the power to account on the basis of reasons; in the second (stronger) version, those rules must be actually justifiable to all on the basis of reasons that are consistent with the equality of all.

(Gowder, 2016, p. 4)

Gowder applies his egalitarian conception of the rule of law based on the debates in classical Athens, Britain, and the United States of America. He argues that the presence of the rule of law should be observed as a “bottom-up” development of “equal laws” (Gowder, 2016, p. 6).

While it may be that Gowder’s “weaker” version (like the indicators and other rule-of-law initiatives) – which emphasises the relevance of an institutional and legal framework to regulate the state – has travelled well, his “stronger” version does not ‘fit’ different contexts. Focusing on equality as the universal philosophical aim of the rule of law and defining the phenomenon along those lines comes with many limitations. Relativist approaches and varying intergroup dynamics make it challenging to apply universal notions of equality (Abrams et al., 2015). Notions around equality have limited portability to societies with diverse political, cultural and social histories. This is because different societies disagree on the significance and meanings of equality. In some contexts, particular groups may need affirmative action to level out inequalities and lack of opportunities. But in another setting, this may not be the case. Discussions on how policies on equality should be operationalised are heavily contested (Beckwith and Jones, 1997). Therefore, although equality may be one of the aims that the rule of law aspires to achieve, like pursuits for individual liberty and property rights (Hayek, 1944, p. 63), a universal consensus pursuing either is disputed (see Twining, 2005; Krygier, 2016; 2015; 2009).

Cheesman (2018) proposes a different strategy for studying the rule of law in contexts where laws and its institutions are weak. Instead of defining the rule of law, Cheesman puts forward what he calls a “rule of law ethnography” (2018). He contends that rather than studying the rule of law as “big correlations between the specifics of institutional design and the effectiveness of specific rule-of-law interventions”, it should be studied as “logics of particular contexts” (Cheesman, 2018, p. 171). Accordingly, he suggests that we should move away from authoritative definitions and classic lists of desiderata associated with the rule of law. Cheesman proposes that we study the phenomenon through “a close, critical, and protracted inquiry into the many diverse practices in its names, as well into the ideas that [animate] them” (Cheesman, 2018, p. 170).

Cheesman applies his “rule of law ethnography” to study the rule-of-law phenomenon in Myanmar. Instead of starting from a preconceived definition of the rule of law, he studies it through what he calls an asymmetrical concept: law and order.²⁰ He defines “asymmetrically related

²⁰ Note that Cheesman’s understanding of *order* varies from how social theorists and I understand *order* in this research. I understand *order* as to how societies cohere around certain issues, and what brings coherence to address those issues through the means of law.

concepts [as] multi-faceted” (Cheesman, 2015 p. 19). Cheesman writes that law and order is asymmetrical to the rule of law because

[the] rule of law relies on general rules to maintain order, whereas law and order rests on particularistic commands and directives, in response to exigencies. The former emphasises judicial institutions, whereas the latter privileges administrative ones. Under the rule-of-law ideal, public adjudication according to general rules guides conduct so that people can make decisions of their own accord. To maintain law and order, authoritative institutions act on specific injunctions to intervene directly in people’s lives. Lastly, law and order entail the exogenous imposition of discipline, which requires a superordinate-subordinate political relationship, whereas under the rule of law, discipline is an endogenous feature of political relations: it is characteristic of those relations not imposed on them.

(Cheesman, 2015, p. 34)

Cheesman distinguishes between a society with law and order and one that simply has the rule of law. A society governed by law and order uses laws to respond to crises, privilege executive and legislative branches, and intervene directly in people’s lives through a superordinate-subordinate political relationship. On the other hand, in a society where the rule of law prevails, laws will be stable, predictable and clear. There will be separation of powers between the executive and the legislative; ordinary citizens will be able to challenge the government through an independent and impartial judiciary. Thus, through the prism of law and order, Cheesman defines the rule of law. Applying his rule-of-law ethnography in Myanmar, he concludes that the officials and judges in the country are partisans of law and order and that they are “not the occupants of low rungs on a ladder to the rule of law; they are climbing a different ladder altogether” (Cheesman, 2015, p. 259). Methodologically, Cheesman guides researchers on *how* to study the rule of law in authoritarian states. Cheesman “[encourages] researchers to develop a richer and more diverse vocabulary with which to discuss [the rule of law]... and all the better to talk more lucidly back to the rule of law idea itself” (Cheesman, 2015, p.114). Theoretically, Cheesman’s interventions engage with the difficulties of studying the rule of law, a concept whose episteme is rooted in Western political history. But suggesting that in Myanmar the stakeholders are ascending a different ladder altogether from that of the rule of law makes one wonder whether Cheesman observes Myanmar and similar settings as a rule-of-law vacuum.

Peerenboom’s, Gowder’s, and Cheesman’s interventions define the rule of law for studies intended for societies outside the West. However, they engage only with the issue of how to break free from the grips of neo-liberal episteme attached to the rule of law, so that the legal experiences in other settings that are dissimilar to the West can be studied. But, while devising a plan to address the limitations (methodological and/or theoretical), Peerenboom, Gowder and Cheesman particularise law’s realities in different settings. They distinguish and ‘other’ the rule-of-law

experiences in weak, authoritarian and fragile states from an ‘ideal’ rule-of-law experience. They do not consider that maybe all societies are climbing towards or away from the rule of law in some way or form. Perhaps they are at different phases of their rule-of-law development due to lack of favourable political, social or economic environments. Thus, despite attempting to provide a “social scientific account of the rule of law” (Gowder, 2016), these interventions overlook common social factors that make the rule-of-law aspirations a reality or a distant fantasy in particular contexts.

II. International rule-of-law engagements and their impact: Literature review

Following from the above discussions, we can observe that the existing approaches to studying the rule-of-law phenomenon and its progress, particularly in weak and fragile settings can neither inform us about the rule of law as a travelling concept intended to bring changes nor the challenges that arise in realising transnational rule-of-law aspirations. Comparative efforts monitor, observe and evaluate the rule of law status in post-conflict countries against an ideal prototype (for example RoL indicators, Peerenboom’s varieties of the rule of law) or treat them as settings that are distinct, and thus incomparable from the rule of law settings (for example Cheesman’s rule of law ethnography).

We can see similar limitations in the academic literature evaluating rule-of-law promotion in particular settings. The literature provides a bleak picture of the achievements of rule-of-law transfers and it reveals four main reasons for the ‘failures.’ The conceptual limitations that I raise above are equally applicable to this strand of scholarship as well. However, in the sections below I focus on why scholars assume that international rule-of-law efforts are bound to fail rather than succeed. From my review, I point out that the existing scholarship ignores insights from sociology of law and comparative law scholars, who demonstrate that it is possible to bring changes through laws if legal reforms are tailored to address particular challenges and nuances of local contexts.

i) Rule-of-law transfers as neo-colonial ‘imposing’ projects

Mattei and Nader (2008) rely on historical analysis to demonstrate how colonial powers have used the rule of law – as a natural principle of social ordering – to liberalise markets and plunder resources in less powerful states (Mattei and Nader, 2008, p. 7). Mattei and Nader (2008) argue that international rule-of-law initiatives tend to perpetuate old hegemonical and colonial dynamics, privileging the experiences of some societies over others. They observe that countries in Asia,

Africa and the Middle East are targeted for rule-of-law reforms because they are perceived to lack robust laws, judicial institutions, and a legal culture like wealthy nations in the Global North.

In a similar vein, targeting the rule-of-law promotion industry, Humphreys (2010) calls the field a “theatre”, where colonial power disparities are revived between those transferring and receiving reforms. Humphreys carries out a documentary analysis of project reports from the World Bank, USAID and the UN to demonstrate that the rule of law has become a “morality tale recounted by powerful institutions” (Humphreys, 2010). He explains his argument by pointing out that historically, rule-of-law promotion has always been “unidirectional”, with activity flowing from one set of wealthy parties to another and not the other way around.

The interventions from critical legal scholars are targeted at the altruistic image projected by the law and development (L&D) and rule-of-law proponents. By unpacking the economic or technical power disparities between the transferors and the recipients, Mattei and Nader and Humphreys show that the rule of law industry is “implicated fully in economic exploitation and upholding social relations which generate inequality” (Banakar and Travers, 2013, p. 91). They argue that the rule-of-law industry revives old imperial “power struggles between dominant and subordinate groups” (Banakar and Travers, 2013, p. 91).

The above-mentioned critical interventions help us *see* the marginalising structures inherent to the global production and exportation of the rule of law. For instance, they pinpoint the source of the dominant normative ideas and governance structures that have emerged to be attached to political histories of established democracies and old imperial powers like the United Kingdom. The rule-of-law templates that are transferred to other settings do follow a liberal political framework where the Westminster-model of separation of powers has emerged as the desirable means to manage powers of the state (Halliday, Karpik and Feeley, 2007, pp. 10-12).

Having noted these valuable criticisms from the critical scholars, there are some significant ‘gaps’ in their arguments about international rule-of-law efforts being “imposing.” For instance, Mattei and Nader and Humphreys are silent on *why* societies in the far-flung corners of the world the ones are often demanding human rights and rule-of-law reforms (Grewal, 2015). Neither do they engage with how the transferred international norms seem to have empowered and strengthened civil societies, girls and women, and consolidated democracy and judicial institutions in many societies that had authoritarian leaders or were riven with conflict (Grewal, 2015; 2016; 2018).

Studying rule of law transfers primarily through a political economy frame, critical legal scholars confine their analysis to unpacking the power disparities inherent in the architecture of the international projects and the movement of liberal ideas. Their accounts also run the risk of “further excluding and ignoring the voices and perspectives of those who are already neglected and disempowered” (Grewal, 2018), thus falling into the very trap of marginalisation of local interests that they are concerned. Critical legal scholars overlook how international norms play out ‘in action’ within the societies to which they are taken and how those in the targeted communities use them. Assuming that the populations engaging with transferred rule-of-law norms as “passive objects to be controlled, saved or spoken for” (Grewal, 2018), they disenfranchise peoples’ experiences and how they engage with transnational legal projects. Therefore, any inquiry into whether international rule-of-law initiatives have been helpful or imposing requires us to gather evidence from the field on how rule-of-law transferors have carried out their roles and in what ways the recipients have engaged and interacted with those initiatives.

ii) Overlooking local interests and social contexts

Approaching the rule-of-law transfers from a different perspective, scholars situated within the interdisciplinary area of law and society have intervened to highlight that contexts matter. Initially, those within this tradition criticised the L&D proponents’ optimism for transforming societies through copy-and-pasting the ‘best’ laws and institutions from Western societies. Keeping society at the heart of their analysis, some scholars have looked at historical (Fitzpatrick, 1980), cultural (Gardner, 1980) and social aspects (Tamanaha, 2011) and their “connectedness” (Tamanaha, 2011) with law. These scholars argue that projects that ignore how social factors influence law are fated to fail.

Critiquing the law and development movement, which was a precursor to the contemporary rule-of-law transfers, Trubek and Galanter (1974, p. 1074) note that its proponents actually believed that transferring more laws would be ‘good’ for targeted societies. They observe that the law and development scholars assumed law to be “impersonal governance hoping that it will lead to more inclusive and equal treatment of all citizens. [They] saw law as a technique for curbing arbitrary government action and as a means of both protecting individual freedom and ensuring government action... law was also associated with rational, instrumental action to secure greater material well-being and other development goals” (Trubek and Galanter, 1974, p. 1074).

Thus, the L&D proponents expected state institutions “[to be] the primary locus of social control, while in much of the Third World the grip of tribe, clan and local community is far stronger than that of the nation-state” (1974, p. 1062). The authors also criticise transferors for assuming that the newly introduced rules reflected the interests of most citizens and that they internalised them. As for the courts, they were expected to work autonomously and independently from political, tribal, religious and class interests (Trubek and Galanter, 1974, pp. 1080-1081). Disentangling the underlying assumptions, Trubek and Galanter point out that the international rule-of-law transferors assume that laws and states function in the same ways.

While Trubek and Galanter emphasise the limitations of not taking the deeply entrenched social norms into account, Tamanaha (2011) points out that rule-of-law promoters ignore the “connectedness of law” to the specific social factors like the politics, history, and economy of a society. He observes that rule-of-law projects overlook the tensions created by overlapping and competing cultural, ethnic, religious, and new legal normative orders (Tamanaha, 2011, p. 244). He adds that no two sets of institutional arrangements are alike or function in the same way in different social settings, as they are interlinked with the local legal culture (Tamanaha, 2011, p. 245). Since rule-of-law projects involve transferring significant portions of laws and institutions from the donor countries to recipient societies where social life and understandings of the population differ, the transferred institutions become embedded in only a limited manner. Furthermore, he contests the mandates on which the rule-of-law industry operates. Tamanaha writes that there is a lack of evidence illustrating that more laws bring better substantive values like democracy, freedom or economic development (Tamanaha, 2011).

Other set of scholars specifically target how rule-of-law reforms are pursued. Reporting from the field, McClymont and Golub (2000) confront the rule-of-law industry’s focus on state institutions to consolidate the phenomenon on the ground. They observe that there are different ways in which law can be put to work in the interest of human rights beyond the conventional legal and institutional arrangements. They point out that enabling the rule of law beyond the state institutions can help strengthen the phenomenon in some social contexts and that there are “many roads to justice” (McClymont and Golub, 2000), not a single pre-determined route set by the rule-of-law industry.

Similarly, Adelman and Centeno (2002) register their criticisms on how the rule-of-law industry’s attention is limited to state institutions. The authors argue that the transferors assume that the

state and its institutions function in similar ways in different social contexts. However, they point out that focusing on state apparatuses that are weak or where the state is the primary source of disorder could do more harm than good:

Lacking a set of institutions to convey the idea and its practice that “ruled and rulers obey the same rules”, internationalization threatens to aggravate the uneven national development of the rule of law. Internationalization of law assumes that the rule of the state and its principles have been absorbed by civil society. In Latin America, where state authority was barely consolidated, legal transnationalism can only perpetuate the problems it claims to solve.

(Adelman and Centeno, 2002, p. 142)

In her monograph, Grenfell (2013) contextualises this issue in East Timor. Grenfell argues that, during the state-building phase from 2000 to 2011, the international community pushed traditional justice mechanisms to the periphery and focused on strengthening state institutions. Grenfell observes that the Timorese have had complicated relations with state institutions under the Indonesians and the Portuguese and that the Timorese citizens prefer to rely on traditional mechanisms, especially to resolve family and interpersonal issues (Grenfell, 2013, p. 187). She explains that in comparison to state-centred laws, traditional law is not based on punishments but rather on reparations and, thus, on different motivations of a state-based system. Furthermore, Grenfell notes that the criminalisation of domestic violence has made it challenging for the Timorese, who prefer restorative forms of justice, to use the newly instituted criminal system. Thus, she concludes that the international rule-of-law efforts were not a success in the country.

Galanter and Trubek, Tamanaha, McClymont and Golub, Adelman and Centeno and Grenfell's criticisms are helpful in reminding rule-of-law transferors that they must remain reflexive of the prevalence of pre-existing normative orders and what is at stake for a targeted society in adopting and adapting to new institutions and laws. By recognizing that there are plural normative orders, rule-of-law transferors can assess the level of support or the necessary changes that need to be incorporated. Beyond this, they are silent on whether legal and institutional arrangements for an independent judiciary, or laws to curb corrupt practices, matter. They emphasise that reforms must 'fit' local interests to succeed. But they do not specify how or in what ways the reforms must 'fit' the local context. The highlighted scholars overlook that rule-of-law reforms are often pursued in settings to 'transform' targeted societies from existing ways of how law and institutions were used to 'new' ways of engagement. And intrinsic to the rule-of-law initiatives is an objective of bringing 'new' institutional arrangements and normative standards for rearranging distribution of power and restraining it. They also do not clarify whose interests matter and how constructive 'local interests' can be sifted from unconstructive ones.

As for the focus on the state, there are many reasons why the international rule-of-law promoters encourage state-based institutional arrangements. Firstly, the structure of the multilateral and bilateral rule-of-law industry requires a government representing the state to enter into agreements for reforms. Secondly, in societies where plural legal orders exist, it is challenging to harmonise a normative order for different communities. This is not to say that traditional non-state orders cannot be incorporated within the state system.²¹ But to fix common normative standards and institutional arrangements through traditional law is tricky. If we consider East Timor as an example, different regions in the country have their unique traditional customs and practices for resolving disputes between family members. Depending on the traditional practices, the nature of punishment given to the perpetrators also vary, making it difficult to harmonise normative standards and attitudes (Reheem Shaila, 2019). Thirdly, where power is vested in a centralised, democratically-elected government, it is more manageable to devise institutional arrangements to tackle it.

Generally, scholars who have followed a contextual analysis of rule-of-law transfers emphasise cultural and social particularities. Their criticisms stress how internationally-led rule-of-law projects tend to favour institutional and legal arrangements developed in Western societies as best practices and transfer them to far-away settings with the same assumptions of how laws and institutions operate in their home donor countries. Their accounts overlook other empirical studies that have shown how internationally-led legal reforms can spur changes (Merry, 2006; Grewal, 2018; Goodale, 2007). They also do not address how transnationally-led initiatives assist in building similar institutional and legal arrangements that aid advocacy networks on the ground in campaigning about local problems to allies outside nation-borders (Risse, Ropp and Sikkink, 1999).

The contextual criticisms of rule-of-law transfers tend to romanticise existing alternate mechanisms as always good and as reasons for why the reforms fail to take root. In societies where state institutional arrangements are weak, it would take time to re-shift attitudes and behaviours, both within and outside of the legal system. It would be too hasty to attribute rule-of-law promotion as a failure without inquiring why state-based initiatives fail in a particular setting. Is it because there are competing local interests that undermine state-based laws and institutions, or the transferred new laws and institutions do not address the identified problems due to a lack of contextual 'fit'?

²¹ In many of the colonies of the UK, indigenous laws and customs were incorporated into the state order as well.

iii) Rule-of-law reforms not bringing fast-enough substantial changes

Carothers (2006) argues that failures and problems of rule-of-law promotion are too striking to be ignored. He writes that the vast amounts of money that have been transferred to countries in Asia, Eastern Europe, and Africa under rule-of-law promotion projects have failed to bring substantial changes. According to him, the rule-of-law projects, which are meant to improve the legal culture and legality of law in the targeted societies have not achieved their objectives. Carothers points out that authoritarians continue to thrive, corruption remains rampant, and human rights activists, media and NGOs are persistently silenced.

At the outset, the rule-of-law industry is based on the lofty ideals of bringing substantive change within recipient societies by transforming them into democratic and wealthy nations. In reality, the limited mandates of multilateral and bilateral institutions, funding constraints, and project deadlines all shape the reform programmes. In developing states like India, rule-of-law reforms are focused on downsizing the government, liberalising the economy, and strengthening property laws. In post-conflict and transitional states, the reforms usually include drafting a new constitution and building core institutional arrangements and laws (UNDP 2013). Any assessment of rule-of-law initiatives, therefore, must consider what is happening on the ground. Otherwise, looking for substantive rule-of-law changes, like improvement in democratic values, while the reforms target financial areas, would be to evaluate the outcomes of an activity in a different social sphere. Such evaluations assume that changes in economy lead to social changes in other spheres of political, cultural and social life. As some sociology of law scholars have argued, legal systems can change and develop according to changes in the social sphere (Neumann, 1957; Cotterrell, 1996). However, such correlated changes can only be gradual and incremental.

Another criticism that Carothers (2006) raises is that there are not enough substantive changes brought about by rule-of-law reforms. Although Carothers acknowledges that there might be small changes that have happened as a result of the rule-of-law transfers, they are insufficient. This argument needs to be reconsidered in relation to how substantive changes happen in specific settings (Sztompka, 1993). As sociology of law scholars point out, various contextual factors influence trajectories of change (Nelken, 2001). Support from the political elite to adopt new laws (Kleinfeld, 2012), mass mobilisation for recognition of new norms (Handmaker and Matthews, 2019), and interactions with transnational human rights and rule of law networks (Kruckenberg, 2011; Simion, 2021) – to list a few – are factors that can influence trajectories of change.

Changes are often gradual and incremental, until and unless there are “tipping points” like war and internal conflicts (Finnemore and Sikkink, 1998) that call for sudden transitions. Even then, for actual meaningful changes to happen on the ground, they may take time (Shaffer, 2012). Therefore, concluding that international rule-of-law promotion leads to no positive outcomes would be to overlook insights from anthropologists, human rights and sociology of law scholars who have demonstrated the power of internationally recognised concepts in bringing changes locally (Risse, Ropp and Sikkink., 1999; Merry, 2009; Halliday and Shaffer, 2015).

iv) Impossibility of transferring meanings through law

Legrand (2001) argues that successful legal transfers are impossible, as “legal epistemes” cannot be transferred. Legrand explains that law itself is a meaning attributed by people, who are influenced by their social and cultural realities. Thus, the meanings and functions of law are embedded within the transferring nation’s legal culture (Legrand, 2001). He concludes that it is “impossible” to rely on laws to bring intended changes as they are bound to undergo transformations in accordance with the local legal culture.

Gillespie and Nicholson (2012) apply Legrand’s observations in their research on rule of law reforms in Vietnam. They point out the limitations in transferring ‘exact’ intended meanings to recipient stakeholders. Gillespie and Nicholson explain that as laws and institutional arrangements travel from an international to a local setting, different interests and priorities shape what the rule of law ought to do in specific contexts. As for the Vietnamese stakeholders, they reinterpreted and reformulated the rule of law to fit into their local realities, where the Communist Party interests remained outside the purview of law (Gillespie and Nicholson, 2012). Gillespie and Nicholson argue that since the transferred rule-of-law arrangements inevitably undergo reinterpretation at the hands of recipient stakeholders, it is unlikely to transfer exact intended meanings. As a result, they conclude that international rule-of-law transfers have limited scope in bringing changes to local settings.

By emphasising the impossibility of transferring the *same* meanings, these scholars tend to focus on finding *exact* institutional and consequent results in targeted societies as recipes for success. However, some comparative scholars have pointed out that sometimes the same laws can have dissimilar functions and meanings in different societies (Adams and Griffiths, 2012). It is important to investigate how a targeted problem is tackled through the means of law and what challenges, if any, exist locally in addressing it through legal avenues. In reality, even the separation

of power principle, which is considered a universal phenomenon, takes varied forms. Judiciaries in the United Kingdom (Gee et al., 2015), the United States of America (Russell, 2001) and France (Garapon and Epineuse, 2012) exercise varying degrees of separation from the executive and legislature. Despite these differences, there is a common understanding globally that the powers of the government are limited, and that the judiciary would step in if government officials act contrary to the prescribed normative standards (Halliday and Shaffer, 2015b). Therefore, it may be impossible to transfer exact legal meanings, but legal categories and concepts can order societies in distinct ways. Therefore, we must inquire how laws tackle arbitrary power, whether they are successful in constraining it and, if not, why they are unable to limit abuse of power. Without investigating these aspects, it would be too hasty to dismiss international efforts as futile.

The academic research to date on the role of international rule-of-law promoters tends to focus on how local contexts and realities in recipient societies vary from the West, where the majority of RoL reforms are initiated. They assume that the failures to bring changes result from the rule-of-law industry ignoring local interests and ‘copy-and-pasting’ templates from donor countries without reflecting on their applicability in specific contexts. However, in contrast to these observations, there could be varied reasons for why reforms fail. Only a contextual analysis can assist in showing whether the reforms have failed due to imposing external dynamics of the rule-of-law transferors (Swenson, 2017) or due to internal political (Hammergren, 2014) or cultural factors (Szto, 2016). To evaluate the successes/failures of rule of law reforms, we need to observe and analyse the actions and reactions of both the transferors and recipients simultaneously, rather than studying them as actors who carry out their roles separately from each other.

Furthermore, recognising that “the rule of law is not just a policy to be implemented, but is also a spontaneously evolving cultural practice” (Přibáň, 2020, p. 120) reminds us that societies could take diverse trajectories to consolidate legal and institutional means for tackling arbitrary power. Thus, when evaluating the role of internationals in strengthening the rule of law in particular contexts, what is actually required for societies to strengthen the rule of law locally should be considered as well. ‘Failures’ and ‘successes’ of rule-of-law promotion should then be analysed against whether international stakeholders have assisted their local counterparts with reforms that help them overcome particular local challenges and move towards the rule-of-law ideals. Thus, for ‘successful’ transnational rule-of-law engagements, internationals may have to tailor their efforts in accordance with what is required locally, as the development of the rule of law may be uneven in nation-states.

v) The ‘failure’ thesis according to development practitioners

In contrast to the above studies, Hammergren (2014) and Mosse (2005) note how the structure and practices within the international development sector have further fuelled the failure thesis in the justice sector. Hammergren, who had worked as a justice sector consultant with World Bank and other international organisations, criticises the sector for having incongruent action and goal plans (Hammergren, 2014, pp. 25-55). That is, she explains that justice sector reformers enter the field with conflated end-goals that do not match with their reform initiatives. She provides examples of how most of the justice sector reforms in Latin America focused on delivering automation and introducing computers in the courts, although they were carried out under the umbrella of promotion of democracy and human rights. Hammergren also adds that most reform programmes did not execute a baseline survey, limiting the project staff from assessing the changes their interventions brought in recipient settings. According to Hammergren, these are the reasons why the interventions within the justice sector came to be perceived mostly as failures rather than successes by their critics.

While Hammergren’s observations stress how justice sector reforms are carried out, Mosse (2005), who worked as a consultant with development organisations, provides a more technical account of how donor agencies assess ‘failures’ or ‘successes’. According to Mosse, development practitioners construct their narratives of ‘failures’ or ‘successes’ that aid them to perpetuate the cycle of aid, and they are distinct from academic discussions. In his study of the British Department for International Development (DFID), Mosse observes that while monitoring and evaluating the performance of one of DFID’s projects in India, the evaluators focused on the operational elements of the project rather than the substantive aspects. Mosse explains that consultants and staff within the organisations are often keen to convince donors and those at the top that a policy is well implemented or that more money is needed for further action (2005, p. 202). As a result, their articulation of successes resembles donor policy models, successful budget spends and managing project deliverables within specific deadlines. This means that ‘successes’ and ‘failures’ are mostly deductive rather than an inductive understanding of the “contingencies and instrumentalities, or open-ended learning” (Mosse, 2005, p. 233). According to Mosse, “to ensure further funding and support, projects have to continue to reflect external agendas, to bear the stamp of the plan, rather than reflect their own organisational and social reality” (Mosse, 2005, p. 233). Consequently, Mosse notes that the reformers construct narratives of failures and successes to validate their interventions, legitimise their presence, and mostly keep their staff on their payrolls (Mosse, 2005, pp. 184-202).

In Chapter VI, I unpack in detail how the international rule-of-law promoters constructed their narratives of successes/failures of their initiatives in East Timor. International development practitioners provide accounts of their successes and failures in particular forms. Development practitioners are keener to report on their activities rather than inform about the complexities that emerge while transferring concepts and transforming the social realities in different contexts. Therefore, the routine performance assessments and monitoring and evaluation of projects do not explain how changes occur in particular settings. Instead, they are templates for the staff to narrate accounts of how well they managed their funds, met their deadlines and delivered tangible outputs, that help them to legitimise their actions to their funders and receive further funding.

Conclusion

In this chapter, I reviewed academic literature that engages with the rule of law, rule-of-law progress, and rule-of-law promotion in particular contexts. I pointed out that the existing empirical scholarship on the rule of law focuses more on how law is abused and manipulated by those in power rather than investigating how law's rule is established in a particular setting to tackle arbitrary power. These studies start with assumptions that the presence of institutional arrangements lead to the rule of law and as a result, they map deviations from the expectations of how law and its institutions *ought* to function. While such initiatives are helpful to compare and contrast the rule of law phenomenon in specific settings against an ideal prototype, they are unhelpful in revealing why laws and institutions do not function the way they ought to function. For a researcher aiming to study the role of transnational actors in strengthening the rule of law in particular contexts and whether or not they have assisted a society to move towards the desired rule of law aspirations needs to move beyond these existing approaches.

I also argued that the interventions from scholars on the reconceptualisation of the rule of law do not fully engage with the challenges of applying similar conceptual frames to observe social realities in different contexts. Although their focus has been rightly placed on demonstrating the varied rule-of-law experiences in societies in the Global South and the necessity to redefine the conceptual boundaries, they do not go far enough. They separate the rule-of-law experiences in authoritarian, fragile and weak states as something that is 'different' from the liberal rule-of-law ideal. While it is crucial to differentiate the uneven development of the rule of law in varied contexts, treating it as a distinct phenomenon from the rule-of-law ignores the diverse possibilities and realities of rule-of-law 'in action'. All diverse experiences are part of the rule-of-law story: some are closer to the rule-of-law ideal, and some are further away from it.

As for the scholarship that engages with the role of international actors in strengthening the rule of law, these scholars fail to consider insights from sociology of law scholars on how social change through legal transfers can happen, as well as the possibilities of social change in an increasingly transnationalising world. For a meaningful analysis of whether internationals have assisted the local stakeholders in strengthening the rule of law, we should analyse internationally led efforts in tandem with the demands from the recipient stakeholders and their adaptation of transnational rule-of-law aspirations. What initiatives are introduced, how internationals engage and negotiate with local stakeholders to adopt new norms, and how they navigate the challenges of local realities to consolidate the rule of law are all aspects that could explain whether the transnational rule-of-law engagements have been successful.

Overall, the existing empirical scholarship on the rule of law and the role of international actors in strengthening the rule of law studies the rule of law as a static phenomenon in a society once core laws and institutional arrangements are adopted. However, the rule-of-law adaptation especially in post-conflict societies is fluid, where the boundaries of legality are continuously formulated and re-shifted by social factors (although to what extent must be empirically teased out). Therefore, to study the rule-of-law progress and the role of international actors in bringing those changes we must resort to an alternate framework that allows us to observe the rule of law as a fluid phenomenon and that enables us to evaluate whether transnational rule-of-law engagements are assisting a society to progress towards transnational rule-of-law aspirations rather than away from them.

CHAPTER IV:

STUDYING THE TRANSNATIONAL RULE-OF-LAW PROGRESS IN CONTEXT:

A ‘GOOD ENOUGH’ FRAMEWORK

Following the arguments from Chapter III, in this chapter, I propose an alternate framework for studying successes/ failures of transnational engagements for strengthening the rule of law in particular settings. As I pointed out, finding ‘perfect’ transnational rule-of-law engagements where the recipient society has fully adapted to the aspired rule-of-law standards is unlikely. For an ‘ideal’ rule of law adaptation, rule-of-law promoters must be able to transfer laws and institutional arrangements with *same* meanings and functions to a recipient society. As well as a recipient society must have adopted the transferred laws and institutions, and adapted the meanings and functions intended by the transferors. Such ‘perfect’ outcomes are often exceptional. Instead, societies that are targeted for rule-of-law reforms at any point of time may be at varying degrees of adoption and adaptation of the transferred laws and institutional arrangements. It is in this context that I propose that we need to move away from evaluating and monitoring transnational rule-of-law engagements against some high imaginary standards that can never be achieved. Instead, a ‘good enough’ framework allows to consider the failures and compromises that may be necessary to move forward while adapting new norms. It underscores the importance of qualitative assessments from the field whether the efforts by transnational actors have assisted targeted stakeholders to adopt new institutions and adapt new norms. Consequently, whether transnational rule-of-law engagements have been ‘good enough’ or ‘not’ can be assessed by examining the tough choices and compromises leaders, officials, civil society members, ordinary citizens, and international partners must make to strengthen the rule of law within particular settings. In the following sections, I review scholarship on ‘good enough’ and outline how other studies have relied on the framework, and I expand on how I have used ‘good enough’ in the research. I also identify some factors that can assist in evaluating whether the transnational rule-of-law engagements have been ‘good enough’ or ‘not good enough’.

I. Many faces of ‘good enough’

‘Good enough’ as a term signifies imperfections. It has received traction from international development practitioners both in terms of acknowledging the scope (Grindle, 2004) and the limits of their interventions (Wallis, 2017; Swenson, 2017). Such a “modest” approach to interventions to an extent, can be attributed to a growing consensus amongst the international development

practitioners that ‘ideal’ reforms can never exist (Wallis, 2017). Before the uptake of the ‘good enough’ framework by international development practitioners, other scholars have used ‘good enough’ in their studies in varied ways (Winnicott, 1960; Silva, 1996; Bowling, 2007). In 1960, Winnicott (1960) introduced “good enough parenting” to highlight the imperfections in parenting that are necessary for a child to successfully transition from infancy to adulthood. Winnicott noted, as infants grow, they must transition into independent adults with a healthy dependence on their parents. This means a parent’s attention and care must be withdrawn gradually. According to him, a ‘good enough’ parent assists a child in recognising that parental presence is not omnipresent and that it is impossible for parents to be available around the clock to tend to their infants’ needs. Winnicott adds, a child requires a parent who is available for a ‘good enough’ amount of time. Thus, according to Winnicott, in the long run, *imperfections* in parenting assists a child in transitioning progressively into an independent being. Silva (1996) uses ‘good enough’ as a framework for discussing the diversity in experiences of mothering (Silva, 1996), Bowling (2007) in the context of policing, and Grindle (2004) on governance reforms. From the scholarship, we can delineate discussions emerging on ‘good-enough’ into two strands: i) ‘good enough’ to highlight the imperfections that may be necessary; and ii) ‘good enough’ to emphasise why looking for ideals in the ‘real world’ is unhelpful when contextual challenges and limited resources demand varied responses. I unpack both these strands below.

The roots of ‘good enough’ framework in the parenting literature can raise questions on whether the framework is paternalistic. In Winnicott’s study, parents have the upper hand to make decisions on behalf of their child as to what is good for the child to transition from an infant to an adult. Applying the ‘good enough’ framework in the context of rule-of-law reforms can raise questions on who holds the ‘power’ in deciding what are ‘good enough’ reforms and evaluating whether the adaptation of the reforms has been ‘good enough’ or ‘not good enough.’ It is crucial to highlight here that any evaluative exercise has the potential to become a ‘top-down’ narrative of what works and does not work, thus perpetuating ‘paternalistic’ dynamics. However, it is possible to break away (to an extent) from ‘top-down’ evaluations by incorporating opportunities for local participants to reflect on the impact of transnational rule-of-law engagements, its possibilities and limitations. In the next chapter on data collection, I tackle these points on how qualitative methods can be used to capture perspectives and accounts from a range of different actors in order to gather data on whether transnational rule-of-law engagements have been ‘good enough’ or ‘not good enough’.

i) 'Good enough' as imperfect support

Winnicott's use of the 'good enough' framework shows the temporal and shifting nature of parenting, as a child transitions from an infant to an adult. He highlights, what may be 'ideal' or 'perfect' support during infancy is not what is necessary for further stages in the development of a child. Winnicott emphasises that there is no perfect way to parent; rather, it can take many forms depending on the infant's needs, and thus, points out the inevitable imperfections that arise during parenting and the necessity of those imperfections for a child's growth as a functional adult. In good-governance scholarship, Grindle (2004) engages with the varying degrees of support a recipient society requires. Grindle (2004) uses the 'good enough' framework to emphasise why diversity in policy interventions is necessary in societies with different political and social contexts. She reminds governance practitioners that there are "no magic bullets, no simple answers, and no obvious shortcuts towards conditions of governance that can cause faster and more effective development and poverty reduction" (Grindle, 2004, p. 572). Instead, Grindle advises governance practitioners to "find opportunities, short of magic bullets, for moving in a positive direction, yet recognising that this is not always possible" (Grindle, 2004, p. 572).

Grindle points out that, for fragile settings, a "good enough governance intervention" will create "minimal conditions" necessary for a society to get on track in its political and economic development (Grindle, 2004, p. 526). She observes that anything beyond could be impractical and ambitious. Compared to stronger states, which show higher levels of structural/institutional stability, organisational capacity, and legitimacy, fragile states could have a range of varying issues (Grindle, 2004, p. 562). Grindle notes that among 'fragile' states, fragility can differ as well. At a very general level, weak or collapsed states would have low or very low structural/institutional stability, low or very low organisational capacity, and a non-existent legality. Grindle emphasises that governance reformers must consider the strengths and weaknesses of local settings and focus on the existing avenues for change in particular environments while introducing reforms (Grindle, 2004, p. 562). She thus appeals to development practitioners to lower their expectations and do what is absolutely essential for a setting (Grindle, 2004).

Grindle adds that governance interventions should be about inputs that can bring realistic economic and political development. Depending on the weaknesses and strengths that exist locally, practitioners are advised to match their interventions according to the characteristics of a country: what reforms are needed, which of them could ignite conflict, and which of them require more time to be adapted (Grindle, 2004, p. 567). Sometimes this entails identifying reforms that are of

priority and relevant to a targeted society's reality (Grindle, 2004, p. 554). This means that governance practitioners in most situations, cannot bring about 'perfect' good governance practices, but through their 'imperfect' reforms, they can establish a 'good enough' governance (Grindle, 2004).

These scholars urge us to look beyond 'perfections' and instead examine whether the interventions are constructive or not for the recipients. The necessity of such 'imperfect' support is visible, particularly in countries emerging from internal conflict. Post conflicts, especially internal conflicts, it is impossible to identify and remove all the perpetrators of violence without destabilising the country (Allan and Allan, 2000, p. 464). Since perpetrators can be found on both sides, amnesty laws are sometimes indispensable for preserving peace and stability in the society. South Africa is an example where perpetrators of the apartheid were pardoned, and the state looked forward instead of redressing the crimes committed in the past (Llewellyn and Howse, 1999). By choosing a restorative justice model to reconcile the "painful past" the country moved away from penalising past crimes and instead chose a solution that works for the long term (Lederach, 1997, p. 31). This was far from the ideal rule-of-law outcome: where law is just and fair, and perpetrators of violence are punished. In contrast to this, amnesty laws allowed perpetrators of violence to co-exist with their victims. For maintaining peace and stability, and moving forward, such a compromise was unavoidable.

Similarly, in some settings, transnational actors must make uncomfortable trade-offs. For instance, in post-conflict states, to immediately establish peace and order, brokering peace deals with warlords and crony leaders may be inevitable (Peake et al., 2004). Entering into peace agreements with perpetrators of violence and working alongside them are far from the 'ideals' attached to the rule of law. However, such "dirty deals" (Kleinfeld, 2018, pp. 99-122) should not be considered as staying apathetic or giving up on further efforts to enhance the rule of law. Instead, such "dirty deals" according to Kleinfeld, buy valuable time for other initiatives that can assist in fostering support for changes from the bottom up.

Moreover, in post-conflict settings where transnational rule-of-law aspirations are transferred as part of state-building initiatives and political settlements,²² deals and bargains with local “elite”²³ leaders are inevitable. These elite leaders – who may have resorted to human rights violations and authoritarian tactics – could wield immense political, economic and social power in a society. They are also crucial for negotiating a new path forward (Cheng, Goodhand and Meehan, 2018; de Waal, 2009). During transitions, as part of political settlements, elite leaders who may have drawn their authority in the society because of their charisma or tradition during the conflict would be vested with formal ‘legal’ authority. Such ‘imperfect’ arrangements are often necessary for fostering support and legitimacy from the public, who follows their revered leader and adopt new reforms that are aimed at transforming existing practices, norms, and behaviour in a society.

ii) ‘Good enough’ as what is possible within a specific context

In the second strand of scholarship, the ‘good enough’ framework is used to evaluate the practice of mothering (Silva, 1996) and policing (Bowling, 2007) in different contexts. Silva and Bowling note that instead of evaluating whether a mother or a police officer carrying out their roles in diverse settings meets the standards of the ‘ideal’ prototype role, what one should ask is whether they have carried out their duties in a ‘good enough’ manner.

Silva uses Winnicott’s ‘good enough’ concept to study lone mothering across varied cultural, historical, and social contexts (1996, pp. 1-10). Silva observes that the ideal conception of a mother – as someone who devotes her entire time alone, unselfishly, to raising new generations – cannot exist, as societies transform their economy, politics, and culture. To substantiate her argument, Silva brings together a range of case studies, which describe realistic struggles and the variety of mothering choices made by working women, middle-class and lone mothers, carrying out their

²² ‘Political settlement’ as a term is defined by different scholars in divergent ways (Bell, 2015). Scholars either focus on ‘political settlements’ as a ‘state’ or as a ‘process’ where interests of the elites or, more broadly that of the society are considered. Di John and Putzel define political settlements as “the forging of a common understanding usually between political elites that their best interests or beliefs are served through acquiescence to a framework for administering political power” (2009, p.4). Cheng, Goodhand and Meehan (2018, p. 10) define political settlements as “the distribution of power on which a polity and society is based, which results from conflict and negotiation between contending elites.” In the context of the arguments presented here in the dissertation, ‘political settlement’ is understood as the ‘new rules of the game’ that are negotiated with the elites on how power and its exigencies will be managed in the society.

²³ Here elites are defined as those who have control over a disproportionate amount of political, economic and/or social power, thus enabling them to influence decisions and implement policies that can impact a wider population (see Cheng, Goodhand and Meehan, 2018, p. 10). In East Timor, the conflict between 1975-1999 paved the way for a few individuals and groups to consolidate their authority as ‘legitimate leaders’ in the society. They drew their authority by pointing out to the many years of their efforts leading the resistance movement against the Indonesian military. Consequently, the individuals who led the resistance movement have now emerged as the new “elites” in the post-independent East Timorese state (see Nygaard-Christensen and Bexley, 2017).

mothering responsibilities (Silva, 1996). Silva adds that, in societies that have strong social welfare provisions, working mothers spend more time with their children or find others who can carry out mothering duties. However, in a society with limited social support systems, working mothers must juggle between their employment and finding alternate caring responsibilities through relatives or creches. Silva points out that what mothers can do for their children in these two settings is shaped by their immediate social environments.

Applying the ‘good enough’ framework, Silva notes that the act of mothering itself is contingent on social factors and develops in non-linear ways. Depending on immediate realities, mothers “continually recreate mothering and the conditions under which mothering happens” (Silva, 1996, p. 33). Silva highlights that since ideas of mothering can vary depending on social and structural factors, it is better to address it in a relational context-dependent manner, where the autonomy of a child and the mother are factored in (Silva, 1996, p. 33). Silva argues that the relational construction reframes the act of mothering not as an essential psychological or moral attribute of women – where a perfect mother is described as someone who provides full, unconditional caring – but as something that emphasises agency of both the child and mother. Silva thus uses the ‘good enough’ framework to study the diverse experiences of mothering and how those who carry out the act of mothering do it within the constraints they are in; nevertheless, trying the best that they can do. Thus, Silva concludes that the ideas of mothering cannot be decoupled from local contexts (Silva, 1996, pp. 10-36).

Similarly, Bowling (2007) applies Silva’s ‘good enough’ framework to evaluate the actions of police officers in the real world. He observes that police officers face different resource constraints and challenges as they carry out their duties to maintain the security of the public. Bowling notes that police, irrespective of their contexts, are expected to make fair decisions quickly and effectively. Bowling argues that, because of the nature of policing, it would be more useful if we evaluate the act of policing as ‘fair enough’/ ‘effective enough’ – a ‘good enough’ service, rather than against an ideal ‘perfect’ policing standard. Bowling emphasises ‘perfect’ policing is impossible to attain because police officers are often working “under the twin imperatives to be fair and efficient to make just decisions quickly” (2007, p. 22). He points out that the resources that police officers may have or what they need to do in different settings to maintain order may vary. Bowling’s use of ‘good enough’, like Silva’s, underscores the importance of comparing the practice of policing in context. He maintains that we must consider the real challenges police officers face while carrying out their duties on the ground. Therefore, Bowling proposes that we should evaluate police

officers against the urgency of the situation and whether they have carried out their role towards ensuring a fair and effective policing. Bowling underlines that his conception of good enough policing does not mean an apathetic acceptance of rudeness, racism or incompetence. Instead, “good enough policing” allows us to focus on other aspects that should be addressed “most urgently” which assist police officers in carrying out their roles fairly and effectively (Bowling, 2007).

Both Bowling and Silva highlight the varied experiences and contextual challenges mothers and police officers face in different societies. According to them, the ‘good enough’ framework helps us to consider the diverse choices police officers and ordinary mothers make for realising philosophical ideals associated with being a mother or a police officer. Silva’s and Bowling’s observations are also relevant for transnational rule-of-law engagements in transitional societies. A transitional society that may have had years of fragmented state infrastructure and laws would have different rule-of-law strengthening experiences compared to stable societies. In most circumstances, countries emerging from internal conflict barely have any infrastructure or skilled human resources to fully realise their rule-of-law aspirations (Sathavy Kim, 2003). Most of the population may also reside in rural areas far away from the state legal system (Allen and Macdonald, 2013). Searching for a ‘perfect’ application of law or expecting officials in the justice sector to carry out their roles perfectly is asking too much of a society that is gradually establishing its state institutions.

In East Timor, statebuilding initiatives led to the adoption of a state-based legal system. However, there are a limited number of skilled judicial officers, government officials, police officers, legal trainers – to list a few roles necessary for executing the constitutional aspirations in the country. In addition, the majority of the Timorese citizens remained outside of the state-based legal system during the Indonesian occupation (Grenfell, 2013). For the country to fully adapt transnational rule-of-law aspirations, there must be fully skilled judicial personnel and other government officials who can execute their roles; and a citizenry who trusts and places authority on the state-based legal system. Unless these aspects are fully fulfilled, transnational rule-of-law engagements will remain ‘imperfect.’ Therefore, following Silva’s and Bowling’s observations, instead of looking for ‘perfect’ transnational rule-of-law promotion, we should investigate whether the transnational actors have done all they can within the limitations of their context for strengthening the rule of law.

II. 'Good enough' framework for the current research

From the above review, we can observe that scholars have relied on 'good enough' in various ways. Nevertheless, some common themes emerge from their use of the term. Underlying their arguments on 'good enough' is the acceptance that 'perfection' may be unattainable – whether in terms of motherhood, parenting, governance reforms or policing. They also point out that looking for 'ideals' in real-life situations can barely turn fruitful as social conditions are far from 'ideal' and people who are carrying out their roles might be doing the best that their contexts allow. As a result, mothers, police officers or governance reformers must respond to the exigencies of the contexts they are situated in with a diverse set of responses that allow them to carry out their roles.

In each of these conceptions, the authors attempt to find a balance, where some of the core, urgent factors relevant to a situation are attained by dropping the illusion of perfection. Silva notes that "good enough mothering" is what is realistic for women to pursue their caring duties without being a terrible parent. For Grindle, "good enough governance reforms" are policies that development practitioners can introduce to tackle immediate concerns, even though those reforms may be far from 'ideal' prescriptions. For Bowling, "good enough policing" is a balancing act that allows an optimum environment for the police force to carry out fair policing with urgency. They emphasise that, for most of the time 'good enough' will do, as long as it assists in building an 'achievable foundation stone' that makes it possible to go beyond 'good enough' towards an 'ideal' (Sidebotham, 2017).

Following Winnicott's, Silva's, Bowling's and Grindle's observations, a 'good enough' framework underlines the importance of identifying parameters that make interventions work for a specific setting. In the context of transnational rule-of-law engagements, what makes 'good enough' or 'not good enough' must be determined based on the realities and needs on the ground. This does not mean that using a 'good enough' framework leads to a situation where there is no specific standard to pursue. Rather, 'good enough' transnational rule-of-law promotion and adaptation entails actions that make it possible for transnational actors to pursue reforms (where necessary and where there is local support). A 'good enough' transnational rule-of-law engagement must always work towards improving rule-of-law standards in the recipient society to tackle arbitrary power, irrespective of the sources, through law. This means facilitating changes where there are weaknesses in how officials apply the laws; enabling state-institutions to direct the use of power through identified formal channels and limiting abuses of power through pre-determined formal arrangements; and, assisting ordinary citizens to transform their existing attitudes, behaviours and

norms by adapting the aspired ones. It may be impossible to pursue all these aspects simultaneously. Depending on contextual limitations and what is necessary for enabling adaptation of transnational rule-of-law promotion for the long run, any of the above aspects could be prioritised. For example, in societies where there were no strong state-based institutions or laws, reforming institutional arrangements and laws to address state-incapacities may be the necessary first step towards strengthening the rule of law (Trebilcock and Daniels, 2008; Grindle, 2004). It must also be noted that what is necessary for facilitating change in one issue area may differ from another. As I will demonstrate in my empirical chapters, the necessary support to assist the Timorese stakeholders to ensure the independence of the judiciary was distinct from what was required to enable the adaptation of transferred anti-corruption laws.

I emphasise that a ‘good enough’ rule-of-law promotion does not mean that we should be complacent about a mediocre involvement of transnational actors. Instead, all things considered, there are sufficient benefits in compromising some ‘ideal’ aspects attached to the rule of law at a particular time, provided there are no critical lapses in human rights, peace and stability. What matters is that the actions of transnational actors are not counter-productive from strengthening the rule of law on the ground. A ‘good enough’ transnational engagement thus aids a recipient society in improving and consolidating the relevance of law, its legitimacy and authority in society, rather than allowing a society to backslide into ‘lawlessness.’²⁴

It is possible that the transnational engagements may ‘not be good enough’ in some settings. Transnational rule-of-law engagements can also fall into a ‘not good enough’ category, when internationals are not cognisant of the recipients’ needs and they copy-and-paste ‘best practices’ or goals without evaluating its ‘fit’ to local settings. They can also be ‘not good enough’ when they do not assist a society in advancing further in their rule-of-law aspirations. Rule-of-law promoters must work alongside their local counterparts in investigating what the recipients need, and what is necessary for the consolidation of rule-of-law aspirations in a specific context. They must plan meaningful interventions, knowing the needs of the recipient settings, which create momentum towards the aspired rule-of-law ideals. After reviewing existing scholarship on transnational engagements in local contexts in the sections below, I identify three factors that facilitate ‘good enough’ transnational engagements.

²⁴ I use ‘lawlessness’ to suggest a ‘void’ of the authority of law in a society. As Rajah (2012) and Cheesman (2015) demonstrated, it is also possible that those in power could use state-sanctioned violence to guarantee that there is order and thus non-lawlessness in a society. Even in such states of ‘suppression’, one can observe ‘lawlessness’ where a state or political elite buys support through violence. Thus, in my use of the term, I mean ‘lawlessness’ to suggest attitudes which disregard the authority of state-based institutions and law.

i) Recursive engagements between the internationals and local stakeholders

Halliday and Shaffer in their transnational legal order ordering theory observes how “the production and implementation of transnational legal norms among international, transnational, national and local lawmakers and law practitioners dynamically and recursively affect each other” (Halliday and Shaffer, 2015, p.38). The authors theorise how recursive interactions between actors situated at different sites “expand or close” the gap between the expected transnational standards and its adopted forms in local and national settings (Halliday and Shaffer, 2015, p. 38). In Halliday and Shaffer’s words, “[s]ometimes the impetus for the formation and change of [transnational legal orders] comes from “below”, and sometimes it comes from “above”, but it always involves engagement across sites and levels of law-making” (Halliday and Shaffer, 2015, p.38).

Project deadlines, funding limitations, and lack of knowledge of the political and social context often constrain international actors in the field from determining the actual needs of the local population (Mosse, 2013; Hammergren, 2014 pp. 7-24). Law and development scholarship abounds with examples of international and local partners ‘failing’ to recursively engage with each other. In his ethnography of World Bank officials executing dam projects in Lesotho, Hitchcock (2017) provides an example of how the Bank officials often hid behind the “fiction of non-political” to distance themselves from the local reality. He explains that the “fiction” of staying non-political became the veil behind which the Bank officials hid from the residents affected by the dam projects, civil society organisations and other parties. Hitchcock remarks that the Bank officials’ strategy resulted in them overlooking legitimate concerns regarding dam construction and its impact on local livelihoods and homes. Instead, the Bank officials re-routed the local population’s concerns to be heard by the government ministry. Hitchcock notes that the local people did not trust the government, and the entire approach lowered the Bank’s legitimacy and credibility in the eyes of the local people. He concludes that not listening to local partners (outside the government) and staying apolitical cost the Bank its footing in Lesotho.

Desai and Schomerus (2018) explain the apolitical and technocratic nature of international development initiatives as a product of its own time – the Washington consensus rooted in neoliberal agendas and liberal legalism. For instance, the World Bank’s articles of agreement state that the Bank would not intervene in the local politics (Shihata and Wolfensohn, 1995). Similarly, the UN also claims that it would not engage with local political matters, as they are issues of national sovereignty (UN Secretary General Hammar skjöld’s statement in 1955, see United

Nations, n.d., 2). The “fiction of non-political” can distance internationals from local realities and encourage them to remain as passive transferors. To break this pattern, internationals must engage with the local stakeholders in a reflexive and recursive manner.

For recursive interactions, international actors, who often have more financial capital and influence, must break away from their ‘top-down’, vertical engagements to more horizontal interactions. This means incorporating provisions and opportunities that facilitate dialogue between local partners as well as transferring decision-making responsibilities to them. Through recursive engagements, international and local stakeholders can inform and negotiate what works, what does not work, and what is needed, to adapt transnational rule-of-law aspirations in a particular context. In recent years, there has been some interest within the policy sphere in moving from a ‘top-down’ approach to such reflexive and recursive engagements (Desai, 2020). Simion’s research (2021) on the rule-of-law intermediaries (‘transnationals’, as I refer to them in this dissertation) in Myanmar illustrates one such example. Simion shows how internationals can gain information on “what is happening in the confined spaces, places and meetings that are inaccessible to them” through their local partners (2021, p. 204). In Myanmar, the local partners delivered otherwise diffused messages of local needs to their international partners. As a result, the local informants could persuade their international partners to support specific reforms (Simion, 2021, p. 204). Furthermore, Simion (2021) adds that, in a setting where foreigners are often viewed with suspicion and distance, engaging closely with the local partners can help build trust among the local population. As for the local stakeholders, internationals could provide them with financial and technical support that is often found wanting in transitional societies. To conclude, internationals and local stakeholders can benefit from recursive engagements, especially if such arrangements enable those transferring reforms to know the local context better; and if those receiving them can adapt the reforms to ‘fit’ local contexts without compromising the progress towards realising transnational rule-of-law aspirations fully.

In East Timor, opportunities for recursive engagements between internationals and local stakeholders were introduced as part of the statebuilding initiatives. UN’s transitional administration introduced arrangements where international actors worked alongside the local stakeholders in the judiciary, ministries, and the parliament (Strohmeyer, 2001). Such close mentor-mentee arrangements were expected to enable the exchange of skills, dialogue, and ideas between the parties (Strohmeyer, 2001; fieldnotes, 2018). However, whether such arrangements have actually enabled recursive interactions must be empirically teased out from the field.

ii) Localising global norms

As I pointed out in Chapter II, norms transferred by international rule-of-law promoters are “abstract formal rules” (Stinchcombe, 2001) that guide transnational initiatives. Once they reach targeted settings, these norms must be localised to address the particular problems and challenges that prevent a recipient society from attaining the aspired transnational rule-of-law ideals. This is because, while the abstractions of transnational conceptions allow for normative ideas to move to different contexts (Twining, 2005), they are limited as tools for guiding reforms in particular contexts (Merry, 2006; 2016). Therefore, as new norms are taken to local contexts, they must be ‘localised’ to fit the needs of specific settings. In the context of rule-of-law transfers and adaptation, this means ‘translating’ aspired rule-of-law standards in the linguistic, functional and practical sense to fit local particularities. Anthropologists who have studied rule-of-law promoters (Berger, 2017; Simion, 2021) and human rights activists in the field (Merry, 2003; 2006; Levitt and Merry, 2017) pinpoint instances where transnational actors successfully transferred global norms to local contexts. These scholars point out how transnational actors “translated” meanings of transferred norms (Berger, 2017), found “vernacular” means to raise awareness of legal norms (Levitt and Merry, 2017), and thus “localised” (Acharya, 2004) transnational aspirations to relatable forms to recipient stakeholders in local settings. Their descriptions draw our attention to the varied ways in which ‘localisation’ of transnational aspirations can happen.

For instance, Berger describes how the local civil society organisations in Bangladesh “translated” the EU’s rule-of-law objectives. He illustrates how Bangladeshi civil society infused ideas about equality before the law and access to justice with prevailing Islamic narratives (Berger, 2017, p. 131). From the field, Berger informs us that the civil society organisations helped raise awareness and improved the legitimacy of village courts amongst the local population by drawing similarities with Islamic principles and standards of equality under the EU rule-of-law initiatives (Berger, 2017). Similarly, Levitt and Merry inform us about civil society activists “vernacularising” international norms through ideas and practices familiar to their recipient group. They give examples of civil society in India using kites at a local kite festival in Gujarat to build awareness against female infanticide.

While Berger describes why “translation” of the transferred rule-of-law standards by the EU was necessary in the case of Bangladesh, Levitt and Merry’s research explains how strategies that work in the local setting are necessary for an effective “vernacularisation” of distant legal idealisms. The

different strategies that the authors pinpoint aim to translate what may be perceived as ‘esoteric’ transnational aspirations that are detached from the local realities to meaningful solutions for solving the immediate concerns of those who are on the ground (see also Helfer and Slaughter, 1997).

Within the scholarship, a few scholars have documented instances of internationals failing to localise global norms. Writing on the USAID and World Bank’s initiatives of instituting judicial councils in Latin America, Hammergren (2014) notes the new arrangements for improving judicial independence did not result in the intended changes. The rule-of-law reformers, who were informed by their experiences of how the judicial councils operated in the US, hoped that the councils would prevent the political elite from interfering with judicial appointments, promotions and transfers. However, Hammergren notes that contrary to the rule-of-law promoters’ expectations, the councils became spaces for judges who had partisan interests to politicise their roles. Thus, instead of furthering the transnational objectives of strengthening judicial independence, the reforms weakened it. In a similar vein, Szto (2016) criticises the anti-corruption reforms in China. Szto explains that, in the Chinese culture, virtuous gift-giving is a tradition followed by families, businesses and officials (2016, p. 610). But the transferred anti-corruption legislation does not recognise this ancient tradition of virtuous gift giving. Instead, Szto notes, ‘Law’ (referring to state-based laws) has entered the realm of gift-giving by classifying it as “inappropriate gifts” (constituting a bribe). As Szto points out, virtuous gift-giving was not the problem the rule-of-law reformers aimed to tackle. However, the anti-corruption legislation following a generalist template led to unfairly targeting practices that are culturally embedded in the Chinese society.

Contrasting these accounts, DFID gives an example of one of its successful interventions in collaboration with a Ugandan NGO – Raising Voices – to reduce physical violence in relationships. Contrary to other initiatives that target gender violence, DFID’s intervention, entitled SASA!, shifted the rhetoric on women’s rights in Uganda. DFID reports that instead of using the language of rights, the initiative used the language of power: “what it is, who has it, how it is used, how it is abused, and how power dynamics between women and men can change for the better” (SASA! Health Social Change and Behaviour Change Network, 21 March 2011). Making the community conscious of how power works and its effects on women, the SASA! Program could build consciousness on gender violence from the grass roots. To generate awareness, SASA! trained community activists to engage with family, friends, neighbours and key stakeholders, including

local and religious leaders, the police and health workers (Alexander-Scott et al., 2016). In addition, many activities (outside of the legal system), including community conversations, door-to-door discussions, film shows and soap operas were included to generate awareness. DFID notes that its SASA! interventions reduced the social acceptability of physical violence in relationships and led to an increased social acceptance of women's refusal of sex with their partners (Alexander-Scott et al., 2016, p. 31). DFID's SASA! programme is a good example of targeting particular challenges and root causes in targeted societies.

The above studies demonstrate why rule-of-law transferors need to engage with how transnational normative aspirations can be made relatable in local settings. Depending on the context, such efforts for localisation could mean identifying aspects of transnational normative aspirations that will be adopted in a specific setting, and the particular challenges that exist in the further adaptation of the transferred normative standards. Such 'localisations' could also mean redrawing the normative boundaries of law or supporting distinct institutional structures or processes that fit the local realities. For example, transnational rule-of-law aspirations emphasise the importance of an independent and impartial judiciary. But for an independent and impartial judiciary to exist in a society, judges will have to adhere to certain standards, and they must have requisite technical skills to interpret and apply laws confidently. Moreover, the wider public and the political elite must accept their authority as the final arbiters. In East Timor, the majority of the judicial recruits require further Portuguese legal language training, alongside professional and technical support while using complicated areas of law such as tax law, trafficking etc (RDTL, 2010; fieldnotes, 2018). Thus, to 'localise' transnational aspirations of an independent and impartial judiciary in the country, it is mostly non-institutional and formal aspects such as assisting the Timorese judicial actors in their interpretations of case law, guiding them to relevant sources of case law and legal authority, supporting them in the drafting of their arguments and judgments that are required.

Localising transferred norms to 'fit' the contexts of particular settings as I point out here is distinct from the accounts of re-interpretation and re-adjustments of transferred norms by local actors that Gillespie and Nicholson (2012) point out in their research. Actions where actors in the field carry out reinterpretations as a manipulative act to divert the adaptation of transnational rule-of-law aspirations must be distinguished from similar efforts where vernacularisation, translation and/ or rearrangement of transferred legal rationales happen in the hands of local actors who are genuinely pursuing to bring changes (see Levitt and Merry, 2017; Berger 2017). Therefore, what kind of support is necessary to localise transferred transnational norms, how such initiatives are carried

out and whether they are facilitating the adaptation of transnational rule-of-law aspirations, must be determined from the field.

iii) Continuing interactions with local stakeholders

Transnational networks can assist societies that aspire to adapt transnational rule-of-law aspirations in the local setting (Finnemore and Sikkink, 1998; Keck and Sikkink, 1999; Risse, Ropp, and Sikkink, 1999). However, the international community must have channels for continuous engagements with those situated locally to facilitate changes and support local stakeholders who want to bring changes. In settings that require broader social change, it may take time for the transnational rule-of-law aspirations to take hold locally. While the society is slowly transitioning, local civil society members and other actors who support transnational rule-of-law reforms must be assisted in building their legitimacy and influence in the local setting. In a best-case scenario, both the political elite and the citizens would be receptive to shifts from 'old' and 'existing' ways of social ordering to 'new' ways: where everyone, including elite and powerful groups adhere to the law, where judges have authority as the final arbiters, and legal rules are fair, just, and transparent. In other instances, elite decision-makers might be overtly receptive but covertly resistant to aligning with the transferred rule-of-law standards (Serban, 2015). However, ordinary citizens, media and civil society may be enthusiastic to bring about changes. Spanish reforms after the fall of Franco are a case in point (Burnell, 2005, p. 369). Or it could be that group/groups in a society might be open and receptive to reforms, and there may be others who oppose them (see Mendelski, 2016, on rule-of-law reforms in Georgia and Armenia). Or in the worst-case scenario, the ruling regime might resist bringing changes to the existing social order, and local stakeholders may be unprepared or ill-equipped to oppose groups that hold power. North Korea is a good example of such a setting. Depending on the level of support from the recipient community, the rule-of-law transferors need to strategise differently to ensure that they can continuously support those aspiring for change. In countries where the ruling elite and the citizens resist the transnational rule-of-law efforts, only minor changes can happen through continuous engagements. In contrast, in settings where citizens/certain groups are willing to demand changes, transnational norms and networks can empower and amplify their demands locally as well as globally (Grewal, 2018).

As mentioned earlier, new norms and institutional arrangements transferred by international partners take time to be fully adapted in the society. In the meantime, as the process of adaptation is underway, it is necessary to exchange legal ideas, principles, developments in the area with the local partners. Also, most of the countries that rely on international support to strengthen the rule

of law in their domestic settings lack technical and/or financial resources (even where there is a political will) to support institution-building. Aid funds and training support provided by international partners can help to close the gap in the resource constraints. For example, in East Timor, where there is limited technical expertise in the judiciary and peoples' attitudes towards state-based laws and institutions are poor, continuous engagements between international and local stakeholders are necessary for finding funds for strengthening institutional structures and creating opportunities for transferring technical skills and expertise. Thus, the kind of continuous engagement that is required for supporting local partners will depend on the particularities of the recipient state.

For example, continuous engagements allow the international community to monitor rule-of-law developments in a society. Whenever there is any lapse, they can activate global governance structures to arm-twist the political elite in complying with the internationally set standards. Continuous engagements between the internationals and the local stakeholders can consolidate the civil society and open avenues for blaming and shaming governments that are resistant to change internationally (Kruckenberg, 2012). Ongoing interactions with the local stakeholders are necessary to ensure that there is a coordinated transnational advocacy and an uninterrupted channel for monitoring possible violations of human rights and rule-of-law norms. Kruckenberg (2012) illustrates this in her ethnography of the Committee on the Elimination of Racial Discrimination (CERD) proceedings. Kruckenberg describes how the civil society in Peru and Russia reported on distinct violations of the state or how the state's inaction has worsened human rights. Giving an in-depth description of the reporting from a Peruvian civil society organisation, Kruckenberg illustrates how the organisation meticulously documented the discriminatory language used by the Peruvian government against the Achuar, an indigenous community in the Amazon region. On hearing the report, the Committee asked the Peruvian government for its response and gave recommendations for protecting the indigenous rights of the Achuar people. Kruckenberg concludes that the international attention and condemnation eventually stopped the Peruvian government from taking hostile policies against the Achuar people (Kruckenberg, 2012, pp. 124-146). Kruckenberg underscores why having channels of continuous engagement with the recipient community is essential for effective transnational regulation and monitoring of whether or not transferred norms have been adapted.

It is worth noting that such international 'issue networks' can assist local actors in pushing back against arbitrary leaders and governments only when they are activated by appeals from the local

civil society/citizens. Locally placed civil society organisations have a better vantage point in gathering evidence and informing the international community about human rights and rule-of-law violations happening on the ground (Kruckenberg, 2012; Halme-Toumissari, 2017). Sometimes this could mean that the internationals will have to toe a fine line from being too critical of a ruling government. If their strategies veer too far from the ruling governments' mandates, both international and local actors working closely with international partners can face backlashes. Their national offices can be forced to shut, and all communication channels with the transnational networks can be terminated. If such a situation happens, neither the internationals nor the local counterparts can effectively rely on transnational governance mechanisms to nudge hostile governments to adopt desired changes. Cheng, Goodhand and Meehan (2018), writing on elite bargains and the successes of political settlements note the fine balance on which transformational reforms must be pursued in post-conflict settings. They write

“...prioritising stabilisation over transformational change means bringing the peace process into closer alignment with the underlying political settlement, at the likely cost of elite capture. The challenge for diplomatic and political interventions is to find ways that create space for meaningful political dialogue and can support momentum for more developmental post war outcomes without pushing too hard against the existing political settlement and against the kinds of deal based mechanisms upon which elite bargains are founded.”

According to the authors, such “doorstep conditions” could open up opportunities for expanding the issues that are taken for negotiation, what can be demanded from those in power, and whose interests must be considered at a particular time while ensuring that failures to bring desired changes does not risk thwarting the chances of adapting transnational rule-of-law aspirations. This could mean that rather than pushing for “large-scale transformational outcomes” (Cheng, Goodhand and Meehan, 2018), what may be needed are small-scale “mini bargains or temporary fixes” that set the environment for continuous dialogue and support between the local elite leaders, civil society, citizens, international issue networks, and other international partners that make possible charting a path for gradual changes towards transnational rule-of-law aspirations.

Continued interactions between international and local stakeholders do not mean that there must be always an international presence on the ground. Transnational rule-of-law initiatives, similar to other international development initiatives are also constrained by donors' financial and policy priorities. Therefore, it is unrealistic to assume that international actors will always be present in the field supporting recipient stakeholders. Often international rule-of-law promoters will have to work through their representatives in the local setting or through civil society members who align with the transnational rule-of-law aspirations. In settings where norms and institutional authority

have not fully taken root and where the local partners are still consolidating their position, as part of the continued interactions international actors must assist the local institutions and partners to establish its authority and legitimacy in the society. So that once it is time for the international stakeholders to withdraw from a particular setting, those who are on the ground can carry forward the aspirations to adapt the transferred transnational rule-of-law aspirations, and the internationals can rely on the local partners to monitor and inform transnational advocacy networks when there is any deviation.

Conclusion

In this chapter, I introduced ‘good enough’ as an alternate framework for evaluating the role of transnational actors in promoting and facilitating the adaptation of transnational rule-of-law aspirations. I reviewed how the ‘good enough’ framework has been used in other studies and I pointed out that scholars who have relied on the framework have used it to highlight the difficulties in finding ‘ideal’ versions – mothering, policing, or supporting good governance practices – in the real world. With this point in mind, I argued that since the strengthening of the rule-of-law in particular context requires different kinds of support, it is better to evaluate transnational rule-of-law engagements against a ‘good enough’ standard. Moreover, comparing transnational rule-of-law engagements in one context with another seldom turns out to be fruitful. Instead, we need to identify conditions that are favourable to the international and the local stakeholders, who are genuinely working towards strengthening the rule of law. Societies that are honestly working towards rule-of-law aspirations may require varying forms of support at different phases, while gradually transitioning and adapting to the expected rule-of-law standards.

For a ‘good enough’ transnational rule-of-law engagement, I proposed that international actors must move beyond the hierarchical arrangements and box-ticking exercises usually attributed to rule-of-law promotion. Instead, they must work constructively with the recipient society. I identified how recursive interactions, localising global norms, and maintaining continuous engagements, allow transferors to remain reflexive of the needs of the recipient community and enable them to tailor their interventions to ‘fit’ local realities. These actions assist them in providing ‘good enough’ support to their local counterparts. A society may not have the perfect rule-of-law on the ground, but what matters is that it is moving towards consolidating the aspired rule-of-law ideals rather than sliding away from them. In East Timor, a ‘good enough’ transnational rule-of-law promotion, with time, should lead to a situation where most citizens agree that arbitrary use

of power is problematic, and that they will resort to law to constrain those abusing power in the public sphere.

I proposed that the ‘good enough’ framework aids us in evaluating transnational rule-of-law engagements while a society adapts to the aspired rule-of-law standards. It also enables us to recognise the value of initiatives that facilitate even gradual and incremental changes. As a result, I emphasise why those evaluating transnational rule-of-law engagements must also focus on the everyday interactions, choices, and negotiations those in the field make to ensure that a society is progressing towards attaining the aspired transnational rule-of-law standards. Therefore, to assess whether transnational engagements have been ‘good enough’ or ‘not good enough’, a close empirical study, which allows us to unpack what is happening on the ground is necessary. In the next chapter, I will engage with the different qualitative methods that I relied on for collecting data and why I have used them to study whether transnational rule-of-law engagements have been good enough or not in East Timor.

CHAPTER V:

ON DATA COLLECTION

This chapter engages with how we can gather and analyse data related to whether transnational engagements have strengthened the rule of law in a particular setting. In the previous chapters I argued why we need to observe rule-of-law adaptation as a fluid phenomenon and reframe successes of the transnational engagements as that which aids progress towards adapting transnational rule-of-law aspirations. Reframing adaptation of rule-of-law as fluid has implications on where we search for information about the rule-of-law phenomenon, whom we rely on for accounts of change, and the methods that are used to collect such data (see Chapter III). Resorting to desk-based research or relying on rule-of-law surveys carried out by indicator projects or evaluations by international organisations (see Chapters III and VI) does not provide a full picture of the trajectories of change on the ground. Instead, I emphasise why studying transnational rule-of-law adaptation within specific areas of reform is more helpful in informing about the impacts of transnational engagements. I argue that studying transnational rule-of-law initiatives in East Timor through judicial independence and anti-corruption reforms not only makes the project manageable but also allows for drawing comparisons between the varied ways in which transnational actors engage/engaged with the Timorese stakeholders in these areas. It also allows in comparing the possibilities and limitations in carrying out judicial independence and anti-corruption reforms in the post-conflict state.

In the latter sections, I expand on the methods of data collection that allow us to place the international and the local stakeholders in the same space and gather information about their experiences, challenges and efforts at strengthening the rule of law on the ground. I emphasise how the proposed methods of data collection allow us to gather ‘thick’ accounts of the process of transnational rule-of-law transfers, its adoption and adaptation in context. I acknowledge that by focusing on both international and local experiences, my study does not go into as much depth as other studies that have engaged with either the ‘local’ or ‘international’ experiences (Nicholson, 2007; Mosse, 2005; Grenfell, 2013). Instead, by engaging with both the international and local stakeholders, this research investigates what becomes a ‘successful’ transnational engagement for these actors that allow both parties to pursue their aspirations of strengthening judicial independence, and anti-corruption norms in East Timor.

To reiterate, in contrast to the existing empirical scholarship on the rule of law (see Chapter III), researchers evaluating, and monitoring rule-of-law reforms must remain reflexive of the conceptual boundaries of travelling legal norms. As a result, researchers studying transnationally sought-after legal norms in particular settings need to remain sensitive regarding where they look for data about the phenomenon and what information is gathered. Using judicial independence as an example, I point out that in East Timor, the presence of charismatic leaders, Portuguese as the legal language, and resource constraints remain crucial ‘external’ challenges that hinder Timorese judges from carrying out their aspired normative roles. These are context-specific challenges, which hinder the Timorese judges from moving towards their aspirations to be an independent and impartial judiciary. Therefore, international partners must assist their local counterparts in overcoming these limitations to facilitate changes in a positive direction.

Finally, researching in East Timor where researchers and informants are “caught up in processes of sense-making, of determining what kind of place Timor-Leste as an independent nation is becoming” (Nygaard-Christensen and Bexley, 2017, p. 399) also calls for a reflexive data collection and analysis. Being a new nation, the rule-of-law transferors and the local recipients are absorbed in a “parallel process of learning, deliberating, and at times contesting, what kind of place Timor-Leste as an independent nation is and should become in the future” (Nygaard-Christensen and Bexley, 2017, p. 399). A researcher, therefore, must assess the varying “social capital”²⁵ (Bourdieu, 1986; Dezalay and Garth, 2002; Garth, 2020) of the Timorese stakeholders as well as of the internationals who are on the ground transferring and receiving new norms. Not all of these actors have equal power to bring about changes or the desired transformations in the country.

Additionally, I highlight some issues that researchers who study social change in particular societies need to consider. While studying the role of transnational actors in bringing social change in settings that are rapidly shifting, researchers must consider the ambivalences that come with tradition, foreign influences, colonial heritage and contemporary politics, which could all lead to heterogeneous outcomes. Only a research design that builds on diverse data collection methods can overcome the above challenges and study closely the kind of change that is happening on the ground alongside the contestations for the changes.

²⁵ According to Bourdieu (1986), social capital depends on the group membership and social networks that actors can mobilise as a result of their educational, cultural or professional affiliations. Also, see Garth’s (2020) thesis on how social capital is operationalised within the legal field; Garth observes that since “law represents relationships”, social capital is embedded in legal capital, and that legal capital without social capital lacks power.

I. Studying the rule of law in East Timor through the lens of judicial independence and anti-corruption reforms

Pin-pointing the boundaries of rule-of-law reforms in recipient societies is difficult. Depending on the institutional agendas of international rule-of-law promoters, rule-of-law reforms vary (Schimmelfennig, 2012). Usually rule-of-law reforms include legal drafting, training, creation of new institutions and the amendment of existing ones, and modernisation of administrative and management systems. Despite the variations in reforms, the rule-of-law reformers adhere to a “similar set of rule of law principles, [embedding] rule of law promotion in the programmatic and organisational contexts of democracy, good governance, human rights; [promoting] formal and institutional changes in the law and judicial systems; and [pursuing] the goals of judicial independence, efficiency, and legitimacy based on fundamental human rights” (Schimmelfennig, 2012, p. 130).

Since the terrain is vast, it is important to narrow down the rule-of-law progress within specific areas. Because, as noted in the earlier chapters, rule-of-law transfers occur in a space where there are already existing normative orders holding a society together. Intrinsic to reforms is the objective to upend existing social orders and introduce a new normative standard that aligns with a wider transnational community. It is unlikely that all the newly introduced reforms would find similar support from the recipients. In his comparative study of legal reforms in commercial and family law in Southeast Asia, Harding (2007) demonstrates the uncertainties of changes in different social fields. In Harding’s research, he finds that most of the Southeast Asian nations have more or less adapted commercial laws. However, legal reforms targeted within the family sphere have not received much support. Harding (2007) reasons that the latter type of reforms lack support because traditional norms continue to regulate family matters and they are socially embedded. In a similar vein, writing on rule-of-law reforms in China, Peerenboom (2002) also concludes that there is “mixed adaption” of reforms in different areas. He explains that the Chinese judiciary’s independence in the application of commercial laws is comparable to many countries in the West, however, for cases involving the Communist Party or on individual human rights, the judiciary is far behind in its independence.

For the purposes of this research, the rule-of-law phenomenon will be studied through judicial independence and anti-corruption reforms. Both these reforms are the ‘bread and butter’ of the rule-of-law industry, and every rule-of-law initiative has components of them. Judicial independence and anti-corruption are also integral to constraining arbitrary power within the

public sphere. We can trace the emphasis on impartial and independent judiciary as a rule-of-law component to the early 1980s when USAID, through its law and development programme, reformed the Central American judiciaries for handling human rights cases and administering justice (Hammergren, 2014, p. 1). One donor's initiatives then became the template for many other multilateral and bilateral organisations for attaining economic prosperity (Sherwood et al., 1994), human rights (Cross, 1999; Keith, 2002), democracy and good governance (USAID, 2002), and peace and stability (Security Council, 2001; Security Council, 2004; Collier, 2006).

As guardians of law, judges are expected to step in when a citizen, business enterprise or a rogue leader has deviated from the normative standards of law. Having an independent or an impartial judiciary is fundamental to safeguarding the finality of law. Entrusting judiciaries with decision-making powers is fundamental for separation of powers within the public sphere. A strong judiciary also acts as a compass for defining the limits of law; and courts breathe life into inanimate legal provisions by applying them to real-life problems.

Like judicial independence, anti-corruption reforms are also integral to rule-of-law promotion activities. Especially after the 2000s, rule-of-law reforms in post-conflict and developing economies have emphasised tackling corruption as part of their good governance initiatives (Mendonca and Fonesca, 2012). Here, the focus is the use of power, leading to arbitrary enrichment. Thus, in fragile states that are perceived as spaces where groups of elites can easily abuse their power to gain access to public resources and use it for their benefit, anti-corruption reforms have become a common initiative for peacebuilding and even stability. Moreover, according to legal reformers and economists, corruption stands contrary to the rule of law principles as it benefits a few elites over the majority. As Uslaner (2008) points out, corruption also erodes public trust and impacts political participation, both of which have consequences for democratic peacebuilding. He adds that corruption leads economic wealth to accumulate among the elite and marginalises others. As for the bilateral and multilateral organisations, corruption is an issue of concern because it moves aid funds away from targeted beneficiaries (Quibria, 2017).

In East Timor, where the judiciary was left in disarray after the referendum in 1999, investigating the rule-of-law changes through the lens of a transitioning judiciary allows us an entry point to observe changes (if any) on the ground. Investigating how far the role of the judiciary has settled in the country, whether judges can apply the laws independently, whether their decisions are final, what initiatives are introduced by the rule-of-law promoters to improve judicial independence, and

whether the reforms have supported the Timorese judges in confidently relying on laws for tackling arbitrary power – these questions can inform us whether the normative expectations attached to judicial independence have settled.

In relation to anti-corruption, reformers have focused on computerisation, case management and digitisation of files for monitoring the flow of funds within the bureaucratic system in the country. Besides these activities, within the justice system, the reformers have supported the institution of an anti-corruption commission and training of prosecutors, police force and anti-corruption officials for ensnaring those who are corrupt. Observing how the Timorese officials handle corruption cases, the challenges anti-corruption officials face and how they have overcome them can inform us whether or not transnational engagements have made any differences in addressing corruption as a problem.

II. Whom to interview?

In the studies highlighted in Chapter III, scholars analysed transnational rule-of-law promotion either from the perspective of the rule-of-law promoters (Hammergren, 2014) or its recipients (Trubek and Galanter, 1974; Nicholson, 2007; Grenfell, 2013). Simion's (2021) recent work on "rule-of-law intermediaries" breaks from this tradition by studying how Burmese NGO workers, individuals, and translators broker social change through rule-of-law exchanges. While Simion explores how "intermediaries" use their social capital to influence, build trust and translate rule-of-law aspirations to local contexts, she does not ask her participants what makes for a 'successful' transnational rule-of-law transfer or adaptation. Simion notes that her interventions are "not of 'rule of law' (or law) in Myanmar" (2021, p. 7) but are instead an in-depth account of "the people who, as agents, populate and translate 'technologies of social ordering'" and how the objectives of the rule of law are modified as it "travels in the hands of numerous actors" (2021, p. 7). In contrast, my study is about how transnational rule-of-law standards reach faraway settings through the hands of transnational actors, and how they influence ordinary people, officials and elite decision-makers to conform to the new norms, and what roles they play towards facilitating the various aspects of rule-of-law adaptation.

In the wider sociological sense, transition to a society with the rule-of-law is best represented by ordinary citizens who can tell us whether they trust the law and whether they can rely on judicial institutions to resolve their issues (Kurkchiyan, 2003, p. 274). However, developing distinct patterns of behaviour and ways of thinking about the law among ordinary citizens takes time

(Kurkchian, 2003; Beetham, 1991). Therefore, waiting until everyone aligns to the normative standards attached to the rule of law and mapping their transition is tricky. Even those who have conducted a large sampling of interviews (see Ewick and Silbey, 1998) studied norm change in a specific setting over many years. Since I had neither the time nor the resources to undertake such comprehensive research, the focus for this research was narrowed down to the officials within the core institutions: the judiciary and anti-corruption commission. Focusing on these spaces as the loci of this research, and on the officials, I collected data on the possibilities and limitations these official actors faced while applying the new laws. I also gathered information on whether the laws, institutional arrangements and the training provided by the international partners, have assisted the Timorese judges and anti-corruption commissioners in applying relevant laws and carrying out their roles confidently.

To gather information on what social factors external to the legal field affect the Timorese judges and anti-corruption commissioners, I interviewed other officials within the Ministry of Justice, office of the ombudsmen (PDHJ), office of the public prosecutor, office of the public defender, members of the civil society, lawyers, judicial aspirants, and law students. These actors also belong to the 'first rung' of local stakeholders, who were targeted by rule-of-law promoters. They are also more likely to adapt to the new norms by being in close proximity to international technical advisers. Moreover, "[these] groups of people are most likely to practice, observe and identify new approaches to law – if indeed they [are] happening" (Kurkchian, 2003, p. 274). Accordingly, I interviewed Timorese judges (2), lawyers (4), public prosecutors (2), public defenders (2), civil society members (8), judicial aspirants (10), law students (8), anti-corruption commissioners (3), ombudsmen (3) and officials at the Ministry of Justice (3). While interviewing these participants, I inquired how their attitudes and standards towards law have shifted and what challenges they face in carrying out their official roles. Their answers were analysed to understand the particular concerns they faced and how the internationals, if at all, have helped them in addressing their problems.

To gain insight into the transferor's perspective, interviews were conducted with programme managers in bilateral and multilateral organisations who were involved in justice sector reforms in East Timor (9), international judges (2), technical advisers to the Public Defenders' Office (2), legal training centre (2), and at the law department at the National University (2). The informants were asked about the challenges they faced while transferring transnational standards into East Timor. During the interviews these participants were asked about the compromises (if any) they had to

make and how they evaluated whether their responses have helped their Timorese counterparts strengthen the rule of law. It is worth noting that the internationals, who were working within the UNDP and other bilateral organisations, were far more restrained in their accounts of the compromises they had to make. On the contrary, the Timorese officials were more forthcoming in revealing the bargains and the necessary ‘imperfections’ involved in adapting to the rule of law ideals. To address the limitations in acquiring primary accounts from the internationals on the compromises they made, I relied on informal conversations with the existing and ex-staff members at the UNDP²⁶ and other (anonymised) bilateral organisations that have funded justice sector reforms in East Timor.

III. Data collection

In the following sections I explain how we can move beyond the binary accounts of rule-of-law reforms (see Chapter III and VI) and instead study the ‘success’/ ‘failures’ of the phenomenon by placing both the internationals and the local stakeholders within the same space. The methods used for data collection should enable us to observe both the actors entangled in the same space. Second, they should also aid us in gathering evidence of the hopes, fears and struggles of those who are genuinely striving to strengthen the rule of law in a particular setting. And most importantly, the methods employed should help us in gathering evidence about whether transnational efforts have aided in bringing any changes towards adapting rule-of-law aspirations on the ground. Keeping these points in mind, the data for the research is collected using a range of different qualitative research methods.

i) Fieldwork

Studying the rule-of-law progress through fieldwork allows us to “cover conversations, observations, impressions and so forth” (Flood, 2005, p. 45) from the field. In addition, it opens various opportunities to hang around, observe, fine-tune interview questions, find potential informants who may be invisible in existing literature or unreachable outside of the ‘field’ (Nelken, 2000, pp. 35-41) – all of which are important factors for gathering evidence of what is happening on the ground. Furthermore, being in the field allows the researcher to build trust with the interviewees through extended engagement (Ruiz-Casares, 2012). In addition, fieldwork offers opportunities to rely on other methods to triangulate data collected from interviews (Yin, 2006).

²⁶ See Appendix for a brief engagement on methodological limitations arising from formal interviews with elites in multilateral organisations, and the implications for gathering evidence of rule-of-law transition in particular settings.

Building trust with informants is necessary for obtaining information beyond the presentational data that they may otherwise provide.

For this research, I carried out informational interviews before entering the field. The interviews were targeted at internationals involved in justice sector reforms from 2000 to 2010 to gain an overarching picture of the rule-of-law programmes in East Timor. Policy documents from UNDP and other bilateral organisations in the public domain and academic literature on justice-sector reforms (Kent, 2012; Grenfell, 2013) were also reviewed. From the literature review, it became apparent that the existing scholarship hardly provides accounts of the experiences of the Timorese officials within the justice sector. Reports from the international organisations give details of their projects and their perceived successes (see Chapter VI). Academic researchers have inquired into the prevalence of traditional law and how it has been overlooked by the rule-of-law promoters (Grenfell, 2006, 2013; Kent, 2012). A few other scholars have reported on the limitations of the Serious Crimes Process (SCP) and the Timor-Leste Commission for Reception, Truth and Reconciliation (CAVR) (Kent, 2012; Linton and Reiger, 2001). Wallis and Neves (2021) evaluated the legacy of international state-building in the country against political and economic development since independence. Wallis and Neves point out how the centralisation of state institutions has concentrated the political and economic power in the hands of a few elite members and has led to the ‘failures’ of statebuilding in the country. The authors evaluate the broader statebuilding efforts against the standard of decentralisation of power. As a result, Wallis and Neves do not focus on the engagements between international and local stakeholders who are working towards bringing changes on the ground. In contrast, my research follows internationally led justice sector reforms in the country beyond institutional arrangements. I focus on the actors – internationals and national–, their efforts and what they needed to do to achieve the aspired transnational standards of having an independent and impartial judiciary and an anti-corruption commission.

Assessing the state of justice sector reforms in East Timor before entering the field allowed me to narrow down the gaps in the rule-of-law research. For instance, it became apparent that much of the rule-of-law literature ignores the experiences of Timorese officials within the new justice system. The existing scholarship does not engage whether rule-of-law reforms in the country have improved the legitimacy of the state-based justice system. Carrying out a preliminary assessment of the ‘field’ before entering it helped in narrowing the issues for inquiry. And to an extent, it also provided a preview of the different actors and their varying interests before encountering them face-to-face.

Data for this research was collected through five-months of fieldwork in East Timor (February-August 2018). Being in the field, I could observe international rule-of-law promoters and the Timorese recipients in the same space: transferring and receiving new norms. I “hung out” (Geertz, 1998; Browne and McBride, 2015) and “participated” in ordinary, mundane activities (Nelken, 2000, pp. 35-41) with my Timorese and international friends (who were not my targeted interviewees). Many opportunities for ‘informal conversations’ with the internationals and the Timorese informants arose at cafes, local political gatherings, discussions, and other public events. The informants continued to give me valuable insights whenever our paths crossed.

Being in the field helped in observing how the resistance leaders engaged in public. I could observe how Xanana (primarily), Alkatiri, Taur Matan Ruak, Lú-Olo and Ramos Horta, attracted, charmed and influenced those around them. The fieldwork also helped in taking note of the superior attitudes of some internationals who perceived Timorese as “simple, traditional and superstitious” and who considered their roles to be “teaching Timorese how to respect law and live under law” (fieldnotes, 2018). Moreover, situated on the ground, it was easier to witness the everyday struggles and challenges of young Timorese lawyers, judges and law students, reading, writing and applying laws in Portuguese. I could also follow their struggles in carving out roles as legitimate voices of authority while living alongside their resistance heroes.

My association with the Peace Centre at the National University of Timor-Leste (UNTL) as a Visiting Researcher opened up opportunities to engage with senior Timorese professors and young university students pursuing their degrees in disciplines other than law. Discussions and debates organised by the Centre provided background on the resistance movement, transition process and contemporary political debates among the “new generation”. The events at the Centre also brought me into close contact with other international researchers who were studying about democracy, family planning and traditional law in the country. The researchers were open to engaging, sharing and discussing their field observations, which helped in corroborating information from my interview participants. JSMP (one of the country’s prominent legal NGOs) also allowed me to use their desk and Internet whenever necessary. JSMP gave me avenues to reach out to the JSMP staff, who drew my attention to local media reports, YouTube videos and Facebook discussions on Xanana and other veterans.

Being in the field helped me to closely examine the different narratives amongst the “new generation”,²⁷ “in-between”,²⁸ and the “old generation”²⁹ about the rule of law on the ground. Analytically distinguishing the three groups was helpful in observing the power disparities between them. For example, those within the “in-between” generation were pejoratively dubbed the “supermi generation” with “supermi degrees” by the “old generation” during the initial phase of the state-building. “Supermi” is a play on an Indonesian brand of instant noodles, and Bexley notes that using the label suggested that “they are soft like instant noodles and lack strength and wisdom; and that they have an instant (Indonesian *instan*) attitude toward life; and that they do not possess strong morals or leadership qualities” (2017, p. 110).

As I will demonstrate in Chapters VII and VIII, it is the “supermi generation” with their Indonesian degrees who hold positions within the judiciary, anti-corruption commission and other judicial institutions. However, the negative labelling of them has resulted in creating binaries between the “old generation” emerging as the “fathers of the new generation of youth” and the younger generation as those “who could not be trusted in decision-making processes, particularly in reference to the burgeoning nation-state” (Bexley, 2017, p. 100). The fieldwork also helped in gaining a perspective on multiple normative orders at play. For example, the newly adopted criminal provisions on domestic violence that criminalise even minor assault, have lukewarm support even amongst the “new generation”. In comparison, the “new generation” supported the reforms on corruption and even opposed corrupt practices by the “old generation” of resistance leaders.

²⁷ Referred to as *generasaun foun* or *geração foun* (literally translated: new generation). Note that Bexley (2017) considers the “new generation” to constitute people whom I refer to as those in the “in-between” generation. Bexley’s categorisation is based on her fieldwork in East Timor immediately post-independence (2000-2009). During the initial phase, as Bexley meticulously documents, many of the Timorese who are the “in-between” generation currently were the “new generation” who were finding their footing within the new state. When I conducted my fieldwork in 2018, this dynamic had shifted. The “new generation” constituted Timorese students in the universities and the legal training centre who were not yet within the state institutions and who felt their voices were ignored. The shifting nature of the categories demonstrates further how identities and power are in constant flux within the transitional state.

²⁸ These were Timorese youngsters who grew up during the Indonesian occupation. They went to universities in Jakarta on scholarships but clandestinely supported the independence movement. After the referendum, many Timorese of the generation were recruited into the state institutions because of their educational qualifications and NGO experiences.

²⁹ The “old generation” was explained to me as those who were young when East Timor gained independence from Portugal. They grew up resisting the Indonesian military. Some of them left for Portugal and other Portuguese colonies (Mozambique and Angola) to build resistance from abroad. Some joined Xanana as guerrilla fighters. These categories of different ‘generations’ were mentioned without any reference to the Timorese pro-Indonesian militia. Every ‘generation’ was explained in relation to the Indonesian occupation and the resistance movement: “old”, “in-between”, “new”.

Field observations also allowed me to distinguish the influence of the charismatic leaders on state officials and judges in East Timor from the actions of “strongmen” in authoritarian regimes (Moustafa, 2014). Unlike authoritarian states, the influence of the resistance leaders over the Timorese judicial actors was not an “overt” or “covert” conflict (Lukes, 2005). Instead, the influence of resistance leaders played out through “many less total and more mundane forms” (Lukes, 2005, p.135): through the process of socialisation, the recollection of their sacrifices during the resistance and constant reminders of their role in regaining Timorese independence. Being in the field, I could scrutinise how the reverence towards resistance leaders left them immune from the reach of law. Listening to local media reports, conversing with the Timorese within the state institutions and outside of it, observing political campaigns and ordinary conversations, I gathered data on the ‘mundane’ power that the charismatic resistance leaders held in the society. A power that guaranteed the resistance leaders an impunity even when they were not holding legislative or executive positions within the government.

A Timorese research assistant³⁰ helped me to translate local media reports, interviews, and debates on corruption and discussions about veteran leaders during the 2018 elections. This gave me large volumes of background data to build my interview questions. Thus, by just being there, I could observe and take note of the themes and issues around judicial independence and anti-corruption. Field observations, followed by the interviews, or vice versa, assisted in “making sense” (Nelken, 2010, pp. 40-55) of the transnational rule of law on the move and what it did in East Timor.

ii) Semi-structured interviews triangulated through field observations, secondary research and focus group discussions

As mentioned earlier, the process of social change in a transitional state is rarely linear. During interviews, the informants must be given opportunities to discuss their diverse experiences and perceptions of trajectories of change. A structured interview that uses a pre-established schedule of questions, with a limited set of pre-conceived responses to evaluate comparability of the data (Blee and Taylor, 2002), cannot help in gathering information on the experiences of social change in transitional settings. In contrast, a semi-structured interview provides more flexibility to deviate from prepared questions and probe the informants further (Blee and Taylor, 2002). It also helps in understanding mobilisation from the perspective of local actors by providing an entry into the “respondent’s experience and interpretation of reality... ideas, thoughts and memories in their own words” (Blee and Taylor, 2002, p. 93).

³⁰ See Appendix for reflections on methodological dilemmas relying on a research assistant.

Additionally, semi-structured interviews provide possibilities for collecting personal testimonies and participants' experiences, which often get missed out on documentary sources (Blee and Taylor, p. 93). The open-ended nature of semi-structured interviews allows respondents to "generate, challenge, clarify, elaborate, or re-contextualise" (Blee and Taylor, 2002 p. 94) observations made by the interviewer based on their field observations. It also allows the participants to explain from their perspective how they make sense of their new roles and how they justify their actions. This provides researchers with an insight into the "individual and collective visions, imaginings, hopes, expectations, critiques of the present and projections of the future on which the possibility of collective action rests and through which social movements form, endure or disband" (Blee and Taylor, 2002, p.95). Furthermore, semi-structured interviews provide a human narrative and agency to how reforms were received and how the recipients carried out their new official roles (Blee and Taylor, 2002, p. 96). It also helps in gaining a longitudinal view of the rhythms of reforms, how they are adapted and resisted and how participants have mobilised for changes despite the challenges (Blee and Taylor, 2002, p. 97).

I used semi-structured interviews with categories of pre-identified participants and others identified in the field (referred to as "snowballing technique", see Bryman 2012, p. 203). During the interviews, it is worth noting that the Timorese officials in the anti-corruption commission, ombudsmen office, office of the public defender, office of the general prosecutor – from the "in-between" generation – were more optimistic about the gradual changes that are underway in the country. As for those in the "new generation" – who are outside of the state institutions, and currently completing their law degrees – their view of social change was more pessimistic. Despite their differences in seeing the rule of law changes as a fluid or a static phenomenon, the informants from the "in-between generation" and those from the "new generation" agreed that the normative boundaries of law do not apply to the resistance leaders and they continue to remain above the grips of law (fieldnotes, 2018). Some of these interviewees also emphasised the important roles resistance leaders play in maintaining peace and stability in the society, and for them the limits of law in capturing the influence of charismatic leaders is a necessary interim compromise while they "wait" for the "rule" of law to fully take hold (fieldnotes, 2018).

As with any qualitative research that relies only on semi-structured interviews, a significant part of the data collected is based on participants' reflections or recollections of particular events. To enhance the validity of data and gain a deep picture of social change on the ground, I relied on

other methods, like documentary analysis of policy documents, focus group discussions, and field observations. Each empirical chapter thus weaves together data collected from interviews and then triangulated³¹ through other methods to gain a picture of what is happening on the ground (Olsen, 2004).

iii) Studying judicial independence and anti-corruption in context

This section engages with the kinds of data collected for studying judicial independence and anti-corruption in East Timor. If we consider judicial independence, many scholars, especially within political science, provide insights into how the phenomenon ought to be studied (Burbank and Friedman, 2002, p. 308; Keith, 2002; Linzer and Staton, 2015; Seibert-Fohr, 2012). They highlight *de facto* and *de jure* elements as the units through which the phenomenon can be explained. *De jure* aspects are institutional arrangements of fixed selection, appointment, tenure, disciplinary and removal procedures, whereas the *de facto* elements include the ability of judges to decide cases independently without external interferences (Linzer and Staton, 2015, p. 255). While *de jure* elements are straightforward, *de facto* aspects are intangible. To gather information on the *de facto* aspects, Helmke (2004) and Rios-Figueroa (2007) advise researchers to consider the number of cases against the government decided by the top judiciary. A survey of the empirical scholarship on judicial independence shows that political scientists conceptualise judicial independence strictly in relation to the separation of powers from the government, and that they study the phenomenon through ‘overt’ modes of conflict. For instance, unpacking judicial decisions against the government by the courts is the means through which researchers usually break down how arbitrary powers of the government is controlled (Helmke, 2004; Rios-Figueroa, 2007). Likewise, analysing the *de jure* elements, where judges are appointed and promoted according to a procedure rather than through random decisions by a government, is another method through which researchers analyse whether those in power are interfering with the judiciary (Linzer and Staton, 2015). As a result, the units for studying judicial independence, as proposed by political scientists, focus solely on how power is divided between the three branches of the state, and how ‘overt’ abuses of power from the government are tackled by the judiciary. In these discussions, the assumption is that judicial institutions have fully taken hold and the threats to them emerge from the executive or the legislative branches. As revealed during the interviews, and witnessed while in the field, challenges to the Timorese judicial actors do not arise from the political wing; rather the presence of charismatic resistance leaders and resource constraints limit the Timorese officials

³¹ Initially, different methods were relied on for validation, however looking at the research question from several viewpoints also aided in deepening the analysis of the data gathered.

from fully adapting their roles (see Chapter VI and VII). The Timorese judiciary is powerless in curtailing the powers of the resistance leaders. Rather, it is the resistance leaders who act as each other's checks and balances. Furthermore, contrary to the dominant conception – one needs to be in a decision-making position in the government to make arbitrary decisions – in East Timor, Xanana, for example, could further his interests and influence policymaking by remaining outside of the state system.³² Therefore, as observed in Chapter II, studying arbitrary power in context requires us to take note of the varying nature of its sources, and its manifestations. Consequently, what matters is gathering information on the unique sources of arbitrary power, how they manifest, and in what ways they interfere with the legal system. The limited technical expertise and the lack of Portuguese language proficiency of the Timorese judges also impeded the full adaptation of judicial independence reforms. All of these aspects revealed that in East Timor, the challenges faced by the judiciary were unique.

Most public discussions on challenges to judicial independence in country took place in 2014 (I explain why in Chapter VII). As for anti-corruption, in 2018, a draft legislation on anti-corruption was underway, and there were frequent public discussions on the topic. The discussions often revolved around the 'impunity' of resistance leaders – especially those backed by Xanana. This opened up opportunities to collect data within the area. I could also triangulate data from the interviewees on the limitations they faced as officials living alongside their heroes in a transitional state. Moreover, public debates emerging between 2018 and 2020 on the political deadlock between Xanana, Prime Minister Taur Matan Ruak and President Lu' Olo (all resistance leaders) gave a rich background for contextualising and triangulating informants' accounts of the influence of elite resistance leaders and their impact on the rule-of-law progress.

Transnational engagements and their impact on judicial independence and anti-corruption are studied through events that are pointed out as "failures" of international initiatives (although by different groups). The 2014 tax judgment was observed by Xanana and his supporters as the case that epitomised the failure of international assistance within the judiciary. On the contrary, in the area of anti-corruption, the inability to enforce judgments against those who are closer to the veteran leaders is perceived as a failure of international engagement by the 'new generation'.

³² This fact was particularly evidenced during the political events between 2018 and 2020. Xanana's reluctance to yield to President Lu-Olo's (another resistance leader) demands to remove proposed cabinet candidates accused of corruption left the ministerial posts in the Ministry of Health and Ministry of Finance vacant, until Covid-19 hit the country.

Comparing and contrasting these two situations, I examine whether the transnational rule-of-law engagements have actually been good enough (success) or not (failure).

iv) Being a reflexive³³ researcher

Researchers must remain reflexive regarding where they look for sources of data. Institutional and political affiliations of informants and their standing in society for speaking about social change or bringing changes, whose accounts are considered, and why they are considered are significant points that can influence the conclusions (Nelken, 2010, pp. 88-100). Moreover, as transnational networks intensify, it is difficult to draw strict boundaries that delineate ‘locals’ and ‘internationals’ (Kempny, 2003). Sometimes those who are locally situated are the ones who lead the demands for rule-of-law reforms. But there may be others who prefer to continue with the existing norms and ways of social ordering. Therefore, a researcher needs to keep a close eye on the institutional affiliations, political interests, and other relevant factors that become apparent during the fieldwork.

In East Timor, Timorese civil society members and the Timorese officials (in most instances) aligned with their international counterparts in endeavouring for better rule-of-law conditions on the ground. Therefore, I have categorised them as ‘transnationals’ along with their international partners, as both these groups were working towards strengthening judicial independence and curbing corruption. Whenever they disagreed with their international counterparts, I have distinguished their voices as ‘local’ (although this was rare). In particular, the Timorese civil society organisations have fully adapted to using the vocabulary of human rights and the rule of law in their reports and interviews (see, for instance, the websites of JSMP, AJAR, La’o Hamutuk, CEPAD). An anomaly among this group was LABEH, a Timorese NGO, which used to monitor corruption and good governance issues. LABEH’s legitimacy as a credible CSO amongst the local CSO members was affected after its director was accused of corruption in 2008. During our interview, the LABEH director underscored that he was a “scapegoat” and that he had been “punished” for monitoring and reporting corruption involving “big names” (Interview with LABEH director). Following his accusation, the director noted that his organisation does not receive funding from the major international organisations or support from other local civil society organisations (Interview with LABEH director).

³³ Following Gouldner’s (1970) thesis, where knowledge is considered not as an objective truth independent of the knower, rather our knowing of a social world is intimately bound up with the political and socio-economic context in which it exists. Therefore, it is important to be aware of how knowledge is produced and constructed to pursue social change.

In addition, researching transnational legal norms in local settings comes with a unique set of challenges. Transnational standards can seemingly appear universal in form and structure. However, as pointed out in Chapter II, transnational standards are abstractions of the expected normative attitudes and behaviours for tackling commonly perceived problems. They are vague standards that allow for flexibility and movement of norms across settings. While studying these norms in settings where they are transferred, it is important to remain sensitive to the variations necessary for making transnational norms fit local contexts. For instance, as noted in Chapter II, transnationally perceived problems in particular contexts can manifest in unexpected ways from what has been expected by those who have campaigned and designed the programmes.

Studying legal systems in other settings can give the observer an illusion that they are *seeing* familiar institutions and laws with the same structures and functions (Nelken, 2000; 2010; Adams and Griffiths, 2012, address similar questions in comparative law). But only a close, protracted inquiry can reveal whether the judicial actors are carrying out similar roles, whether the institutions are actually tackling and capable of addressing transnationally perceived problems. A researcher may also find that sources that hold legitimacy in one setting may not necessarily have the same value in another context. Therefore, a researcher studying transnational norms on the move must be vigilant regarding their own prejudices and perceptions as they study norm transfers and their adaptation.

For instance, in East Timor, it became evident that the ‘sources of interferences’ were not conventional parliamentary or executive interference. Even though people referred to interferences as ‘political’, field observation revealed that they took different forms and were of different kinds (fieldnotes, 2018). This meant I had to diversify my sources of data, and methods of data collection by looking beyond long-established indicators of studying judicial independence – higher court rulings *against* the government in power or instances where the executive had actively interfered and removed or transferred judges. Finally, the positionality and the relationality of the researcher with the informants should be kept in mind. A researcher’s identity can shape relations and interactions with different participants.³⁴ Reflecting on one’s positionality highlights which aspects of the research question can be pursued and why (Palaganas et al., 2017). It helps to refine and revise data collection methods, considering the limitations and possibilities that emerge from a researcher’s positionality in the field.

³⁴ See reflections on my positionality in the Appendix.

Conclusion

In this chapter, I discussed strategies and methods used for collecting information on transnational rule-of-law engagements in context. I also expanded on why the identified methods are necessary for providing a ‘thick’ description of the rule-of-law phenomenon and its progress on the ground. I explained how the proposed methods were used in the current study, and I gave a brief account of how these methods provided a vantage point in observing and analysing the rule-of-law changes and the role of transnational actors in bringing about those changes in East Timor.

At the outset, I also highlighted why it is important for researchers to remain reflexive when studying transnational norms in local settings. Researchers must consider the varying social capital of transferors and recipients. They should also be cognisant of the shifting terrain of norm change. In addition, researchers must be reflective of the sources they rely on because looking for similar patterns and trends based on researchers’ experiences or assumptions may lead to the wrong sources. A researcher must stay continuously sensitive to the diverse ways in which external social factors interact with the legal field and how they interfere, restrict, or expand the normative limits of law. Only a reflexive approach in collecting and analysing data will help in understanding whether a society is moving up the rule-of-law ladder or not.

CHAPTER VI:

TRANSNATIONAL RULE-OF-LAW INITIATIVES IN EAST TIMOR: A REVIEW OF MONITORING AND EVALUATION DOCUMENTS

[T]he core objective of any system of justice is to *make justice a reality*. The expectations of ordinary people are simple: conflicts must be resolved; injustices must be addressed; rights must be protected; criminals must be punished, and victims assisted to repair the damage caused to them and restore their lives. The process through which justice is administered must be trustworthy, independent, transparent, effective, efficient, swift and fair. These are expectations to keep in mind when seeking to define a coherent and common vision on how the justice system in Timor-Leste should develop and operate. Equally, [...] it must be understood that the justice sector of this young nation is being built from scratch in terms of infrastructure, equipment, procedures, and qualified staff. To build a justice system that [ensures the fundamental rights, duties, freedoms and guarantees foreseen in the Constitution, serves the values and culture of Timor-Leste; and enjoys the confidence of the Timorese people]... will take time, perhaps even decades to implement. It will require the collective commitment of society, ideally expressed through a shared and resolute determination of the political leaders of the country.

(Justice Sector Strategic Plan for Timor-Leste, 2010, p. 7)³⁵

This chapter provides a background of the rule-of-law challenges in East Timor and the transnational initiatives to strengthen the rule of law. I also review policy documents from the government and international rule-of-law partners and their monitoring and evaluation (M&E) documents to analyse how ‘successes’ of transnational engagements are articulated. These documents give details of why specific projects were initiated, how they were implemented, and their impact on the Timorese stakeholders. Similar to the limitations I pointed out in the academic literature in Chapter III, I argue that the accounts of the transnational rule-of-law initiatives and their progress in East Timor give us a ‘top-down’ description of their successes (Fitzpatrick, Sanders and Worthan, 2004). Rather than informing the actual rule-of-law experiences of the recipients or the progress made with the assistance of the international partners, the M&E documents focus on the promoters and their project outputs. Experiences of those in the middle and at the bottom – judges, lawyers, civil society members, and ordinary citizens who must adopt and adapt to new norms – the challenges they face, and the strides they have made (or the lack thereof) are left unobserved and unaccounted for.

³⁵ Henceforth referred to as JSSP 2010 and in the bibliography as RDTL, 2010.

Furthermore, I point out that even though East Timor's justice sector strategic plan (JSSP) approaches strengthening the rule of law as a phased goal, the M&E documents do not factor in the gradual progress. Instead, the evaluators assume that once institutions and laws are transferred, and judicial staff recruited, they are enough to bring shifts in normative standards and adherence to law in East Timor. The existing policy documents overlook the sociological dimensions of the rule of law that I highlighted in Chapter II. They fail to monitor and evaluate whether transnational engagements have brought any actual rule-of-law changes on the ground. The M&E documents also overlook whether the transferred laws and institutions are appropriate for tackling arbitrariness; what particular limitations exist, and how have they been addressed? Instead, M&E exercises map increases in the number of judicial staff, training initiatives, new laws, cases, and international technical advisers who are recruited (to list a few) as evidence of rule-of-law improvement in East Timor.

The first section of this chapter summarises the challenges officially identified by the Timorese government, policymakers, and international partners. In the second part, internationally-led initiatives for addressing these challenges are summarised. The final section critically analyses how the successes of these initiatives are monitored and evaluated by transnational partners.

I. The rule of law challenges in East Timor

In 2010, the Ministry of Justice along with the Council of Coordination for Justice (CoC) – an advisory body, comprising the Minister of Justice, President of the Court of Appeal and the Prosecutor General – developed a strategic plan for the short-, medium- and long-term development of the Timorese justice sector (JSSP, 2010). The initiative was the first Timorese-led activity set up to address the weaknesses of the justice system. Prior to this, in 2004 and 2008, international partners – the Asia Foundation, funded by USAID and Australian Aid – had conducted surveys on citizen awareness and attitudes on law and justice in East Timor (The Asia Foundation/USAID surveys, 2004, 2008). In addition, for UNMIT, Judge Philip Rapoza of the Massachusetts Court of Appeal also carried out an independent, comprehensive needs assessment of the justice sector in 2009 (UNMIT, 2009).³⁶ All these documents provide a detailed picture of the state of the Timorese judicial system and the rule-of-law challenges.

³⁶ A need for an independent comprehensive assessment of the justice sector was identified after the 2006 political crisis in a report of the Secretary General (S/2006/628). In 2009, Security Council Resolution 1867 (2009) underscored the “importance of a coordinated approach to the justice sector reform, based on [a] needs assessment”, based on which the United Nations Mission in Timor-Leste prepared the mandate for an independent assessment. It is worth noting that no Timorese members were recruited for the assessment. Please see the report is popularly referred to locally as the ICNA report 2009.

There are five³⁷ major rule-of-law challenges identified: institutional development; legal framework; human resource development; infrastructure and information technology; and access to justice. Barriers arising from Portuguese as the legal language are not identified as a challenge in the JSSP report. However, The Asia Foundation/USAID surveys in 2004 and 2008, UNMIT report (2009), UNDP JSP IV Assessment reports (UNDP, 2020), and data from the field all suggest that language is one of the main limitations that the Timorese stakeholders face in strengthening the rule of law. Therefore, in addition to the identified challenges in the JSSP (2010), I also consider language as one of the limitations as well.

i) Institutional challenges

During the 1999 violence, courts and other infrastructure built during the Indonesian occupation were destroyed. In 2000, after the UN transitional administration (UNTAET) took over, it established district courts in Dili, Baucau, Suai and Oecussi, and a court of appeal (in Dili). Only four of the thirteen districts in the country have courts. Furthermore, the Supreme Court, which is laid out in the Constitution, has not yet been established due to the lack of first-class Timorese judges. Both the Public Prosecution Service and the Public Defender Office remain undersized institutions with district offices near the courts (UNMIT, 2009). Most prosecutors and defenders prefer to stay in Dili due to the lack of safe and secure accommodation in the districts (The Asia Foundation/USAID survey, 2008). Poor road conditions and limited transportation further limit prosecutors and defenders from coming face-to-face with people in rural settings (UNMIT, 2009, p. 35). Although East Timor's population is only around 1.3 million, the JSSP identifies that the existing number of courts remains too small to serve the entire population or to fulfil its constitutional mandate of applying the law and ensuring the respect of the rule of law (JSSP, 2010, p. 10; UNMIT, 2009).

The JSSP also identifies a lack of coordination or “flow” of information from the Courts, Office of the Prosecutor General, Public Defenders’ Office and the police (JSSP, 2010, p. 31). The report points out that interactions among the institutions are weak, and they often work in isolation (JSSP, 2010, p. 13). Other institutional challenges identified are limited IT and case management systems

³⁷ The Justice Sector Strategic plan (2010) identifies five issues and considers limited infrastructure and information technology as a problem as well. Language concerns are considered under human resources. Contrary to this format, I have combined infrastructure and institutional challenges under institutional development, and language as a stand-alone issue.

that facilitate coordination and effective support between different judicial institutions (JSSP, 2010, p. 31).

ii) Legal framework

The legitimate sources of law in East Timor are the Constitution, laws passed by the National Parliament and the government, regulations, other legislative instruments of UNTAET, and traditional law. Under the UNTAET regulations, Indonesian laws along with international law were recognised as applicable laws. However, in a 2003 Court of Appeal decision (*Public Prosecutor v Armando dos Santos*), it was decided that the subsidiary law applicable to East Timor would be Portuguese laws dating back to 1975. The judges reasoned that since the Indonesian occupation was illegal and never recognised by the UN Security Council, Indonesian laws were “invalid” in East Timor.³⁸

The new Timorese Penal Code, the Criminal Procedure Code, the Law on the Protection of Witnesses, and the Civil Procedure Code were enacted and adopted only in 2009. Until then, Portuguese legal codes were used for training and decision-making purposes (Interview with Timorese judge 1). Overlapping legal regimes and conflicting judicial positions are pointed out as issues that weaken the clarity and coherence of the functioning of the justice sector (JSMP, 2004; see Chapter VIII). The Timorese Constitution recognises both state and traditional law; however, there is no guidance on harmonising these competing legal regimes (JSSP, 2010, p. 27; The Asia Foundation/USAID survey, 2008, p. 9). Especially for matters relating to family, women, and children, traditional legal norms conflict with the standards recognised in the Constitution and other state laws.

Other challenges include limited number of skilled Timorese personnel who can draft legislation and policies in Portuguese. After recognising Portuguese as the legal language, templates for new laws and regulations are copy-and-pasted from Portugal. The UNMIT report (2009) points out that the lack of technical expertise in the Portuguese language has left Timorese stakeholders to rely on their international technical experts and wholesale adoption of legal provisions that overlook the Timorese reality (UNMIT, 2009, p. 10; MoJ-PDO seminar 2018). Developing the legal framework, translating legislation to Tetum, training a body of national legal advisers, and

³⁸ The Ximenes and Antunes judgment was based on the reasoning of an earlier decision given by a district court in Columbia, USA.

harmonising traditional law with state-based law and revising state laws, are all identified as continuing challenges that need to be tackled together with international partners (JSSP, 2010)

iii) Human resources and lack of technical expertise

Under the Indonesian administration, Timorese were not recruited in senior judicial roles. Once UNTAET took over, students who had graduated with a law degree were employed into the state institutions. However, none of the initial recruits had experience carrying out investigations, prosecuting or judging cases. According to the JSSP, lack of technical skills and expertise among the Timorese judicial actors led to international staff substituting for national staff (JSSP, 2010, p. 28). In addition, limited fluency in the Portuguese language is identified as a significant challenge for Timorese judicial aspirants and judicial actors in fully taking senior roles within the justice sector. Other issues include retaining international and national staff to ensure that institutional memory is not lost. The strategic plan recognises the need to develop a culture of civil service, ethical values and professionalism within the legal sector. In relation to the international staff, the JSSP points out that the mechanisms for recruitment and evaluation of international staff remain weak (JSSP, 2010, p. 28; UNMIT, 2009). Furthermore, the Legal Training Centre is observed to have limited capacity to train more judges, prosecutors and public defenders. The strategic plan also highlights the importance of continued training for judges, notaries and lawyers for improving their technical skills (JSSP, 2010, p. 29).

iv) Access to justice: Bringing formal justice closer to people

The JSSP identifies low public awareness of justice institutions and conservative attitudes have limited access (JSSP, 2010, p. 31). According to the Asia Foundation/USAID survey of citizen awareness of law and justice in East Timor, around two-thirds of the Timorese have some understanding of the Constitution (2004, p. 33). However, the survey points out that only 28% of people consider the Constitution to be the country's basic law, and only 15% understand it vaguely as a way of life or guidance for citizens (The Asia Foundation/USAID survey, 2004, p. 33). Among the participants, small-town residents, older women in urban and rural areas, and those without schooling are identified as groups who have limited awareness of the constitutional provisions (The Asia Foundation/USAID survey, 2004, p. 34). The 2008 survey shows that 85% of the interviewees expressed confidence in traditional justice in comparison to 77% in formal justice (The Asia Foundation/USAID survey, 2008, p. 13). In its annual report, UNDP also points out that legal awareness and confidence in the state institutions continue to be weak and affect the reliance on them (UNDP, 2018). According to the Asia Foundation Survey, ordinary citizens are

disinclined to rely on state institutions because they perceive them to be ineffective at resolving problems (31%), costly and slow (15%), and inept at finding the truth (11%) (The Asia Foundation/USAID survey, 2008, p.13). Especially in the villages, citizens prefer to bring their cases to traditional authorities – Chefe de Aldeia (Chief of Hamlet), or the *lia nain* (traditional elders) and other respected individuals – for resolution.

Many citizens continue to perceive Chefe de aldeia (21%), suco chiefs (21%), followed by parliament (14%) and government (13%) as responsible for making rules that govern people's lives (The Asia Foundation/USAID survey, 2008, p.14). Limited access to courts, lawyers and other judicial actors remains a major factor that restricts people from seeing courts as a reliable space for resolving issues (The Asia Foundation/USAID survey, 2008, p. 15). Furthermore, only 51% of those interviewed think that the formal laws adequately address disputes and other problems that people experience in their everyday lives (The Asia Foundation/USAID survey, 2008, p. 15). Thus, a substantial proportion of the conflicts – involving children and women – continue to be resolved through the traditional system (JSSP, 2010, pp. 10, 14).

Reliance on traditional justice is mostly seen for private matters involving family members: domestic violence, marital rape, and sexual abuse of children by family members (fieldnotes, 2018). Filing cases officially on these issues means potential conviction and incarceration of close family members – a confrontational outcome that many Timorese choose to avoid. Instead, they prefer to rely on the traditional justice system for a reconciliatory solution (Interview with ex-Minister of justice, 11 July 2018; see Grenfell, 2013; Hohe and Nixon, 2003).

In contrast, for public matters – corruption, abuse of public office, tax-related cases – courts remain the primary source for recourse (fieldnotes, 2018; JSMP annual reports, 2008-2020). However, the concerns for governance/public related cases remain a lack of understanding of what constitutes deviance from normative standards, evidentiary gaps, and foot-dragging to pursue cases against officials (see Chapter VIII).

v) Language barriers

Portuguese as the legal language is identified as the main limitation for the Timorese judicial actors and judicial aspirants. During the adoption of the new Constitution, the resistance leaders were insistent on recognising Portuguese as the official language. Even though most of the population

do not speak Portuguese (Simões, 2015), adopting Portuguese was symbolic for the resistance leaders. It represented the country's alliance to and history with Portugal and other CPLP nations.³⁹

Even though Tetum is adopted as an official language (Article 13, RDTL Constitution), very little financial or technical support has been provided to integrate it as part of the legal system. According to JSSP, since Tetum is undeveloped with a limited vocabulary, political leaders and the international community have overlooked its potential as a legal language (JSSP, 2010, p. 28). Consequently, language barriers are identified as one of the main obstacles that hinders access to the legal professions and training of justice actors in East Timor (UNDP, 2018). It also limits levelling the gap in human resource capacities and ensuring access to justice (UNDP, 2013). The use of Tetum in the justice sector has been encouraged after the adoption of the Decree law No. 11/ 2017. But on the ground, changes remain minimal. For instance, the Ministry of Justice publishes all their legal documents and information in Portuguese. Of approximately 191 laws passed by the Parliament, only about 31 are available in Tetum (fieldnotes, 2018).

II. Strategy to move forward

The JSSP provides a roadmap as to how the limitations can be overcome.

Thematic Area 1: Institutional development: Strengthening the administration of justice, improving the capacity of the institutions and the coordination between them

- i) Within 3 years (2012), there will be systematic and effective coordination of the justice sector and its institutions
- ii) In the next 10 to 20 years (2020/2030), the services of the justice sector will gradually be deconcentrated so that people in all districts can access justice
- iii) Within 10 to 15 years (2020/2025), the institutional framework of the justice sector will be completed, as provided in the Constitution and laws of Timor-Leste
- iv) Within 5 to 10 years (2015/2020), the justice system will be able to open, conduct and complete, in an effective manner and within a reasonable period of time, all types of court cases, especially criminal cases

Thematic Area 2: Legal Reform and Framework: Strengthening and harmonising the legal framework of the justice system and of the law

- i) Within the next 5-7 years (2015/2017), the Ministry of Justice will be able to maintain and update a harmonized legal framework, of high quality, in the areas of Justice and Law.

Thematic Area 3: Human Resource Development

Building the capacities and skills of the justice sector professionals, including providing institutions with the necessary and sufficient human resources to carry out their mandates, meeting training needs and ensuring performance evaluation

- i) Within 5 years (2015), the justice sector is capable of identifying and filling all positions with motivated and qualified national staff

³⁹ Informal conversation with a FALINTIL supporter during the resistance period. The informant observed that although English was an option, the elite leaders were unhappy that Australia, United States or United Kingdom never supported the Timorese independence claims from Indonesia (12 May 2018).

ii) By 2030, all justice sector personnel are provided with the necessary competencies skills and knowledge, including on applicable ethical standards to adequately perform their functions

iii) Within 5-7 years (2015/2017), the Legal Training Centre, in partnership with the Law Faculties of Universities and other Legal Study Centres, will become a legal centre of excellence, able to supply all professionals in the legal area who are needed by the justice system.

Thematic Area 4: Infrastructure and Information Technology: Establishing the necessary infrastructure for the justice institutions throughout the country, in respect to buildings, housing, transportation, communication and ICT

i) In the next 10 to 20 years (2020/2030), the institutions of the justice sector will be gradually equipped with the adequate physical infrastructure, equipment and logistical and technological resources, at central and district levels

ii) Within 5 years (2015), the institutions of the justice sector will have acquired the basic information and communication technology systems (ICT) needed for their operation; by 2020, all information systems will be entirely computerized.

Thematic Area 5: Access to Justice: Bringing justice closer to the people, offering them access to justice, particularly in the districts including raising the awareness of the population regarding laws, rights and available justice services and guaranteeing the interaction between the formal and the informal justice systems

i) Every 5 years (2015,2020,2025,2030), there will be a significant improvement in the current situation of the justice sector, in terms of availability of justice services and the awareness of and the public confidence in the justice system

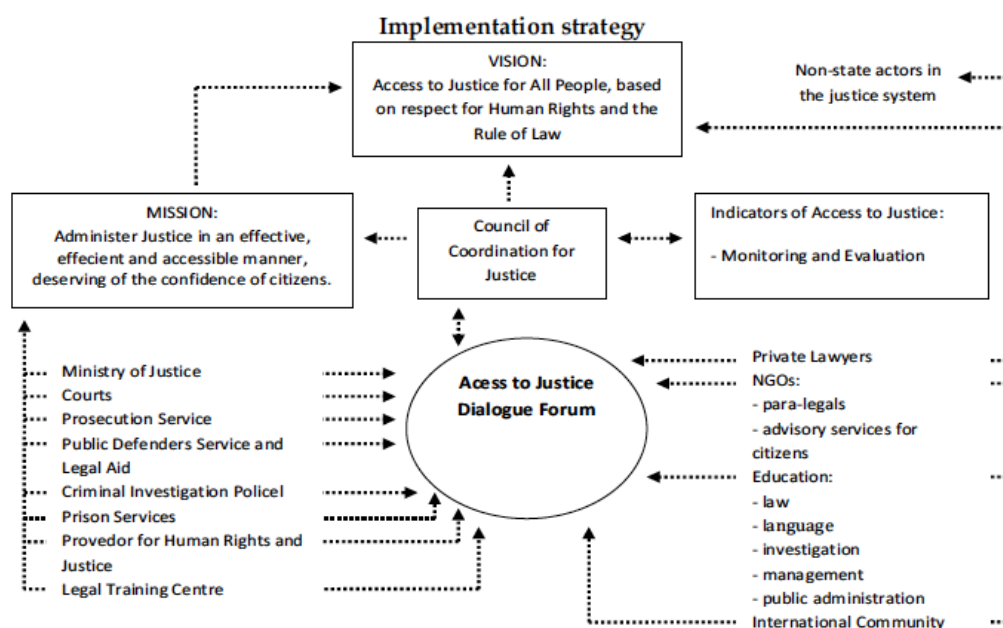
ii) Within 5 years (2015), crime prevention policies and actions will be implemented in the justice sector

iii) Within 5 years (2015), the principle of non-discrimination, the sensitivity to issues of gender and the protection of vulnerable groups and human rights will be guaranteed in the justice sector

iv) Within 3 to 5 years (2012/2015), the customary law and community justice mechanisms will be regulated, and the systematic monitoring of their conformity to human rights will be implemented.

(Source: JSSP, 2010)

The JSSP (2010) and the UNMIT (2009) reports underline that the strengthening of the justice system should consider the “simple expectations” of ordinary citizens and that their conflicts must be resolved through “trustworthy, independent, transparent, effective, efficient, swift and fair” justice processes (JSSP, 2010, p. 7). For operationalising these endpoints, the JSSP gives further details below:



(Source JSSP, 2010, p. 41)

According to the strategy plan, challenges to the justice system are meant to be tackled incrementally. The plan recognises coordination and cross-support from various actors: government, bilateral and multilateral agencies, and civil society. For strengthening the justice system, the JSSP recognises that there must be a holistic change in society. The strategy thus emphasises not only institutions within the legal sector but also educational institutions, citizens, strong NGOs, paralegals, international community, and investigation services (to list a few stakeholders) having important roles in strengthening the rule of law.

III. Transnational initiatives to strengthen the justice sector

Since 2003, the international community – predominantly UNDP – has adopted a comprehensive plan with the Government of Timor-Leste to strengthen the justice sector. The Ministry of Portugal and other CPLP countries (Brazil, Cape Verde, Angola and Mozambique) are the primary bilateral donors for the courts, prosecutors' office and Public Defenders' Office. The governments of Australia, the United States of America, Germany, Korea and Japanese also support justice sector development. However, their presence and the extent of their support is marginal in comparison to the CPLP nations. Additionally, the European Union funds good governance and transparency reforms in the anti-corruption commission, Office of the Provedor for Human Rights and Justice (PDHJ) and the Parliament. It also supports civil society in its legal awareness

campaigns (European Development Fund, 2014, p. 12). But the UNDP's Justice System Program (JSP) remains the most comprehensive initiative that brings state governments and the Timorese Ministry of Justice to work together to strengthen the rule of law locally.

UNDP's JSP has been executed in different phases. Under JSP Phase I, UNDP followed the priorities identified under National Development Plan 2002-2007 and the Stability Programme 2003. During this period, UNDP funded basic training and infrastructure. JSP II, which was adopted in 2005, followed the Timorese National Justice Policy priorities 2005-2010. Accordingly, UNDP supported the strengthening of the institutional capacity of the judiciary, the Ministry of Justice, and the Office of the Prosecutor General (UNDP, 2013). Under JSP III, UNDP was given an extended mandate to focus on capacity development, justice decentralisation, prosecution services, correction services and access to justice (UNDP, 2013, p. 3). In 2014, JSP Phase IV titled, 'Consolidating the Democratic Rule of Law and Peace through a Strong Justice System in Timor-Leste' was initiated. JSP IV continued with the mandate of capacity development and improving access to justice (UNDP TL, n.d.). However, after eight months since the launch of JSP IV, the National Parliament passed two resolutions calling for the termination of contracts of international judges in courts, the Legal Training Centre and the Anti-Corruption Commission (details in Chapter VII).

During the JSP phases, UNDP worked with the Government of Timor-Leste to provide support in different areas. To improve technical expertise, UNDP followed a three-tiered approach:

- (1) providing compulsory "quick impact" training courses for judges, prosecutors and public defenders prior to their appointment;
- (2) delivering ongoing training to the Timorese judicial recruits;
- (3) providing a mentoring scheme where international judges shadowed and carried on judicial roles alongside their Timorese counterparts.

Through tripartite arrangements with the Ministry of Justice in Portugal and East Timor, UNDP recruited Portuguese judges and prosecutors to carry out official functions and mentor Timorese judges (UNDP, 2018). UNDP notes that such arrangements were necessary

To address the shortage of qualified human resources within the sector... international advisers were engaged to perform line-functions in the courts and provide on-the-job training for their national colleagues (UNDP, 2013, p. 3).

According to the JSP plan, international personnel were expected to gradually phase-out from their line functions by 2009 (UNDP, 2013). However, the internal political crisis in April 2006 set back

the training of Timorese judicial actors. The mentorship arrangements continued until 2014, when the National Parliament suspended the visas of international judges (see Chapter VII). Consequently, 23 international advisers recruited through the UNDP JSP initiatives had to leave.

**INDICATIVE TABLE OF INTERNATIONAL MENTORS WITHIN CORE JUSTICE INSTITUTIONS
(excluding Ministries)⁴⁰**

Year	International Mentors within core judicial institutions
2004 (JSMP, 2004, p. 7)	4 international judges in District Courts 3 international judges in Court of Appeal (CoA) (JSMP, 2004, p.20) 2 public prosecutors 1 public defender
2005	5 judges in District Court (JSMP, 2005, p. 14) 3 judges in CoA ⁴¹ 2 public defenders (JSMP, 2005, p. 21) ⁴² 3 prosecutors (JSMP, 2005, p. 21) ⁴³
2006-2007	No records available - Political Crisis
2008 (JSMP, 2008)	2 international judges in District Court 3 international judges in CoA
2009 (JSMP, 2009)	5 international judges in District Court 2 international judges in CoA
2010 (JSMP, 2010)	No observation report on the justice sector
2011 (JSMP, 2011)	No tabulation of the number of international judges on the ground. JSMP report provides a total number of judges within the justice sector
2012 (JSMP, 2012)	No tabulation of number of international judges on the ground. JSMP report provides a total number of judges within the justice sector
2013 (JSMP, 2013)	No tabulation of number of international judges on the ground. JSMP report provides a total number of judges within the justice sector
2014 (JSMP, 2014)	5 judges 2 prosecutors Judicial crisis- suspension of international judges
2015 (fieldwork, 2018)	All international technical assistance to the justice sector suspended
2016 (fieldwork, 2018)	Resumption of agreement between Ministry of Justice TL, Portugal and UNDP
2017 (fieldwork, 2018)	2 Portuguese judge as judicial trainers 2 Brazilians in Public Defenders' Office

⁴⁰ Table compiled after surveying JSMP Annual Reports (2004-2019).

⁴¹ Judge Antunes; Judge da Goa; Judge da Costa; East West Centre report indicates that the three judges in CoA were Portuguese. Judge Claudio Ximenes, even though a Timorese expatriate, was considered to be an international judge by the UNMISSET mission.

⁴² Please note the report only mentions female international public defenders. Total number of defenders at the time was 6.

⁴³ Only mentions female international prosecutors. Total number of active prosecutors was 13.

2018 (fieldwork, 2018)	1 Portuguese judge as assessor within the local court 2 enior judges from Portugal within the Legal Training Centre
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UNDP supported the Ministry of Justice by establishing the Legal Training Centre, a national institution to train and accredit Timorese professionals working in the justice sector. Tripartite arrangements with the UNDP, Portugal and East Timor brought Portuguese judges, lawyers, and language-trainers to teach and mentor judicial aspirants at the Legal Training Centre.

After the 2014 termination of work visas of international actors, JSP initiatives resumed in 2017. The programme renewed partnership with the Ministry of Justice, Office of the Prosecutor General and the Legal Training Centre. A Portuguese judge was appointed as the senior pedagogical adviser/general coordinator at the Legal Training Centre (UNDP, 2018). Furthermore, UNDP recruited two Portuguese judge lecturers for training and evaluating judicial aspirants. In 2016, three international public defenders from Brazil were also appointed (UNDP, 2018). Between 2014 and 2018, JSP supported the funding of ten international advisers to the MOJ (UNDP, 2020, p. 17).

Through tripartite agreements, the UNDP has appointed technical advisers to the parliament to fill the expertise vacuum. As for legal language, considering that there is limited funding from the government, the JSP phase IV supported the development of a Tetum legal glossary and the deployment of translators in Dili and Baucau courts (UNDP, 2020, p. 19). The programme has also funded the appointment of a Timorese language instructor at the Legal Training Centre (fieldnotes, 2018).

Under the JSP initiatives, many citizen-awareness initiatives have been undertaken in coordination with Belun, a local NGO working on access to justice. Linkages with other Timorese civil society organisations have also been established to improve legal awareness (UNDP, 2018). The awareness programmes under JSP so far have focused on the following issues:

- i) corruption and its impact on social public policies
- ii) public defence and human rights in Timor-Leste and Brazil
- iii) the role of civil society for vulnerable groups
- iv) criminal punishment and human rights
- v) Mental health in correctional institutions (UNDP, 2018, p. 13).

IV. Monitoring and evaluating the successes of transnational engagements

There has been no stand-alone evaluation of the operation of the JSSP, despite developing elaborate indicators to map the progress of the justice sector's development in East Timor (JSSP, 2010, pp. 44-93). But bilateral and multilateral development partners have carried out evaluations of their projects. For demonstrating my arguments, I focus on the evaluation of UNDP-led JSP initiatives. I review UNDP's JSP M&E documents mainly because it continues to be the most comprehensive transnational support initiative for strengthening the rule of law within the justice sector in East Timor.

i) On institutional support

JSP evaluators point out that in 2004, the JSP Phase I could establish a Legal Training Centre to provide professional qualification courses and appoint international legal professionals to fill the human resource vacuum (UNDP, 2013, p. 4). For the JSP Phase II, it was the establishment of the National Prisons and Parole Directorate. The evaluators also observe an improvement of security and prison facilities and that the prisoners are treated according to international standards (UNDP, 2013, p. 5). For JSP Phase III, the evaluators articulated the success of the programmes as the institution of mobile courts. For JSP IV, the evaluators identify that the 2014 resolution negatively affected international interventions. As a result, mentorship and training programmes had to be cancelled. However, the evaluators note that during the period, the Public Defenders' Office (PDO) received technical assistance from the Ministry of Justice Brazil, with the support of UNDP. Furthermore, UNDP also initiated Access to Justice Clinics and mobile courts. Consequently, the evaluators point these out as JSP Phase IV's successes.

Other successes are pointed out as providing infrastructure development of the existing institutions. UNDP helped to develop an integrated case management system (IIMS) in 2010 – a joint initiative with AusAid (now known as DFAT) – for tracking cases. According to the UNDP, IIMS aids in “the efficient and timely administration of justice” (UNDP, 2013, p. 6). IIMS allows them to track a case as it progresses through the police, prosecution, and courts, ending in the correction service (UNDP, 2013, p. 5). UNDP observes that the IIMS assists the Timorese stakeholders in overcoming the institutional challenges and lack of coordination between core justice institutions.

ii) On developing the legal framework

UNDP's training initiatives for the national law makers are identified as a success because they have “improve[d] the quality of law-making”(UNDP, 2013, p.5). The evaluators point out that

essential laws such as the Law on the Legal Aid, the Customary Law, the Juvenile Code, Court of Audit Law, Criminal Investigation Police Law, Criminal Code and Civil Code have now been adopted (UNDP, 2013, p. 4). The M&E report also congratulates UNDP's initiatives to open public consultations, which helped to incorporate gender considerations into the land law legislation.

Other successes of the JSP programmes are listed as drafting a strategic plan for parole services, law on the implementation of criminal sentences, preparing standard operating procedures, and strengthening prison structures and procedures (UNDP, 2013). Recruitment of prison psychologists and social workers for instituting social reintegration programmes for prisoners was also highlighted as an achievement (UNDP, 2013, p. 5).

iii) On human resources and training

The M&E report of JSP IV notes that even though the 2014 National Parliament resolution was a setback, training activities at the legal training centre resumed in a short period, in 2017. After resuming training activities at the Legal Training Centre, 53 students were enrolled compared to 33 students in 2013 (UNDP, 2020, p. 20). The evaluators emphasise that since the JSP initiatives began, the number of Timorese judicial personnel have increased, and that the “national officials are now generally able to run all straightforward criminal cases without international input”. The report also highlights that they are beginning to take “sole responsibility for civil cases too” (UNDP, 2013, p. 4).

NUMBER OF JUSTICE PROFESSIONALS (2014 – 2018)*						
	JUDGES	PROSECUTORS	PUBLIC DEFENDERS	PRIVATE LAWYERS	NOTARIES	TOTAL
2014	20	21	20	n/a	n/a	66
2015	34	33	31	72	21	177
2016	34	33	31	99	21	218
2017	34	33	31	98	21	217
2018	34	33	31	98	21	217

* source: UNDP Annual reports

The report underscores that there was an increase of 70% of justice personnel from 2014 to 2018, while the output target level for UNDP was a 50% increase in the number of national judges, prosecutors and public defenders by 2018. The evaluators note that UNDP has continued to train judicial aspirants and it provides continuing education on a number of topics to justice professionals.

Statistics for initial trainings (2014-2019)

Magistrates Course*	FROM	TO	# of applicants	# of enrolled students	# of graduated students
V Batch	2013	2015	n/a	33	33
VI Batch	May 2017	2019	n/a	53	13 (TBC in 2020)

* judges, prosecutors and public defenders

Lawyers Course*	FROM	TO	# of applicants	# of enrolled students	# of graduated students
IV Batch	Nov 2014	Nov 2016	125	28	27 (7 W; 20 M)
V Batch	Nov 2016	Nov 2018	115	35	29 (4 W; 24 M)

* duration: 24 months

Notary Course*	FROM	TO	# of applicants	# of enrolled students	# of graduated students
II Batch	Jan 2014	June 2017	101	15	14 (4 W; 11 M)

* duration: 30 months

CONTINUOUS LEGAL EDUCATION ACTIVITIES (2014-2019)					
Title of the training	Target Group	Start date	End date	# participants	
Electoral justice seminar	Judges, Public Defender, Human Rights Commission, CAC, Police CIS	21/06/2017	22/06/2017	30	
New land laws and illicit drug trafficking law	Judges, prosecutors, public defenders, notaries, Land & Property Dept, Customs, Police, and LTC trainees	Oecusse: 25/09 to 29/09/17 Suai: 07/11/17-10/11/17 Baucau:13/11/17-17/11/17 Dili: 11/12/17-12/12/17		131	
Land Law and Real Rights	Judges	13-17 August 2018 and 10-14 September 2018		29	
Employment Contract in labour law	Private Lawyers	10-11 December 2018		22	
Civil liability	Judges	3-6 December 2018		34	
Ethics and Deontology	Judges	29/01 2019	30/01 2019	12	
TOTAL N. of PARTICIPANTS:				258	

(Source: UNDP, 2020, pp.20-21)

iv) On Access to Justice

Under the JSP IV programme, UNDP coordinated with the Public Defenders' Office to introduce more paralegals in rural areas. Twenty-one paralegals were appointed from 2018 to 2019 (UNDP,2020, p. 24). Evaluators point out that the “changes for the population” from the UNDP initiatives can be observed from the increase in the number of registered cases and improvement in legal awareness (UNDP, 2020, p.39). In 2017, 115 cases were registered in access to justice clinics. In 2018 and 2019, 70 and 69 cases were filed, respectively. The evaluation team highlights that the programme was able to surpass its targeted number of clients (UNDP, 2020, p. 26). The increase in the number of cases is evidence of ordinary people relying on the formal system

through access to justice clinics and mobile courts. Mobile courts were organised between 2010 and 2019 in three judicial districts, covering nine municipalities that did not have fixed courts (UNDP, 2020, p. 29). To quote the evaluators,

A2JC and Mobile Courts have created opportunities for the rural population to use formal justice services and the mediation component of the A2JC has contributed to rebuild relations among community members.

Within the formal system, the evaluators point out that between 2016 and 2018, around 2,477 persons brought their cases to the courts. The total number of registered cases increased by 80% between 2014 to 2018, with most being gender-based violence cases. The evaluators correlate this increase to the access to justice clinics and mobile courts. Furthermore, according to an internal survey conducted by UNDP, titled ‘A2JC user perception survey’ in 2019, it was found that:

approximately 60 per cent of respondents were familiar with the key formal justice institutions; 87 per cent of respondents thought that the formal justice system could help solve their problems, and 79 per cent of respondents knew how to access the formal justice system. However, the formal justice system was additionally perceived as being too far (geographically, 62%), too difficult to understand in terms of the process of the justice system (65%), being too complicated and time-consuming (64%), and being perceived as being too expensive (57%).

(UNDP, 2020, p. 40)

At the institutional level, the evaluators point out that introducing access to justice clinics has provided a semi-formal mediation avenue that has helped bring down case backlogs (UNDP, 2020, p. 40). It has also assisted public defenders in working alongside civil society members as potential partners (UNDP, 2020, p. 42). Despite the above observation, UNDP’s support for mobile courts was discontinued in 2019 due to funding constraints (UNDP, 2020, p. 28). The Ministry of Justice now funds mobile courts, but only in the capital city of Dili (UNDP, 2020, p. 28).

V. Limitations of the M&E reports

UNDP’s JSP initiatives were launched to assist the state in building a domestic judiciary with the rule of law (UNDP TL, n.d.). The JSP successes are identified through outputs in the number of training programmes launched, increase in judicial personnel, registered cases, and international mentors appointed as the evidence of rule-of-law progress. These aspects only provide a general idea of how the justice sector in East Timor is slowly developing from having nothing to a system where there are judges, prosecutors, public defenders, paralegals and proactive civil society members.

While the reports are meticulous in providing statistics, they do not inform us of the imperfect adaptations of the new institutions and legal frameworks. Although the JSSP document recognises

that building a justice system that guarantees the rights in the Constitution, providing access to justice for all, gaining the confidence of the Timorese people, “will take time, perhaps even decades to implement” (JSSP, 2010, p. 7), the M&E reports overlook what is at stake for strengthening and adapting the aspired rule-of-law standards.

In addition, as pointed out in Chapter II, the rule of law is closely embedded with how ordinary people, lawyers, judicial actors and those in power use laws and legal institutions. The authors of JSSP also acknowledge the sociological dimensions of the rule of law. To quote them, “the rule of law require[s] the collective commitment of society, ideally expressed through a shared and resolute determination of the political leaders of the country” (JSSP, 2010, p. 7).

Despite such observations, the M&E reports do not show what it takes for ordinary citizens and judicial actors to observe the problems they face in everyday life, and in public, through the lens of law. Instead, the M&E reports identify geographical inaccessibility, high costs, complexities of legal jargon, and time-sink as reasons for the limits of full adaptation of the state-based legal system. In this narrative, the holds of rational legal ordering are perceived to escape ordinary citizens because of institutional/infrastructural limitations, rather than their inability to relate to new laws or their preference to competing social norms.

Furthermore, UNDP’s JSP evaluations are limited to areas that have received immediate funding from international donors. For instance, the JSP IV evaluation monitors the impact of mobile courts and access to justice clinics – initiatives supported by the Government of Japan and the Republic of Korea during the JSP Phase IV (fieldnotes, 2018). As a result, it overlooks the progress in other justice-sector institutions.

In contrast, the G7+,⁴⁴ in its assessment of the justice institutions in East Timor, finds that the country is currently in “Phase 2: Build and Reform” (Fragility Assessment Report, 2013). According to the G7+, at Phase 2, the community is gradually building its confidence in the justice system, but in some cases, interference from the state exists (Fragility Assessment Report, 2013).⁴⁵ The G7+ report mentions that the objective for East Timor should be to move towards Phase 3, transition, which is where the public’s confidence in the justice system is increased, and there is no interference from other sovereign bodies on the judiciary. According to G7+, the aim must be to

⁴⁴ Goodbye Conflict, Welcome Development (G7+) was established in 2010 to bring together countries that are either facing conflict or have recent experience of conflict and fragility.

⁴⁵ The G7+ identifies five phases: Crisis, build and reform, transition, transformation and resilience.

reach the final Phase 5, resilience, where the public has full confidence in the judiciary (UNDP, 2013, p. 10; Fragility Assessment Report, 2013). The fragility assessment in East Timor was carried out in collaboration with the Ministry of Finance and involved consultations with about forty-one state institutions, development partners, civil society organisations, local authorities, and universities. Although G7+ report acknowledges the incremental process of development, it does not inform us whether the transnational engagements have been able to assist the Timorese stakeholders in transitioning from Phase 2 to Phase 3 and then on to Phase 5.

The limitations raised here can be attributed to the objectives and the schema of the M&E processes. Evaluation of projects in international organisations is carried out as accountability measures so that the taxpayers in the donor home countries know how their aid money is spent (Mosse, 2005, pp. 230-243). Consequently, the M&E reports focus more on the supply side of the interventions rather than studying what happens on the ground. Therefore, to analyse whether transnational rule-of-law engagements have brought any changes, we need data on how ordinary people, judicial actors, civil society members and political leaders navigate their way through the new set of norms with the support of international partners.

Conclusion

This chapter provided an overview of the rule-of-law challenges in East Timor. The initiatives undertaken by the international community to strengthen the justice sector and the rule of law were also discussed. I then reviewed how the impact of internationally-led rule-of-law initiatives is studied. I argued that the existing M&E documents from development agencies do not inform us about the rule-of-law challenges and the progress on the ground. Moreover, donors are rarely interested in defining definite goals of their activities – instead they provide vague benchmarks that help them measure what they identify as institutional obstacles (Hammergren, 2014, p. 35; Mosse, 2005). They do not bother examining whether their initiatives to improve capacity have actually been used: are better trained judges, prosecutors, public defenders, and civil society members able to make better decisions, apply laws to constrain arbitrary power, and carry out their roles in professional ways (Hammergren, 2014, pp. 35-36)? To overcome these limitations, we need thick descriptions of how the internationals have assisted the Timorese and in what ways those initiatives have helped them to rely on laws to tackle arbitrary power.

In Chapter VII and VIII, I provide detailed accounts of transnational rule-of-law engagements for strengthening judicial independence and anti-corruption norms in East Timor. I study how

international partners have transferred transnational standards of judicial independence and anti-corruption to their Timorese partners. Through a close empirical inquiry, I investigate whether these initiatives have aided the Timorese stakeholders to progressively adapt to their new roles and apply laws to constrain arbitrary power.

CHAPTER VII:

JUDICIAL INDEPENDENCE IN TRANSITION

In East Timor, even before the redeclaration of independence in 2002, power was diffused between different groups (Ingram, 2018). Traditional authorities such as the *liurais*, who are the enforcers of traditional law, continued to operate parallel with the Portuguese colonial and the Indonesian administration (Grenfell, 2013). Even post-independence and the adoption of a state-based legal system, the *liurais* continue to hold considerable cultural capital amongst the Timorese population (Grenfell, 2013; fieldnotes, 2018; Ten Brinke, 2019). However, their influence in the political sphere, however, is indeterminate (fieldnotes, 2018). Similarly, leaders from the diplomatic and the resistance front hold significant symbolic capital for advocating and fighting for the Timorese independence (Ingram, 2018; Leach, 2008; Leach, 2002). Within the political sphere, they have taken key roles as the decision-makers. Charismatic leaders – Xanana, Ramos Horta, Mari Alkatiri – do not even have to hold political positions in order to exercise decisions that could impact the whole country (fieldnotes, 2018; Kent, 2012). As for the judiciary, those who were recruited as judges are individuals from the “in-between” generation. They hold limited influence compared to the resistance leaders. These judges are far from being accepted as the final decision-makers or enforcers of the newly adopted rules by the elite leaders. This unique context of East Timor as a country in transition where political power and institutional authority are in *flux* demands a careful assessment of how judicial independence reforms are transferred and adapted.

In this chapter, transnational rule-of-law engagements for strengthening judicial independence are studied through a ‘crisis moment’. Focusing on a 2014 tax case between ConocoPhillips – a private company – and the Government of East Timor, I inquire what prompted the ruling government at the time to label the international initiatives in strengthening the judiciary as a ‘failure’. The interviewees also referred to the 2014 case while discussing judicial independence (fieldnotes, 2018). Besides these reasons, the 2014 tax case provided a window into observing and analysing the tensions between Xanana’s government and a young judiciary mentored by the Portuguese judges as part of transnational rule-of-law engagements.

Archived materials from Timorese news channels, civil society reports, and various Bar Association statements were also collected and analysed for a comprehensive understanding of the 2014 tax case. These materials were compared with the official documents from the ruling government and the National Parliament. Televised presentations by Xanana Gusmão, the Prime

Minister in 2014, criticising the judgment, were also analysed. Interviews conducted in 2018 were then used to contextualise the debates around the case and the impact of international support in the judiciary. While gathering and analysing the data, I separated the ‘transnational’ from the ‘local’ voices. As explained in Chapter V, increasing interconnectivity between local and international actors poses difficulties in delineating ‘international’ voices from ‘local’ ones. For the purposes of this chapter, whenever the local voices converged with the internationals, I refer to them as transnational, and where they diverged, I note them as ‘local’ (the government and veterans’ association, in this case).

I. Portuguese judges in the Timorese justice sector

To fully grasp the tensions that arose due to the 2014 tax case, it is pertinent to note the technical arrangements between the Portuguese and the Timorese judges. According to the new Constitution (Article 163) and the Statute of Judicial Magistrate (Statute of the Judicial Magistrate Law 8/2002), international judicial actors can be recruited as mentors within the core judicial institutions. These provisions legitimise the recruitment of non-East Timorese judges and other judicial officers, who have a minimum experience of fifteen years from a civil law country, in the courts, prosecution, and other judicial institutions. As mentors, the internationals are expected to “professionally integrate the judicial organisation” and “transfer good practices and knowledge” to their Timorese counterparts (Interview with MoJ participant 2).

The flow of international judicial actors has been operationalised through tripartite (UNDP Timor-Leste-bilateral donor-Ministry of Justice TL) arrangements. As part of the mentorship initiative, most judges have been recruited from Portugal. Portuguese judges were preferred to assist in the Courts as Timorese expatriates, and the resistance leaders considered them to be more experienced. Such perceptions of Portugal’s supremacy as an old nation with a developed jurisprudence and strong laws made it the “ideal partner” for guiding the inexperienced Timorese judges (Interview with CSO participant 6; Interview with academic 1; Interview with Timorese lawyer 2). This consolidated Portugal’s role as the primary rule-of-law partner in the country (fieldnotes, 2018).

Furthermore, the Statute of the Judicial magistrate provides channels for close interactions between the Portuguese judicial officers and the Timorese judges. According to the Statute, the Timorese judges’ seniority is determined through a three-tiered system. Under the tiered system, new probationary judges are classified as third-class magistrates, followed by second-class judges

and first-class counsellor judges. The Statute also provides a classification of judges as “very good” and “good” (Sec 26-29, Statute of Judicial Magistrate). The Statute mentions that only senior judges can carry out the inspections of their junior counterparts. Moreover, first-class judges who have received a “very good” rating can be judicial inspectors (Sec 22, Statute of Judicial Magistrate). Since there are no first-class Timorese judges (even in 2018), senior Portuguese judges who are funded by the UNDP’s Justice System Program carry out inspections (field observations, 2018).

One of the Timorese informants explained the role of a judicial inspector:

We have Portuguese judges who carry out our assessments. They evaluate the quality of our written judgments, number of cases dealt and the years of our experience... We need a Portuguese judicial inspector because, according to [the Statute of the Judicial Magistrate], a judicial inspector has to be a senior judge... in Timor, we do not have any Timorese first-class judge yet. This is also why we do not have the Supreme Court... as only top judges can be part of it... only senior Portuguese judges can assess our progress...

(Interview with Timorese judge 1)

Other initiatives include technical exchanges through training and capacity-building initiatives. International judges and lawyers are recruited at the Legal Training Centre, public defenders’ office, the prosecutors’ office, and the law department at the National University (UNTL). The internationals within these institutions provide training and “shadow” their Timorese counterparts while they carry out their official roles (Interview with UNDP staff 1,2,3; Interview with LTC Director). One of the Timorese judges from the initial batch of recruits described their interactions with the internationals in the following manner:

For a case, I [would do] the research, and if it was difficult, then I spoke [to] my international counterparts for help... that is if I had any questions that I could not find answers... But not [for] every single case... We hesitate as human beings... but at the same time, we need clarification, some resolution of our doubts, then we ask. In terms of Portuguese [language], when we were in the same panel, I used to give my draft judgment to the internationals so they could read it and correct my language. I am a new generation of Timor-Leste; I am just learning Portuguese... All the decisions are still written in Portuguese. Normally, when they [Portuguese judges] were here, we were grateful... From them, we could get experience to be more perfect... we could consult with them on controversial cases... even small cases where [law] was ambiguous. They were here to help us, to research, to clarify...

(Interview with Timorese judge 1)

As trainers and mentors, international technical advisers act as gatekeepers in setting standards for the Timorese judicial actors. For example, at the Legal Training Centre, Portuguese judicial trainers assess exam scripts and sit on interview panels (field observations, 2018); whereas, in the courts, public defenders’ office, and the prosecution office, the internationals work alongside Timorese judges, prosecutors and defenders imparting to them the “culture of law” and “values of being a judicial actor” (Interview with LTC Director; Interview with international judge 1; Interview with

Timorese public defender 1; Interview with Timorese public prosecutor 1). Finally, the Portuguese judicial inspectors assess Timorese judges' drafting and legal skills to determine whether they have 'progressed' (Interview with Timorese judge 1; Interview with international judicial inspector).

On the ground, these arrangements have shaped the perceptions of Portuguese judicial actors as "role models". Many Timorese judicial actors and aspirants expressed that they aspire to be "like the Portuguese judges"—whether interpreting laws, using the Portuguese language, or challenging the resistance leaders (fieldnotes, 2018). One of the trainees at the Legal Training Centre summarised the role of Portugal and Portuguese judicial actors in strengthening the Timorese justice sector as follows:

Portugal is an old country, unlike Timor-Leste. Their jurisprudence is rich. They have been applying their laws for many years. We can learn so much from them... Similarly, unlike Tetum, Portuguese is a global language, and there are many books already written about the law in Portuguese.

(Focus Group discussions with trainees at the Legal Training Centre)

Adopting Portuguese as the legal language and welcoming assistance from Portugal meant that the state could gain access to the European Union and its funds. Thus, it was a strategic move in resuscitating alliances with a wider group of nations drawing on shared colonial history (Interview with CSO participant 6; Interview with academic 1; fieldnotes, 2018). Portugal's image as the leader of the Community of Portuguese Language Countries (CPLP) in promoting cooperation and cultural exchange further projected its image as a global power championing a liberal ideal, unlike the oppressive Indonesian regime. By adopting similar laws, institutions, technical skills and ethics as the Portuguese judiciary, the Timorese elite decision-makers in 2002 expected the arrangements to assist the Timorese judges in getting closer to the Portuguese standards. Moreover, recognising Portuguese as the official language was also symbolic for the "old generation". It was the language of the resistance movement for sending messages to sympathisers without being detected by the Indonesian military (Interviews with CSO participants 1, 4, 6, and 7). Although Tetum was adopted as an official language the government did not invest enough funds to integrate it as the legal language (Interview with MoJ staff 1; Interview with anonymised staff at a multilateral organisation). Tetum's limited linguistic development and non-existent global reach further left Portuguese as the de facto official legal language even though most Timorese did not speak the language.

It is worth noting that unlike the elite decision-makers from the "old generation" who steered the course of the technical arrangements in the judiciary, all the recruited judicial actors were from the

“in-between” generation. They attended law schools in Indonesia and used Bahasa Indonesian and Tetum. One of the civil society members from the “in-between” generation emphasised the issue:

[resistance leaders and elite expatriates] wanted to adopt measures to control the condition that is vulnerable to political intervention. It was the political decision to make Portuguese the language of law. This meant that only people who spoke the language could work within the system... Well, as you can see... those fluent in Portuguese do not work in the judicial institutions... it is those from my generation, who studied in Indonesia, are the judges... they are met with these challenges.

(Interview with CSO participant 6)

In addition, in a 2003 decision by the Court of Appeal (CoA), the President of the Court of Appeal at the time (Judge Claudio Ximenes⁴⁶) and a Portuguese judge (Jose Maria Antunes) decided that the subsidiary law applicable to East Timor was the law of Portugal until the country adopts its own legislation. The *Armandos* case further shifted the power to those familiar with Portuguese laws and the Portuguese language (Ximenes and the other Portuguese judges) by marginalising the Timorese probational judges educated in Indonesian law schools. This decision led Ximenes to request a compulsory qualifying exam and training for the Timorese judges from the UNDP to raise their standards (informal conversation with ex-international UNDP staff).

All these developments consolidated the role of the Portuguese judges as mentors within the Timorese judiciary. And the Timorese judges from the “in-between” generation were expected to learn from their senior and experienced international counterparts. Until 2014, these arrangements continued without any concern. However, in 2014, a tax case between a US oil and gas producer, ConocoPhillips, and the Timorese government disrupted the international assistance within the judiciary.

II. A summary of the 2014 judicial crisis

ConocoPhillips operated out of one of the gas fields (Bayu Undan) in the Timor Sea between East Timor and Australia. According to the joint petroleum development area (JPDA) agreement, 90% of the company’s tax revenues paid on business profits had to be paid to East Timor and 10% to Australia. Royalties and taxes from Bayu Undan are the principal sources of national revenue for East Timor. In 2010, the Ministry of Finance assessed ConocoPhillips as owing \$236 million in tax arrears to the Timorese state (Upstream staff and Reuters, 5 November 2014). The Ministry’s assessments were based on the advice given by an international technical adviser, who was later

⁴⁶ A Timorese expatriate judge from Portugal who was recruited by UNDP to mentor the newly recruited local judges from 2002.

arrested for defrauding the Timorese government for \$3.5 million (La'o Hamutuk, 16 September 2014).⁴⁷

According to the Ministry, ConocoPhillips was regulated by the Bayu-Undan Contractors Act (Law 3/2003), the Indonesian laws on income tax, and the tax procedures and penalties found in UNTAET Reg. No. 2000/18 (laws that were ruled inapplicable in the *Armandos* decision). ConocoPhillips argued that the officials had wrongly applied the “rescinded laws” for assessing its tax liability and filed a challenge against the Ministry’s tax assessments at the Dili District Court. The Dili District Court heard the company’s pleadings *ex parte* and decided that the government had applied the rescinded Indonesian tax laws, which led to the incorrect tax assessment. It thus ruled in favour of ConocoPhillips. The Court also ordered the government to pay the company \$20,000 to cover its legal costs.

i) Government’s response to the 2014 tax case

The decision was rejected by the Prime Minister at the time, Xanana Gusmão. Xanana gave two televised PowerPoint presentations (“Court of Errors”⁴⁸ and “Errors made by the Public Prosecutor”⁴⁹), explaining why the Dili District Court and the Prosecutors Office were wrong. He declared to the nation that he “respected the rule of law and the independence of the judiciary” but it was his duty to explain how the judges and prosecutors “erred” in applying the relevant laws to facts and following relevant procedures. Xanana pointed out the judges applied “incorrect laws” to the case. He argued that the relevant laws that “ought” to have been applied to the case were rightly identified and applied by the officials in the Ministry. Xanana also cited Portuguese legal experts who supported his observations and how they identified the Indonesian law on income tax (Law 10/1994) and the UNTAET Reg No. 2000/18 as the accurate applicable law (Xanana Gusmão 1/2 presentation, Slide 9).

Xanana added that not only were the wrong laws applied to the case, but the judges had also applied the wrong Portuguese case precedents that did not fit the facts of the current case. To emphasise his point, Xanana took extracts from different judgements relating to nine decommissioning cases with different factual backgrounds but identical paragraphs in the

⁴⁷ The tax adviser to the Ministry at the time was a US citizen, Bobby Boye, who was later convicted by a US federal court for fraud and embezzlement for siphoning funds from the Timorese state. See La'o Hamutuk for a detailed report (16 September 2014).

⁴⁸ Referred to as Xanana Gusmão 1/ 2 presentation henceforth, and in the bibliography as Oliver Queen, 2014a.

⁴⁹ Referred to as Xanana Gusmão 2/2 presentation henceforth, and in the bibliography as Oliver Queen, 2014b.

judgments. Xanana alleged that the judges had “copy-and-pasted” decisions without understanding the facts of the cases before them. He stated that the judges had neither fully grasped the Portuguese cases they relied on as precedents, nor had they mastered the Portuguese language. He argued that ‘Timorese judges’ lack of skill and competence led them to rely on Portuguese decisions blindly without adequately applying their reasoning. Xanana blamed the international judges for failing in their contracts and not improving their ‘Timorese counterparts’ technical and legal skills.

Procedurally, Xanana claimed that in the past the court had partially allowed appeals from the opposing parties but failed to grant appeals to the government without any explanation. He also blamed the prosecutors for procedural impropriety. According to Xanana, the prosecutors failed to notify the government about the pending case. Furthermore, they did not attach the necessary documents from the Ministry of Finance to strengthen the state’s case. Xanana persuasively made a case to his audience that the court and the prosecution were biased *against* the government, especially his government (Xanana had been the Prime Minister since 2007 after two consecutive election wins).

Xanana also criticised the judgment for its “anti-national tone”: favouring a private international company over the ruling government. According to him, his government would have used ConocoPhillips’ tax arrears to spend on welfare programmes for the ‘Timorese public. Instead, he observed that the Court decision diverted the funds and overturned his government’s plans for improving the standard of living of ordinary ‘Timorese people (Xanana Gusmão 1/2 presentation). The procedural and substantive lapses were given as the reasons why his government and the National Parliament had to intervene on behalf of the ‘Timorese people.

Following Xanana’s criticisms, the National Parliament passed Resolution no. 11/2014, terminating the work contracts of five Portuguese judges (two from the Dili District Court and three from the Court of Appeal), two prosecutors (out of four) and one Portuguese anti-corruption commission investigator (out of three – the other two acted as advisers to the Commissioner).⁵⁰ They were ordered to leave the country within two days, and the Foreign Office, police and security forces were authorised to implement the resolution.

⁵⁰ At the time of the resolution there were seven international judges, of whom six were Portuguese and one was Cape-Verdean, but the resolution mainly targeted the Portuguese judicial officers.

The National Parliament justified their resolution by pointing out that the Timorese judges cannot handle “complex” cases and that the international technical advisers failed to improve the technical skills of the judges and their assistance was “inadequate”. The Council of Ministers also passed another resolution, no. 29/2014, to audit the Timorese justice sector for an independent evaluation of the issues facing Timorese judges and their independence. According to the National Parliament, the Timorese judges were “overly dependent” on their international counterparts (Resolution no. 29/2014). The members also pointed out that the 2014 judgment “revealed the weaknesses of the young justice system”, as well as the substantive and procedural “juridical irregularities” that exposed the country to “external threats to its sovereignty” and “national security” (Resolution no. 11/2014). The National Parliament and the Council of Ministers highlighted the necessity for the “Timorisation” of the justice sector, wherein Timorese judges carry out their duties without international support (Resolution no. 29/2014).

The Veterans’ Association supported Xanana and the National Parliament’s resolution through a public letter addressed to the judges (veteran association letter, 29 October 2014). In the letter, the veterans alleged that the Timorese judges had acted contrary to the national interests. They criticised the Timorese judges for being deferential to their Portuguese counterparts and ridiculed them for surrendering the hard-earned independence that the veterans had struggled to attain for them (veteran association letter, 29 October 2014). According to the veterans, if the judges were truly nationalistic, they would have supported the Ministry’s tax assessment as well as ordered ConocoPhillips to pay their tax arrears to the state. By deciding against the government, the veterans observed that the judges were working against national interests.

According to Xanana, the National Parliament and the veterans, the internationals ‘failed’ in their technical assistance as they did not assist the Timorese judges in applying the law to matters before them impartially/independently. Instead, they argued that the Timorese judges were wrongly influenced by their international counterparts and big private companies that caused them to start deciding cases contrary to the state’s interests and overlooking local realities (Xanana Gusmão 1/2 and 2/2 presentations; veteran association letter, 29 October 2014).

As for the Timorese judges, their failure was deciding against Xanana’s government and thus the state. This critique of the Timorese judges from the ‘in-between’ generation was entangled with the other local debates, and it evoked a recurring theme in the local politics where Timorese staff working with international organisations or closely with international partners and were questioned

about their commitment and loyalty to the state (Nygaard-Christensen, 2017, p. 200; Kammen, 2003). Xanana, in particular, had been targeting the ‘in-between’ generation for their perceived disloyalty to the state (or Xanana’s decisions) before the 2014 tax judgment. Nygaard-Christensen (2017, p. 199) contextualises the tension by providing a summary of one of the speeches given by Xanana in 2011. Nygaard-Christensen (2017, p. 199) reports that Xanana stated:

in young democracies, people in society tend to consider themselves ‘independent’, that is, operating ‘outside of the state’, in the sense that they are more of an activist than they are a citizen, or better yet, that they are the citizens of the international organisations that pay them handsomely, and defend them so well, rather than a citizen defending their own country.

He continued, referencing the United Nations,

I’m sad actually. We don’t work for the United Nations, we work for Timor, for the government.
(Gusmão, 2011).

Such metaphors of opportunism and disloyalty are common in the Timorese politics. Nygaard-Christensen (2017) observes that traditionally, the Timorese who did not participate in the independence movement or supported integration with Indonesia have been excluded through narratives of opportunism from gaining privileges in the new state or participating in the decision-making. Similarly, drawing a new exclusionary line between the “in-between” generation of judges and the “old generation” of elite decision-makers, Xanana’s critique underscored the de facto boundaries of who has the power to decide on behalf of the Timorese public was upturned. As a result, he targeted the legal fiction of judicial independence that assigned powers to the Timorese and Portuguese judges to act above Xanana and to take roles as the final decision-makers. Thus, by providing details of the lack of competence of the Timorese and Portuguese judges, Xanana and his supporters were indicating, firstly, why the Timorese judges’ decisions should not be considered final, and secondly, why the Portuguese judges had to leave their positions.

ii) Transnational responses to the National Parliament’s resolutions

Transnational actors responded to Xanana’s comments and the National Parliament’s resolutions through a series of critical public statements. According to them, the international technical advisers were not the reasons for the failures within the justice sector as Xanana highlighted. Rather it was the ruling government that refused to abide by the conventions of the separation of powers and the constitutional provisions that affected the judiciary. They indicated that the provisions and guarantees for judicial independence under the Timorese Constitution had been violated (Associacao Sindical dos Juizes Portugueses CSM, 11 November, 2014; The Asia Foundation, 2014; JSMP, 2014;) In addition, they argued that the managerial and disciplinary oversight of

judicial officers was vested with the Superior Council of the Judiciary and not the National Parliament (The Asia Foundation, 2014; JSMP, 2014).

The Asia Foundation's report listed reasons why the National Parliament resolutions were invalid in the "legal sense" (The Asia Foundation, 'Legal Note on National Parliament Resolution No. 11/204 and Government Resolution 29/2014'). According to the Asia Foundation, instead of being a legislative overseer and political decision-maker, the National Parliament interpreted its supremacy over other bodies. The Foundation indicated that the Ministry of Foreign Affairs and the Ministry of Justice should have assessed the international judicial cooperation policy (Asia Foundation, 2014). In addition, the report highlighted that even though the Portuguese judges were working on contracts they were technically acting as judges in the domestic courts. This meant that the government still had to follow the dismissal provisions for judges set out in the Constitution. In conclusion, the report noted that what transpired behind the closed doors of the National Parliament was "an offence to the principles of autonomy and independence of judges" (Asia Foundation, 2014).

The UN Special Rapporteur on the independence of judges also expressed similar concerns. According to the rapporteur:

The resolutions represent a serious interference in the independence of the judiciary... I am troubled that the decision may have been taken in retaliation for court judgments which displeased members of the government and the Parliament. It may also have a chilling effect on national members of the judiciary, affecting their independence.

(United Nations Human Rights Office of the High Commissioner Statement, 25 November 2014)

The Judicial System Monitoring Program (JSMP),⁵¹ a Timorese NGO working in the justice sector, concluded that the revocation of the work visas was "inconsistent" with the Constitutional provisions, existing legislation and human rights commitments made by the State of East Timor (JSMP, 2014). Like the UN Special Rapporteur, JSMP raised concerns about the impact of the resolutions on the public perceptions of judicial independence. JSMP pointed out that judges, prosecutors, public defenders and anti-corruption commissioners could be "more reluctant to take positions or express opinions contrary to the government or parliament" (JSMP, 2014). The organisation warned that public perceptions of judicial independence might also be affected by the

⁵¹ The NGO finds generous funding from international donors and openly works with international researchers and interns at their office. JSMP also allowed me to use desk-space at their office whenever I needed to work on my research.

“explicit contravention of legal provisions” (JSMP, 2014) and that the action could have indirect consequences outside the justice sector: “decrease in confidence of private investors, [weaken] bilateral relationship with Portugal and other CPLP nations, [encourage] tolerant attitudes towards corruption” (JSMP, 2014).

Depending on the institutional agendas, transnational actors indicated different reasons for the government’s response. Alistair Wyvill, a senior counsel, reporting on behalf of the Northern Australian Bar, alleged that the National Parliament’s retaliation was a timely measure to hinder the pending corruption cases against eight ruling government members. Wyvill reasoned that only this could explain the revocation of visas of Portuguese prosecutors and the adviser to the Anti-corruption Commission, who were unrelated to the 2014 case (Wyvill, 16 November 2014).

Asia Justice and Rights (AJAR) Timor-Leste, which campaigns for transitional justice, noted that the parliamentary resolution was a strategy to suspend cases against the Indonesian military officials (Interview with AJAR director). The law requires two international judges as part of the Serious Crimes Panel bench (UNTAET Regulation 2000/15, section 22; Criminal Procedure Code, Decree-Law No.13/2005, Article 3). In the director’s opinion, revoking Portuguese judges’ work visas allowed the proceedings against the Indonesian military personnel to be stalled. The informant observed that even the resistance leaders had abandoned seeking justice for the serious crimes’ victims (Interview with AJAR director). Instead, the informant noted that the leaders were more interested in saving bilateral economic relations with Indonesia (Interview with AJAR director, media Statement by AJAR director de Oliveira, 29 October 2014). Amnesty International and eighteen other Timorese NGOs working on human rights concurred with AJAR’s statements (IRIN News, 15 December 2014).

Portuguese Judicial Association highlighted their concerns by noting that “removing judicial officers arbitrarily, whether international or national, threatened the rule of law and a citizen’s right to a fair trial in Timor-Leste” (UIM Resolution, 11 November 2015). The Association, like the Asia Foundation and JSMP, drew attention to the Timorese judges’ limited skills and expertise and the necessity of the international judges for training new judicial recruits – which it emphatically pointed out was essential for the delivery of a fair trial within the country (UIM Resolution, 11 November 2014).

Compared to the government's responses, transnational actors focused on pointing out the National Parliament's contravention of constitutional procedures and international standards of separation of powers. Their statements and reports failed to address the issues of dependence on international judicial actors, language constraints faced by Timorese judges, and the issue of overlapping laws underscored by Xanana. Instead, the transnational actors were concerned about the flow of technical assistance and the consequences arising from the termination of technical arrangements.

iii) Consequences of the 2014 tax case

The National Parliament's resolution impacted the development of the Timorese justice sector substantially. Post-2014, international assistance within the courts remains suspended. In contrast, international technical assistance to other sectors has continued with no issues. Training at the Legal Training Centre was also terminated until 2017. A Timorese judge (Interview with Judge 1) encapsulated the consequences of the 2014 Parliament's decision in the following way:

Because there are no international judges, we cannot continue with serious crimes cases. To initiate proceedings, we need two international judges sitting alongside a Timorese judge... also, my batch had internationals to guide us as mentors and help us draft and interpret complex laws... The new judges lack mentorship as there are very few senior Timorese judges... only five of us. Our promotions have also been affected since 2014. We have had no one to evaluate our work. In 2011, after the first judicial inspection, five of us were elevated as second-class judges... but until now, we have been waiting to be assessed and evaluated to have first-class Timorese judges in the country. We are improving, but we need support... maybe research assistance from international judges. They could take advisory roles, especially for complicated tax cases and petroleum cases. Also, many judges are not fluent in Portuguese as a legal language yet... the new judges can benefit from some help and mentorship...

According to the Justice Sector Strategic Plan, all the vacant positions in the judiciary were expected to be filled by 2015. The Plan had also laid out strategies for improving the competence, skills and knowledge, including ethical standards, of Timorese judges by 2030. Other goals included developing the Legal Training Centre as a centre of legal excellence by 2015/2017 (JSSP, 2010, p. 64). All these goals had to be paused following the expulsion of the Portuguese judges from the Legal Training Centre, courts and the prosecution impacted the training, mentoring and promotion of the Timorese judges.

Within the political sphere, the 2014 controversy led Xanana to resign from his position as Prime Minister in 2015. In his resignation letter, Xanana explained that the older generation was giving way to the new generation. He nominated Dr Rui Araujo (from the "in-between" generation), a member of Timor-Leste's National Student Resistance (RENETIL), as Prime Minister for 2015-2017. However, on the ground, Xanana's influence was ubiquitous (see section below). After

stepping down, Xanana continued in his role as a senior coordinating minister. He then took positions as senior minister in the coalition government of Taur Matan Ruak (2018-2020) and as the chief negotiator for developing the Timor Sea's untapped Greater Sunrise reserves.⁵² He also leads Tasi Mane, a mega-infrastructure project centred around oil refining facilities on East Timor's south coast, constructed with the hopes of prospective pipelines running through the untapped Greater Sunrise reserves.⁵³

III Contextualising the 2014 crisis from the field

In the following sections, using data collected from the field in 2018 I examine the purported reasons for the “failures” of transnational engagements within the justice sector. In addition to the issues identified by Xanana, other challenges identified by the informants are also included.

i) Dependence on international judges

Interviews with Timorese judicial actors revealed their lack of knowledge of the Portuguese language had impacted their competencies in independent decision-making. The participants observed that especially for complicated cases, they relied on their international counterparts for assistance with interpreting the relevant legal provisions and their application to cases (Interview with judge 1; Interview with judge 2; Interview with PDO participant 3; Interview with senior prosecutor 1).

Some informants pointed out that the arrangements for judicial inspection and promotions led Timorese judges to blindly follow formats preferred by their Portuguese counterparts. They mentioned that the training programmes in Portugal and the presence of Portuguese mentors have further shaped how the Timorese judges think, act, and carry out their roles (Interview with Timorese lawyer 2; Interview with international technical adviser in the justice sector 1)

One of the interviewees expanded their observations:

The Timorese judges rely on Portuguese cases as precedents to interpret Timorese laws to get a positive evaluation from their superior international counterparts... the Portuguese judiciary has a lot of influence here... The mentality of Timorese judges is structured very similarly to that of the Portuguese judiciary. For example, all the judgments are written in Portuguese with the same

⁵² In May 2020, PM Taur Matan Ruak left the coalition with Xanana's CNRT party. Xanana and his supporters filed multiple legal challenges in the court to seek fresh elections. In the end, PM Taur joined a coalition with the other major opposition party, FRETILIN. This action to remove Xanana from being proximate to the ruling government resulted in small scale tensions in the capital city of Dili.

⁵³ The Tasi Mane project has been criticised as an extravagance, especially by the opposition FRETILIN. It is reported that Xanana has allowed for hundreds of millions of dollars from the public budget to be spent on an airport, port facilities, and multi-lane road highways – none of which have been used yet. There are also allegations that those closer to Xanana have enriched themselves through state contracts and kickbacks (see Partick O' Connor, 15 June 2020).

structure of Portuguese judgments... because they [Timorese judges] are trained in that way... They have a Portuguese judicial inspector as an authority to supervise and evaluate them for promotion... In the legislation here, they [judicial inspectors] don't have hierarchical power over the judges... but they [Portuguese judicial inspectors] have the power to evaluate who will be considered for promotion and disciplinary proceedings...

(Interview with international technical adviser in the justice sector 1)

A Timorese lawyer explained that the close mentorship and guidance provided by the Portuguese judges worried Xanana and his government who were in power 2007-2015. The lawyer contextualised the concerns about a 2008 court decision against the state budget proposed by Xanana's government, who allocated \$788 million for a mid-year budget, which went beyond the limits prescribed by the budgetary law. The case was brought by 16 members of the Parliament, and the court of appeal, constituting two foreign judges – Ivo Nelson Rosa (acting President)⁵⁴ and José Luís da Goia – invalidated the budget.

The court concluded that the Parliament's budget exceeded the estimated sustainable income (ESI) from the petroleum fund (\$396.1 million) and it ruled that the government had no authority to withdraw above the prescribed limit set by law. The judges also highlighted that 97% of the budget was allocated to the government while allocating small amounts for the Parliament, President and judiciary violated the Constitutional separation of powers (La'o Hamutuk, 4 December 2008). The judges added that budgets which exceed legally permissible limits encouraged corruption with more cash floating in the public sector (de Jesus Soares, 2015). After the 2008 decision, Judge Ivo Nelson's contract was not renewed by the Superior Council of Judiciary. Relations between Portuguese judges and Xanana's government remained tense since then (Interview with Timorese lawyer 2). The lawyer observed:

If you look at the Superior Council of Judiciary – they are supposed to manage independence and separation between the judiciary and the government. But procedurally, the government gets to nominate members of the Council. When you have a hierarchy and power culture, there is a general understanding that whoever nominates you, you are representing them. I can explain this through an example: there was a court of appeal decision questioning the state budget, and one of the Portuguese judges was at the forefront of writing that decision. A few months after, the Superior Council of Judiciary cancelled the contract of the international judge... because the judge decided against what the government wanted to do with the state budget... it is not surprising that the President of Council was the Minister of Justice at that time.

The 2014 decision was explained as a similar incident to the 2008 case where the judiciary overturned Xanana and his government's decisions (Interview with Timorese lawyer 2).

⁵⁴ Judge Ximenes had delegated his authority to judge Ivo Nelson, as he was in Portugal for medical reasons.

There were also pending corruption investigations against some of his close senior aides, which made the government and Xanana wary of international judicial actors (Wyvill 2014; Interview with CSO participants 4 and 5). These actions strained relations between the prosecutor office and Xanana's government and resulted in a lack of communication while the courts heard the ConocoPhillips case in 2014. All these issues led Xanana and his followers to perceive that the judges and prosecutors were acting against his government) and furthering the agenda of their international partners (Interview with local lawyer 1, 2; Interviews with CSO participants 4, 5, and 6).

ii) Overlooking local interests

There were concerns that the international judges were pushing for "high standards" and championing an agenda to create a "mini-Portugal" in Southeast Asia (informal conversations with Timorese citizens; Interview with Timorese lawyer 4). One of the international ex-advisers to the Parliament summarised the displeasure of Xanana's government in 2014 in the following way:

I am a Portuguese lawyer, even I felt the Portuguese judges were pushing too quickly... you cannot make everything perfect suddenly... make corruption go away... lock up the leaders... every country needs its time... the Portuguese judges were trying to transform this country like Portugal... Portugal is still not perfect, Timor is a young country, give it some time... In my opinion, the 2014 retaliation resulted from the internationals pushing the government to the extreme...

(Interview with international ex-adviser to the Parliament)

The informant's observations can be contextualised against the limits of law within a society that hinges on the presence of resistance leaders for stability. Xanana's role in East Timor's independence movement had made him a living embodiment of hope, resistance, and independence for those who resisted the Indonesians (Gusmão, 2000). In a society with a strong tradition of respecting elders, charismatic resistance leaders (especially Xanana) hold unique positions as "beloved elders" who fought tirelessly as "soldiers" (used symbolically) for the Timorese people. They are believed to be "blessed by the ancestral spirits" to lead the Timorese people (Winch, 2017).⁵⁵ Their authority transcends the normative limits of law and their heroic deeds cloak them in impunity from the grips of accountability prescribed by law. By encouraging a strict separation of powers between the judiciary and Xanana, the international judges were disrupting the de facto social order on the ground.

⁵⁵ In East Timor, the dead are believed to provide protection to the living. Bronwyn Winch's ethnography (2017) studies this within an individual context.

Additionally, the Portuguese judges were criticised for overlooking the limited language proficiency of their Timorese counterparts and the prevalence of traditional law (Interview with MoJ participant 2; ex-Minister of Justice; MoJ-UNDP-PDO seminar). Timorese informants who have been mentored by different internationals drew distinctions between the Portuguese, the Brazilians and the Cape Verdeans. The Brazilians were noted as being better at “understanding” the local realities than their Portuguese counterparts (fieldnotes, 2018). They observed that the Brazilians understood their limitations as a young nation with a colonial history and dictatorship (Interview with Timorese public defender 1; Interview with public prosecutor 2; focus group discussions with LTC students). Brazilian advisers were noted as being more sensitive: they made efforts to understand the social contexts, learned Tetum, and engaged informally with their Timorese counterparts (Interview with Timorese public defender 1; Interview with public prosecutor 2; focus group discussions with LTC candidates).

In contrast, the Portuguese technical advisers were perceived as “distant” and “aloof” from fully comprehending the Timorese reality (Interview with Timorese prosecutor 2; Interview with Ministry of justice official 2; Focus group with LTC candidates; Interviews with Timorese lawyer 1 and 2). The Timorese participants noted that the Portuguese legal trainers were more reserved, experienced, and tempered (Interviews with Timorese judge 1 and 2). Despite these differences, the Timorese judicial stakeholders observed them as aspirational ideals (fieldnotes, 2018). One of the Timorese prosecutors encapsulated the paradox:

Portuguese mentors may not have been diplomatic in dealing with cases that were of interest to the resistance leaders. But their courage to stand up against the resistance leaders was exceptional. They demonstrated to the Timorese officials what is possible to achieve as an independent judge, a prosecutor...

(Interview with Timorese prosecutor 2)

However, Xanana and his supporters perceived the internationals within the justice sector to be in opposition with the government. Timorese interviewees provided explanations as to why the internationals were perceived as threats by Xanana’s government. They noted that in 2012, Xanana’s government discovered that the Australian intelligence service had planted covert devices in a room next to the Prime Minister’s office in 2004 (Interview with CSO participant 2). The operation was carried out to gain the upper hand in the impending negotiations over the oil and gas fields in the Timor Gap. There were also instances where sensitive information discussed during the Parliamentary proceedings was leaked to international partners and reporters (Interview with Timorese lawyer 2). According to one of the Timorese lawyers, such instances caused

Xanana's government to grow concerned about the interests of international technical advisers (Interview with Timorese lawyer 2; IFEX, 6 February 2014).

Another incident was the leak of a UN document in 2011 – a nine-page PowerPoint presentation. One of the contentious points of the document was that it identified Xanana as a “major obstacle to the development of democratic governance in Timor-Leste” (Tempo Semanal, 15 May 2011). The UN document leak strained relations between Xanana and UNMIT. Over the course of the year, Nygaard-Christensen (2017) reports, there were rumours it was a Timorese staff member – someone from the “in-between” generation – who made the presentation. The allegations further inflamed Xanana's supporters to accuse the “in-between” generation of working for the international organisations' interests rather than the Timorese interests. They were labelled as “sell-outs”, “anti-national”, and “chasing big money” (Nygaard-Christensen, 2017).

In 2014, when the National Parliament convened to discuss the resolution, all the internationals were asked to leave the Parliament while the resolution was passed (Interview with ex-international adviser to the Parliament). There were concerns that the international community would coerce the government into abandoning the decision (Interview with lawyer 2; Interview with ex-international legal adviser to the Parliament). As a state that was heavily reliant on international aid and slowly reducing its overseas development assistance, Xanana's government was concerned about pressures from the international community (Interview with lawyer 2). The government widely perceived the international expatriate community to be a close-knit “grapevine network” through which sensitive information from the state institutions were passed on to sources outside the country (informal conversations; field observations, 2018).

Besides these issues, there were genuine concerns that some international advisers were providing substandard technical assistance and siphoning money from the state to benefit themselves and their friends. The quality of international technical assistance was raised particularly in the context of Bobby Boye's arrest. Boye was a legal adviser appointed to the Government of East Timor by the Norwegian Aid Fund to assist the state with its Oil for Development programme (Interviews with La'o Hamutuk staff). Boye had worked closely with the government, and he was respected and trusted by those who engaged with him. He alerted Xanana's government of the ‘gaps’ in the law that the oil companies were exploiting. Boye's assessment identified the tax arrears of ConocoPhillips and his interventions triggered ConocoPhillips to look into his history – the company discovered that he was siphoning money from the state in fraudulent contracts (La'o

Hamutuk, 14 October 2016). Boye had asked the Timorese Ministry of Finance to request bids from international law firms to support the Petroleum Tax Audit and rewrite petroleum tax regulations within the country. The Timorese officials trusted him to decide the winner of the technical bid. He created a sham company based in New York and awarded a \$2.4 million contract to it. Boye's scam was unveiled in 2014 following an FBI investigation, and he was arrested for defrauding the Government of Timor-Leste. A civil society member reflecting their interactions with Boye recollected:

Boye was helpful and friendly... taking time to explain complicated laws and regulations related to petroleum resources... he was passionate about it. He took evening classes for those who wanted to know more about the laws... and took time to discuss with activists like me who had no idea about the issue... we trusted him... when I heard that he was arrested for stealing millions from the government, I was shocked... very shocked honestly.

(Interview with a former CSO Timorese staff who worked on petroleum and energy resource issues)

As for the Portuguese judicial actors, Xanana was suspicious that the international judges were favouring ConocoPhillips – suspicions that were ignited by a local media report about Portuguese judges exchanging SMS with the senior officials in ConocoPhillips Timor-Leste (Interview with Timorese Prosecutor 2; Interview with LABEH Director). Other participants added that there was too much “paranoia”, especially surrounding the internationals and the local stakeholders working alongside them in the judiciary (Interview with Timorese prosecutor 2; informal conversations with Timorese official 1 at the Ministry of Finance).

The informants reflected how the international technical advisers, especially the Portuguese judges, promoted their ‘ideal’ versions of justice reforms without reflecting enough on whether they were ‘ideal’ for the Timorese context at a particular time. Overlooking language constraints, the prevalence of traditional law, and the transitional reality of the state, the international technical advisers failed to recognise the ‘external’ challenges to the adaptation of transnational judicial independence. The international judicial actors instead focused their efforts on the technical aspects of strengthening a judiciary. While the technical aspects: the knowledge of law, legal drafting, and adherence to judicial standards, are necessary for establishing the authority and legitimacy of the judges (Shapiro, 1981), they are just one set of elements required for building an independent judiciary in a post-conflict state. In East Timor, where the institutions are fairly young and have not been fully embedded in the society, *time* is essential for establishing the authority and legitimacy of the judicial institutions. Furthermore, the Timorese judges recruited as part of the statebuilding initiatives and vested with new roles as the final decision-makers need time to

establish their authority in a society that continues to revere resistance leaders and traditional authorities.

iii) Living alongside heroes

Timorese informants, especially within the civil society organisations and the “new generation” at the Legal Training Centre and the law school, noted the limitations in the international technical assistance in strengthening the judiciary to limit the powers of the resistance leaders. Civil society members, in their interviews, explained that Xanana’s supporters revere him, and the Timorese public trust him to make the best decisions for the country (Interviews with CSO participants 4, 5, 6, 7, and 8; field observations, 2018). One of the civil society participants explained Xanana’s uncontested authority as the “respected elder”:

During the resistance movement, Xanana hid in the mountains and he led the resistance movement successfully. Many Timorese believe that he could stay undetected in the mountains because he was blessed by the spirits [in Mt Paitxau]. The spirits kept him alive and safe from the brutality of the Indonesian military. Even when you meet him in person, he has this aura... it is like the ancestors are speaking through him...

(Interview with CSO participant 9)⁵⁶

Xanana is described as a “living legend”, especially by the Timorese who lived under the Indonesian occupation and supported the independence movement (field observations, 2018). He is also referred to as the “father of the nation” or the “*Maun boot*” (literally translated as the big brother). His friendly demeanour and charismatic personality are other factors that make him the peoples’ cherished leader (anthem for Xanana, see Abio Salsinha, 8 February 2021; field observations 2018).

One of the civil society participants from the “in-between” generation expressed Xanana’s charisma in the following way:

I was very upset with Maun Xanana and his decision [referring to the 2014 decision]... but I could not stay mad at him for long... there is something about him that draws people to him... he smiles and jokes with everyone as he knows them personally. He knows how to reach out to people’s hearts.

Even those holding key positions within the judiciary and other state institutions were noted as being unable to escape his charisma. A Timorese lawyer recollected Xanana’s visit to the Dili District court. The lawyer expanded:

⁵⁶ See also Xanana interview with Rui Araujo, 20 July 1992; Xanana was arrested by the Indonesians in 1992 and was convicted in 1993 with life imprisonment but “miraculously unscathed by the brutal Indonesian forces”, as recounted to me by a local who was inspired by Xanana during their university days in the 90s. See also ‘I am not a Myth, interview with Rui Araujo from 20 July 1992’ (Gusmão, 2000, pp. 172-173).

During the proceeding, when the judge asked Xanana to give his full name for court records, Xanana replied in his booming voice, Kay Rala Xanana Gusmão and jokingly asked the judge, what is your name? The judge was surprised but gave her name, everyone in the courtroom laughed, and the proceedings began...

(Interview with local lawyer 4)

The AJAR Director explained the difficulties of raising opinions opposing or critical of Xanana's. Recounting from their experiences, the informant noted:

When Parliament passed the resolution, I wrote an article against it. Maun Xanana was not happy with me. I saw him at a public event, and he told me this. And I said I agree with him about the judges lacking language skills and not knowing law. I know this because I lost two cases where the judges applied the law wrongly. But we should not attack the judges because we are still in the process of development. We have to respect the decision of the judges; one can always appeal.

As the informant emphasises, Xanana's criticisms were legitimate. But not following the finality of the court decision, Xanana threatened transnationally held conventions of separation of powers. Xanana's government could have filed for an appeal to the Court of Appeal, but instead of going through the predetermined modes of dispute resolution, he opted for an unconventional response, contravening the expected transnational conventions of judicial independence.

Explaining the difficulties of adapting the ideal standards of judicial independence while the charismatic leaders are alive, one of the civil society members stated:

There are many challenges. Language is a big challenge. Agree... national judges are lacking capacity in terms of the material also. It is not about whether they have mastered all their materials, it's also about our integrity. It is also about whether the judges are mature or not. Our character is such that we are paternalistic, they [the judges] hesitate a bit when they have to deal the cases of '*maun boot*' like the veterans, like people whom they feel inferior to... the leaders are considered above the law... and it becomes difficult to apply the law equally... Since the veterans have high privilege within the Timorese society – socially, they are at the highest. Hence, they try to maintain this position. This is a challenge to our democracy.

Ne'e ita reza atu sira mate lalais ['That is why many pray that they die soon']. There is no equal application of law when they are alive... we are waiting for the rule of law...

(Interview with Timorese CSO participant 6)

Weber's conception of "charismatic authority"⁵⁷ aids us in understanding the influence of Xanana and other key resistance leaders in the society. We can observe that these actors draw legitimacy from the wider society through narratives of their heroism and exemplary traits. A generation of Timorese looks up to Xanana (and, to a certain extent, other key resistance leaders) as the father of the nation. Xanana's role as their resistance leader – defending the hopes for an independent

⁵⁷ Weber's idea of charisma stands in tension with bureaucratic rational legal authority, but I take the position that societies like East Timor where 'legal rationality' was transferred through intensive state-building exercises is indicative of a society that is in *transition* from the parallel pulls of traditional and charismatic authority.

nation and tirelessly fighting for it – has assured him the reverence of the Timorese people. By drawing on his charismatic authority, Xanana can exercise command over others and gain acceptance of his claims and obedience to his directives without too much resistance (Weber, 1962, pp. 71-72). Lukes’ analysis of three-dimensional power is also helpful to analyse how Xanana exercises his authority over the Timorese public in intangible ways. As Lukes notes, power can work in ways that are hidden from those subjected to it. In the case of East Timor, Xanana could set the agenda and policies that affect the Timorese public by remaining outside the constraints of law. Through metaphors that drew exclusionary lines between the “old generation” who fought for the resistance and the “in-between” and the “new generation”, Xanana constructed a new rule of absolute immunity for the resistance fighters – especially immunity from the fictional legal rules transferred by the internationals that aimed to fetter the old generation.

Compared to Xanana, not all resistance leaders have the same influence over the Timorese. Among the resistance leaders, distinctions were made between those who stayed in the country during the occupation (leaders like Xanana, Taur Matan Ruak, and Lu’olo), those who remained outside of East Timor, and those who supported the independence movement through diplomatic channels (Ramos Horta and Mari Alkatiri). Those who stayed to fight the Indonesians were widely considered selfless for sacrificing their education, family, and comfortable lives compared to those who mobilised support internationally. In contrast, the leaders of the diplomatic front were perceived to have led a comparatively comfortable life. Furthermore, those who were on the resistance front had to face the violence and brutality of the Indonesian military. It was described as a “life-or-death struggle”. Such distinctions between the resistance leaders also explained why Xanana enjoys more public support than the others (fieldnotes, 2018).

It is worth noting that not everyone agreed to the unconditional deference to Xanana. But Xanana’s critics within the old generation and from the “in-between” generation could do very little to constrain his power. Those within the “in-between” generation, who had taken official roles within the judiciary, were already labelled as the “supermi generation” and Indonesian sympathisers for their Indonesian degrees. In addition, in 2011 and 2014, they were identified as detractors of national interests by Xanana and other veterans. Such labelling has affected the “in-between” generation from pushing back against the resistance leaders publicly. Consequently, reverence for charismatic leaders has had a chilling effect on those who have taken key positions in public offices and judicial institutions. This situation made the informants from the “in-

between” generation observe that until the demise of leaders like Xanana, it is impossible for “ideal standards for the rule of law to take hold” (fieldnotes, 2018).

Conclusion

In this chapter, I analysed the controversies surrounding the 2014 tax case that paused the international technical assistance to the judiciary. Following the debates on the 2014 case, I provided descriptions of why the government perceived international assistance to the judiciary as a ‘failure’. These issues were then contextualised through data collected from the field in 2018. Data collected from the field shows that Xanana’s observations that international support has barely improved the technical capacity of the Timorese judges were legitimate concerns. As for transnational actors, we can observe from their reports’ focus was on the deviations of the government from the constitutional conventions. In their official reports, the international stakeholders and the Timorese civil society members discussed the challenges in the judiciary through the transnationally set abstract templates of threats to judicial independence: interference from the executive and legislature. Narrating the challenges of the Timorese judiciary through the separation of power lens, transnational actors overlooked what was happening on the ground. Neither did they investigate the allegations raised by Xanana and the National Parliament on the lapses of technical assistance to the judiciary.

At the outset, the responses to the 2014 decision from the government and the transnational community shed light on how different actors describe ‘failures’ and ‘successes’, and what they choose to examine while discussing the failures and successes of transnational initiatives. According to Xanana and his supporters, the international support ‘failed’ because it did not assist the Timorese judges in applying laws confidently and impartially, or considering the local realities whereas, for the international community, it was the lack of political will to respect the authority and legitimacy of the judiciary that led to the ‘failed’ reforms. Neither of these narratives informs us about the actions of transnational actors, how they worked towards enabling the *adaptation* of judicial independence norms in the country. What were the challenges they faced, and how did they overcome those challenges? Such a reframing allows us to move beyond evaluating transnational engagements against an ideal phenomenon, but instead examine whether those involved in transferring and receiving new legal norms and institutions took the necessary strategies to assist a society towards adopting and adapting new norms. Gathering accounts from the field allowed opportunities for collecting data on how transnational engagements within the justice sector panned out: what challenges restricted Timorese judges from being independent and

how they have (or not) overcome those challenges through international support. Drawing on the data from the field, in Chapter IX, I explain why transnational rule-of-law engagements in the justice sector were not good enough.

CHAPTER VIII:

FIGHTING CORRUPTION: REFORMING AND WAITING

In this chapter, I study the reforms that were introduced to tackle corruption in East Timor. Following discussions on the ‘failures’ of the anti-corruption commission that was established through international support, I investigate whether the transnational initiatives have actually failed to bring changes on the ground. Two controversial corruption cases – one involving a senior Minister who was part of the “old generation” closer to the resistance leaders, and another involving a Minister from the “in-between” generation – are analysed to understand the limits of the transferred anti-corruption regime.

The data for this chapter was collected through field observations and semi-structured interviews conducted with Timorese anti-corruption commissioners, civil society members working on anti-corruption, and lawyers in 2018. ‘Informal’⁵⁸ interviews with the United States International Aid (USAID) staff, who were the primary financial supporters of the anti-corruption commission (CAC), also gave background information to situate the reforms within rule-of-law promotion initiatives (field observations, 2018).⁵⁹ Materials from Asia Justice and Rights’ (AJAR’s) *Laloran Justisa* (TV documentary), Centre of Studies for Peace and Development’s (CEPAD) public awareness campaign posters, and the anti-corruption commission’s prevention training manuals were also analysed to understand how the international and the local stakeholders engaged with each other to mobilise the Timorese to fight against corruption. Focus group discussions with the “new generation” were used to collect information about student movements and to map attitudes towards anti-corruption.

Since 2018, debates on enacting separate legislation on anti-corruption have been reactivated. On 20 July 2020, the Parliament approved new legislation. To an extent, the enactment of legislation allays some of the concerns expressed by the informants in 2018. However, I argue from the data collected in 2018 that, as a young state in transition, the institutional and legal arrangements for tackling corruption in East Timor are far from perfect. Many challenges exist *outside* of the legal

⁵⁸ The representatives from USAID requested that I did not record our interview, and that our meeting was “off the record”. I was informed that to be “on record”, approval from Washington was required. The participants agreed that I could use the information they provided for triangulating the data I collected.

⁵⁹ There were also other donors for CAC, but they supported the Commission from the periphery. For example, Indonesia, Singapore, and Malaysia had training initiatives and exchange programmes for the officials. USAID and UNDP supported technical advisers who were attached to the Timorese staff (Interview with CAC international cooperation officer).

field that have also influenced the trajectory of adaptation of the anti-corruption norms. Relying on the data collected from the field, these challenges will be explained at the institutional and the social level. At the outset, the data in this chapter illustrates why there must be a broad social consensus on what constitutes a corrupt practice (arbitrary use of power for private gain) and how it should be tackled to fully address corruption.

I. Internationally-led initiatives for combating corruption in East Timor

In 2009, the Anti-Corruption Commission was established through the enactment of new legislation. According to the statute, the anti-corruption commission is “an independent and specialised criminal body to investigate” corruption (Law No. 8/2009). The law gives the commission its mandate to undertake preventive action and criminal investigation when there is passive or active corruption, abuse of power, embezzlement, misuse of public material or resources, or financial participation in public affairs. Like the Office of the Provedor for Human Rights and Justice (PDHJ) – established with the support of the European Commission in 2005 – which had the mandate to oversee complaints of maladministration and abuse of power by those within the Timorese government, the commission also targets abuse of public office for private gain. Under the Anti-Corruption Commission law, the Office for the Provedor for Human Rights and Justice’s overlapping mandates with the Anti-Corruption Commission were repealed: the provedors (ombudsmen) were restricted to monitoring roles, and the anti-corruption commissioners were given investigatory functions.

Despite the presence of the Provedor office that had the mandate to address abuse of public office, a separate, specialised institution on anti-corruption was considered necessary. Post-9/11, the United States Congress’ commitment to tackle corruption and terrorism in its partnering states also influenced the United States Agency for International Development’s (USAID) mandate within East Timor (informal meeting with USAID personnel). The Timorese government was encouraged to set up institutional arrangements to combat corruption for gaining access to bilateral development funds and trade agreements with the United States of America. Xanana Gusmão’s government (which was in power at the time) allocated \$1,045,000 in funding for staff and support to signal that there was political will to combat corruption (Interview with international ex-adviser to the Parliament). The Portuguese legal advisers within the Parliament, on the contrary, were against the proposal for an independent body on anti-corruption. They were concerned that a separate corruption agency, modelled along the American style would create confusion. According to them, an independent Commission for anti-corruption moved away from how the Portuguese legal system was structured (which is the prototype for the Timorese justice sector). Accordingly,

the Commission's mandate was limited to be an extended arm to support investigations into corruption for the Office of the Public Prosecutor (Articles 292, 293, 294, 295, 296, 297, 299, 302 of the Penal Code).

Once the Anti-Corruption Commission was established, many bilateral and multilateral donors financially and technically supported the institution through its Directorate of Support and Cooperation. The Commission had international advisers funded by USAID (through its Forti and MSD programme), Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH (GIZ), United Nations Development Program (UNDP) and Korea International Corporation Agency (KOICA) at different points until 2018. The international advisers to the Commission assisted with capacity-building. They helped draft training manuals and developed strategic policies to strengthen the Commission's mandate (Interview with International cooperation officer). Until 2014, the Anti-Corruption Commission also had Portuguese prosecutors – appointed through bilateral arrangements with the Ministry of Justice in Portugal – who assisted the commissioners in coordinating with the Prosecutor's Office (Interview with International cooperation officer).

II. Perceived 'failures' of the anti-corruption regime

On the ground, the “new generation” at the law department and the Legal Training Centre were vocal in their criticisms of how the anti-corruption regime works in the country. Two of the local civil society participants were critical about the limitations of the anti-corruption regime (both campaigning for separate anti-corruption legislation in 2018). While the civil society members blamed the reasons for the failures of the anti-corruption reforms to fully take hold on the government and on the existing legal framework, the “new generation” argued that the limited mandate of the commission mixed with the “impunity culture” of the old generation were the causes of failure (fieldnotes, 2018).

i) “An anti-corruption commission with no teeth”

The Timorese civil society organisations that have been vocal about the limits of the anti-corruption regime are La'o Hamutuk and Programa Monitorizasaun Sistema Judisial (JSMP). Both organisations approached their campaigns in different ways. La'o Hamutuk, which translates to “walking together” considers transparency and accountability as its core values. Accordingly, it acts as a watchdog, informing the public and other interested parties whenever there is a non-transparent administrative decision, suspicious tender, or similar issues (see La'o Hamutuk Issue Index: Corruption, n.d.1). The organisation compiles official documents, reports, and produces its

analysis on issues as they arise for “facilitating communication between people in Timor-Leste, Timorese and international decision makers” (La’o Hamutuk, Mission statement, n.d.2).

The organisation does not investigate individual allegations of corruption; however, it monitors the activities of the Timorese government, international organisations, and businesses in the country. East Timor is a resource rich nation with 90% of the state expenditures sourced from the petroleum fund; La’o Hamutuk monitors the fund and how the expenses are spent. Most importantly, to gain an objective perspective, La’o Hamutuk does not accept grants from organisations such as the United Nations and its agencies, the World Bank, ADB, IMF, major donors to Timor-Leste, the Timor-Leste government, political parties, or companies operating within the country (La’o Hamutuk, n.d.).

Since 2009, La’o Hamutuk has been at the forefront, recommending for a separate legislation on anti-corruption (which was finally passed on 20 July 2020). According to the organisation, it is imperative that the law on corruption addresses “big and small corruption” (La’o Hamutuk, 2019, p. 5), it has clear definitions for public functionaries (La’o Hamutuk, 2019, p. 4), and it stipulates strong institutional arrangements for prevention (La’o Hamutuk, 2019, p. 3). During the interviews, La’o Hamutuk staff voiced their concerns about the perfunctory structure of the anti-corruption commission and the limitations in relying on the penal code for addressing corruption (Interviews with La’o Hamutuk staff). They also pointed out that to punish corruption, an allegation has to pass through the anti-corruption commissioner and the prosecutor general, either of whom could subvert the process (Interviews with La’o Hamutuk staff; La’o Hamutuk Bulletin, June 2009).

In contrast to La’o Hamutuk, JSMP⁶⁰ concentrates exclusively on the procedural limitations that hinder a full adaptation of the anti-corruption norms. Like La’o Hamutuk, JSMP also emphasises that not having separate legislation on anti-corruption has limited the powers of the commission. The organisation observes that from its monitoring of corruption cases, there are usually several different kinds of corruption: i) economic involvement in business; ii) intentional mismanagement; iii) abuse of power; iv) embezzlement; v) abuse of trust; vi) passive corruption for an unlawful act; and vii) active corruption (JSMP, 2017). In their interviews, JSMP staff argued that separate legislation that recognises these varying kinds of corruption could aid the anti-corruption

⁶⁰ JSMP’s funding for its anti-corruption campaign came from Australian Aid (field observations, 2018). Also see JSMP Press Release, 27 September 2018.

commission to prosecute the “big people” (referring to ex-ministers and resistance leaders; Interviews with JSMP staff).

According to staff members in the JSMP, not having separate legislation on corruption has blunted the Commission’s “teeth” in terms of investigating corruption charges (Interviews with JSMP staff). JSMP, in its reports, notes that separate legislation could help define what constitutes corrupt practice and give more proactive powers to the commissioners to initiate investigations without waiting for approval from the Prosecutor’s Office.

Secondly, JSMP highlights that the lack of implementation of the law on witness protection has affected the ability to gather evidence against corrupt officials. According to its staff, ruling governments in power have not done enough in implementing the law. JSMP notes that witnesses who give testimony in court feel threatened as their identities are not anonymised, with the courts having inadequate facilities or technologies to do so (JSMP, 2017).

Finally, in their interviews JSMP staff underscored that the abuse of Article 113 of the Constitution that provides immunity to members of the Parliament is a significant obstruction in carrying out successful prosecutions (Interviews with JSMP staff). The Article states that members of the government must be suspended when charged with a criminal offence punishable for more than two years imprisonment. JSMP explains that in a case which is punishable with imprisonment for more than two years, a government member’s immunity is automatically suspended without the court waiting for the National Parliament to remove their immunity (JSMP, 2017). In the case of the National Parliament members, their immunity can be suspended if the charge is for more than five years. JSMP staff noted that, in practice, the immunity provision was used as a cloak to protect members of the government (Interviews with JSMP staff).⁶¹

ii) “One law for the veterans and another for us”

Many interviewees noted that those who were part of the resistance or closer to the charismatic resistance leaders have “de facto impunity” when it comes to corruption charges within the public sector (Interview with lawyer 2; focus group discussions with law students at UNTL; Interviews with CSO members 2, 3, 4 and 6). This “de facto impunity” of parliamentarians – especially veterans – from prosecution was explained by some of the JSMP staff members who monitor

⁶¹ One of the examples the staff provided was of the trial of the Secretary of State for Arts and Culture, Isabel Ximenes (see JSMP, 2015).

parliamentary sessions and corruption cases in the Dili District Court. The informants made these points mainly through the examples of two cases that had caught the Timorese public's attention: one involving, the ex-Minister of Finance, Emilia Pires, from the "old generation"; and another involving the ex-Minister of Justice, Lucia Lobato.

The corruption charges against Lobato involved her awarding a tender to provide uniforms for prison guards to a company owned by Lobato's husband without the knowledge of other members of the bid committee. Other allegations against her involved giving out a contract for constructing a civil registration office in Lautem (a district in East Timor) to a company that had a good relationship with the leaders of her Social Democrat Party (PSD); and complaints about abuse of power, as Lobato did not consult or seek advice from the relevant Directorates and ignored technical advice without any legitimate basis (East Timor Law and Justice Bulletin, 22 December 2012).

The corruption charge against Pires involved her awarding two contracts for hospital beds and equipment to her husband's company in Melbourne without disclosing a conflict of interest. The contracts were worth \$1 million and dealt with the supply of 260 hydraulic orthopaedic beds to Dili's Guido Valadares Hospital. The prosecution accused Pires of personally approving the funding and contracts for the beds as a pre-emptive "emergency" response to dengue fever in 2012 (there was no outbreak in the country). The beds were not delivered until 2013 and remained unused in their packaging. Corruption charges were also brought against the Vice-Minister for Health, Madalena Hanjam, for colluding with Pires and assigning the contract to Pires's husband's company without following the expected competitive bid process.

These cases (particularly that of Pires) were explained as the reasons for Xanana's retaliation against the Portuguese judges and the prosecutors in 2014 (Interviews with lawyers; fieldnotes, 2018; Allard, 26 November 2014). Despite such allegations, the case against Pires was eventually heard by the Dili District Court. During the trial, both Xanana and Ramos Horta appeared as witnesses and gave evidence that they approved Pires's decision to procure more beds for the hospitals (informal conversations with Timorese citizens). Xanana even added that no Timorese company manufactured the required beds, which was why Pires' husband's company was contracted for the deal (Interview with JSMP staff; Interview with CSO member 2).

Nevertheless, corruption charges against Pires succeeded in the Dili District Court, and she received seven years' imprisonment. Hanjam ended up receiving four years of imprisonment. Pires and her defence lawyer argued that the trial was unbalanced and unfair from the beginning, with the prosecution establishing a "probable guilt case" rather than "guilt beyond a reasonable doubt" (Barker, 9 February 2017). Pires also lodged a request to then-President Taur Matan Ruak (currently PM) to refer her case to a court in Portugal because the judges in the Dili Court were prejudiced against her and lacked the "capacity or will to ensure justice" (Barker, 9 February 2017).

Emilia Pires never served her conviction for corruption in East Timor – she left for Portugal for medical reasons (see Appendix on graffiti maligning Pires after she left for Portugal). Comparing Pires's conviction with Lobato's, one of the civil society informants observed that "a class of people" stay immune from legal proceedings (Interview with CSO participant 6). The participant added that it is not surprising that the minister who was convicted and left to serve her imprisonment was from the 'in-between' generation (Interview with CSO participant 6).

Some of the 'new generation' Timorese also criticised the international community for not condemning Pires's exodus to Portugal (informal conversations with Timorese citizens). Similar criticisms were also raised against the international community in the country for not pursuing a Portuguese couple who fled the country after being sentenced for embezzlement (informal conversations with Timorese students at UNTL).⁶²

Although not reported in the JSMP reports, during the interviews the staff members also observed that the parliamentary privileges of immunity were selectively applied and never offered to the "small fishes" amongst the veterans or "smaller" party members who were "not well connected" (Interviews with JSMP staff). They were prosecuted according to the law, even leading to successful convictions – an example that was given was the case of the ex-Minister for State Administration and Territorial Management associated with RENETIL (National Resistance of Students from East Timor), who was accused of corruption in 2011.⁶³

They contrasted both these cases with that of Vicente Guterres (former President of the national Parliament) and Emilia Pires (Minister of Finance). Both Guterres and Pires were close allies and

⁶² The couple was convicted in August 2017 by a panel of judges of the Dili District Court to eight years in prison and to repay \$859,000 for embezzlement. While waiting for their appeal, the couple fled the country and arrived in Lisbon. In January 2021, the Court of Appeal acquitted them. See details of the case here: La'o Hamutuk, 25 November 2017.

⁶³ See details about Arcângelo Leite's case here: Bureau of Democracy Human Rights and Labor, 2013.

had personal relations with the older generation of resistance leaders – Xanana, Jose Ramos Horta and Mari Alkatiri (these were the names identified by interview participants, although Xanana's close links with them were emphasised). Guterres was given parliamentary immunity, stalling the Dili District Court from hearing corruption charges against him. These cases were thus used as vignettes by the participants to describe the arbitrary application of anti-corruption law in the country.

iii) “Where is the law to stop big companies and private parties?”

Law students at the National University, and judicial aspirants at the Legal Training Centre raised concerns about how the anti-corruption initiatives focus on the government while overlooking the private sector. They observed that targeting the corrupt practices of public officials extended the “neoliberal”, “limited government” agenda promoted by institutions like the World Bank and USAID (focus group discussions with LTC and law school students; informal conversations; public debate on corruption on GMN TV: fieldnotes; Interview with lawyer 4). The participants argued that the funding and technical support given to the Anti-Corruption Commission were focused on tackling corruption by government officials. The interviewees added that more and more international and domestic private companies are emerging, providing different services and harnessing natural resources (focus group discussions with LTC and law school students; Interview with lawyer 4, fieldnotes, 2018). They thus argued that overlooking private gain and collusion amongst these private entities was a limitation of the current regime.

III. Contextualising the limitations from the field

Drawing on the interviews with the anti-corruption commissioners in particular, the following sections pinpoint the limitations that hinder the commissioners from applying the legal provisions in the fullest sense. Data from these informants is then used to analyse the strategies that were undertaken by the transnational community in assisting the Timorese to overcome their limitations.

i) Procedural limitations

Speaking to the criticisms of the anti-corruption commission having “no teeth”, the commissioners agreed that there are some overlaps between the mandates of the Provedor for Human Rights and Justice and the Anti-Corruption Commission. One commissioner noted that when there are sensitive cases concerning maladministration, there is no clear mandate whether it should be the Provedor office guiding the official/department with recommendations or the

Commission initiating criminal prosecution against the accused (Interview with CAC Deputy Commissioner 1).

Furthermore, the Commission cannot initiate investigations and prosecutions *suo moto* as the commissioners' "hands are tied" (Interview with CAC Deputy Commissioner 1). One of the deputy commissioners explained that the Commission's governing statute allows it to tackle corruption cases in only two ways:

- 1) it can wait for the Office of the Public Prosecutor to send a request for investigation to the Commission (identified by the Statute),
or
- 2) the Commission can gather and analyse information if someone has filed a complaint directly to the commissioner (Article 5, Law No. 8/2009).

In all other instances, the Commission can only engage in a corruption case when one is being prepared by the Prosecutor's Office to be brought before the courts.

In the first instance, the Commission helps the Office of the Public Prosecutor to prepare essential documents and evidence to help build a strong case for the prosecution. In the second, when a complaint is directly lodged to the Anti-Corruption Commission, the commissioners can do an initial analysis (without using wiretapping on suspects or examining bank accounts or tax records) if there are grounds to believe a complaint is genuine. The commissioners can send the complaint further on to the Prosecutor's Office to initiate charges. If the prosecutors agree with the commissioners that the case has grounds, then the Office can dispatch an order to the commissioners to initiate official investigations.

Official reports from the Office of the Public Prosecutor for 2013-16 indicate that the Commission and the Office worked together to initiate 286 corruption cases, of which 165 have resulted in formal charges (Office of the Prosecutor General, Financial Report, 2017).⁶⁴ But the commissioners still argued that this was not enough to root out corruption from the country entirely (Interview with CAC Deputy Commissioner 1).

Another deputy commissioner at CAC further explained that, unlike the Corruption Eradication Commission (KPK) in Indonesia, which has prosecutorial authority and broader investigative

⁶⁴ Office of the Prosecutor General, Financial Report 2013-2017 quoted in JSMP 2017.

powers over government officials and private parties (Interview with CAC Deputy Commissioner 2, 3 May 2018), CAC does not have any such powers. The commissioner emphasised:

The law tells us we have the specialised mandate to control corruption [carried out] by public officials. We have no powers to curb private parties. We have proposed for laws to [give] us a mandate for controlling the private sector as well... because there is a lot of corruption in the private sector. At the moment, we can only process investigations indirectly when [those] within the private sector engage with a government project.

These issues can be linked to how the Anti-Corruption Commission relies on the Penal Code and its statute to decide what constitutes a corrupt practice. Within the Penal Code, only abuse of positions taken while in public office is covered. Thus, although East Timor has adopted institutional and legal frameworks to combat corruption, the arrangements are far from ideal. The Provedor office, Anti-Corruption Commission and the Office of the Public Prosecutor are young institutions that have existed for less than eighteen years. The officials within these institutions are slowly and gradually negotiating and drawing the boundaries of their jurisdictions, mandates, and relevance. As of now, they have limited their roles for tackling corruption to addressing that which the Penal Code identifies as a corrupt practice amongst public officials.

ii) Varying understandings of “corrupt” practice

The anti-corruption regime in East Timor identifies corruption as a practice carried out by public officials, administrative agents, and members of the civil and police forces (Definition 2 (h) of the Law No. 8/2009). Meanwhile, the Penal Code sets the normative boundaries of what constitutes a corrupt practice. It also identifies passive corruption through illicit and licit means;⁶⁵ active corruption;⁶⁶ embezzlement;⁶⁷ misuse of public material resources and facilities;⁶⁸ abuse of power;⁶⁹ and financial participation in public affairs.⁷⁰

Despite the statutory provisions, there is widespread confusion about what a corrupt practice looks like in an everyday setting. Deputy commissioner 1 at the Commission, articulated the problem in the following way:

The politicians, they understand corruption differently... CAC understands it in one way, and sometimes the court understands it differently. CAC’s understanding is different because we have

⁶⁵ Followed by the United Nations Convention against Transnational Organised Crime and Protocols, this is defined as the acceptance of any undue advantage by a public official.

⁶⁶ Under Article 294 of the Penal code, it means giving an undue advantage to public officials.

⁶⁷ Under Article 295 of the Penal Code, it means when an official illegitimately appropriates private or public property for his or her own profit or for the profit of a third party.

⁶⁸ Includes an official using government vehicles or other properties for purposes other than authorized.

⁶⁹ An official abuse their power or violates rules with the intention of obtaining for him or herself or for a third party.

⁷⁰ Article 299 of the Penal Code, where an official uses their position to intervene in contracts or other operations or activities and takes advantages of this position for themselves or for the third party.

received training from internationals and other international corruption commissions... citizens understand differently... all of this brings confusion to prevent and combat corruption.

I can give you an example – CAC believes that the government needs a policy on how it spends its expenditure... in reality, we see some Ministers giving money to poor people to improve their well-being... they just give it to them. When money is given, it should be based on a well-prepared guideline so that the money will bring benefits to those who are receiving it. But if they [ministers] just give it away without a policy... it will be misused... When we went to the field to investigate, we saw that the money given was spent incorrectly. Now, according to CAC, there was corruption. If the money was given for building a kiosk and at the end, it was used to pay for children's school fees – yes it was used to help the family, but the money was still misused... we told the ministers that this is corruption, but they understand it differently. They said, ah! the money was used to help poor people... But this is wrong, according to CAC...

The previous governments [acted] like this way, there were many things that they did... not intentionally to commit corruption, but for us, it was corruption. The Ministers were carrying out their policies incorrectly. Often, we see Ministers signing files they should not have approved because it benefitted their relatives or those closer to them... this, according to CAC, amounted to an abuse of power, but it was not taking bribe... misusing money... these different interpretations have been a problem until now...

(Interview with CAC senior official 1)

Under the transnational initiatives to build a normative order against corruption, the primary concern is to limit situations that “[distort] electoral processes, [pervert] the rule of law and [create] bureaucratic quagmires” that exist for “soliciting bribes”, “private gain”, “embezzlement” and “mismanagement of public funds” (United Nations Office on Drugs and Crime, n.d.). The example given by the commissioner shows a context where public money allocated by ministers without direction was used for a *different* purpose by the targeted beneficiary. As the commissioner notes, the use of social welfare funds that were given to build a kiosk, which was then used instead to pay for the recipients' children's education, amounts to abuse of public money, and it thus constitutes corruption. But it has been challenging to relay what act becomes a misuse of public money and private gain to Ministers, public officials who are disbursing the money, and the intended beneficiaries.

The problems do not stop there – similar concerns also exist regarding disagreements on the amount of bribery that warrants a criminal charge. When asked about varying understandings and limits of bribes, one of the deputy commissioners observed:

If you look at the budget approved by the National Parliament to buy new government vehicles... they approved the budget for a specific company vehicle. When the procurement was finalised, the vehicles were of a cheaper brand. CAC asked where the remaining money was?

CAC's definition is that even if there is a \$1 bribe, then it is corruption. For instance, if the state budget allocated a certain amount of money to a certain place, even if it has a \$1 difference, it means that the government officials must be responsible... and explain why there was mismanagement and whether the money was spent according to the budget. As far as CAC is concerned, it is

corruption even if it is \$1, or \$1000. If 30,000 Timorese staff take \$100 each from the state. The state will lose a lot of money, so CAC needs to be very strict and firm.

(Interview with CAC senior official 1)

In contrast to the Commission's understanding of bribery that aligned with the international definition, during public discussions and informal conversations, some officials and lawyers observed minor forms of corruption or negligible amounts of bribery as not a problem to tackle under the anti-corruption regime (fieldnotes, 2018).

Furthermore, who was carrying out the corrupt act also determined whether the action was considered as corruption. Referring to Lobato's and Pires's cases, some Timorese and international officials who had engaged with Lobato described her as "unyielding" and "too independent" – aspects that gained her fewer veteran allies, which led to her being taken down by corruption charges (conversation with an international official at a bilateral organisation requesting anonymity; fieldnotes; 2018). Lobato also lost her parliamentary immunity.⁷¹ There was no support from the older generation of resistance leaders for Lobato's case, and the Court of Appeal sentenced her to five years of imprisonment for corruption.

In contrast, for Pires's case, Xanana immediately retaliated against her conviction and published an open letter addressed to her. Using his flair for poetic language and criticising the court for its decision, Xanana accused the President of the Court of Appeal and the Prosecutor General of financial irregularities in their offices. He criticised them for convicting Pires, who, despite her ill-health, returned from Portugal to rebuild the Timorese state post-referendum. A Timorese informant drew my attention to the letter published by Xanana.

In the letter, Xanana recalled his friendship with Pires, which began when he was detained in Jakarta's Salemba prison-house and how she had assisted him during that time. Xanana found the court-decision "deplorable" for causing more distress to Pires, who was already suffering from a serious illness. He wrote:

Emilia... I know you are going through troublesome times in your life! You know well that I know nothing about law, because while I was in the mountains, I could not study when other respected Timorese took up law courses abroad and, above all, in Indonesia... now the latter are the ones who fill most of the powerful judicial system today... You know, Emilia, I admire these people! They [referring to Timorese judges and Prosecutors] do not understand Portuguese and judge under the laws written in Portuguese and sign judgments that they do not understand...

(translated from Portuguese; Observador, 26 January 2017)

⁷¹ This case was on appeal in 2018 and was being heard while I was collecting data in East Timor.

Xanana added that in her role as the Minister of Finance, Pires transformed the public administration and finance departments by modernising the institutions and introducing a public finance system.

The State of Timor-Leste owes a lot to you... you, who with unusual honesty, worked towards strengthening its institutions and law... therefore I cannot accept that you have committed a crime of corruption that has harmed the State. The hospital beds are being used, and the President of the Court of Appeal himself benefited from using the type of orthopaedic beds you procured when he was admitted to the hospital.

(translated from Portuguese; Observador, 26 January 2017)

Criticising the judges and prosecutors further, Xanana wrote:

One of your accusers even claims they have data about me... this foundling even boasts of her role as a sorceress of justice... nowadays they all feel this way: powerful, extraordinarily sober, and upright... in some illusory perception that they have the state in their fists when they do not even understand what a state is! (Translated from Portuguese with the help of the research assistant)

(translated from Portuguese; Observador, 26 January 2017)

Some of the Timorese – including lawyers – preferred to turn a blind eye to the veterans’ corrupt acts (field observations, 2018). During our informal conversations, they defended Xanana and supported him. The informants observed that those who fought in the jungle alongside Xanana were left out during the state-building process. They did not have the essential educational degrees or experience (as Xanana also pointed out in his public letter to Pires). In contrast, those who studied in Indonesia or fled to Portugal, Angola or Mozambique during the period of resistance “reaped the benefits” by gaining positions within the new state administration (Interview with lawyer 2). Allowing veterans to circumvent the tender process in the interim period was seen as a means to broker peace and acknowledge the veterans’ contributions during the resistance movement. Lawyer 2 explained the situation further:

It is like Xanana’s philosophy is sharing with everyone. He definitely knows some people are playing the system. I would think he [Xanana] is not putting his feet down against them because he allows everyone to have a little bit of benefit. Especially those veterans who fought in the jungle. It would be unfair if they were completely side-lined by a new system. So, I think he is ensuring that everyone benefits from the new system for a while until he decides to be strict. One day he will say this is it, and he won’t [turn] a blind eye anymore.

I have an example for this – the electrification project. If you look at who has gotten the contracts, it is mainly veterans owning different streets as part of the electrification project. In this way, everyone got the pie, and they share benefits. And no one is actually questioning it... at least in the legal way. Those benefitting think that it is their right to benefit from their position as veterans and their efforts during the resistance. Whoever [laughs] planned this made sure that everyone has gotten the chance to make money...

As the informants describe, the ambiguities in law mingled with a culture of reverence for a generation of leaders have led to the narrow application of anti-corruption provisions. Even when the legal provisions are applied, there are other ways through which those closer to the old guard end up beyond the grips of the anti-corruption enforcement agencies. A lack of consensus on what acts or whose acts constitute a criminal act of corruption has further limited a full adaptation of the anti-corruption laws in the country.

iii) Missing files, apologetic staff

While describing challenges that exist outside the law, all the interviewees within the Anti-Corruption, judiciary and Prosecutor's Office, informed that neither Xanana nor any other resistance leader has ever attempted to interfere actively with their investigation or trial process. The resistance leaders' (mainly Xanana's) influence was explained as being more intangible. For instance, in cases involving those closest to the "older generation", it was harder to establish the evidentiary threshold. The deputy commissioners at the Commission observed that staff in the government offices often gave a range of excuses during the investigation, from not finding essential files to admitting that they were inexperienced (Interview with CAC senior officials 1, 2 and 3; Interview with PDHJ participant 1; Interview with lawyer 3). One of the officials explained:

They [Xanana and others] did not even call us... so far this has never occurred... But the difficulty we [at CAC] face is different. When we ask for documents or files from the offices, the staff come back and say... oh sir, the documents are not here... or give us some time and we will send this to you... or we are trying to find it, or some other excuses...

(Interview with CAC senior official 1)

Another official within the Provedor Office explained the hesitancy from the staff as a result of many staff members in the offices being FRETILIN/CNRT party supporters or being related to or knowing the accused. The official added that in East Timor, everyone knew each other. For an accused, who is a veteran or a traditional authority, the informants observed that finding evidence becomes more difficult (Interview with PDHJ participant 1). One of the informants observed that sometimes the difficulties arose from the prosecutors themselves, who wanted to either pursue or block a case against someone because they think that Xanana or Mari Alkatiri or some other influential resistance leader/veteran would have preferred it that way (Interview with anonymised Timorese official 2).

A Timorese official who had worked at the Anti-Corruption Commission in the past contextualised the politics of "missing files and apologetic staff". The official observed that "missing files" was the most common excuse that officials heard (Interview with anonymised

Timorese official 2). The official reflected that many Timorese who are recruited to the various ministries had limited training and experience working in public administration. As a result, many staff at the bottom level, who might spot a corrupt practice in its initial phase, lose opportunities to do so because they lack a “culture of file-keeping”. Therefore, when someone said they could not find a file, it was accepted with no questions. The official continued to explain that the young Timorese administrators lacked experience. They were not used to archiving or documentation, which are fundamental aspects of building a transparent system. The official explained:

For me, I understand the importance of documentation and archiving... I learnt this when I was working with UNTAET in 2000... I also got training in Paris on corruption... But this is not the culture of many in the government offices... the local staff cannot find key files... or sometimes they do not even record files... whereas, within the UN, everything was archived. Everything was documented. Here the problem first is language and training, and then behaviour... you cannot change behaviour in a short time. He or she [referring to the superior] may be from a political party you support or oppose, the staff get promotion when the party they support is in power... If you are not aligned with a political party or its leaders, you cannot progress in your profession... so files disappear with officials when they leave their office to take other posts... I had noticed this when I joined in different posts... so when an investigation for corruption case is initiated, especially against people who are close to veteran leaders, then such excuses are common... maybe the files were not there... or maybe they [the staff] did not want to cooperate...

The official gave an example:

One journalist came to interview me about the upcoming elections [referring to May 2018]. and the rule of law... The journalist wanted to know how we can uphold the principle of rule of law in [East] Timor. I responded, the leader of any political party needs to respect the law and the Constitution. Whoever has violated the law, I added, needs to be responsible under the law. If not, there will be no accountability, and the country will continue like this... All my staff were afraid when they heard this... I was just talking about the law and how to guarantee democracy and justice... I told them no need to worry... The problem is that here everything is driven by “politicians” [gestures air quotes]... [East] Timor is in transition to democracy... the country still needs time to change...

A local lawyer, when asked about the perceptions of Timorese officials in state institutions being deferential to charismatic leaders and assisting in averting investigations against some of the leaders, pointed out:

It is the people who have to apply and uphold the rule of law. People who lived here, they are people who have seen law as an oppressive force. Transition takes time... it takes longer for minds to shift. If you ask for sudden changes, it will be imposing new rules upon the person... applying the law as it is, is oppressive for ordinary citizens in a transitioning state.

The lawyer added:

Interference happens. It is when individuals use law to control others it becomes a problem... It happens everywhere. The fundamental problem in [East] Timor is whether the interference is done through the official channels. It is more of a cultural respect for the key decision-makers [referring to the resistance leaders who had taken up positions as Prime Ministers and Presidents in the past].

(Interview with local lawyer 2)

As described by the interviewees, the deferential behaviour of many Timorese towards the resistance leaders and their status of being above the law became observable during the political deadlock after the May 2018 elections. The 2018 political impasse between the three key resistance leaders showed why law's normative limits are limited, especially for cases that are in the interests of the elite resistance leaders.

Mari Alkatiri – leader of FRETILIN, who narrowly won the parliamentary elections in July 2017 – called for new elections as his party did not win a majority in the Parliament. Xanana's CNRT party did not form a coalition with FRETILIN. Consequently, in the 2018 election, Xanana's coalition (formed with Taur Matan Ruak's PLP and KHUNTO)⁷² won the majority vote by defeating FRETILIN. Before the 2017 parliamentary elections, Xanana had supported Lú-Olo (President of FRETILIN and a resistance leader) for the presidential seat. However, after the 2018 parliamentary election results were announced, President Lú-Olo blocked the appointment of some of the nominated members from Xanana's CNRT from taking the oath of office. The President opposed their nominations because the nominees had pending corruption charges against them or had been accused of corruption (fieldnotes, 2018).

In response to President Lú-Olo's opposition, Xanana sent a letter to Prime Minister Taur Matan Ruak questioning the President's power to stop democratically elected MPs from taking their seats in Parliament. Xanana recommended that Taur should appoint CNRT members to the Parliament irrespective of the President's objections. Xanana also declared that he would boycott the swearing-in ceremony until all the candidates proposed by the coalition were sworn in. The incident led to a political deadlock among the key resistance leaders – Xanana, President Lú-Olo and Prime Minister Taur Matan Ruak. The issue was still not resolved at the end of 2020, and key ministries – the Ministry of Finance and the Ministry of Health – continued without their ministers (O'Connor, 15 June 2020).

When the issue first arose in 2018, civil society members and those working within the justice sector observed that no one would take the matter to court for a resolution. According to them, a solution could be reached only politically by the “old resistance leaders” coming together and discussing the problem. The CEPAD Director summarised the situation in the following way:

There is the 'LAW' [emphasising capitals] and law in Timor-Leste. The justice that is politicised, I call it 'law'. For the LAW to work, you need to respect the social contract and follow the rules and laws... because justice is not a political issue, but this recent issue [referring to the 2018 impasse] can

⁷² Details about the political parties and their leadership can be found in the Appendix.

only have a ‘political’ solution... that the leaders will have to sort it out... this is my view... this is something that we carry from the Indonesian times. During Indonesian time, we lost cohesion and the respect for the LAW... and as a result, now we face the politicisation of justice...

(Interview with CEPAD Director)

In a country where resistance leaders like Xanana and the veterans continue to be revered for their selfless sacrifices, it is difficult to fetter their influence and constrain them to the normative bounds of law. For many Timorese, Xanana, is their ‘living hero’, blessed by the ancestral spirits. Imprisoning Xanana or those who fought alongside him is not an outcome that they support. An ex-international legal adviser to the National Parliament, reflecting on the impasse between the Portuguese judges and Xanana in 2014, put the dilemma in this way:

The Portuguese judges and others who were pushing to apply the ideal standards [in 2014] assumed that East Timor *is* Portugal. Leaders like Xanana are necessary to guarantee peace in a transitioning society... If you try to proceed against the resistance leaders, that will create instability, and there would be no one to run the country at all. Sometimes this means minor kinds of corruption need to be overlooked... leave it to the Timorese. With time, they will figure out what is best for them...

(Interview with international ex-adviser to the National Parliament)

Those who are in the “in-between” generation who have taken up different official roles within the state bureaucracy and the judiciary find themselves stuck between their sentiments of deference to their heroes and their official mandates. Those from the “in-between” generation consider the “old generation” as their heroes who fought against the Indonesian occupying forces in the 1990s. According to them, the country “needs more time” to reach the aspirations of the rule of law (similar to the observations made by Timorese interviewees on judicial independence as well). Meanwhile, both civil society participants and the “new generation” of Timorese who observe the “impunity culture” enjoyed by the “old generation” have resolved that for them it is a rule of law by “waiting”, and that they need to wait until the resistance leaders die (field observations, 2018).⁷³

IV. Transnational initiatives creating a momentum from the bottom up

The institutional and social challenges set out above had limited the enforcement of the anti-corruption regime in the country. During 2018, there was a renewed momentum from the international and the Timorese civil society to enact the anti-corruption legislation (fieldnotes, 2018). However, it was also recognised that focusing solely on the law was not enough to bring changes in the long run (Interview with CEPAD Director; Interview with AJAR Director;

⁷³ See Sara ten Brinke (2018), ten Brinke also finds similar sentiments amongst the young generation in the context of bringing changes through political participation.

Interviews with CAC commissioners). CEPAD and AJAR directors observed that neither perfect legislation on anti-corruption nor a robust CAC with more investigative powers could curb the abuse of power by charismatic resistance leaders. Instead, the informants observed that a wide mobilisation of Timorese citizens who could proactively bring complaints and cases and identify corruption when it happens was necessary to fight corruption.

The CEPAD Director explained that attitudes may take time to shift, however, CEPAD, other civil society organisations, and the Anti-Corruption Commission were “slowly” and “gradually” raising public awareness of corruption (Interview with CEPAD Director). CEPAD and AJAR staff were optimistic about the “small efforts” underway to strengthen attitudes against corruption within the society. They observed that although they cannot change the influence of leaders like Xanana, their initiatives are slowly gaining support and attention from the public.

One example was an initiative led by AJAR and the PDHJ, funded by the European Union, to create a TV drama titled *Laloran Justisa* (Waves of Justice). This example of “edutainment” (Asia Justice and Rights, 2017) defines complex legal problems as issues ordinary people face and creates awareness of their rights and responsibilities. *Laloran Justisa* covers many legal issues ranging from defendant’s rights, challenges of corruption and nepotism, the right to a clean environment, freedom of speech, domestic violence, sexual violations and citizens’ rights relating to elections. It uses family drama, love stories and football to inform its viewers about democracy and human rights. The programme has a strong female protagonist, and every episode uses both positive and negative role models for police, government officials, judges and other public officials (Asia Justice and Rights, 2017).

Laloran Justisa has helped build awareness on legal issues and laws, especially amongst the younger generation and ordinary citizens (Focus group discussions with UNTL law students; Focus group with LTC trainees). The director of AJAR explained that the popular series (first broadcast on national government television and then repeated on another network) has been a crucial tool to build awareness and respect for the rule of law values from the bottom up so that when the resistance leaders’ era ends, the country can move “forward” (Interview with AJAR Director).

CEPAD was engaged with the Department of Foreign Affairs and Trade (DFAT Australia) and United States Agency for International Development (USAID) in creating awareness manuals and

public campaign posters.⁷⁴ During our interview, the director of CEPAD observed that the public awareness campaigns have helped create momentum, especially among the younger generation. The director gave examples of the “new generation” questioning and organising protests against ministers and government officials who used government vehicles for their personal interests. He added that the emerging demands for tackling corruption – even among the “old generation” – showed that their campaigns were working (Interview with the director of CEPAD, 18 July 2018, emphasising President Lú-Olo’s and Prime Minister Taur Matan Ruak agreement to tackle corruption in 2018).

The Commission also found new ways and strategies to combat corruption. The commissioners explained innovative ways of expanding the Anti-Corruption Commission’s prevention mandate while waiting for the legislation to pass. The deputy commissioner for prevention at the Commission explained that under his supervision, the Commission has organised training sessions and awareness programmes for staff at the junior/lower state bureaucracy levels as part of its prevention mandate.

The commissioner expanded about the initiative:

We [referring to the commissioners and international technical adviser] discussed prevention... and we thought, why don’t we try to control crime even before it happens? The international adviser was telling us that if Timor-Leste had to progress, then we need to focus on prevention rather than combating crime every year... therefore we thought we need to have strong prevention... of course, it will be hard to eliminate corruption completely, but we can slowly wipe it out step by step... We are now focusing on training staff members at the lowest level through educational seminars... we ask them to look for whether the tender quotations are in line with the advertised tender, whether the tender is given to the lowest bidder etc.... this way we inform staff to look for corruption when it happens from the initial step itself... We also did some programmes targeting youth, informing them why cheating is bad... prevention this way can be good for the future...

(Interview with CAC Deputy Commissioner 1)

Civil society members, lawyers and the anti-corruption commissioners agreed that although East Timor does not have the perfect anti-corruption regime, it is still making progress. They highlighted cases where corruption charges were successful (Interview with lawyer 2). A USAID senior official similarly observed during our meeting how the country has moved to rank 91st (precisely at the middle) on Transparency International’s Corruption Index (Informal meeting with USAID staff).

Other proud examples included how the Timorese officials cooperated with the United Nations Office on Drugs and Crime (UNODC) and held a national roundtable to support a draft anti-

⁷⁴ See Appendix on public campaigns against corruption.

corruption law. Furthermore, Timorese students were organising protests and awareness campaigns against corruption (fieldnotes, 2018). The officials within the Commission, Scientific Police, the Prosecutor General's Office, and the Financial Intelligence Unit were also proactively reaching out to their international partners, and they were attending training on advanced crime, financial investigations and complex, cross-border corruption cases to gain more practical knowledge from their counterparts in Indonesia, Malaysia and Singapore. Such initiatives were explained to me to have boosted the confidence and commitment of officials within the Anti-Corruption Commission to fight corruption more proactively (Interviews with CAC participants 1, 2, 3 and 4).

Moreover, in 2020, after a long hiatus since 2011 – the last time hearings were held on the anti-corruption law – the Parliament approved the anti-corruption legislation. The law was finally adopted after many years of campaigning from the international and the Timorese organisations pressuring the Parliament to enact the legislation (fieldnotes, 2018). At every phase of the drafting and debates on the anti-corruption law from 2009 to 2020, local civil society and international organisations made persuasive representations before the Parliament (see La'o Hamutuk, 27 August 2020). The World Bank's World Governance Index, and Transparency International's Corruption Index were further used to convince the Parliament to legislate the law and improve East Timor's rankings (see La'o Hamutuk, 27 August 2020).

Outside the legal framework, as the legal institutions – the courts, the Anti-Corruption Commission, the Office of the Prosecutor, the PDHJ – are slowly settling into their mandates and functions, initiatives targeting the public seem to have helped build momentum for combating corruption gradually. The CEPAD and AJAR staff members emphasised that their awareness programmes were crucial in informing ordinary Timorese citizens to spot corruption and report it to the Commission whenever they witness a corrupt act or become a victim of corruption. On the other hand, the commissioners note that their prevention measures are trickling down and creating awareness among ordinary Timorese bureaucrats within the government departments. Through the training programmes on preventive measures, the staff are encouraged to follow tender/procurement procedures and maintain good file-keeping and archiving practices. None of these initiatives on their own can overcome the challenges that the informants described above. But, as the civil society members, anti-corruption commissioners and those from the “new generation” reflected, their initiatives are bringing changes to how ordinary Timorese citizens observe corruption (fieldnotes, 2018).

Conclusion

The data on the limitations of the legal provisions and the ambivalent attitudes of the international community could lead one to conclude that the transnational anti-corruption reforms were ‘unsuccessful’. The officials at the Anti-Corruption Commission may have been unable to tackle all forms of corrupt practices or all corruption cases immediately. But instead of being stuck in a procedural inertia, the commissioners collaborated with their international partners in finding innovative solutions for overcoming their challenges.

Some of these initiatives have led to observable shifts in public attitudes against corruption. In 2020, Xanana’s CNRT party retracted support for the AMP coalition because Prime Minister Taur had not appointed the CNRT nominees to the Parliament. Political observers predicted that Xanana could unseat Taur and take over as Prime Minister (Al Jazeera, 10 March 2020; Rahmani, 1 June 2020). However, Taur formed a coalition with the opposition party, FRETILIN, and other smaller parties, shutting Xanana and CNRT out of the National Parliament and the government. Xanana, with CNRT, attempted to challenge the coalition to seek a fresh national election through multiple legal challenges, but his efforts were defeated. Although there were a few protests reported in Dili after Taur’s new coalition announcement, Taur succeeded in forming a government. Under his government, the National Parliament also approved the new anti-corruption law.

Xanana’s influence is waning slowly compared to his position in 2002 or 2014, as a “new generation” of Timorese is slowly entering the public sphere. Xanana’s self-serving political acts in recent years have also attracted public criticism from some.⁷⁵ But it does not mean that Xanana has completely lost his support amongst all Timorese; many older and in-between generations continue to look up to him as their beloved hero.⁷⁶ In the meantime, the international technical advisers and the Timorese stakeholders have worked together in determining the actual issues that

⁷⁵ In 2020 Xanana attempted to oust Taur Matan Ruak from power by withdrawing CNRT support for the national budget in the Parliament. East Timor’s economy is highly dependent on state spending, and the incident led Taur to hand in his resignation. Due to the coronavirus outbreak, Taur Matan Ruak withdrew his resignation and instead formed a coalition with President Lú-Olo’s FRETILIN and other small parties. Xanana’s move was reported as a political act. Furthermore, in January 2021 Xanana visited Richard Daschbach, a self-confessed paedophile priest whose victims included Timorese children, to celebrate Daschbach’s birthday. Other acts of “letting down” the nation include a public slapping of family members of a man who died in a Dili hospital after being tested positive for Covid-19. See Oki, 14 April 2021.

⁷⁶ Martin Hardie’s letter to the ETAN group in response to the media coverage on Xanana’s public outburst outside Dili hospital in April 2021. In file with the author. See also the anthem made in honour of Xanana, Abio Salsinha 8 February 2021.

have limited the anti-corruption commission from fully realising its normative roles. Their recursive engagements have led to collaborations that address the legal and procedural challenges and difficulties that exist outside of the legal field. Thus, the internationals have helped their Timorese counterparts to move towards tackling all forms of corruption rather than away from it.

CHAPTER IX:

ANALYSIS

‘GOOD ENOUGH’ OR ‘NOT GOOD ENOUGH’ TRANSNATIONAL RULE-OF-LAW-PROMOTION AND ADAPTATION

At the start of this dissertation, I emphasised why we should consider the sociological dimensions of how norms travel, get adopted and adapted in a society while monitoring and evaluating rule-of-law reforms. In transitional settings where such reforms are common, often the recipient society needs to undergo diverse transformations to adapt to the reforms fully. They may also have unique social, political and economic challenges that hinder adoption and adaptation of transferred laws, norms and institutions. For such settings – depending on the particular challenges – compromises may be necessary to assist a society in adopting and adapting new norms, standards, and behaviour in the long run. A ‘successful’ (good enough) transnational rule-of-law engagement happens when those transferring and receiving new norms and standards chart a path towards assisting a society in realising its rule-of-law aspirations. Therefore, international and local actors’ actions must be evaluated against whether they have been able to bring desired changes on the ground. Here, the emphasis is not on whether international actors transferred perfect laws and institutional structures; instead, it is on whether they could assist their local partners in moving towards adapting the transferred norms and standards.

In the sections below, I apply the proposed ‘good enough’ framework to analyse whether the support of transnational actors has been ‘good enough’ or ‘not good enough’ in aiding the Timorese stakeholders to move towards their aspired rule of law standards. In Chapter IV, I also identified three aspects that can help us to analyse whether transnational actors have done a ‘good enough’ rule-of-law promotion and adaptation: recursive engagement between the internationals and the local stakeholders; localising global norms to local forms; and building close links with international advocacy networks. All these aspects enable the international actors to bridge the gap between the immediate requirements needed on the ground for the recipient society to move towards the aspired standards. However, whether transnational rule-of-law engagements are ‘good enough’ or ‘not’ is a qualitative assessment that must be made based on the context where rule-of-law transfer and adaptation happens. Since the social, political, and economic realities of recipient societies vary, what makes ‘good enough’ transnational engagements must be unpacked from the field. In Chapter VII and VIII I provided ‘thick’ accounts of the challenges that those who are in

the Timorese judicial institutions face in adapting the transferred rule-of-law norms. In the sections below, I analyse transnational rule-of-law engagements in East Timor along the three identified parameters, and I will argue why transnational engagements in the case of judicial independence were ‘not good enough’ whereas those in the area of anti-corruption were ‘good enough.’

i) Recursive engagement between internationals and the local stakeholders

In Chapter IV, I pointed out why the rule-of-law transferors and recipients must engage with each other recursively. Only by exchanging ideas, engaging and networking with the recipient stakeholders can rule-of-law transferors identify what issues exist locally, what workable solutions should be promoted, and what kind of support a recipient society needs at a particular time. Thus, recursive engagements between the international and local stakeholders can enable those transferring and receiving norms to make informed interventions and support for strengthening the rule of law in the recipient society. In East Timor, in the two illustrations I provided from the field, we can observe different patterns of recursive engagements (or the lack of them) emerging between the internationals and the Timorese stakeholders.

Within the judiciary, the structure of international rule-of-law engagement was channelled through tripartite arrangements between the UNDP, the Ministry of Justice in Portugal, and Timor-Leste. The Portuguese judges and lawyers in the courts, office of the prosecutor, and Legal Training Centre were recruited based on their seniority and experience. These formal arrangements created ‘top-down’ engagements with the international judges taking positions as mentors, trainers and judicial inspectors on the ground. As the Timorese judges, judicial aspirants and law students pointed out, they looked up to the Portuguese mentors as their ‘role-models’. The ‘top-down’ vertical interactions between the Portuguese and the Timorese judges led to mentor-mentee relationships between the Portuguese technical advisers and the Timorese judicial actors rather than collaborations between them. In contrast, the international technical advisers attached to the anti-corruption commission did not have the same ‘top-down’ supervision over their Timorese counterparts. The international experts were recruited as technical advisers to their Timorese counterparts in the anti-corruption commission. The internationals worked alongside the staff, developing training manuals and strategising the commission’s role. These arrangements were distinct from those adopted within the judiciary, where senior international judges sat on the domestic panels, supervised Timorese judges on how to carry out their judicial duties, and in many instances, evaluated them for their promotion and recruitment into judicial service. Thus, the

formal arrangements that facilitated international support in the two areas led to different structures of interactions between the Timorese and international stakeholders.

Furthermore, unlike the judiciary, different bilateral agencies could engage with the anti-corruption commission. In the judiciary, it was predominantly Portuguese judges who were recruited as senior personnel in the domestic courts and as instructors at the LTC, whereas the anti-corruption commissioners had more flexibility in identifying their needs and seeking support from the international community as required. The international cooperation officer at CAC could collaborate with potential partners to address specific resource and technical requirements of the institution. The anti-corruption commissioners could also work with other anti-corruption experts from different parts of the world. They developed training manuals and strategised preventative measures with their international partners. The commissioners also sought technical assistance from anti-corruption commissions in Indonesia, Singapore, and Malaysia to train staff and expand their technical knowledge in the area. Thus, the transnational engagements for strengthening anti-corruption norms were more demand-driven compared to the pre-planned strategy adopted in the judiciary.

The limitations of international judicial actors in recursively engaging with their local stakeholders can also be attributed to the structure of transnational initiatives for judicial independence reforms. As part of the “judicial globalisation” (Slaughter, 1999), transnational judicial engagements are meant as opportunities to transfer technical skills, expertise to create a “universal culture of judicial independence” (Shetreet, 2012). Such exercises emphasise transferring specific forms of knowledge, ethical standards, expectations, comparative and international perspectives (Dixon and Jackson, 2019). The exchange of knowledge of local contexts and realities is secondary to such arrangements (Dixon and Jackson, 2019). Moreover, senior foreign judges are often appointed as mentors and supervisors as part of judicial independence reforms in a recipient society. Such arrangements further make it challenging for often younger and comparatively inexperienced judicial actors (like in East Timor) to get an equal footing with their senior colleagues.

In East Timor, the international judges were initially recruited to ‘fill’ the human resource and technical vacuum. As part of the transitional justice process, the internationals were expected to be impartial and independent arbiters compared to their Timorese counterparts, who were

perceived as partial to the pro-independence rebels (Linton, 2001).⁷⁷ A legal provision was incorporated as part of the transitional justice processes that mandated at least two international judges to sit with a Timorese judge while deciding serious crimes cases to ensure impartiality and independence. After 2002, the roles of the international judges expanded, and they sat with Timorese judges to decide domestic cases. In their new roles, the international judges were expected to transfer technical skills that were found lacking amongst Timorese judicial actors. Therefore, within the judiciary, the internationals were sought after for their traits that were perceived to be ‘absent’ amongst the Timorese stakeholders: experience, independence, technical knowledge. As a result, the Portuguese judges encouraged their Timorese counterparts in becoming more like them rather than disentangling the unique challenges that the Timorese judicial recruits faced or the distinct local realities on the ground. These factors limited the international judicial actors from having meaningful recursive engagements with the Timorese judges.

ii) Localising global norms

Transnational normative standards that guide international rule-of-law engagements are vague and abstract (Twining, 2005; Halliday and Shaffer, 2015a). However, once the transnational standards reach a local setting, they need to be localised to ‘fit’ the particularities of that society. For example, transnational standards on judicial independence emphasise the separation of powers between the executive and legislature, and legal provisions that guarantee judicial independence. As for anti-corruption, the focus is on tackling the misuse of public office for personal gain or aiding close allies through anti-corruption laws and/ or other criminal measures. These are broad conceptions of judicial independence and anti-corruption. In order to bring meaningful changes, reforms targeted to strengthen judicial independence and tackle anti-corruption must be localised to fit particular realities and contexts. Although transnational conceptions on judicial independence assume power and its exigencies to arise from political sources, for example, in East Timor, ‘power’ in the public sphere is not fully channelled to function through state-based political and institutional avenues. Consequently, threats to the judiciary arise from sources outside the political channels.

⁷⁷ Linton compares two similar cases, one involving a resistance (FALINTIL) fighter and another involving a pro-Indonesian militia member. Linton notes that the Timorese judges showed more leniency to FALINTIL fighters when deciding their gravity of punishment. While deciding a conviction for murder by a FALINTIL fighter, Linton observes that the Timorese judges considered the wider context of the independence movement. In contrast, when a similar case involving a pro-Indonesian militia member was brought before the courts, Linton notes that the judges were far stricter. See Linton (2001, p. 140)

As I argued in Chapter IV, the local and international actors, who are in the middle (transferring and receiving norms), are the agents who can localise abstract global conceptions to ‘fit’ local particularities. In order to localise transnational standards, those transferring and receiving norms must identify particular ‘local’ issues and amend the reforms to tackle them. This could mean ‘localising’ transferred legal normative standards, and institutions to tackle problems as to how they manifest locally (as in Szto’s (2016) example of corruption in China). Or maybe the legal doctrine and the legal system are already capable of tackling the identified problem, but those who must rely on the laws for tackling an issue might not be ready to do so for specific reasons. In such circumstances, transnational actors must generate awareness and find innovative solutions to encourage ordinary people, lawyers, and judges to confidently resort to the authority of law (as seen in Berger’s (2017) example of village courts in Bangladesh). Therefore, ‘localising’ global norms in particular settings, needs a sensitive and reflexive engagement by the transferors and recipients on what kind of support is necessary, institutionally and legally, to tackle how perceived problems manifest in particular contexts.

The data presented in Chapter VII and VIII illustrates how judicial independence and anti-corruption norms were transferred to East Timor through international actors. But in order to localise both these norms, the transnational stakeholders – international promoters and the Timorese recipients had to focus on distinct aspects. For instance, to ‘localise’ transnational judicial independence standards in East Timor, rule-of-law transferors had to assist the Timorese judges in applying the law confidently and upholding their roles as the final decision-makers. They also had to ensure that their initiatives enabled an environment for establishing the authority and legitimacy of the judges as the final arbiters on problems arising in the public sphere. However, on the ground, the international partners predominantly focused on transferring constitutional provisions, training judges, and consolidating the separation of powers between the executive, the legislature and the judiciary (the ‘internal’ aspects of judicial independence). The international partners overlooked the other ‘external’ social aspects such as limited Portuguese language proficiency of the judges, prevalence of traditional norms and living alongside resistance leaders as distinct challenges that hindered the ‘localisation’ of judicial independence in the country.

Instead, the international partners approached the presence of resistance leaders and the prevalence of traditional norms in the society as problems that ought to be removed immediately for establishing the authority and legitimacy of the judiciary. It is true that such social realities hinder Timorese judges from being independent. However, as a society that has recently emerged

out of a conflict and has adopted new norms and standards, it takes more time to fully shift away from existing practices. Moreover, the judges, who are from the “in-between” generation do not possess similar authority and legitimacy as the charismatic resistance leaders, who continue to be revered as the final decision-makers, by a large proportion of the Timorese population. But such attitudes are slowly shifting as a generation of young Timorese are entering into the political and legal fields. In the interim, as the generational changes occur, for a constructive transnational engagement, those supporting judicial independence reforms ought to have identified strategies that ‘fit’ the transitional context of the society. Such support would have meant making compromises with resistance leaders. Although paradoxical, support from the resistance leaders such as Xanana to the judiciary is significant for the consolidation of legitimacy and authority of the judges in the eyes of a considerable section of Timorese population.

In contrast, for ‘localising’ anti-corruption norms in East Timor required different support. For anti-corruption norms to take effect, ordinary citizens, civil society organisations, whistle-blowers must report the abuse of public office for personal or others’ economic enrichment, i.e., it often requires actors situated *outside* of the legal field to make use of the existing laws on corruption. This requires an understanding or a consensus amongst enforcement officials and citizens on what is understood as ‘bribery’, ‘maladministration’, and ‘unjust enrichment.’ Furthermore, for anti-corruption standards to be fully enforced requires distinct strategies for generating awareness from the bottom up and improving targeted beneficiaries’ reliance on laws and institutional arrangements to tackle corruption.

Therefore, depending on the issue area, localisation of transferred normative standards happen at different levels in order to determine what ‘works’ in the local context. Recursive interactions between the international and the local partners provide opportunities to disentangle the unique challenges on the ground. They can also inform about the distinct strategies that could facilitate localisation of transnational norms. In some contexts, in order to pave way for localisation, it might be linguistic translation of transnational aspirations that is necessary, in other contexts transferred institutions and/or laws must be amended to address the unique local issues to carry out the intended functions, in some settings it could be a lack awareness of technicalities of law that challenge the adaptation of transferred norms, or it could be a combination of one or more of these factors.

In the context of East Timor, the limitations of localising transnational standards of judicial independence can be attributed to a few reasons. One, is the rapidly consolidating notions of the phenomenon globally. Irrespective of political, social and cultural contexts, judges are expected to be impartial, independent, and free from ‘external’ influences, especially from the government.⁷⁸ Transnational rule-of-law transferors and advocacy networks orbit around guarding the separation of power principle, and its corresponding institutional and procedural conventions. Even transnational engagements are tailored to address these ‘technical’ concerns. But they significantly limit international actors in the field from engaging with the local stakeholders in a reflexive manner, which could provide them opportunities to reformulate their engagements to ‘fit’ local realities. Second, as I mentioned in the section above, the macro structures of transnational engagements for strengthening judicial independence in particular contexts limit the possibilities of identifying what is needed within a local setting. Often senior judges from the Global North are recruited as part of justice sector reforms, and they are expected to transfer what are perceived as ‘superior’ skills to their local counterparts. As part of their interactions, their objective is not to identify ‘local’ concerns but to ‘elevate’ targeted judicial stakeholders to an imaginary universal ideal of an impartial and independent judge. In East Timor, such goals were pursued through supervisory arrangements and inspections by Portuguese judges, wherein the Portuguese judges were entrusted with the responsibility to raise the Timorese judiciary to international standards.

The anti-corruption laws and institutional arrangements that were transferred to East Timor focused on public officials and tackling their abuse of power. Other sources of corruption like that of private companies (mainly suggesting tax evasion) were overlooked. Despite such limitations, when it came to implementing anti-corruption strategies at the Commission, Timorese officials and international partners took into consideration the influence of charismatic leaders in Timorese society. They worked together to devise strategies to address deferential attitudes of government officials towards their leaders. They also identified how lack of specific technical knowledge, culture of file-keeping, and lack of consensus as to what constitutes a corrupt act as different aspects that limit the Timorese stakeholders from fully addressing corruption on the ground. Recognising the challenges of tackling corruption, especially amongst the veterans, transnational

⁷⁸ Judicial independence circumscribed by interference from the other branches is not a reality that is exclusive to East Timor. In 2018 alone, reports from the international media on crises within the judiciary – be it in India, Seychelles, Lesotho or Poland – were described in the same way. It shows how judicial independence as a separation of powers – mainly from the arbitrary influences of the government – has emerged as the normative order that is globally tied to the value of judicial independence and the rule of law. See for India (The Wire, 12 January 2018; The Hindu Business Line, 18 January 2018); for Seychelles (Rickard, 20 July 2018); Lesotho (International Commission of Jurists, 15 May 2018; Commonwealth Magistrates’ and Judges’ Association, 13 May 2018); and for Poland (Dobrowski and Tyrmand, 11 June 2018; Tompson, 2018).

actors focused on generating awareness amongst the officials who are at the junior levels in offices. As explained by one of the commissioners, this action was to equip officials to identify breaches while it occurred and to encourage reporting to the Commission. Thus, beyond formal institutional reforms, the international and the Timorese civil society participants and anti-corruption commissioners invested in other innovative strategies to create momentum from the bottom up against corruption. Training for junior staff to identify irregularities in tender and procurement processes, TV documentaries, public billboards, and radio advertisements helped them to reach out to a wide section of the Timorese public and generate awareness on corruption. In the area of anti-corruption, international and Timorese stakeholders modified their strategies to respond to the distinct social realities of the local context.

Thus, unlike the engagements in the justice sector, international partners working with officials at the anti-corruption commission approached their roles by taking into account the wider social and political challenges. They identified how *time* and resources were crucial for the adaptation of aspired anti-corruption standards in the country. Moving beyond the legal and procedural technicalities on anti-corruption, the initiatives for tackling corruption focused on consolidating the legitimacy of anti-corruption commission in the society, strengthening local civil society organisations working on the issue, and generating awareness among the public and the government officials about corruption. Consequently, transnational actors working on strengthening anti-corruption norms were able address the particular challenges on the ground and localise transferred norms on anti-corruption .

iii) Continued interactions with local stakeholders

As I explained in Chapter II, the process of norm adaptation is rarely linear. To enable the adaptation of transnational standards, it is crucial that the international and local actors continue to have channels for engagements with each other. Depending on the realities of recipient societies, such continued interactions between local and international partners may be necessary for new norms and standards to travel and reach particular contexts. Or it may be that the recipient society needs technical and financial support to adopt and adapt the new standards. Or it could be that after the first phase of norm transfer and adoption, continued interactions between the international and local stakeholders are necessary for norm adaptation (Finnemore and Sikkink, 1998; Keck and Sikkink, 1999; Risse, Ropp and Sikkink, 1999).

Usually, locally-based civil society organisations or officials in the field offices inform international networks when governments deviate from expected standards adopted locally. Once the international networks are intimated, they can pressure local governments to adopt desired policies or amend laws as required. However, it is worth noting that the transnational advocacy networks can put pressure on the local government and push for changes when they have some bargaining power over the decision-makers. Therefore, fostering amicable relations with the government/ruling elite while at the same time being able to bargain and negotiate for policy change are conditions necessary for meaningful continued transnational engagements that facilitate the adaptation of transnational rule-of-law aspirations.

What kind of continued support is needed from the transnational community is determined by the local contexts. In East Timor, continued interactions with the international community were necessary for improving the technical skills of officials in the justice sector, accessing financial assistance to adopt new institutional arrangements, and creating a community of civil society organisations and proactive citizenry who will hold those breaching legal norms accountable. The case studies on judicial independence and anti-corruption reveal the distinct reasons why continued support was necessary in the areas. In the judiciary, continued interactions with the foreign judges were crucial for the training, promotion, and development of the technical skills of the Timorese judges. Whereas in the anti-corruption commission, continued support was necessary in creating a momentum towards adapting a separate anti-corruption law, training officials in the commission and outside of it on how to investigate and build a corruption charge, and generating awareness among the public and the officials on what constitutes corruption.

But in order to continue interactions, especially in post-conflict settings, those transferring and receiving new norms have to balance between not pushing for changes too quickly –upsetting the elite leaders – and making sure that the recipient society is moving towards a positive direction. In a country transitioning to democracy and slowly building its institutional arrangements, support from the government and sometimes even “great individuals” (Sztompka, 1993, p. 270) may be necessary. Especially in such social settings that are less stable, where rational legality, established bureaucracy, and routine are absent, “great individuals” play a vital role in introducing and legitimising newly introduced reforms (Sztompka 1993). Great individuals can act as agents who can support changes by inspiring society to forge a new way forward and move away from “established ways of life, rules and laws” (Sztompka, 1993, p. 270). Within the judiciary, we can observe that the foreign judges pursued their roles by applying laws as it is (2008 budget case and

2014 tax case are examples), and thus, contrary to the interests of elite leaders such as Xanana. By doing so, the international judicial actors overlooked what may have been necessary to continue their engagements in the judiciary. The culmination of tense relations between Xanana's government and the Portuguese judges resulted in the suspension of international assistance to the courts and the Legal Training Centre, leaving Timorese judges with practically no financial or technical support.

On the other hand, international assistance for anti-corruption could continue without any disruption. Although the appointment of Portuguese prosecutors to the commission was discontinued after 2014, other legal technical exchange initiatives continued. Although the anti-corruption commission's role and the international support to tackle alleged corrupt crimes were far from perfect, the stakeholders working in the area prioritised having continued engagements with the international community rather than chasing perfection. During 2014-2018, they worked alongside local partners focusing on public awareness and prevention campaigns. In 2018, donors supported local civil society organisations working on anti-corruption to mobilise momentum for a new legislation on corruption (fieldnotes, 2018). Subsequently, in 2021 a new anti-corruption legislation was adopted in the country. Thus, uninterrupted continued interactions in the area of anti-corruption reforms enabled to build broader support groups in the local community.

One could note the paradox of having strong transnational advocacy networks around an issue area. International advocacy networks could immediately step in and shame the government for the 2014 resolution that revoked the work visas of the Portuguese judges. In contrast, when Pires left for Portugal without serving her punishment for corruption, transnational advocacy networks on anticorruption could not organise and create a momentum internationally as they did after the 2014 case. In the case of judicial independence, different international Bar Associations, UN agencies, human rights organisations working on diverse issues came together to condemn the Timorese government. Unlike transnational networks on judicial independence the advocacy networks on anti-corruption are diffused and fragmented (Ivory, 2020). However, is because of the weak transnational networks that the international and local stakeholders working in the area of anti-corruption reforms could undertake meaningful recursive engagements and innovative solutions to localise anti-corruption norms: aspects, which paved the way for continued engagements between the international and local stakeholders within the local setting.

For a society that is in transition, continued engagements with international partners are crucial until the local institutional and professional capacities are strengthened. After transitional phase, in order for transnational advocacy networks to make meaningful engagements it is necessary that there are robust legal institutions, skilled professionals within the institutions, proactive civil society organisations, and a citizenry that is committed to rely on laws to hold those abusing power accountable. Therefore, when international actors are in the field, they must not only support those within the immediate legal institutional structures, but their engagements must also include assisting the local civil society organisations, media and lawyers to ensure that there are strong channels for further continuous engagement. In the context of anti-corruption commission, internationals and Timorese stakeholders chose to focus on what was necessary to sustain continued interactions within the sector while the anticorruption commission and the local civil society organisations slowly established their authority in the society.

iv) ‘Good enough’ or ‘not good enough’ transnational rule-of-law engagements

At the outset, the 2014 tax case could lead an external observer to conclude that the internationally led reforms in the judiciary were successful and for a judiciary, which was barely ten years old, it was a significant victory that the judges could stand against the elite leaders. As for the international efforts in the anti-corruption commission, an external observer could conclude that they ‘failed’ because corrupt acts especially amongst the resistance fighters and those closer to the elite leaders continued. Contrary to such conclusions, I argue that if we examine the kind of international support and the initiatives for assisting the adaptation of transferred norms, we will reach different conclusions. As I pointed out in Chapter IV, defining ‘successes’ or ‘failures’ is an evaluative exercise that is set against some parameters. In this study, transnational rule-of-law engagements are ‘good enough’ when they have enabled a recipient society to *adopt* and *adapt* to transferred norms and standards in the long run. Examining closely the kind of support and interactions between the local and international actors, we can see that transnational engagements in the justice sector were not good enough, whereas those in the anti-corruption were good enough.

In 2014, when the judges decided the tax case in favour of ConocoPhillips, the judges carried out their expected roles by applying the law and their reasoning (although Xanana criticised that they resorted to inapplicable tax law provisions and failed to hear government’s arguments).⁷⁹ An external observer could conclude that the international support in the judiciary was successful.

⁷⁹ La’o Hamutuk has documented arbitration settlement of “several significant tax disputes” between the Government of East Timor and ConocoPhillips in Singapore. According to La’o Hamutuk, by 2017, the Government of Timor Leste agreed to refund more than \$250 million of over-assessed tax arrears to the oil companies (La’o Hamutuk, 2021).

However, the data from the field reveals that the foreign judges spearheaded the 2008 budget case and the 2014 tax cases. In comparison, the Timorese judges were in the peripheries of the decision-making. This is because Timorese judges sought support from the internationals, especially for complicated cases (interview with Timorese judge 1). Timorese judges also sought assistance for writing judgments and reading law in Portuguese from the foreign judges (interviews with Portuguese legal language trainers at LTC). Thus, the 2014 tax case was not a 'win' for judicial independence of the Timorese judges per se, especially with the senior foreign judges taking the lead. Moreover, tensed relations with the internationals in the judiciary and the elite leaders eventually led to the termination of their contracts, which negatively impacted the progress of judicial training of Timorese judges. At the LTC, judges' training was suspended between 2014-2017 as there were no qualified senior professionals. In the judiciary, promotions of Timorese judges were put on hold. As a result, there was no Supreme Court in the country and no 'first class' Timorese judges. One could note that by stalling the establishment of a supreme court and pausing training at the legal training centre, the elite leaders won in the long run. They hindered the judicial development in the country and the embedding of separation of powers. Their decisions to revoke the visas of international technical advisers impacted the full adaptation of even the 'thin' aspects of transnational aspirations on judicial independence. Thus, international and local stakeholders may have been able to activate transnational networks to demand Xanana's government adhere to the constitutional conventions of separation of powers. But on the ground, the international shaming was not enough to assist the Timorese judges in improving judicial independence. The transnational initiatives to strengthen judicial independence did not facilitate arrangements for recursive engagements or initiatives for localising judicial independence reforms to fit local contexts.

Unlike the judiciary, within the anti-corruption commission, the commissioners' roles involved carrying out investigations, preparing robust charge sheets and liaising with the prosecutors' office to carry out their mandates. Apart from adequate technical training, the commissioners required proactive citizens who report on corrupt acts, and government officials who could provide them with adequate evidence to carry out their mandates. This meant ordinary citizens and officials had to agree on what constitutes a corrupt act, and who is corrupt. Public awareness campaigns as well as supporting local civil society organisations working on anti-corruption were necessary for enabling the long-term adaptation of anti-corruption norms in the country. Buying time and undertaking 'imperfect' transnational engagements in the area, international and local stakeholders focused on raising awareness amongst ordinary citizens and government officials in the interim.

Meanwhile, the continuous engagements between the Timorese and the internationals created channels for the transnational stakeholders to engage, influence and work together to improve the anti-corruption regime in the country. The Timorese officials at the Anti-Corruption Commission, Provedor Office, and the civil society members at CEPAD, AJAR and JSMP, could also consolidate their positions and build legitimacy among the Timorese citizens. Although their efforts so far have not yielded a full normative shift against corruption, especially against corrupt acts by those closer to the resistance leaders, they are slowly and gradually building support from the bottom-up. Transnational actors are using the interim time, while the resistance leaders are still alive, to collaborate with their international partners in consolidating technical resources and expertise. Thus, the transnational engagements on anti-corruption have been ‘good enough’ as they have assisted the Timorese stakeholders in moving *towards* adapting transnational anti-corruption standards rather than moving *away* from them.

Why transnational engagements for strengthening judicial independence remain more challenging than anti-corruption reforms can be explained based on what both these reforms target to do. Although reforms in both areas target institutional changes – recruiting more trained judges and anti-corruption commissioners, adopting legal provisions–, to bring meaningful changes the reformers have to facilitate a shift in certain practices and norms in the society. For judges to be fully independent, there must be a consensus amongst the elite decision-makers – and if not them, the citizens – to vest authority in judges as the final decision-makers (Clark, 2011). This means that those who hold power in a society must concede to the newly transferred norms where power is distributed amongst the branches of the state, and the judiciary takes the role as the ultimate arbiter (Shapiro, 1981). In contrast, to curb corruption, what is necessary, is to stop the executive officials from siphoning off money from public coffers. Unlike the need for garnering favourable political will from elite decision-makers to strengthen the independence of the judiciary, anti-corruption initiatives could be pursued by building awareness and support from local officials and junior staff who are aligned with international partners working towards fighting corruption. Therefore, ‘external’ political and social support is as important as formal legal protection for strengthening judicial independence and anti-corruption (Feld and Voigt, 2003; Clark, 2011; Gee et al., 2015; Kosar, 2018).

Transnational efforts to strengthen judiciary’s role in a society where judicial actors are distrusted or disregarded need recognition that judges may not be able to immediately take on their impartial and independent roles. They must build their influence in society slowly and gradually. This means

that for a constructive transnational engagement to strengthen judicial independence, a ‘good enough’ engagement may be more necessary than appreciated. International and local stakeholders need to consider what kinds of compromises are necessary to undertake at a particular time that allows for long-term adaptation of judicial independence norms. But it is also crucial to highlight here how transnationally led engagements to strengthen judicial independence can never be good enough. The structure of transnational engagements in the judiciary brings senior judges to work closely with their local counterparts, with the expectation that they assist the latter in ‘improving’ their judicial skills and integrity. Moreover, transnational engagements in the judiciary emphasise recipient judges to learn celebrated jurisprudential principles, decisions and international legal provisions from the senior colleagues. Such arrangements of technical exchanges seldom value local knowledge or particularities. As Shetreet (2011) highlights the emphasis is on creating a common culture among the judges globally. As a result, those transferring judicial independence norms are expected to meet particular standards and not slip from the desired standards. This makes it difficult for those on the ground to navigate the realities and make uneasy compromises that enable a long-term adaptation of transferred rule-of-law standards.

Therefore, to conclude, the case study of transnational rule-of-law promotion in East Timor shows what may look like a ‘successful’ adaptation of transferred legal norms may not necessarily be a success story on the ground. The 2014 case could be perceived as a ‘success’ story of judicial independence reforms, where the young judiciary had the confidence to stand up to Xanana’s government. But data from the field illustrates a different picture of the condition of the Timorese judiciary, where judges lacked confidence in using Portuguese as the legal language and interpreting complex laws.

Secondly, it shows that for a successful rule-of-law adaptation, sometimes rule-of-law transferors may have to compromise and choose imperfect solutions to assist local stakeholders in moving towards aspired end-goals. Depending on the particularities and nuances of the recipient society, what compromises need to be taken may vary. In the transitional state of East Timor, the compromises required to set the society on a trajectory *towards* adapting judicial independence and anti-corruption norms were distinct. East Timor may have already adopted all the necessary institutional and legal arrangements for formally recognising the supremacy of the rule of law and judges as the final decision-makers. But as a country that is transitioning, many challenges still exist on the ground. In East Timor, strengthening trust and confidence in state-based institutions, generating awareness and consciousness of new normative standards, and assisting officials within

the judiciary in establishing their authority are necessary for realising the full normative limits of transferred rule-of-law norms.

Conclusion

Transnational rule-of-law engagements are prevalent especially in societies that are emerging out of a conflict. Societies emerging out of war/conflict often have to rearrange, reapportion and resettle power arrangements in the political, economic and social spheres to bring desired changes. Transitional settings where new legal norms and standards are introduced, time is essential for the recipient community to adopt and adapt to the transferred norms and standards, especially when they require the recipient community to shift away from existing power arrangements, standards, attitudes and behaviours. Those transferring transnational rule-of-law standards may need to make uneasy alliances and compromises to pave the way for the adaptation of new norms. Consequently, I argued, evaluating transnational rule-of-law engagements in transitional settings on a scale of zero and one – where zero represents failure and one is a success – where a recipient society has transformed to a perfect rule-of-law society, can hardly inform us what is necessary for the recipient society to adapt to the new norms. Instead, I argued that we need to re-examine how we evaluate and understand successes and failures of transnational rule-of-law initiatives in the context of transferring new normative standards and institutional arrangements to a setting that may not have a favourable social, political or economic environment for adapting new norms.

I proposed an alternate framework, the ‘good-enough’, which helps us observe and evaluate whether transnational engagements have been a success/failure in aiding a society to move towards aspired transnational rule-of-law standards. I argued that the framework allows us to look beyond definitive ‘perfect’ conceptions of successes of rule-of-law transfers and adaptation. Instead, it encourages us to consider the necessary compromises and negotiations that transnational actors have to make to facilitate adaptation of new norms and standards by recipient stakeholders. In transitional settings that may have far from ‘ideal’ social, political, and/or economic conditions, transnational actors may have to slip below their expected standards of ideal support. Depending on the particular challenges of the recipient transitional society, what compromises are needed to adopt new institutional arrangements, legal standards, and adapt to them may vary. Thus, for a ‘good enough’ transnational rule-of-law engagement, I underscored why transnational actors must ensure that their actions enable a recipient society to move *towards* aspired rule-of-law standards rather than *away* from them. Thus, the ‘good enough’ framework I proposed potentially provides

a lens to observe the in-between phase where a society is either advancing or moving away from the desired endpoints.

I applied the ‘good-enough’ framework to observe and evaluate transnational rule-of-law engagements in two areas within the justice sector in East Timor. Analysing the data from the field, I concluded that the transnational rule-of-law engagements aimed at strengthening judicial independence were ‘not good enough’, whereas those for strengthening anti-corruption norms were ‘good enough’. I argued that transnational engagements in the area of anti-corruption were ‘good enough’ not because the internationals transferred institutional arrangements and technical skills perfectly to the Timorese or because the Timorese adopted their new roles exactly as expected. Rather, the transnational engagements were ‘good enough’ because those at the ‘top’, the ‘bottom’ and in the ‘middle’ recursively engaged and influenced each other to determine what ‘fitted’ the needs for strengthening norms against corruption in the country. They were also ‘good enough’ because those who were transferring and receiving anti-corruption norms balanced between what is necessary while the society is in transition and pursuing perfect standards. Therefore, the kind of engagements between the transferors and the Timorese recipient stakeholders were context specific support that facilitated the adaptation of transnational rule-of-law aspirations in the long run.

As for data collection, the good enough framework encourages researchers and policymakers to reflect on how the gaps between challenges on the ground and normative aspirations can be bridged. To gather evidence on whether or not a society is moving *towards* the rule of law or not, I argued we need rich qualitative data from the field that can provide ‘thick’ descriptions of what kind of changes are happening because of transnational engagements. I demonstrated why researchers must look for data on what kinds of changes are happening because of transnational engagements and rely on research methods that enable them to gather information from the ‘bottom-up.’ Contrary to M&E documents on UNDP’s Justice System Program, which hardly referred to or considered whether transferred norms were adapted by their targeted Timorese stakeholders, qualitative data from the field illustrated a different picture of the justice sector reforms and their impacts in East Timor. While the UNDP Justice System Program’s evaluators seem to have assumed that the increase in the numbers of cases filed and staff recruited equated to a rule-of-law adaptation, the data from the field reveals how the increase in number of judicial staff or training programmes did not actually amount to judicial independence in East Timor. The Timorese judges still needed more training in the Portuguese language and technical support in

interpreting laws. Moreover, living alongside their resistance heroes, the judges were far from being able to assume their roles as final decision-makers fully.

The findings from the research raise many questions for further theoretical and empirical inquiries. Firstly, to fully understand the impact of transnational rule-of-law engagements in East Timor, we need an in-depth empirical study that investigates the shifts (if any) in the normative awareness and legal consciousness among ordinary citizens. Other similar case studies (as I have presented here) that provide ‘thick’ accounts of Timorese officials’ experiences in different areas of state administration and their challenges in adapting their new roles can assist us further in theorising the direction of the adaptation of transferred norms in East Timor. Outside of East Timor, we need more empirical case studies that inform us how societies adopt and adapt transnational standards, and what role transnational actors play in facilitating those changes. Such case studies can help us identify different strategies that enable transnational actors to provide ‘good enough’ support. Furthermore, empirical accounts can illuminate the limits and possibilities of international projects: whether they remain imposing, empowering or hindering a society from adapting new norms.

There are also many theoretical issues that demand the attention of sociology of law scholars. Transnationalisation of norms has impacted (sometimes confining and expanding) the normative boundaries of legal concepts. As we have seen in the case of judicial independence, the transnationalisation of the phenomenon has narrowed down transnational engagements in the area strictly to the separation of powers. Such transnational categories are also increasingly influencing perceptions of legal phenomena in different settings. Some scholars have already ventured into the area, studying the role of indicators and their implications for legal knowledge (see Nelken, 2015). However, many other issues remain unanswered. How has transnationalisation impacted the normative boundaries of legal concepts in national settings? Can international actors bring meaningful changes in local settings operating on transnational categories? What tools/strategies are necessary for transnational actors to engage reflexively while engaging in transnational legal reform initiatives in national and local settings? These are just a few issues that need further examination. Finally, from the rule-of-law scholars, we need more empirical studies that examine the ‘rule’ of law as a sociological phenomenon in diverse settings. Cotterrell (2020), Krygier (2020; 2019), and Přibán (2020), have initiated some discussions in this area. We need more empirical studies that can inform us how distinct sources of power, for instance, reshape and re-align the normative boundaries of law in particular settings and whether existing legal and institutional

arrangements for safeguarding the rule of law are enough to constrain them. Within law and society scholarship, we need more empirical studies that examine the ‘gap’ between ‘law in action’ and ‘law in the books’ in post-conflict settings and which explain why there is a ‘gap’ and what strategies can be taken to bridge the ‘gap.’

REFERENCES

Books

- Adams, M., Meuwese, A. & Ballin, E. H. (2017). *Constitutionalism and the rule of law: Bridging idealism and realism*. Cambridge University Press.
- Anleu, S. (2010). *Law and social change*. Sage publications.
- Armytage, L. (2012). *Reforming justice: A journey to fairness in Asia*. Cambridge University Press.
- Banakar, R. & Travers, M (eds). (2013). *Law and social theory* (2nd edn.). Hart Publishing.
- Baratz, M & Bachrach, P. (1970). *Power and poverty: Theory and practice*. Oxford University Press.
- Beckwith, F.J. & Jones, T.E. (eds) (1997). *Affirmative action: Social justice or reverse discrimination*. Prometheus Books.
- Beetham, D. (1991). *The legitimization of power*. Macmillan.
- Berger, P.L. & Luckmann, T. (1966). *The social construction of reality: A treatise in the sociology of knowledge*. Penguin.
- Berger, T. (2017). *Global norms and local courts: Translating the rule of law in Bangladesh*. Oxford University Press.
- Block-Lieb, S & Terrence, H. (2017). *Global lawmakers: International organizations in the crafting of world markets*. Cambridge University Press.
- Botero, J & Ponce A. (2011). *Measuring the Rule of Law*. World Justice Project.
- Bryman, A. (2012). *Social research methods* (4th edn). Oxford University Press.
- Calavita, K. (2010). *Invitation to law and society: An introduction to the study of real law* (2nd ed). University of Chicago Press.
- Call, C., & Wyeth, V. (eds.). (2008). *Building states to build peace*. Lynne Rienner.
- Carothers, T. (ed). (2006). *Promoting the rule of law abroad: In search of knowledge*. Carnegie endowment for International Peace.
- Charmaz, K. (2006). *Constructing grounded theory: A practical guide through qualitative analysis*. SAGE.
- Cheesman, N. (2015). *Opposing the rule of law: How Myanmar's courts make law and order*. Cambridge University Press.
- Clark, T. (2011). *The limits of judicial independence*. Cambridge University Press.
- Cotterrell, R. (2008). *Living law: Studies in legal and social theory*. Ashgate.
- Czarnota, A. & Krygier, M. (eds). (1999). *The rule of law after communism problems and prospects in East-Central Europe*. Routledge.
- de-Sardan, J. O., Blundo, G., Alou, M. T., Arifari, N. B. (2008). *Everyday corruption and the state: Citizens and public officials in Africa*. Bloomsbury Publishing.
- Dezalay, Y. & Garth, B. (eds). (2002). *Global prescriptions the production, exportation, and importation of a new legal orthodoxy*. University of Michigan Press.
- Dicey, A. V. (1982). *Introduction to the study of the law of the Constitution*. Liberty classics.
- Driscoll, J. (2015). *Warlords and Coalition Politics in Post-Soviet States*. Cambridge University Press.

- Durkheim, E., In Lukes, S., & Halls, W. D. (2014). *The rules of sociological method: And selected texts on sociology and its method*. Free Press.
- Engel, Rebecca. (2021). *The 2006 Crisis in East Timor: Lessons for contemporary peacebuilding*. Routledge.
- Eslava, L. (2015). *Local space, global life: The everyday operation of international law and development*. Cambridge University Press.
- Ewick, P. & Silbey, S. (1998). *The common place of law: Stories from everyday life*. University of Chicago Press.
- Finnis, J. (1980). *Natural law and natural rights*. Clarendon Press.
- Fitzpatrick, P. (1980). *Law and state in Papua New Guinea*. Academic Press.
- Fuller, L. (1964). *The Morality of Law*. Yale University Press.
- Gardner, J. (1980). *Legal imperialism: American lawyers and foreign aid in Latin America*. University of Wisconsin Press.
- Gee, G., Hazell, R., Malleson, K., & O'Brien, P. (2015). *The politics of judicial independence in the UK's changing constitution*. Cambridge University Press.
- Geertz, C. (1973) *The interpretation of cultures*. Basic Books.
- Ginsburg, T., & Moustafa, T. (eds.). (2008). *Rule by law: The politics of courts in authoritarian regimes*. Cambridge University Press.
- Gouldner, A. (1970). *The coming crisis of western sociology*. Basic Books.
- Gowder, P. (2016). *The rule of law in the real world*. Cambridge University Press.
- Greenlees, D. & Garran, R. (2002). *Deliverance*. Allen and Unwin.
- Grenfell, L. (2013). *Promoting the rule of law in post-conflict states*. Cambridge University Press.
- Grewal, K. (2016). *The socio-political practice of human rights: Between the universal and the particular*. Routledge.
- Gusmão, X. (2000). *To resist is to win! the autobiography of Xanana Gusmao with selected letters & speeches*. David Lovell Publishing.
- Halliday, T. & Carruthers, B. G. (2009). *Bankrupt: Global lawmaking and systemic financial crisis*. Stanford University Press.
- Halliday, T. & Shaffer, G. (eds). (2015). *Transnational legal orders*. Cambridge University Press.
- Hammergren, L. A. (2014). *Justice reform and development: Rethinking donor assistance to developing and transition countries*. Routledge.
- Hammersley, M. & Atkinson, P. (1995). *Ethnography: Principles and Practice*. Routledge.
- Hayek, F. (1944). *The Road to Serfdom*. Routledge.
- Helmke, G. (2004). *Courts under constraints: Judges, generals, and presidents in Argentina*. Cambridge University Press.
- Humphreys, S. (2010). *Theatre of the rule of law: Transnational legal intervention in theory and practice*. Cambridge University Press.
- Husa, J. (2018). *Advanced introduction to law and globalisation*. Edward Elgar.
- Jensen, E. & Heller, T. (2003). *Beyond common knowledge: Empirical approaches to the rule of law*. Stanford University Press.

- Kent, L. (2012). *The dynamics of transitional justice: International models and local realities in East Timor*. Routledge.
- Kleinfeld, R. (2012). *Advancing the rule of law abroad: Next generation reform*. Carnegie Endowment for International Peace.
- Kleinfeld, R. (2018). *A savage order: How the world's deadliest countries can forge a path to security*. Pantheon.
- Kruckenberger, L. (2012). *The UNreal world of human rights: An ethnography of the UN Committee on the Elimination of Racial Discrimination*. Nomos Verlagsgesellschaft.
- Leach, M. (2017). *Nation-building and national identity in Timor-Leste*. Routledge.
- Lederach, J.P. (1997). *Building peace: Sustainable reconciliation in divided societies*. United States Institute of Peace.
- Lee, R. B. & DeVore, I. (eds). (1968). *Man the hunter*. Aldine.
- Lukes, S. (2005). *Power: A radical view* (2nd edn.). Palgrave Macmillan.
- Malinowski, B. (1922). *Argonauts of the Western Pacific: An account of native enterprise and adventure in the archipelagos of Melanesian New Guinea*. Routledge.
- Massoud, M. (2013). *Law's fragile state: Colonial, authoritarian, and humanitarian legacies in Sudan*. Cambridge University Press.
- Mattei, U. & Nader, L. (2008). *Plunder: When the rule of law is illegal*. Wiley-Blackwell.
- McClymont, M & Golub, S. (2000). *Many roads to justice : The law related work of Ford Foundation grantees around the world*. The Ford Foundation.
- McWilliam, A. and Leach, M. (2019). *Handbook of Contemporary Timor-Leste*. Routledge.
- Mosse, D. (2005). *Cultivating development: An ethnography of aid policy and practice*. Pluto Press.
- Nelken, D. (2010). *Comparative criminal justice*. Sage.
- Nelken, D. (2000). *Contrasting criminal justice: Getting from here to there*. Ashgate.
- Nelken, D and Feest, J (eds.). (2001). *Adapting legal culture*. Hart Publishing.
- Neumann, F. (1986) *The rule of law: Political theory and the legal system in modern society*. Leamington Spa.
- Nicholson, P. (2007). *Borrowing court systems: The experience of socialist Vietnam*. Martinus Nijhoff.
- Nygaard-Christensen, M., & Bexley A (eds.). (2017). *Fieldwork in Timor-Leste : Understanding social change through practice*. Nordic Institute of Asian Studies.
- Pahuja, S. (2011). *Decolonising international law: Development, economic growth and the politics of universality*. Cambridge University Press.
- Parsons, T. (1951). *The social system*. Free Press.
- Peerenboom, R (ed.). (2003a). *Asian discourses of rule of law*. Routledge.
- Peerenboom, R. (2002). *China's long march toward rule of law*. Cambridge University Press.
- Rajah, J. (2012). *Authoritarian rule of law: Legislation, discourse and legitimacy in Singapore*. Cambridge University Press.
- Rawls, J. (1971). *A theory of justice*. Harvard University Press.
- Raz, J. (1979). *The authority of law: Essays on law and morality*. Oxford University Press.
- Riles, A. (2001). *The network inside out*. University of Michigan Press.

- Risse, T., Ropp, S. C., & Sikkink, K. (eds.). (1999). *The power of human rights: International norms and domestic change*. Cambridge University Press.
- Saldaña, J. (2009). *The coding manual for qualitative researchers*. Sage publications
- Sandel, M. (1998). *Liberalism and the limits of justice*. Cambridge University Press.
- Scambary, J (2019). *Conflict, identity and state formation in East Timor 2000-2017*. Brill.
- Scott, J. (2009). *Art of not being governed*. Yale University Press.
- Seibert-Fohr, A. (ed.). (2012). *Judicial independence in transition*. Springer.
- Shaffer, G., & Aaronson, E. (eds.). (2020). *Transnational legal ordering of criminal justice*. Cambridge University Press.
- Shapiro, M. M. (1981). *Courts: A comparative and political analysis*. University of Chicago Press.
- Shetreet, S., & Forsyth, C. (eds.). (2011). *The culture of judicial independence*. Brill Nijhoff.
- Shihata, I. F., & Wolfensohn, J. D. (1995). *The World Bank in a changing world*. Brill Nijhoff.
- Silva, E.B (ed.). (1996). *Good enough mothering? Feminist perspectives on lone motherhood*. Routledge.
- Silverman, D. (2019) *Interpreting qualitative data* (6th ed.).Sage Publications.
- Simion, K. (2021). *Rule of law intermediaries: Brokering influence in Myanmar*. Cambridge University Press.
- Sisk, T. (2014). *Statebuilding*. John Wiley & Sons.
- Slater, D. (2010). *Ordering Power: Contentious politics and authoritarian leviathans in Southeast Asia*. Cambridge University Press
- Slaughter, A. (2005). *A new world order*. Princeton University Press.
- Stephen, B. Burbank & Friedman, B. (2002). *Judicial independence at the crossroads*. Sage Publications.
- Stinchcombe, A. (2001). *When formality works: Authority and abstraction in law and organizations*. University of Chicago Press.
- Sunstein, C. (2001). *Democracy's constitution*. Oxford University Press.
- Sztompka, P. (1993). *The sociology of social change*. Wiley-Blackwell.
- Tamanaha, B. (2004). *On the rule of law: History, politics, theory*. Cambridge University Press.
- Trebilock, M. & Daniels, R. (eds.). (2008). *Rule of law reform and development: Charting the fragile path of progress*. Edward Elgar
- Thompson, E.P. (1975). *Whigs and Hunters: The Origin of the Black Act*. Penguin Books.
- Uslaner, E. (2008). *Corruption, inequality, and the rule of law: The bulging pocket makes the easy life*. Cambridge University Press.
- Walker, N. (2014). *Intimations of global law*. Cambridge University Press.
- Weber, M. (1962). *Basic concepts in sociology* (H.P. Secher, Trans.) The Citadel Press.
- Yin, R. (2003). *Case study research: Design and methods*. Sage Publications.
- Zürn, M., Nollkaemper, A. & Peerenboom, R (eds.). 2012. *Rule of law dynamics in an era of international and transnational governance*. Cambridge University Press.

Book chapters

- Adams, M. & Griffiths, J. (2012). Against 'comparative method': Explaining similarities and differences. In J. Bomhoff, & M. Adams (eds). *Practice and theory in comparative law* (pp. 279-301). Cambridge University Press.
- Adams, M., Ballin, E. & Meuwese, A. (2017). The ideal and the real in the realm of constitutionalism and the rule of law: an introduction. In M. Adams, A. Meuwese A. & E. Ballin (eds). *Constitutionalism and the rule of law: Bridging idealism and realism* (pp. 3-33). Cambridge University Press.
- Adelman, J., & Centeno, M. (2002). Between liberalism and neoliberalism: Law's dilemma in Latin America. In Y. Dezalay & B. G. Garth (eds.), *Global prescriptions: The production, exportation, and importation of a new legal orthodoxy* (pp. 139-162). University of Michigan Press.
- Adérito de Jesus Soares. (2015). A social movement as an antidote to corruption. In S. Ingram, L. Kent & A. McWilliam (eds). *A new era? Timor-Leste after the UN* (pp. 203-213). Australian National University Press.
- Anleu, S. (2010a). Contemporary social theory and law. In S. Anleu. *Law and social change* (pp. 40-81). SAGE publication.
- Anleu, S. (2010b). The meanings of law. In S. Anleu. *Law and social change* (pp. 1-13). SAGE publication.
- Banakar, R. & Travers, M. (2003). Law, sociology and method. In R. Banakar, & M. Travers, (ed). *Theory and method in socio-legal research* (pp. 1-27) . Hart.
- Berremán, G. (2012). Behind many masks: Ethnography and impression management. In A. Robben, C. G. M. Antonius, J. Sluka (eds.). *Ethnographic fieldwork: An anthropological reader* (2nd ed. pp. 153-74). Wiley-Blackwell.
- Bexley, A. (2017). The geracao four and Indonesia: Exclusion, belonging and the nation-state. In M., Nygaard-Christensen, & A., Bexley (eds). *Fieldwork in Timor-Leste: Understanding social change through practice* (99-125). NIAS press.
- Blee, K., & Taylor, V. (2002). Semi-structured interviewing in social movement research. In B. Klandermans & S. Staggenborg (eds.), *Methods of social movement research* (pp. 92-117). University of Minnesota Press.
- Bourdieu, P. (1986). The forms of capital. In J. Richardson (ed), *Handbook of theory and research for the sociology of education* (pp 241-258). Greenwood.
- Boyle, E.H & Meyer J.W. (2002). Modern law as a secularised and global model: Implications for the sociology of law. In Y. Dezalay & B. Garth. *Global Prescriptions. The production, exportation and importation of a new legal orthodoxy* (pp 65-95). University of Michigan Press.
- Brewer, J. (1993). Sensitivity as a problem in field research: A study of routine policing in Northern Ireland. In C. Renzetti, M. Lee, M. Raymond (eds.) *Researching sensitive topics* (pp. 125-45). Sage publications.
- Charmaz, K. (2000). Grounded theory: Objectivist and constructivist methods. In N. K. Denzin and Y. Lincoln (eds.). *The handbook of qualitative research*. Sage Publications.
- Davis, K., Kingsbury, B. & Merry, S. (2015). Introduction: The local-global life of indicators: Law, power, and resistance. In S. Merry, K. Davis, & B. Kingsbury (eds). *The quiet power of indicators: Measuring governance, corruption, and rule of law* (pp. 1-24). Cambridge University Press.
- Davis, K. E., Kingsbury, B., & Merry, S. E. (2012). Introduction: Global governance by Indicators. In K.E. Davis, B. Kingsbury & S.E. Merry, *Governance by indicators: Global power through quantification and rankings* (pp. 3-28). Oxford University Press.

- Fitzpatrick, J., Sanders, J. & Worthen, B. (2004). *Program evaluation: Alternative approaches and practical guidelines* (3rd ed.). Pearson.
- Flood, J. (2005). Socio-legal ethnography. In R. Banakar & M. Travers (eds). *Theory and method in socio-legal research* (p.33-49). Hart Publishing.
- Garapon, A. & Epineuse, H. (2012). Judicial independence in France. In A. Seibert-Fohr (ed). *Judicial independence in transition* (273-305). Springer.
- Garth, B. (2020). Issues of Empire, Contestation, and Hierarchy in the Globalization of Law. In M. Hirsch, & A. Lang (eds). *Research handbook on the sociology of international law* (pp 19-37). Edward Elgar.
- Genschel, P. & Rixen, T. (2015). Settling and unsettling the transnational legal order of international taxation. In T. Halliday & G. Shaffer (eds.), *Transnational legal orders* (pp. 154-184). Cambridge University Press.
- Gillespie, J. & Nicholson, P. (2012). Taking the interpretation of legal transfers seriously: The challenge for law and development. In J. Gillespie & P. Nicholson (eds). *Law and Development and the Global Discourses of Legal Transfers* (pp. 1-26). Cambridge University Press.
- Goodale, M. (2007). Introduction locating rights, envisioning law between the global and the local. In M. Goodale & S. Merry (eds.). *The practice of human rights: tracking law between the global and the local* (pp. 1-38). Cambridge University Press.
- Grasten, M. (2016). Whose Legality?: Rule of law missions and the case of Kosovo. In Rajkovic, N., Aalberts, T., and Gammeltoft-Hansen, T. (eds). *The power of legality: Practices of international law and their politics* (pp. 320-342). Cambridge University Press.
- Halliday, T.C., Karpik, L., & Feeley, M. (2007). The legal complex in struggles for political liberalism. In T.C. Halliday, L. Karpik & M.M. Feeley (eds.). *Fighting for political freedom: Comparative studies of the legal complex and political liberalism* (pp. 1–40). Hart Publishing.
- Halliday, T. & Shaffer, G. (2015b). Researching transnational legal orders. In T. Halliday & G. Shaffer (eds.). *Transnational legal orders* (pp. 475-528). Cambridge University Press.
- Halme-Tuomisaari, M. (2017). Meeting “the world” at the Palais Wilson: Embodied universalism at the UN Human Rights Committee. In Niezen, R. & Sapignoli, M. (eds.). *Palaces of hope: The anthropology of global organizations* (pp. 127-151). Cambridge University Press.
- Harding, A. (2007). Southeast Asia 1997-2006: Two case studies on the politics of law and development. In C. Antons & V.Gessmer. (eds). *Globalisation and resistance: Law reform in Asia after financial crisis* (pp133-157). Hart.
- Hayward, S. & Cassell, C. (2018). Achieving critical distance. In C. Cassell, A. Cunliffe & G. Grandy. *The sage handbook of qualitative business and management research methods* (pp. 361-376). Sage.
- Heupel, M. (2012). Rule of Law Promotion through International Organizations and NGOs. In M. Zurn, A. Nollkaemper & R. Peerenboom. (eds). *Rule of law dynamics* (pp.133-152). Cambridge University Press.
- Heydebrand, W. (2001). From globalisation of law to law under globalisation. In D.Nelken, & J. Feest, (eds.). *Adapting legal cultures* (pp117–138). Hart Publishing.
- Higgins, K. W. (2019). Qualitative interviewing of elites. In P. Atkinson, S. Delamont, A. Cernat, J.W. Sakshaug, & R.A. Williams (eds.), *SAGE Research Methods Foundations*. Sage Publications.
- Hitchcock, R. (2017). From boardrooms to field programs: Humanitarianism and international development in Southern Africa. In M. Sapignoli, & R. Niezen (eds.). *Palaces of hope: The anthropology of global organizations* (pp. 172–197). Cambridge University Press.

- Ivory, R. (2020). Transnational criminal law or the transnational legal ordering of corruption: Theorizing Australian corporate foreign bribery reforms. In G. Shaffer & E. Aaronson (eds.). *Transnational legal ordering of criminal justice* (pp 84-119). Cambridge University Press.
- Jettinghoff, A. (2001). State formation and legal change: On the impact of international politics. In D. Nelken & J. Feest (eds.), *Adapting Legal Cultures* (pp. 99-117). Hart Publishing.
- Kennedy, D. (2006). The 'rule of law', political choices and development common sense. In Trubek, D and Santos, A (eds). *The New Law and Economic Development: A Critical Appraisal* (pp. 95-173). Cambridge University Press.
- Krygier, M. (2009a). The Rule of Law: Legality, Teleology, Sociology. In G. Palombella, N. Walker (ed.). *Re-locating the Rule of Law* (pp. 45 – 70). Hart Publishing.
- Krygier, M. (2017). Tempering Power. In M. Adams, A. Meuwese, & E. Ballin (eds). *Constitutionalism and the rule of law bridging idealism and realism* (pp. 34 – 59). Cambridge University Press.
- Kurkchian, M. (2003). The illegitimacy of law in post-Soviet societies. In D. Galligan & M. Kurkchian(eds). *Law and informal practices: The post-communist experience* (pp 25-46). Oxford University Press.
- Leach, M. (2008). Difficult memories: The independence struggle as cultural heritage in East Timor. In Logan, W and Reeves, K (eds). *Dealing with 'difficult heritage'*. Routledge.
- Legrand, P. (2001). What legal transplants? In D. Nelken & J. Feest. *Adapting legal culture* (pp 55-70). Hart Publishing.
- Levitt, P & Merry, S.E. (2017). The vernacularisation of women's human rights. In J.Snyder, L. Vinjamuri & S. Hopgood (eds.). *Human Rights Futures* (pp. 213-236). Cambridge University Press.
- Merry, S. (2015). Firming up soft law: The impact of indicators on transnational human rights legal orders. In T. Halliday, & G. Shaffer (eds.). *Transnational legal orders* (pp. 374-399). Cambridge University Press.
- Merry, S. (2006). Culture and Transnationalism, In S. Merry, *Human rights and gender violence: Translating international law into local justice* (pp 38-51). University of Chicago Press.
- Mommsen, H. (1997). Cumulative radicalisation and progressive self-destruction as structural determinants of the Nazi dictatorship. In Kershaw, I. & Lewin, M. (eds). *Stalinism and Nazism: Dictatorships in Comparison* (pp 75-87). Cambridge University Press.
- Mosse, D. (2011). Politics and ethics: Ethnographies of expert knowledge and professional identities. In C. Shore & et.al. (eds.), *Policy worlds: Anthropology and the analysis of contemporary power* (pp. 50–67). Bergahn Books.
- Nelken, D. (2000). Virtually there, researching there, living there. In D. Nelken (ed). *Contrasting criminal justice: Getting from here to there* (pp. 23-41). Ashgate.
- Nelken, D. (2001). Towards a sociology of legal adaptation. In D.Nelken & J. Feest (eds). *Adapting Legal Cultures* (pp 7-54). Hart Publishing.
- Neumann, F. (1957). The change in the function of law in modern society. In H. Marcuse (ed.). *The democratic and the authoritarian state* (pp. 22–68). Free Press.
- Newton, S. (2006). The Dialectics of Law and Development. D. Trubek & A. Santos (eds). *The new law and economic development: A critical appraisal* (pp174-202). Cambridge University Press.
- Niezen, R. (2017). The anthropology by organizations: Legal knowledge and the UN's ethnological imagination. In R. Niezen & M. Sapignoli (eds.). *Palaces of hope: The anthropology of global organizations* (pp. 294-317). Cambridge University Press.

- Nygaard-Christensen, M. (2017). The UN Document Leak: The Production of Political Controversy. In M. Nygaard-Christensen & A. Bexley (eds.). *Fieldwork in Timor-Leste: Understanding social change through practice* (pp. 191- 208). NIAS press.
- Olsen, W. (2004). Methodological triangulation and realist research: An Indian exemplar. In B. Carter & C. New. *Making Realism Work: Realist Social Theory and Empirical Research* (pp. 135-150). Routledge.
- Palombella, G. (2009). The rule of law and its core. In G. Palombella & N. Walker (eds). *Re-locating the rule of law* (pp.17-42). Hart Publishing.
- Paris, R., & Sisk, T. D. (2009). Introduction: understanding the contradictions of postwar statebuilding. In *The Dilemmas of Statebuilding* (pp. 15-34). Routledge.
- Payne, L. (2015). The justice paradox: Transnational legal orders and accountability for past human rights violations. In T. Halliday & G. Shaffer (eds.). *Transnational legal orders* (pp. 439-472). Cambridge University Press.
- Peerenboom, R. (2003b). Varieties of Rule of Law: An Introduction in R. Peerenboom (ed.). *Asian Discourses of Rule of Law* (pp. 1-53). Routledge.
- Přibáň, J. (2020). Sociology of the rule of law: Power, legality and legitimacy. In J. Přibáň (ed). *Research Handbook on the Sociology of Law* (pp.110-123). Edward Elgar.
- Rajah, J. (2015). Rule of law as transnational legal order. In T. Halliday & G. Shaffer (eds). *Transnational legal orders* (pp 340-373). Cambridge University Press.
- Ruiz-Casares, M. (2012). Building trust, enhancing research: Carrying out fieldwork in Namibia. In V. Lise-Hélène & A. Narayan (eds). *Research beyond borders: Multidisciplinary reflections* (pp.75-93). Lexington.
- Russell, P. (2001). Toward a general theory of judicial independence. In P. Russell & D. O'Brien (eds). *Judicial independence in the age of democracy: Critical perspectives* (pp. 1-24). University Press of Virginia.
- Schimmelfennig, F. (2012). A comparison of the rule of law promotion policies of major western powers. In A. Nollkaemper, M. Zurn & R. Peerenboom (eds). *Rule of law dynamics: In an era of international and transnational governance* (pp. 111–132). Cambridge University Press.
- Seibert-Fohr, A. (2012) Judicial independence in Germany. In A. Seibert-Fohr (ed). *Judicial independence in transition*, (pp 447-519). Springer.
- Serban, M. (2015). Rule of law indicators as a technology of power in Romania. In S. Merry, K. Davis & B. Kingsbury (eds.). *The quiet power of indicators: Measuring governance, corruption, and rule of law* (pp. 199-221). Cambridge University Press.
- Silva, E.B. (1996). Introduction. In E.B. Silva (ed.). *Good enough mothering? feminist perspectives on lone motherhood* (pp. 10-37). Routledge.
- Smyth, M. (2005). Insider-outsider issues in researching violent and divided societies. In E. Porter, G. Robinson, M. Smyth, A. Schnabel, E. Osaghae (eds.). *Researching conflict in Africa: Insights and experiences*, United Nations University Press.
- Tamanaha, B.Z. (2009). A concise guide to the rule of law. In G. Palombello & N. Walker (eds.). *Relocating the rule of law* (pp. 3–16). Hart Publishing.
- Tanase, T. (2001). The Empty Space of the Modern in Japanese Law Discourse. In D. Nelken & J. Feest. *Adapting legal cultures* (pp.187-198). Hart Publishing.

Taylor, V. (2016). Big rule of lawsm™ (pat. pending): Branding and certifying the business of the rule of law. In J. Farrall & H. Charlesworth. *Strengthening the rule of law through the UN security council* (pp. 27-43). Routledge.

Taylor, V. & Whitaker, N. (1992). Collective identity in social movement communities: Lesbian feminist mobilisation. In A. Morris & C. McLure (eds.) *Frontiers in social movement theory* (104-129). Yale University Press.

Toharia, J. (2003). Evaluating systems of justice through public opinion: Why, what, who, how and what for? In E. Jensen & T. Heller (eds). *Beyond common knowledge: Empirical approaches to the rule of law* (pp. 21-63). Stanford University Press.

Tomasz, T. (2020). The symbolic jurisprudence: Theorizing constitutional (re) capture, testing the limits of separation of powers and reimagining the judicial review. In A. Baraggia et. al (eds). *New challenges to the separation of powers: Dividing power* (pp. 180-202). Edward Elgar.

Urueña, R. (2015). Indicators and the law: A case study of the rule of law index. In S. Merry, K. Davis & B. Kingsbury (eds.). *The quiet power of indicators: Measuring governance, corruption, and rule of law* (pp. 75-102). Cambridge University Press.

Journal Articles

Abrams, D., Houston, D. M., Van de Vyver, J., & Vasiljevic, M. (2015). Equality hypocrisy, inconsistency, and prejudice: The unequal application of the universal human right to equality. *Peace and Conflict: Journal of Peace Psychology*, 21(1), 28-46.

Acharya, A. (2004). How ideas spread: Whose norms matter? Norm localization and institutional change in Asian regionalism. *International Organization*, 58(2), 239–275.

Adams, M & Janse, R. (2019). Rule of law decay: Terminology, causes, methods, markers and remedies. *Hague Journal on the Rule of Law*, 11, 1-8.

Allan, A. & Allan, M.M. (2000). The South African truth and reconciliation commission as a therapeutic tool. *Behavioral Sciences and the Law*, 18, 459-477.

Andrew, H. (1999). Reflections on interviewing foreign elites: Praxis, positionality, validity and the cult of the insider. *Geoforum*, 30, 313-327.

Bachrach, P & Baratz, M. (1962). Two faces of power. *The American Political Science Review*, 56(4), 947-952.

Banakar, R. (2000). Reflections on the methodological issues of the sociology of law. *Journal of Law and Society*, 27, 273-295.

Barry, B. (1990). How not to defend liberal institutions? *British Journal of Political Science*, 20(1), 1-14.

Baxter, H. (1998). Autopoiesis and the ‘relative autonomy’ of law. *Cardozo Law Review*, 19, 1987-2090.

Becker, H. S. (1967). Whose side are we on? *Social Problems*, 14(3), 239–247.

Bedner, A. (2010). An Elementary Approach to the Rule of Law. *Hague Journal on the Rule of Law*, 2(1), 48-74.

Bowling, B. (2007). Fair and effective policing methods: Towards ‘good enough’ policing. *Journal of Scandinavian studies in criminology and crime prevention*, 8(1), 17-32.

- Brinke, S. ten. (2018). Citizens by waiting: Timorese young adults between state politics and customary authority. *Citizenship Studies*, 22(8), 882–896.
- Browne, B. & McBride, R. S. (2015). Politically sensitive encounters: Ethnography, access, and the benefits of hanging out. *Qualitative Sociology Review*, 11(1), 34–48.
- Burnell, P. (2005). Political strategies of external support for democratization. *Foreign Policy Analysis*, 1(3), 361–384.
- Call, C. T. (2003). Democratisation, war and state-building: Constructing the rule of law in El Salvador. *Journal of Latin American Studies*, 35(4), 827–862.
- Carothers, T. (1998). The Rule of Law Revival. *Foreign Affairs*, 77 (2), 95–106.
- Carruthers, B. G., & Halliday, T. C. (2006). Negotiating globalization: Global scripts and intermediation in the construction of Asian insolvency regimes. *Law & Social Inquiry*, 31(03), 521–584.
- Castells, M. (2016). A sociology of power: My intellectual journey. *Annual Review of Sociology*, 42(1), 1–19.
- Chalmers, S. (2019). The mythology of international rule-of-law promotion. *Law & Social Inquiry*, 44(4), 957–986.
- Cheesman, N. (2018). Rule-of-law ethnography keywords. *Annual Review of Law and Social Science*, 14, 167–184.
- Cotterrell, R. (1996). The rule of law in transition: Revisiting Franz Neumann’s sociology of legality. *Social & Legal Studies*, 5(4), 451–470.
- Cotterrell, R. (1998). Why must legal ideas be interpreted sociologically? *Journal of Law and Society*, 25, 171–192.
- Cross, F. (1999). The relevance of law in human rights protection. *International Review of Law and Economics*, 19 (1), 87–98.
- Cunliffe, A., & Karunanayake, G. (2013). Working within hyphen-spaces in ethnographic research: Implications for research identities and practice. *Organizational Research Methods*, 16 (3), 364–392.
- de Soto, H. (2002). Law and property outside the west: A few new ideas about fighting poverty, *Forum for Development Studies*, 29 (2), 349–361.
- Desai, D. (2020). Reflexive institutional reform and the politics of the regulatory state of the south. *Regulation and Governance*, 1–19.
- Desai, D., Schomerus, M. (2017). There was a third man tales from a global policy consultation on indicators for the sustainable development goals. *Development and Change*, 49(1), 89–115.
- Dixon, R., & Jackson, V. (2019). Hybrid constitutional courts: Foreign judges on national constitutional courts. *Columbia Journal of Transnational Law*, 57, 283–356.
- Drew, A. Linzer, J. & K. Staton. (2015). A global measure of judicial independence 1948– 2012. *Journal of Law and Courts*, 3(2), 223–256.
- Eatwell, R. (2006). The Concept and Theory of Charismatic Leadership. *Totalitarian Movements and Political Religions*, 7 (2), 141–156.
- Eliasson, J. (2012). The role of the UN in promoting the rule of law: Challenges and new approaches. *UN Chronicle*, 49 (4), 4–7.
- Espeland, W. N., & Stevens, M. L. (2003). Commensuration as a social process. *Annual Review of Sociology*, 24, 313–343.

- Feld, L. P., & Voigt, S. (2003). Economic growth and judicial independence: Cross-country evidence using a new set of indicators. *European Journal of Political Economy*, 19(3), 497–527.
- Finnemore, M. & Sikkink, K. (1998). International norm dynamics and political change. *International Organization*, 52(4), 887–917.
- Friedman, L. (2019). Context and convergence: Some remarks on the law and society movement. *Law Context: A Socio-Legal Journal*, 36(1), 12-20.
- Friedman, Lawrence. (1986). The law and society movement. *Stanford Law Review*, 38, 763-780.
- Geertz, C. (1998). Deep hanging out: Review of James Clifford, routes, travel, and translation in the late 20th century and Pierre Clastres, chronicle of the Guayaki Indians. *The New York Review of Books*, 45(1), 69.
- Goldbach, T. (2019). Why legal transplants? *Annual Review of Law and Social Science*. 15, 583–601.
- Goodwin, M. (2012). What I talk about when I talk about global law. *Tilburg Law Review*, 17, 269-275.
- Grenfell, L. (2006). Legal pluralism and the rule of law in Timor-Leste. *Leiden Journal of International Law*, 19(2), 305–337.
- Grewal, K. (2015). International criminal law as a site for enhancing women's rights? Challenges, possibilities, strategies, *Feminist Legal Studies*, 23 (2), 149-165.
- Griffith, A. I. (1998). Insider / outsider: Epistemological privilege and mothering work. *Human Studies*, 21(4), 361–376.
- Grindle, M. S. (2007). Good enough governance revisited. *Development policy review*, 25(5), 533-574.
- Grindle, M.S. (2004). Good enough governance: Poverty reduction and reform in developing countries. *Governance*, 17, 525-548.
- Handmaker, J. & Matthews, T. (2019). Analysing legal mobilisation's potential to secure equal access to socioeconomic justice in South Africa. *Development Southern Africa*, 36 (6), 889-904.
- Hasmath, R. & Hsu, J. (2008). NGOs in China: Issues of good governance and accountability. *Asia Pacific Journal of Public Administration*, 30 (1), 29-39.
- Helfer, L & Slaughter, A.M. (1997). Toward a theory of effective supranational adjudication. *Yale Law Journal*, 107, 273-392.
- Herod, A. (1999). Reflections on interviewing foreign elites: Praxis, positionality, validity, and the cult of the insider. *Geoforum*, 30(4), 313–327.
- Hertogh, M. (2016). Your rule of law is not mine: Rethinking empirical approaches to EU rule of law promotion. *Asia Europe Journal*, 14, 43-59.
- Hoghugh, M & Speight, A. (1998). Good enough parenting for all children - A Strategy for a Healthier Society. *Archives of Disease in Childhood*, 78, 293-330.
- Ingram, S. (2018). Parties, personalities and political power: legacies of liberal peace-building in Timor-Leste. *Conflict, Security & Development*, 18(5), 365-386.
- Jenkins, S. A. (2018). Assistants, guides, collaborators, friends: The concealed figures of conflict research. *Journal of Contemporary Ethnography*, 47(2), 143–170.
- Johnson Phillips, S. (2009). Creating a global rule of law culture. *Minnesota Journal of International Law*, 18, 291-292.
- Kahn, J. (2008). Vladimir Putin and the rule of law in Russia. *Georgia Journal of International and Comparative Law*, 36 (3). 511-558.

- Kalinic, A. (2015). Framing the global: Entry points for research edited by Hilary Kahn. *91 International Social Science Review*, 91(1), 1-2.
- Kammen, D. (2003). Master-slave, traitor nationalist, opportunist-oppressed: Political metaphors in East Timor. *Indonesia*, 76, 69-85.
- Karlsson, B. (2013). Writing development. *Anthropology Today*, 29(2), 4-7.
- Keck, M. E., & Sikkink, K. (1999). Transnational advocacy networks in international and regional politics. *International Social Science Journal*, 51(159), 89-101.
- Keith, L. (2002). Judicial independence and human rights protection around the world. *Judicature*, 85(4), 195-200.
- Kempny, M. (2003). The local, the national, the transnational: On the organization of cultural diversity in a global age. *Polish Sociological Review*, 143, 305-320.
- Khaitan, T. (2020). Killing a constitution with a thousand cuts: Executive aggrandizement and party-state fusion in India. *Law and Ethics of Human Rights*, 14 (1), 49-95.
- Kiernan, B. (2003). The demography of genocide in Southeast Asia: The death tolls in Cambodia, 1975-79 and East Timor, 1975-80. *Critical Asian Studies*, 35 (4), 585-597.
- Krygier, M. (2001). Transitional questions about the rule of law: Why, what, and how? *East Central Europe*, 1 – 34.
- Krygier, M. (2009b). The fall of European communism: 20 years after. *Hague Journal on the Rule of Law*, 1(2). 195 – 214.
- Krygier, M. (2011). Four puzzles about the rule of law: Why, what, where and who cares? *Nomos*, 50, 64-104.
- Krygier, M. (2013). Why is the rule of law left to lawyers? *Ukraine Law Journal*, 18 (4), 18-38.
- Krygier, M. (2016). The rule of law: Pasts, presents, and two possible futures. *Annual Review of Law and Social Science*, 12, 199 – 229.
- Krygier, M. (2019). What's the point of the rule of law? *Buffalo Law Review*, 67, 743 – 791.
- Laurila, J. (1997). Promoting research access and informant rapport in corporate settings: Notes from research on a crisis company. *Scandinavian Journal of Management*, 13, 407-418.
- Lazarev, E. (2019). Laws in conflict: Legacies of war, gender, and legal pluralism in Chechnya. *World Politics*, 71(4), 667-709.
- Linton, S. (2001). Rising from the ashes: The creation of viable criminal justice system in East Timor. *Melbourne University Law Review*, 25(1), 122-180.
- Linton, S & Reiger, C. (2001). The evolving jurisprudence and practice of East Timor's special panels for serious crimes on admissions of guilt, duress and superior orders. *Yearbook of International Humanitarian Law*, 4, 167-21.
- Llewellyn, J. J , Howse & Robert. (1999). Institutions for restorative justice: The South African truth and reconciliation commission. *The University of Toronto Law Journal*, 49(3), 355-388.
- Malterud, K. (2001). Qualitative research: Standards, challenges and guidelines. *The Lancet* , 358,483-488.
- Malejacq, R. (2016). Warlords, Intervention, and State Consolidation: A Typology of Political Orders in Weak and Failed States. *Security Studies*, 25 (1),85- 110.
- Mendelski, M. (2016). The EU's rule of law promotion in post-Soviet Europe: What explains the divergence between Baltic States and EaP countries? *Eastern Journal of European Studies*, 7, 111-144.

- Mendonça, H. F. de, & Fonseca, A. O. da. (2012). Corruption, income, and rule of law: Empirical evidence from developing and developed economies. *Brazilian Journal of Political Economy*, 32(2), 305–314.
- Merry, S. (2006). Transnational human rights and local activism: Mapping the middle. *American Anthropologist*, 108(1), 38-51.
- Merry, S., & Wood, S. (2015.). Quantification and the paradox of measurement: Translating children's rights in Tanzania. *Current Anthropology*, 56(2), 205–229.
- Mikecz, R. (2012). Interviewing elites: Addressing methodological issues. *Qualitative Inquiry*, 18(6), 482–493.
- Moore, S. (1973). Law and social change: The semi-autonomous social field as an appropriate subject of study. *Law & Society Review*, 7(4), 719-746.
- Mosse, D. (2013). The anthropology of international development. *Annual Review of Anthropology*, 42, 227–246.
- Moustafa, T. (2014). Law and courts in authoritarian regimes. *Annual Review of Law and Social Science*, 10, 281-299.
- Nelken, D. (1986). Beyond the study of law and society? Henry's private justice and O' Hagan's "The End of Law?" *American Bar Foundation Research Journal*, 11(2), 323-338.
- Nelken, D. (1998). Blinding insights: The limits of a reflexive sociology of law. *Journal of Law and Society*, 25(3), 407-426.
- Nelken, D. (2006). Getting at law's boundaries. *Social and Legal Studies*, 15(4), 598-604.
- Nelken, D. (2019). Whose best practices? The significance of context in and for transnational criminal justice indicators. *Journal of Law and Society*, 46 (1), 31-50.
- Palaganas, E. C., Sanchez, M. C., Molintas, M. P., & Caricativo, R. D. (2017). Reflexivity in qualitative research: A journey of learning reflexivity in qualitative research. *The Qualitative Report*, 22(2), 426–438.
- Paris, R. (2010). Saving liberal peacebuilding. *Review of International Studies*, 36(2), 337-365.
- Parsons, J., Kutateladze, B., Thornton, M., Bang, A., & Yaya, A. (2010). Justice indicators for post-conflict settings: A review. *Hague Journal on the Rule of Law*, 2(2), 203-217.
- Pech, L & Scheppele, K. (2017). Illiberalism within: Rule of law backsliding in the EU'. *Cambridge Yearbook of European Legal Studies*, 19, 3-47.
- Quibria, M. G. (2017). Foreign aid and corruption: Anti-corruption strategies need greater alignment with the objective of aid effectiveness. *Georgetown Journal of International Affairs*, 18(2), 10–17.
- Radin, M. (1989). Reconsidering the rule of law. *Boston University Law Review*, 69 (4) ,781-819.
- Reheem Shaila. (2019). Shifting legal borderlands? Brazilian legal technical assistance to East Timor. *Brazilian Journal of Institutional Studies*, 5(2), 747-776.
- Renata, U. (2015). Can you tell when an illiberal democracy is in the making? An appeal to comparative constitutional scholarship from Hungary. *International Journal of Constitutional Law* 13 (1), 279-300.
- Rios-Figueroa, J. (2007). Fragmentation of power and the emergence of an effective judiciary in Mexico, 1994-2002. *Latin American Politics and Society*, 49(1), 31-57.

- Rodríguez-Garavito, C. (2011). Beyond the courtroom: The impact of judicial activism on socioeconomic rights in Latin America. *Texas Law Review*, 89(7), 1669-1698.
- Roxborough, I. (2012). Building other peoples states: the sociology of state- building. *Comparative Sociology*, 11 (2), 179–201.
- Sannerholm, R. (2007). Legal, judicial and administrative reforms in post-conflict societies: Beyond the rule of law template. *Journal of Conflict & Security Law*, 12(1), 65-94.
- Sahin, S. (2011). Building the nation in Timor-Leste and its implications for the country's democratic development. *Australian Journal of International Affairs*, 65(2), 220-242.
- Schram, S. R. (1967). Mao Tse-Tung as a Charismatic Leader. *Asian Survey*, 7(6), 383–388.
- Shaffer, G. (2012). *Transnational legal process and state change*. *Law & Social Inquiry*, 37(2), 229-264.
- Shoesmith, D. (2003). Timor-Leste. Divided leadership in a semi-presidential system. *Asian Survey*, 63(2), 231–252.
- Sidebotham, C. (2017). Good enough is good enough! *British Journal of General Practice*, 67(660), 311–311.
- Silbey, S. (2005). After legal consciousness. *Annual Review of Law and Social Science*, 1, 323-368.
- Silva, K & Simião, D. (2012). Coping with “traditions”: The analysis of East-Timorese nation building from the perspective of a certain anthropology made in Brazil. *Virtual Brazilian Anthropology*, 9 (1), 360-381.
- Silva, K. (2013). Negotiating tradition and nation: Mediation and mediators in the making of urban Timor-Leste. *The Asia Pacific Journal of Anthropology*, 14(5), 455-470.
- Silva, Kelly. (2008). A cooperação internacional como dádiva: Algumas aproximações. *Mana* 14(1), 141-171.
- Simões, F. (2015). Law and language in Timor-Leste: Bridging the divide. *Contemporary Southeast Asia*, 37(3), 381–405.
- Sisk, T. D. (2013). Power-sharing in civil war: Puzzles of peacemaking and peacebuilding. *Civil Wars*, 15(1), 7-20.
- Skaaning, S.E. (2010). Measuring the rule of law. *Political Research Quarterly*, 63(2), 449-46.
- Slaughter, A. (2000). Judicial globalization. *Virginia Journal of International Law*, 40 (4), 1103-1112.
- Strohmeyer, H. (2001). Collapse and reconstruction of a judicial system: The United Nations missions in Kosovo and East Timor. *American Journal of International Law*, 95 (1), 46-63.
- Swenson, G. (2017). Why U.S. efforts to promote the rule of law in Afghanistan failed. *International Security*, 42 (1), 114-151.
- Szto, M. (2016). Chinese gift-giving, anti-corruption law, and the rule of law and virtue. *Fordham International Law Journal*, 39(3), 591-628.
- Tamanaha, B. (2011). The primacy of society and the failures of law and development. *Cornell International Law Journal*, 44(2), 209-247.
- Tamanaha, B. (2012). The history and elements of the rule of law. *Singapore Journal of Legal Studies*, 232-247.
- Taylor, Verta. (1989). Social movement continuity: The women's movement in abeyance. *American Sociological Review*, 54, 761-75.

- Terence, H. & Osinsky, P. (2006). Globalization of Law. *Annual Review of Sociology*, 32, 447- 470.
- Trubek, D. & Galanter, M. (1974). Scholars in self-estrangement: Reflections on the crisis in law and development studies in the United States. *Wisconsin Law Review*, 1062-1102.
- Twining, W. (2004). Diffusion of law: A global perspective. *The Journal of Legal Pluralism and Unofficial Law* 36(49), 1-45.
- Twining, W. (2005). Have concepts, will travel: Analytical jurisprudence in a global context. *International Journal of Law in Context*, 1(1),5-40.
- Uitz, R. (2015). “Can you tell when an illiberal democracy is in the making?” An appeal to comparative constitutional law scholarship from Hungary. *International Journal of Constitutional Law*, 13(1), 279–300.
- Vyas, Y. (1992). The independence of the judiciary: A third world perspective. *Third World Legal Studies*, 11(6), 127-177.
- Waldron, J. (2002). Is the rule of law an essentially contested concept (in Florida)? *Law and Philosophy*, 21(2), 137-164.
- Wallis, J. (2017). Is ‘good enough’ peacebuilding good enough? The potential and pitfalls of the local turn in peacebuilding in Timor-Leste. *The Pacific Review*, 30(2), 251-269.
- Watson, A. (1983). *Legal change: Sources of law and legal culture*. *University of Pennsylvania Law Review*, 131(5), 1121-1158.
- Winch, B. (2017). La iha fiar, la iha seguransa: The spiritual landscape and feeling secure in Timor-Leste. *Third World Thematics*, 2(2), 197-210.
- Winnicott, D.W. (1960). The theory of the parent-infant relationship. *International Journal of Psychoanalysis*, 41, 585-595.
- Winnicott, DW. (1953). Transitional objects and transitional phenomena. *International Journal of Psychoanalysis*, 34 (2), 88-97.

International documents

- Security Council. *Prevention of Armed Conflict : Report of the Secretary General, General Assembly*. A/55/985-S/2001/574 (7 June 2001). <https://reliefweb.int/report/world/prevention-armed-conflict-report-secretary-general-a55985-s2001574-0>.
- Security Council. *The Rule of Law and Transitional Justice in Conflict and Post Conflict States: Report of Secretary General*. S/ 2004/616 (23 August 2004). <https://www.refworld.org/docid/45069c434.html>.
- The United Nations. (1948). Universal Declaration of Human Rights.
- UN General Assembly. *The rule of law at the national and international levels*. A/RES/62/70 (6 December 2007). <https://undocs.org/en/A/RES/62/70>
- UN General Assembly. *The Rule of Law at the National and International Levels*. A/RES/61/39 (18 December 2006). <https://www.un.org/ruleoflaw/files/A-RES-61-39.pdf>.
- UN General Assembly. *The Rule of Law at the National and International Levels*. A/RES/63/128 (11 December 2008). <https://undocs.org/en/A/RES/63/128>.
- UN General Assembly. *The Rule of Law at the National and International Levels*. A/RES/64/116 (16 December 2009). <https://undocs.org/en/A/RES/64/116>.

UN General Assembly. *The Rule of Law at the National and International Levels*. A/RES/ 65/32 (6 December 2010). <https://undocs.org/en/A/RES/65/32>.

UN General Assembly. *The Rule of Law at the National and International Levels*. A/RES/ 66/102 (9 December 2011). <https://undocs.org/en/%20A/RES/66/102>.

UN General Assembly. *The Rule of Law at the National and International Levels*. A/RES/ 67/97 (14 December 2012). <https://undocs.org/en/A/RES/67/97>.

UN General Assembly. *The Rule of Law at the National and International Levels*. A/RES/ 68/116 (16 December 2013). <https://undocs.org/en/A/RES/68/116>

UN General Assembly. *The Rule of Law at the National and International Levels*. A/RES/ 69/123 (10 December 2014). <https://undocs.org/en/A/RES/69/123>.

United Nations Secretary General. *The rule of law and transitional justice in conflict and post-conflict societies*. S/2004/616 (2004, August 23). <https://digitallibrary.un.org/record/527647?ln=en>.

Domestic legislation

Constitution 2002 (TL)

Law no. 19/2009 *Penal Code* (TL)

Law no. 7/2004 *Establishing the Provedor for Human Rights and Justice* (TL)

Law no. 8/2002 *Statute of Judicial Magistrates* (TL)

Law No. 8/2009 *Establishing the Anti-Corruption Commission* (TL)

Law no.7/2020 *Measures to prevent and combat corruption* (TL)

UNTAET Regulation 1999/01 *On the authority of the Transitional Administration in East Timor*

UNTAET Regulation 1999/03 *On the Establishment of a Transitional Judicial Service Commission*

UNTAET Regulation 2000/01 *On the establishment of the Central Fiscal Authority of East Timor*

UNTAET Regulations 2000/12 *On a provisional tax and customs regime for East Timor*

UNTAET Regulations 2000/11 *On the organization of courts in East Timor*

UNTAET Regulations 2000/18 *On a taxation system for East Timor*

PhD Theses

Babo Soares D. (2003). *Branching from the Trunk: East Timorese Perceptions of Nationalism in Transition* (doctoral thesis). Australian National University.

Lazarev, E. (2018). *Laws in Conflict: Legacies of War and Legal Pluralism in Chechnya* (doctoral thesis). Columbia University.

Leach, M. (2021). *A kaleidoscope of meaning fragments: Understanding the rule of law's paradoxes in international development* (doctoral thesis). Tilburg University.

Simion, K. (2018). *Translating Rule of Law to Myanmar: Intermediaries' Power and Influence* (doctoral thesis). Australian National University.

Webpages

- Al Jazeera. (2020, February 10). *Xanana Gusmao returns as East Timor PM in coalition government* | *East Timor News* | *Al Jazeera*. <https://www.aljazeera.com/news/2020/3/10/xanana-gusmao-returns-as-east-timor-pm-in-coalition-government>
- Allard, T. (2014, November 26). Exclusive: Timor PM protecting “corrupt” cabinet members. <https://www.smh.com.au/world/exclusive-timor-pm-protecting-corrupt-cabinet-members-20141125-11tosz.html>
- Amnesty International. (2009, August 27). *We cry for Justice: Impunity persists ten years on in Timor-Leste*, ASA 57/001/2009. available at: <https://www.refworld.org/docid/4a96305c2.html>.
- Amnesty International. (2011, August n.d). *Timor-Leste: Justice delayed, justice denied*. ASA 57/003/2011. <https://www.refworld.org/docid/4e3bd68317.html>.
- Amnesty International. (2012, August 14). *Ban Ki-moon must address UN’s failure to bring justice to Timor-Leste victims*. <https://www.refworld.org/docid/50304f1b875f.html>.
- Associacao Sindical dos Juizes Portugueses. (2015, November 11). *UIM resolution about the Portuguese judges working in East Timor*. <https://www.laohamutuk.org/Justice/2014/IAJ-UIM11Nov2014en.pdf>.
- Barker, A. (2017, February 9). *Australian citizen, former East Timorese minister fights against “unfair” seven-year jail sentence for corruption*. ABC News. <https://www.abc.net.au/news/2017-02-10/australian-fights-against-east-timors-unfair-jail-sentence/8256952>
- BBC News. (2019, December 11). *Citizenship Amendment Bill: India’s new ‘anti-Muslim’ law explained*. <https://www.bbc.co.uk/news/world-asia-india-50670393>.
- Commonwealth Magistrates’ & Judges’ Association. (2018, September 13). *Statement on the suspension of the Chief Justice of Lesotho*. <https://www.cmja.org/downloads/judicialindependence/CMJA%20Statement%20on%20Lesotho%20130918.pdf>.
- CSM Portugal. (2014, n.d). *Juízes em Timor-Leste: Comunicado CSM* <https://www.laohamutuk.org/Justice/2014/CSMComunicado4Nov2014pt.pdf>.
- de Oliveira, J. L. (2014, October 29). *Resolução do Parlamento Nacional No. 11/2014 (Da necessidade de Realização de uma Auditoria ao Sector da Justiça*. https://www.laohamutuk.org/Justice/2014/Jose%20Luis%20de%20Oliveira%20Koment%20Res%2011_2014.pdf.
- Directive by President of Court of Appeal. (2014, 28 October). *Letter from Chief Judge Guilhermino Da Silva directing all judges to continue working*. <https://www.laohamutuk.org/Justice/2014/TribRek28Oct2014pt.pdf>.
- Dobrowolski, P & Tyrmand, M. (2018, June 11). *‘There’s nothing authoritarian about Poland’s judicial reforms*. <https://www.theamericanconservative.com/articles/theres-nothing-authoritarian-about-polands-judicial-reforms/>
- East Timor Law and Justice Bulletin. (2012, December 22). *Defiant Lobato attacks East Timorese courts as politically biased*. <https://www.easttimorlawandjusticebulletin.com/2012/12/defiant-lobato-attacks-east-timorese.html>
- East Timor Law and Justice Bulletin. (2014, July 1). *Timor-Leste courts rule for ConocoPhillips in tax cases: ConocoPhillips appreciates Dili district court’s independence on tax cases*. <https://www.easttimorlawandjusticebulletin.com/2014/07/timor-leste-courts-rule-for.html>.

Evans, J. (2021, August 5). *In India, Hindu support for Modi's BJP varies by region, beliefs*. <https://www.pewresearch.org/fact-tank/2021/08/05/in-india-hindu-support-for-modis-party-varies-by-region-and-is-tied-to-beliefs-about-diet-and-language>.

Grewal, K. (2018, April 4). *Do We Need Human Rights Law?* <https://theconversation.com/do-we-need-human-rights-law-92242>.

Human Rights Watch. (2020, April 9). *Shoot the traitors: Discrimination against Muslims under India's new citizenship policy*. <https://www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy>.

IFEX. (2014, February 6). *East Timor takes on Australia over commercial spying allegations*. <https://ifex.org/east-timor-takes-on-australia-over-commercial-spying-allegations>.

International Commission of Jurists. (2018, May 15). *Lesotho: Authorities Must Ensure the Independence of the Judiciary and Reopen the Court of Appeal*. <https://www.icj.org/lesotho-authorities-must-ensure-the-independence-of-the-judiciary-and-reopen-the-court-of-appeal>.

IRIN News. (2014, December 15). *Timor-Leste's judicial lurch could worsen domestic violence trauma*. <https://www.laohamutuk.org/Justice/2014/IRIN15Dec2014.pdf>

Joint statement by ANTI (The Timor-Leste National Alliance for an International Tribunal) and Amnesty International. (2012, November 12). *Timor-Leste: Tackling impunity in Timor-Leste and Indonesia - Justice is the only way*. <https://www.refworld.org/docid/50a247cf2.html>.

JSMP. (2015, December 14). *Press Release*. <https://jsmp.tl/wp-content/uploads/2015/01/imunidade-wcju1.pdf>.

JSMP. (2017, December 11). *Justice Update*. www.jsmp.tl.

JSMP. (2018, September 27). *Press Release*. https://jsmp.tl/wp-content/uploads/PrPWPBanakdaFRE'TILINPromoveBoaGovernasaunnoKKN_ENGLISH.pdf

Justice Sathavy, K. (2003, December 19). *Hope for justice lies in school for judges*. The Phnom Penh Post. <https://www.phnompenhpost.com/national/hope-justice-lies-school-judges-0/>.

La'o Hamutuk. (2008, n.d). *Conference on the role of Parliament in promoting transparency, accountability and combating corruption*. <https://www.laohamutuk.org/econ/08LHCorruptionStmt.html>

La'o Hamutuk, (n.d.1). *Issue index: Corruption*. <https://www.laohamutuk.org/issues.html#corrupt>.

La'o Hamutuk, (n.d.2). *Mission Statement*. <https://www.laohamutuk.org/mission.html>

La'o Hamutuk. (2009, June). *Bulletin*. In *La'o Hamutuk Bulletin*. <https://www.laohamutuk.org/Bulletin/2009/Jun/bulletinv10n1.htm#editorial>

La'o Hamutuk. (2017, n.d). *Guerra case*. <https://www.laohamutuk.org/econ/corruption/Guerra/GuerraArticlesNov2017en.pdf>

La'o Hamutuk. (2019). *La'o Hamutuk institutu Timor-Leste ba monitor no analiza dezentvolvimentu submisaun ba komisaun a parlamentu nasional rdtl ba asuntu konstitusionais no justisa*. <https://www.laohamutuk.org/econ/corruption/2019/SubLHLeiAntiKorupsaun1Mar2019te.pdf>

La'o Hamutuk.(2020, August 27). *Draft anti-corruption law discussed, sleeps, discussed again*. <https://www.laohamutuk.org/econ/corruption/11AnticorruptionLaw.html>.

Lao Hamutuk. (2008, December 4). *Appeals Court invalidates state budget*. <https://www.laohamutuk.org/econ/MYBU08/BudgetRuledUnconstitutional08.html>

Observador. (2017, January 26). *Xanana Gusmão- defende- ex-ministra-timorense-condenada- e critica justiça*. <https://observador.pt/2017/01/26/xanana-gusmao-defende-ex-ministra-timorense-condenada-e-critica-justica/>.

O' Connor. P. (2020, June 15). *East Timorese government realignment shuts Xanana Gusmão out of power*. World Socialist Website. <https://www.wsws.org/en/articles/2020/06/15/timr-j15.html>

Oki, R. (2021, April 14). *Xanana Gusmão slaps mourners and sleeps in street outside Timor-Leste hospital in Covid-19 protest*. The Guardian. <https://www.theguardian.com/world/2021/apr/14/xanana-gusmao-slaps-mourners-and-sleeps-in-street-outside-timor-leste-hospital-in-covid-19-protest>

Rickard, C.(2018, July 20). *Passing the baton for judicial discipline in Seychelles*. <https://africanlii.org/article/20180720/passing-baton-judicial-discipline-seychelles>.

SASA. (2011, March 21). *Health social change and behaviour change network*. <https://www.comminit.com/health/content/sasa>.

Tempo Semanal. (2011, May 15). *Exklusif: Internal UN document says Xanana obstacle to constitutionalism*. <http://temposemanaltimor.blogspot.com/2011/05/exklusif-internal-un-document-says.html>.

The Asia Foundation. (2014, October24). *Legal note on National Parliament resolution No. 11/204 and Government Resolution 29/2014*. <https://www.laohamutuk.org/Justice/2014/TAF%20Briefing%20Note%20on%20NP%20Resolution%2011%202014%2024%20October.pdf>.

The Diplomat. (2020, June 1). *Timor-Leste's new kingmakers*. <https://thediplomat.com/2020/05/timor-lestes-new-kingmakers/>

The Hindu Business Line. (2018, January 18). *Supreme Court crisis: All not okay, democracy at stake, say four senior-most judges*. <https://www.thehindubusinessline.com/news/supreme-court-crisis-all-not-okay-democracy-at-stake-say-four-seniormost-judges/article10028921.ece>.

The Wire. (2018, January 12). *Loya case the tipping point, four SC judges say. Democracy is in Danger*. <https://thewire.in/law/sc-justices-hold-historic-press-conference-triggered-judge-loya-case>.

Tompson, A. (2018, September 26). *Poland's controversial judicial reforms in bid to 'de-communise' the country*. <http://ohrh.law.ox.ac.uk/polands-controversial-judicial-reforms-in-bid-to-de-communise-the-country>.

UNDP TL. (n.d.). *Justice system programme UNDP in Timor Leste*. https://www.tl.undp.org/content/timor_leste/en/home/all-projects/Justice-System-Programme.html.

UN OHCHR. (2014, November 25). *UN human rights expert urges Timor-Leste to reconsider dismissal of international judges and prosecutors*. <http://www.laohamutuk.org/Justice/2014/OHCHR25Nov2014a.pdf>.

United Nations and the Rule of Law (n.d). *The rule of law in the UN's intergovernmental work*. <https://www.un.org/ruleoflaw/what-is-the-rule-of-law-archived/the-rule-of-law-in-un-work/>.

United Nations Office on Drugs and Crime (n.d). *UNODC's action against corruption and economic crime*. <https://www.unodc.org/unodc/en/corruption/index.html>.

United Nations. (n.d 1). *What is the rule of law — United Nations and the rule of law*. <https://www.un.org/ruleoflaw/what-is-the-rule-of-law>.

United Nations. (n.d.2). *Dag Hammarskjöld: The UN years*. <https://www.un.org/depts/dhl/dag/time1955.htm>.

Upstream Staff and Reuters. (2014, November 5). *East Timor evicts judges over tax ruling - Upstreamonline.com*. <http://www.upstreamonline.com/live/1382552/>

van Zyl Smit. (2019, September 24). *The need for a better understanding of our judiciary has never been greater. Democratic Audit Blog*. <https://www.democraticaudit.com/2019/09/24/the-need-for-a-better-understanding-of-our-judiciary-has-never-been-greater>.

Veteran Association. (2014, October 29). *Veterans declaration*. <http://www.laohamutuk.org/Justice/2014/VetsDecl29Oct2014te.pdf>.

Wright, T. (2021, January 10). *The U.S. must now repair democracy at home and abroad. The Atlantic*. <https://www.theatlantic.com/ideas/archive/2021/01/us-must-now-stand-democracy-home-and-abroad/617626/>.

Wyvill, A. (2014, 16 November). *Report on relations between the judiciary and the government in Timor-Leste*. <https://www.laohamutuk.org/Justice/2014/WyvillReport20Nov2014.pdf>.

Reports & Working Papers

Alexander-Scott, M., Bell, E., & Holden, J. (2016). *DFID guidance note: Shifting social norms to tackle violence against women and girls (VAWG)*. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/507845/Shifting-Social-Norms-tackle-Violence-against-Women-Girls3.pdf.

Allen, T., & Macdonald, A. (2013). *Post-Conflict Traditional Justice: A Critical Overview*. <https://core.ac.uk/download/pdf/20050781.pdf>

Asia Justice and Rights. (2017). *Annual Report*. <http://asia-ajar.org/wp-content/uploads/2018/05/AJARs-2017-Annual-Report.pdf>.

Bell, C. (2015). *What we talk about when we talk about political settlements: Towards Inclusive and Open Political Settlements in an Era of Disillusionment*. The University of Edinburgh – Political Settlements Project. <https://www.research.ed.ac.uk/en/publications/what-we-talk-about-when-we-talk-about-political-settlements-toward>.

Cheng, C., Goodhand, J., and Meehan, P.(2018). *Securing and Sustaining Elite Bargains that Reduce Violent Conflict*. UK GOV Stabilisation Unit. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/765882/Elite_Bargains_and_Political_Deals_Project_-_Synthesis_Paper.pdf.

Collier, P. (2006). *Post conflict risks* (Working Paper 256). Centre for the Study of African Economies. <https://core.ac.uk/download/pdf/6250412.pdf>.

Di John, J., & Putzel, J. (2009). *Political settlements: Issues paper*. University of Birmingham. <http://epapers.bham.ac.uk/645/>.

European Development Fund. (2014). *National indicative program for the period 2014-2020*. https://eeas.europa.eu/sites/default/files/20141023_nip_timor_leste.pdf.

Fragility Assessment Team at Ministry of Finance. (2013). *Summary Report Fragility Assessment in Timor-Leste*. <https://www.adb.org/sites/default/files/linked-documents/cps-tim-2016-2020-sd-01.pdf>

Hammergren, L. (1998). *Institutional Strengthening and Justice Reform*. USAID. http://pdf.usaid.gov/pdf_docs/Pnacd020.pdf

- Hohe, T. & Nixon, R. (2003). *Reconciling justice: Traditional law and state judiciary in East Timor*. United States Institute of Peace. <http://www.gsdr.org/docs/open/ds33.pdf>.
- JSMP. (2004). *Overview of courts in East Timor in 2004*. <https://jsmp.tl/wp-content/uploads/2012/05/court-final-report-2004e.pdf>.
- JSMP. (2005). *Overview of Timor Leste justice sector 2005*. <https://jsmp.tl/wp-content/uploads/2012/05/Final-Overview-Report-2005-e.pdf>.
- JSMP. (2008). *Overview justice sector 2008*. <https://jsmp.tl/wp-content/uploads/2012/05/Overview-Justice-Sector-2008-English.pdf>.
- JSMP. (2009). *Overview justice sector 2009*. https://jsmp.tl/wp-content/uploads/2012/05/JSMP-Report-OJS_e.pdf.
- JSMP. (2011). *Overview of the justice sector 2011*. <https://jsmp.tl/wp-content/uploads/2012/06/OJS-2011-English.pdf>.
- JSMP. (2012). *Overview of the justice sector 2012*. <https://jsmp.tl/wp-content/uploads/2012/05/Overview-of-the-Justice-Sector-2012.pdf>.
- JSMP. (2013). *Overview of the justice sector 2013*. <https://jsmp.tl/wp-content/uploads/2012/05/Final-draft-of-OJS-2013-28-April-2014.pdf>.
- JSMP. (2014). *Overview of the justice sector 2014*. https://jsmp.tl/wp-content/uploads/2012/05/OJS-2014_ENGLISH.pdf.
- JSMP. (2015). *Overview of the justice sector 2015*. https://jsmp.tl/wp-content/uploads/2012/05/JSMP_OJS-2015_English_FINAL.pdf.
- JSMP. (2016). *Overview of the justice sector 2016*. https://jsmp.tl/wp-content/uploads/2012/05/OJS-2016-Final_English-Version_26-April-2017.pdf.
- JSMP. (2017). *Overview of the justice sector 2017*. https://jsmp.tl/wp-content/uploads/2018/05/OJS-Report-2017-Full_ENGLISH-l-1.pdf.
- JSMP. (2018). *Overview of the justice sector 2018*. https://jsmp.tl/wp-content/uploads/OJS-2018-report_ENGLISH.pdf.
- JSMP. (2020). *Overview of the justice sector 2020*. https://jsmp.tl/wp-content/uploads/Relatoriu-OJS-2020_-ENGLISH.pdf.
- Mehmood, S., & Seror, A. (2021). *Religious leaders and rule of law* (Working Paper 280). <https://ideas.repec.org/p/abo/neswpt/w0280.html>
- Melton, J. & Ginsburg, T. (2014). *Does de jure judicial independence really matter? A re-evaluation of explanations for judicial independence* (Working Paper No. 612). Coase-Sandor Institute for Law & Economics. https://chicagounbound.uchicago.edu/law_and_economics/179/.
- Office of Democracy and Governance- Rule of law division. (2001). *Guidance for promoting judicial independence and impartiality*. https://pdf.usaid.gov/pdf_docs/Pnacm003.pdf.
- Office of Democracy and Governance- Rule of Law Division. (2008). *Guide to rule of law country analysis: The rule of law strategic framework*. https://webcache.googleusercontent.com/search?q=cache:OF5p9R8_-30J:https://pdf.usaid.gov/pdf_docs/PNADT593.pdf+&cd=1&hl=en&ct=clnk&gl=uk.
- Parsons, J., Thornton, M., Eun Bang, H., Estep, B., Williams, K., & Weiner, N. (2008). *Developing indicators to measure the rule of law: A global approach a report to the world justice project*. Vera Institute of Justice. <https://www.vera.org/publications/developing-indicators-to-measure-the-rule-of-law-a-global-approach>.

Peake, G., Gormley-Heenan, M. & Fitzduff, M. (2004). *From warlords to peace lords: Local leadership capacity in peace processes*. Initiative on Conflict Resolution and Ethnicity (INCORE). University of Ulster. <http://www.incore.ulst.ac.uk/research/projects/wlpl/WlplFull.pdf>.

RDTL. (2010). *Justice sector strategic plan for Timor-Leste*. http://www.mj.gov.tl/files/JSSP_ENGLISH.pdf

Shetreet, S. (2011). *Fundamental values of the justice system* (Legal studies research paper series 20/2011). University of Cambridge. <http://www.law.cam.ac.uk/ssrn/>.

The Asia Foundation/USAID. (2004). *Law and justice in Timor-Leste: A survey of citizen awareness and attitudes regarding law and justice*. <https://www.charneyresearch.com/wp-content/uploads/2014/02/A-Survey-of-Citizen-Awareness-and-Attitudes-Regarding-Law-and-Justice-in-East-Timor-.pdf>.

The Asia Foundation/USAID survey. (2008). *Law and justice in Timor-Leste: A survey of citizen awareness and attitudes regarding law and justice*. <https://www.laohamutuk.org/Justice/08AsiaFoundationLawJusticeSurveyEn.pdf>.

Transparency International. (2008). *Human rights and corruption* (Working paper no. 5/2008). <https://www.transparency.org/en/publications/working-paper-no-5-2008-human-rights-and-corruption>.

U.S. Department of State Bureau of Democracy. (2013). *Country reports on human rights practices*. <https://2009-2017.state.gov/j/drl/rls/hrrpt/2012/eap/204244.htm>.

UNDP. (2013). *UNDP Project Document on Revised Justice System, Programme*. the file <https://www.un.org/ruleoflaw/files/Project%20Document%20UNDP%20in%20Timor%20Leste.pdf>.

UNDP. (2016). *Strengthening the rule of law and human rights for sustaining peace and fostering development*. <https://erc.undp.org/evaluation/managementresponses/keyaction/documents/download/612>.

UNDP. (2018). *UNDP Justice System Programme Annual Progress Report*. <https://info.undp.org/docs/pdc/Documents/TLS/JSP%20Annual%20Report%202017%20-%20Final.pdf>

UNDP. (2020). *Final Evaluation Report for JSP IV (January 2014- January 2020)*. [https://info.undp.org/docs/pdc/Documents/TLS/JSP%20Phase%20IV%20\(2014%20-%20Jan%202020\)%20Final%20Review%20Report_FINAL_300620.pdf](https://info.undp.org/docs/pdc/Documents/TLS/JSP%20Phase%20IV%20(2014%20-%20Jan%202020)%20Final%20Review%20Report_FINAL_300620.pdf).

United Nations Development Program. (2013). *Strengthening the rule of law on crisis affected and fragile situations*. <https://www.undp.org/publications/strengthening-rule-law-crisis-affected-and-fragile-situations>.

UNMIT. (2009). *Independent comprehensive needs assessment of the justice sector*. <https://www.laohamutuk.org/reports/UN/UNMIT/JusticeNeedsAssessmentOct09.pdf>.

USAID. (2005). *Anticorruption strategy*. <https://www.usaid.gov/sites/default/files/documents/1868/200mbo.pdf>.

USAID. (2008). *Guide to rule of law country analysis: The rule of law strategic framework a guide for USAID democracy and governance officers*. https://pdf.usaid.gov/pdf_docs/PNADT593.pdf.

YouTube videos

Abio Salsinha. (2021, February 8). *Xanana mahon ba Timor*. YouTube. <https://www.youtube.com/watch?v=fkjiNeTzm80>.

CNN. (2021, January 6). *Biden's speech as rioters invade Capitol*. YouTube. https://www.youtube.com/watch?v=BaTFqDNtuuc_

Oliver Queen. (2014a, November 4). Debate kona ba rezulusaun Parlamentu Nasional ho Xanana Gusmão 1/2. YouTube. <https://www.youtube.com/watch?v=bOwNfEYtVSk>.

Oliver Queen. (2014b, November 4). Debate kona ba rezulusaun Parlamentu Nasional ho Xanana Gusmão 2/2. YouTube. <https://www.youtube.com/watch?v=CV8qiMA29pY>.

Other

Government of Timor Leste. (2014). *Government Resolution No. 32: Revoking work visas of named foreign judicial personnel*. <https://www.laohamutuk.org/Justice/2014/GovRes32-2014en.pdf>.

Government of Timor Leste. (2014). *Government Resolution No. 29*. <http://www.laohamutuk.org/Justice/2014/GovRes29-2014en.pdf>

Government of Timor Leste. (2014). *Government Resolution No. 29*. <http://www.laohamutuk.org/Justice/2014/GovRes29-2014en.pdf>

National Parliament. (2014). *National Parliament Resolution No. 11: Audit in the Justice Sector*. <https://www.laohamutuk.org/Justice/2014/PNRes11en.pdf>.

Public Prosecutor v Armando dos Santos. (2003, July 15) UN-ETTACA Judgment. http://www.worldcourts.com/un_etta/eng/decisions/2003.07.15_Prosecutor_v_Dos_Santos.pdf.

UIM Resolution. (2014, November 11). <https://www.laohamutuk.org/Justice/2014/IAJ-UIM11Nov2014en.pdf>

United Nations Human Rights Office of the High Commissioner Statement. (2014, 25 November). *UN human rights expert urges Timor-Leste to reconsider dismissal of international judges and prosecutors*. available here [laohamutuk.org/Justice/2014/OHCHR25Nov2014a.pdf](https://www.laohamutuk.org/Justice/2014/OHCHR25Nov2014a.pdf).

Xanana Gusmao presentation 2 (2014b, 4 November) on *Tax cases in Dili Court: Errors made by public prosecutor*. <https://www.laohamutuk.org/Justice/2014/PUBLIC-PROSECUTER-ERRORS.pdf>.

Xanana Gusmao televised presentation 1. (2014a, 4 November.). *Tax cases in Dili court: Errors made by courts*. <https://www.laohamutuk.org/Justice/2014/COURT-ERRORS.pdf>.

APPENDIX

Interviews

	Interview Participants	Category	Experience
#1	Ministry of Justice	Timorese	Ex-Minister of Justice
#2	CAC Participant 1	Timorese	Senior official at Anti-Corruption Commission Experience working with international trainers from Italy, America, Portugal, Malaysia, Indonesia and Singapore
#3	CAC Participant 2	Timorese	Senior official at Anti-Corruption Commission Experience working in the Serious Crimes Unit, 2000-2002 Experience working with different international rule of law promoters at the courts and at anti-corruption commission
#4	CAC Participant 3	Timorese	Senior official I at Anti-Corruption Commission Experience working at the Office of Public Prosecutor
#5	CAC Participant 4	Timorese	Senior official at Anti-Corruption Commission Experience working with staff from bilateral and multilateral organisations, which are keen to support anti-corruption
#6	PDHJ Participant 1	Timorese	Senior official at the Office of the Provedor Experience working in the serious crimes unit, 2000-2002 Experience working at UNDP- Timor-Leste
#7	PDHJ Participant 2	Timorese	Senior official at the Office of the Provedor Experience engaging with Indonesian trainers on good governance
#8	PDHJ Participant 3	Timorese	Senior official at the Office of the Provedor Experience engaging with the members of the National Parliament for appointing Commissioners and Senior Officials at CAC and PDHJ Experience interacting with international rule of law promoters from Australia, United States, Portugal, Spain
#9	UNDP Staff 2	Timorese	Senior official at UNDP Experience working at UNDP for more than five years Coordinating bilateral/multilateral initiatives to strengthen Legal Training Centre, and institutions within the justice sector
#10	Lawyer 2	Timorese	Independent legal professional

Interview Participants		Category	Experience
			Working as a lawyer for more than ten years
#11	Lawyer 3	Timorese	Independent legal professional Working as a lawyer for more than five years, represented a few public officials who were accused of abuse of public office
#12	Lawyer 4	Timorese	Government lawyer at the Ministry of Finance
#13	CSO participant 1	Timorese	Senior staff working on anti-corruption and parliament monitoring
#14	CSO participant 2	Timorese	Junior staff working on corruption and parliament monitoring
#15	CSO participant 3	International	Senior staff Experience leading debates against corruption, public finances, international aid
#16	CSO participant 4	Timorese	Junior Staff Experience leading debates against corruption, public finances, international aid
#17	CSO participant 5	Timorese	Senior Staff Clandestine student activist during Indonesian occupation Experience working on anti-corruption, elections
#18	CSO participant 6	Timorese	Director Experience working on a range of social issues including corruption, judicial independence, access to justice Experience engaging with international bilateral/multilateral donors for rule of law programmes
#19	CEPAD participant 1	Timorese	Director Experience working on anti-corruption, good governance issues Experience engaging with international bilateral/ multilateral donors for rule of law programmes
#20	CSO participant 7	Timorese	Senior Staff Experience working on a range of social issues including corruption, judicial independence, access to justice Experience engaging with international bilateral/ multilateral donors for rule of law programmes

	Interview Participants	Category	Experience
#21	CSO participant 8	Timorese	Senior Staff Experience working on a range of social issues including corruption, judicial independence, access to justice Experience engaging with international bilateral/multilateral donors for rule of law programmes
#22	LABEH participant 1	Timorese	Senior Staff Experience working on anti-corruption, good governance issues Direct engagement with members of National Parliament to tackle corruption ‘Victim’ of corruption charges Experience engaging with international bilateral/multilateral donors for rule of law programmes
#23	DFAT Contractor	International	Computerisation of Timorese courts Case management system Engagement with the Timorese ruling elite Engagement with other international rule of law promoters in East Timor during 2002-2008
#24	EEAS staff 1	International	Experience setting up PDHJ in East Timor
#25	EEAS staff 2	International	Supporting Timorese civil society and government on good governance measures
#26	UN staff 3	International	Experience working in East Timor over ten years over a range of sectors
#27	International ex-adviser 1	International	Experience supporting ex-President as well as other senior members of the National Parliament
#28	International ex-adviser 2	International	Experience supporting ex-President of Timor-Leste
#29	USAID Staff	International	Experience supporting anti-corruption mission in East Timor
#30	Focus group discussion with law students at UNTL	Timorese	Participated in protests on anti-corruption Trained by international trainers
#31	Focus group discussion with LTC trainees	Timorese	Previous experience working in courts Trained by internationals Engaged in local politics

	Interview Participants	Category	Experience
#32	Asia Foundation staff 1	International	Experience working on justice sector issues
#33	GiZ staff/ CSO participant 9	Timorese	Experience working in civil society Associated with a local CSO in the past and worked on petroleum oil issues
#34	Michael Leach	International	Leading academic in East Timor's politics
#35	Ministry of Justice staff 2	Timorese	Experience engaging with local leaders, members of the national parliament and international donors
#36	Ministry of Justice staff 3	Timorese	Experience leading LTC Experience working with a range of international technical advisers at the LTC and the Ministry of Justice
#37	JICA staff 1	International	Experience supporting justice sector reforms in East Timor
#38	International Judge 1	International/ Portuguese	Experience supporting Timorese trainees at the LTC, and Timorese officials at the Public Defenders' Office, courts and the Office of the Public Prosecutor
#39	International Judge 2	International/ Portuguese	Experience supporting Timorese trainees at the LTC Judicial Inspector
#40	Prosecutor 1	Timorese	Senior official at the office of the Prosecutor Part of the first batch of UNTAET recruitment
#41	DFAT Staff 1	Timorese	Experience working on justice sector issues
#42	PDO participant 1/ International technical adviser 1	International/Brazilian	Senior legal adviser at the Public Defenders' Office
#43	PDO participant 2/ International technical adviser 2	International/Brazilian	Legal adviser to at the Public Defenders' Office
#44	PDO participant 3	Timorese	Senior official at the Public Defenders' Office Part of the first batch of UNTAET recruitment
#45	Judge 1	Timorese	Second class judge Part of the first batch of UNTAET recruitment
#46	Judge 2	Timorese	Second class Judge
#47	LTC Participant 1	Timorese	Tetum legal language trainer Experience working with international advisers at the LTC and outside the justice sector
#48	LTC Participant 2/ International technical adviser 3	International	Portuguese legal language trainer at LTC
#49	Portuguese lawyer 1/ International technical adviser 4	International	Legal trainer at the law department UNTL

	Interview Participants	Category	Experience
#50	Portuguese lawyer 2/ International technical adviser 5	International	Legal trainer at the law department UNTL
#51	Staff UNTL 1	Timorese	Senior staff at the law department Expatriate in Angola during the resistance period
#52	Staff UNTL 2	Timorese	Senior staff at UNTL Experience managing international staff and researchers based at the University
#53	Staff UNTL 3	Timorese	Senior staff at Centre for Peace, UNTL Experience managing international staff and researchers based at the University
#54	Staff UNTL 4	Timorese	Junior Staff at Centre for Peace, UNTL
#55	Helen Hill	International	Academic involved in promoting the Timorese independence movement in the 1990s. Worked with multiple generations of Timorese students at local schools and at UNTL to improve their educational opportunities
#56	Kelly Silva	International	An academic and anthropologist, who has researched on international aid in East Timor. Also worked on traditional legal system.
#57	Rebecca Engel	International	Academic who has researched on the World Bank's aid support to the Timorese government. Involved with BELUM, a local NGO.
#58	Sara ten Brinke	International	Anthropologist who was present in the field collecting data on democracy and political mobilisation amongst the youth in East Timor
#59	Laura Burke	International	Anthropologist, present in the field researching on family planning
#60	Mica Barreto Soares	Timorese	Researcher on China-Timor-Leste relations Previous experience working at CAC RENETIL member
#61	UNDP Staff 4	International	Senior staff assisting with democracy, governance, justice sector issues
#62	UNDP Staff 5	International	Junior staff member assisting with democracy, governance, justice sector issues
#63	Myriam Minder	International	Researcher on traditional law in East Timor who was present in the field collecting data on traditional customs

Note: During data collection, I observed the multiplicity of roles undertaken by Timorese stakeholders during the 20 years post-independence. As pointed out in the thesis, not having enough trained personnel meant that there was only a handful of Timorese officials who alternated

between each other taking top roles within the state institutions. As a result, while interviewing senior officials, I could inquire on a wide range of questions and get a broader perspective of how transnational rule-of-law promotion played out ‘in action’. But there were also some disadvantages. Our discussions about justice sector reforms were often broad, with the participants reminiscing about experiences of their different roles and their engagements with the international technical partners. For example, during the interview, an official at the Ombudsman’s office would reflect on their role as a public defendant in the Serious Crimes Panel or within the anti-corruption commission and working with the international technical advisers instead of recounting their experiences solely within the Ombudsman’s office. While writing up the data it was especially challenging to attribute data accurately. To overcome this limitation, wherever applicable, I have indicated the interviewee’s position within a particular institution at the time of their recollected memory.

Interviews with staff in international development organisations: Challenges in gaining their ‘real’ perspectives

Limitations while interviewing elites to understand what is happening in reality have already been highlighted (Laurila, 1997; Mikecz, 2012). Researchers have also pointed out the difficulties of gaining access to and trust of elite interviewees (Laurila, 1997; Mikecz, 2012; Higgins, 2019). As officials leading projects and determining their course on the ground, elites often guard actual information and instead provide official narratives. They are trained to deliver ‘public relations’ versions of events rather than actual strategies and personal accounts of the projects in which they have been involved (Mikecz, 2012). Thus, gaining access to the desired data might also be tricky while engaging with elite participants. I highlight one such methodological concern I encountered during my research and pose questions about the limitation of gathering evidence of rule-of-law reform projects in practice and drawing conclusions of a project’s ‘successes’ and ‘failures’.

Staff at the international organisations are the gatekeepers of international projects. As officials involved in translating international ideals to local realities, they subscribe to the idealisms of the ‘global project’ and vouch for the similarity and uniformity in human experiences. They work tirelessly to demonstrate that their policy plans work and that their projects matter (Mosse, 2011). In his study of development practitioners, Mosse notes that the “project officials work hard to maintain representations even while, to varying degrees, they are aware of and uneasy about the contradictions that underlie growing coherence” (2004, p. 182). They sustain such representations through promotional pamphlets, posters, slogans, wall hangings or photo displays in the project offices, and evaluation reports (Mosse, 2005, p. 164). The international rule-of-law promoters in East Timor also fell into the same category. During formal interviews, the internationals narrated accounts of how their teams carried out projects competently, whereas in informal settings, they were more open about the difficulties and challenges that are intrinsic to carrying out reform projects in transitional states.

In his writings, Mosse notes that historically, the structure of programme evaluations and reporting has further consolidated how programme officials speak about their activities in formal settings. He points out that the inducted project staff, who are influenced by the audit culture of the agency, represent “events in terms of normative models, [remove] contingency, history (and politics) and [push] towards the timelessness of a policy idea. Reports, briefing papers, Aide memoires, terms of reference all [help] to provide an enduring map of the territory, lending stability to knowledge

about the project, affirming its models and creating the comforting illusion that the project implemented policy was successful because it was well designed” (Mosse, 2005, p. 164). Therefore, acknowledging imperfections officially would mean admitting that the projects, in reality, do not transpire in intended ways and often lead to negligible progress, or no progress at all (Mosse, 2011).

International staff in the UN and other multilateral organisations also distanced their experiences from the realities on the ground during the formal interviews. This ‘apolitical’ and ‘impartial’ technocratic stance allows them an easier entry point in targeted societies than organisations that are actively political or activist (Niezen, 2017). This separation from reality helps development practitioners to “allow reason to rule and allow history to be arranged as the unfolding of a location less [policy] logic” (Mitchell, 2002, p. 15, 36 in Mosse, 2005, p. 231). As a result, the internationals were silent about the aspects of their initiatives, the wider politics of aid and the local reality (Mosse, 2005, p.231) during our initial encounters. Instead, they tried to protect policy models by veiling the processes and practical experiences.

The internationals followed strict protocols – they requested that I provide them with my research ethics document issued by King’s, preliminary interview questions and details about my research. In comparison, the local officials were more laidback and less apprehensive about my requests for an interview. At another interview, with USAID staff, I was asked to meet alone and undergo extensive security checks and was refused permission to carry any electronic devices into the offices. These instances further encouraged me to reflect on the opaque structures of the international aid industry.

Saving the truth or keeping silent about the processes also aids officials in continuing their initiatives in a targeted society. This reality draws our attention to the practical reasons why staff associated with international organisations often choose to provide ‘official’ narratives. The internationals have access to certain sectors because they are at the mercy of the government or the ruling elite. Speaking out about uncomfortable truths and criticising the elite in power could mean that their engagements could be terminated. Nygaard-Christensen (2017) provides a helpful description of the consequences in East Timor after a document leak from the UN. Nygaard-Christensen (2017) notes that the association of the document criticising Xanana to the UN mission even threatened the UN’s mandate in the country. To minimise the impact of the document leak, the UN mission in East Timor at the time (UNMIT) had to issue a press release stating that the document “did not represent the official views of the UNMIT” and that the

“UNMIT views are communicated directly to the Timorese government” (UNMIT, 2011). UNMIT pointed out that it was an “individual” opinion, not an “institutional” one (Nygaard-Christensen, 2017; Karlsson, 2013, p. 5). By making the distinction, UNMIT emphasised how the UN documents follow an intense process of drafting, negotiations, amendments, and withdrawals of texts to appease all parties (Riles, 2001, p. 74; Nygaard-Christensen, 2017, p. 202).

Therefore, speaking out about what is happening on the ground could mean that their own or their colleagues’ and/or their organisation’s image and credibility could be affected. The hesitancy of some of the international aid staff to ‘formally’ provide interviews for the current research is therefore indicative of the caution that those who are in the middle must exercise.

For a researcher, such ground realities pose limitations while gathering data on experiences, perspectives, and views, and generally collecting evidence of the negotiations and compromises the transnationals had to make to transfer transnational aspirations locally (fieldnotes, 2018). However, these limitations can be overcome if the researcher uses strategies that assist the informants in breaking away from their “templates for thinking and talking about events, reporting or communicating to outsiders” (Mosse, 2005, p.154). I resorted to informal conversations and building a rapport over time with the internationals in the field to gather information beyond their official accounts. Extending my stay and spending more time in the field allowed me to continually and successfully reinforce my contact and credibility (Brewer, 1993, pp. 130-131) with the research participants. Informal meetings can help, where researchers can just ‘hang around’, engage in informal conversations, and, if possible, observe the staff members carrying out their roles while in the field. It can expose the negotiations, thoughts and opinions that go on behind the scenes before finalising a formal report and provide a preview of what is happening on the ground. Maintaining positive relations and trust with the participants is also necessary to transform informal conversations into candid opportunities to collect insights and information from elite interviewees, which may otherwise be difficult to access. A researcher carrying out interviews with staff from international organisations therefore must bear in mind the institutional and professional constraints within which the participants are situated and reflect on how these aspects affect the data collected formally from these stakeholders.

Statement on positionality

- Situating my research

Writing on positionality, Malterud (2001) has astutely observed how a researcher's background and position influences what they investigate, the methods that are used or their data collection, and the findings that are considered appropriate to record. My experiences as a researcher working on law and development projects shaped my initial disposition to my research question. When I started my thesis and while I was preparing my research design, my initial hypotheses revolved around proving how the international rule-of-law promoters cannot know what works for local contexts. I was influenced by my research experience in India, scoping for the World Bank Land Governance Project and by my critical legal educational background from SOAS. I was convinced that the homogenous structures that the internationals transferred through imposing conditionalities and aid projects simply would not stick or work for local settings.

My position towards the international rule of law projects started to shift while preparing for my fieldwork. I reached out to many international rule of law technical advisers within different multilateral and bilateral organisations to discuss their experiences transferring new laws and institutions to faraway settings. Despite the varying countries and social settings in which they were stationed, I observed that there were some common themes that emerged during our conversations. Stubborn elite leaders, limited funds and human resources, lack of language expertise, and changing donor priorities were flagged as issues that hindered the 'transferors' in carrying out their roles 'perfectly'. Getting a glimpse of the other side's concerns encouraged me to open up my theoretical frame and shift my observational lens so that I could see beyond transnational legal transfers as opposing power dynamics of powerful versus weak nations.

While in East Timor, a more open observational frame helped me to observe and capture the competition and challenges that different international rule of law transferors faced locally. Field observations revealed a messier and more complicated picture of transnational engagements. I noticed that if I had taken the critical frame, I would have only observed how the expatriates lived in their wealthy enclaves, separate from the realities of the local Timorese. Being in the field for some time allowed me to observe how the Timorese's discontent with the internationals did not permeate to all their interventions. For instance, within the justice sector, the presence of international technical advisers was seen as helpful and constructive, which was not necessarily the case in other sectors.

Being in the field also allowed me to see that contesting ‘local interests’ were not monolithic either. Some of the Timorese resisted international state-building because they perceived it as a threat to their known ways of being. During our conversations, they expressed their beliefs in the traditional dispute resolutions where the ancestral spirits were assumed to guide the resolution. Looking beyond the critical frame pushed me to observe such social dynamics. From the second month of my data collection, I started consciously refining my interview questions to understand the dynamics that were playing out between the transnational and local actors. How did the latter engage with their transnational counterparts, and what difficulties did they find in adopting the transnational standards? Why was there resistance to adapting to new norms? Were there any initiatives by the Timorese or the internationals that focused on overcoming these challenges?

While in the field, I had also made fieldnotes on the limitations of officers within the courts and other judicial institutions. I noticed that unlike what has been written about authoritarian states in Singapore, Burma or China, the social setting within East Timor was different. It had a vibrant political culture, open forums for political debate, extensive opportunities for cross border transnational engagements and several thriving small CSOs. I had documented *why* my interviewees felt that the ideal standards of the rule of law values have not been “reached yet” and that it is “not yet” time for fully transitioning from a young state to an established democracy. I had already made a note of close collaborations and initiatives that were carried out by local CSOs and their international partners. ‘Casting the net wide’ and being open to different narratives from a wider group of stakeholders helped me to gather the thicker data that I needed. The small size of East Timor – especially the capital city, Dili, which was the heart of all international, local and national events – also helped me during my data gathering. I could gather more information than was needed to study my research question. It also gave me easier access to individuals and institutions. Having said that, my identity as a ‘cosmopolitan’ researcher, originally from India but based at a UK university, also impacted the data I could collect from my informants.

- Situating myself as researcher

Every researcher finds distinct identities in the field (Brewer, 2004); sometimes a researcher actively constructs their identity but often research participants co-construct the identity of the researcher to make sense of their role in the field (Hayward and Cassell, 2018). I had to reflect on my identity in East Timor on the day of my arrival in the field. At the border control, which was an open room connected to the runway and the baggage belt, I was immediately made aware of

my ‘otherness’ from other ‘international’ travellers. Two border control officials, who were verifying passports and approving visa on arrivals, informed me that since I am an Indian citizen their supervisor had to give permission for me to enter the country although all internationals, on paper, must follow the same rules to enter the country on a tourist visa. Other passengers who had Portuguese/Brazilian/Australian passports were allowed their visas without any fuss. Luckily, I had pre-empted such a situation at the airport after reading about South Asian travellers’ plights at the border control in East Timor.

I already had a letter from the Timorese Ministry of Foreign Affairs and the Timorese Embassy in the UK, who had approved my visit for research. The superior officer looked at the signature at the bottom of the letter and told me that it was a senior person in the Ministry, and he would let me enter the country. A few days into my stay, someone researching corruption amongst the border force officials informed me that the ‘unequal’ treatment I received was usually reserved for visitors from ‘certain nations’ prone to economic migration. The person went on to allude that such perceptions were encouraged by the EU-backed donor training for the border force, which had transferred similar discourses within the EU to East Timor. It was all hearsay, and I never saw or heard anything that further proved the assertion. But I noticed that as the researcher pointed out, the Timorese’s aspirations of being a “little Portugal in South Asia” were visible in other spheres of everyday social life. The wealthier Timorese citizens especially took pride in their ability to speak Portuguese fluently, watch Portuguese television, shop at the local Portuguese supermarket and spend their weekends at the local Portuguese restaurants. During our conversations, they also emphasised the difference of East Timor, being a catholic, democratic county compared to its other Southeast Asian neighbours. It is worth noting that many of these Timorese citizens had either lived in Portugal during the resistance or had some connection with Portugal.

Initially I was worried that my lack of Portuguese language skills could limit me from accessing interview participants. But contrary to my fears when I began my interviews with the Timorese officials and local citizens, they were warm and welcoming and were happy to find an English-speaking researcher. They were also delighted to know that I am originally from India. Many of them who took key positions in the governmental departments were in their mid-to-late forties or early fifties. During our meetings, they mentioned watching Indonesian television during the occupation, which played lots of Bollywood movies during their teenage years. Many of the top Timorese officials started our discussion by referring to a Bollywood song or hit (mainly “*Kuch*

Kuch Hota Hai”) from the 1990s.¹ I noticed that it was a ritual of some sort, where the participants were building a common ground with me, where they would draw similarities between my life experiences and theirs. Towards the end of our interview and after building a rapport, they would also note that they were expecting a “*malae*”² to show up when they read that I was a researcher from King’s College, London.

Furthermore, I found that I could easily build a rapport with the Timorese interviewees, as their friendly and social ways were familiar to me. I was asked questions about my personal life and my family. Being brought up in a small town in Kerala and having conducted fieldwork in many villages in India, I was familiar with this mode of social interaction where personal and professional boundaries are blurred while the participants strike a familiarity with the interviewer. Hence, I did not shy away from answering questions about where my husband was, why I was not married or why I did not have any children even though I am in my thirties.

In addition, before entering the field I had combed through all the material I could find that could inform me about the Timorese culture and social etiquette. During my scoping interviews, I reached out to others who had been to the country to understand what would and would not work during conversations with the Timorese participants. An Australian researcher told me to always remember the cardinal rule of not to speak loudly or in a commanding voice (which I was not planning to do anyway). The same advice was also reflected by the Canadian government’s advice to researchers and volunteers planning their trip to East Timor (Canadian Government archived material, in file).³

Beyond the rituals of social interactions that made it easier to break the ice with the interviewees, I also noticed that my post-colonial identity also worked in my favour. During the interviews, especially when the participants had to engage with questions on why something was not working well – regarding implementation of a law or policy, or prevalent corruption in the country – they

¹ During my initial interviews I clarified that I am from the South of India – Kerala – where Bollywood films are less celebrated. But upon hearing this, my interviewees looked disappointed, so as weeks went by, I made conscious efforts to not share this information with them.

² Referring to expats who are white; “*malae mutin*” refers to internationals who are black. I did not qualify as either because of my ‘brown’ skin colour, which was closer to the complexion of the Timorese. This was pointed out informally to me on multiple occasions by many Timorese people during my stay in the field.

³ While in the field, some of my Timorese friends explained to me that the Timorese are friendly, and they would never show their discontent to someone’s face. But if they feel someone is ordering them around, they will just say yes and ignore them. I was told this was the “indomitable spirit” of the Timorese, which helped them win their independence.

would suggest that I would understand, as I am originally from a country which has a colonial history and is currently developing. My informants would say “oh you would understand” when it came to discussing the adoption of the Portuguese language and the challenges that came with it (referring to India’s adoption of English as an official language), or difficulties in overriding traditional practices or the continuing corrupt practices within a country that is predominantly poor and has living heroes.

Although India’s tryst with colonialism and its developments post-independence are different from East Timor’s, the common history of being ruled by different global powers made my Timorese interview participants presume that I would “understand” their realities as well. This perception of me as a comrade of sorts made them more open and willing to share information and their struggles working with experts, especially from the Global North. From their accounts of their trepidations and anxieties working with *malaes* from the developed world, I observed that they were trying to strike a similar chord with me. Thus, although I was very much an “outsider”, I was perceived as an “insider”⁴ somehow – as an “insider” who could understand and sympathise with the challenges, rather than someone who “judged” them (Herod, 1999). These perceptions by the Timorese interviewees, I believe, had a profound impact on the data they shared with me. It is worth noting that being perceived as an ‘insider’/‘outsider’ is a double-edged sword. Sometimes being considered as an insider could hinder interviewees from sharing information, thinking that the researcher is part of the establishment they are resisting. As Herod (1999) points out, a researcher needs to reflect how their identity establishes connections with participants and how that could change from one context to the other. I was perceived more or less as an ‘insider’ for conducting interview with my research assistant by the staff at the Delegation of the European Union to Timor-Leste. As a result, I could collect very little information from the informant in comparison to my interviews with the Timorese staff.

In the field, I found difficulties in drawing a “critical distance” (Hayward and Cassell, 2018) from the accounts (Becker, 1967) provided by the Timorese informants. As a result, analysing data while in the field was a challenge. However, after leaving the field, the ‘distance’ away from the interview participants allowed me the space and time to observe the data with objectivity. Hammerslev and Atkinson (1995) advise researchers to critically scrutinise the impact of the ‘field’ to minimise

⁴ Please note that when I use ‘insider’/‘outsider’ categories, I follow Griffith’s (1998) discussions on the insider as someone whose personal biography gives them a ‘lived familiarity’, a priori knowledge of the group researched, and the outsider as a person who does not have any prior intimate knowledge of the group being researched. Perceptions of being an ‘insider’ can help in building trust and receiving more honest answers and the ability to provide a ‘thick’ description (see Geertz, 1973).

potential subjective contamination of data. They note that an internal reflexivity can assist researchers to reflect on their positions and relations with the interview participants and the kind of data gathered from the field. Relying on semi-structured interviews and multiple sources of data allowed me to ensure that a “critical distance” was maintained while collecting (Hayward and Cassell, 2018). As scholarship illustrates (Berger and Luckmann, 1966; Becker, 1967; Cunliffe and Karunanayake, 2013; Hayward and Cassell, 2018), one of the main challenges of a qualitative researcher remains constructing knowledge while acknowledging how subjectivity and positionality could impact research. Only through active and ongoing critique and reflexivity of the researcher’s own positionality and their participants can researchers produce replicable data and generalisations of the complexities of the social world that they study.

Relying on a research assistant

Recent scholarship has also demonstrated how locally-based assistants aid in research within post-conflict and conflict settings (Jenkins, 2018) and why it is necessary to reflect on the collaboration and the ethical dilemmas that emerge from such reliance (Jenkins, 2018, p. 144). Although most of my interviewees spoke English to an extent and I could converse in basic Tetum, I recruited a research assistant, thanks to a fieldwork bursary I received from the university law department. I relied on my research assistant to help me with drafting requests for interviews in Tetum and translating during interviews, when necessary. Having a research assistant who could converse in Tetum, Portuguese and English and who was aware of the organisational culture was helpful for navigating local interview protocols and etiquette.

Timorese interviewees welcomed the presence of my research assistant as they viewed him as a “*generasaun foun*” (new generation) who was interested in the workings of the state machinery. My RA’s presence also made it difficult for the Timorese interviewees to avoid my questions regarding resistance leaders and, in particular, regarding Xanana. They were more open to speaking about the difficulties of living alongside the resistance leaders, sometimes giving me more details than I sought. In hindsight, I doubt whether they would have been forthcoming as they were if I were on my own. Within the scholarship, Smyth (2005, p. 17) observes that assistants can mobilise their pre-existing social networks, their proficiency in local language and their familiarity with the social and local political context to open new avenues for data collection. Although my research assistant did not have experience researching legal issues, he had assisted a local CSO in their study of the 2006 political crisis in the past. This experience gave my research assistant a substantial understanding of the local politics and the tensions that exist between different resistance leaders. He was also well-versed in research and disclosure protocols.

However, having a Timorese RA tagging along with me was not always constructive. During an interview with the European Union External Action (EEAS) programme manager, the official was disconcerted that I was accompanied by a research assistant. They questioned me about confidentiality, research ethics and my agreement with my research assistant regarding disclosure of the information shared during the interviews. These were all relevant questions that I had discussed at the beginning of my fieldwork with the RA. My RA had carried out sensitive research in the past, dealing with the 2006 political crisis in the country, and was aware of the protocols concerning anonymity and non-disclosure. For the interviewee in question, their worry was more about having a Timorese person present when discussing the local challenges or key figures in the

society. They were worried that information could get out to the local leaders and jeopardise the organisation's goodwill with the officials. Not surprisingly, that interview did not go well, and I did not get any information that I wanted. Berreman (2012) also reports of similar experiences where his access to high-caste groups in a Himalayan village was curtailed of after he switched from relying on an upper-caste research assistant to a Muslim assistant. Therefore, Berreman notes, and Jenkins (2018, p. 148) concedes, that a researcher must critically reflect not only on their positionality but also on their local assistant's positionality when assessing the nature of data gathered. After the incident with the EEAS staff, for my other interviews with international participants I carried out the interviews alone.

Political Parties in East Timor

- Revolutionary Front for an Independent East Timor (Frente Revolucionaria de Timor-Leste Independent, FRETILIN): The oldest party in East Timor, which fought for independence from Portugal and continued to be the political wing of FALINTIL. FRETILIN is currently headed by Mari Alkatiri, who fought for Timorese independence from the diplomatic front. Lú-olo, the current President, is also the President of FRETILIN and a resistance fighter.
- National Congress for Timorese Reconstruction (Conselho Nacional de Reconstrucao de Timor, CNRT): A political party formed under Xanana Gusmão's leadership in 2007. Those who study political parties in East Timor observe that CNRT was formed as a result of the enmity between Xanana and Mari Alkatiri, which dates back to the 1980s. (Shoesmith, 2003) CNRT and FRETILIN still continue to be the major parties, although other small parties are emerging. CNRT won the elections in 2007 and then in 2012; in 2018 they formed a coalition with PLP.
- People's Liberation Party (PLP): This party is led by the former FALINTIL resistance commander, Taur Matan Ruak. The beginnings of the Party date back to 2012, when Taur, who was President, criticised Xanana and Alkatiri for widespread corruption. He alleged that they benefitted their families with lucrative government contracts. In 2018, Taur formed a coalition with Xanana's CNRT party and became Prime Minister. As of 2020, his relationship with Xanana and CNRT has deteriorated.

- The other minor parties are the Democratic Party (Partido Democratico), the Social Democratic Party (Partido Social Democrata), the Timorese Social Democratic Association (Associacao Social-Democrata Timorese), the Timorese Democratic Union (Uniao Democratica Timorese), the Timorese Nationalist Party (Partido Nacionalista Timorese), the Association of Timorese Heroes (Klibur Oan Timor Asuwain), the People's Party of Timor (Partido do Povo de Timor), the Christian Democratic Party (Partido Democrata Cristao), the Socialist Party of Timor (Partido Socialista de Timor), the Liberal Party (Partai Liberal), the Christian Democratic Union of Timor (Uniao Democrata-Crista de Timor), Frente-Mudanca, People's Liberation Party (Partidu Libertasaun Popular), Kmanek Haburas Unidade Nasional Timor Oan (KHUNTO). In 2018, KHUNTO joined with CNRT and PLP to form a government.

All the major political parties are led by resistance leaders and, to date, the position of President has always been occupied by one of them. Except for Dr Rui Maria de Araujo, who was appointed as the Prime Minister in 2015, the other Prime Ministers have also been resistance leaders. The competition between East Timor's political parties was described by the Timorese citizens as a battle between the key resistance leaders, who want to lead and make decisions on behalf of the Timorese state. Even though many Timorese criticise the resistance leaders for not giving way to the younger generation, no one has so far dared to oust them from power or take on the senior leadership roles.

Some snapshots from the field



A billboard that was displayed opposite the National Parliament in May 2018 before the swearing-in ceremony of the new government. Although Taur Matan Ruak was elected as Prime Minister, Xanana's face appears alongside the nominated cabinet members. My friends at UNTL often pointed at the billboard and joked how it showed that the new cabinet had "Xanana's blessings". In 2020, the situation had changed and Xanana withdrew his support of Taur's government.



An election campaign poster for the AMP coalition in 2018. Taur Matan Ruak (left) and Xanana (centre) are depicted in their guerrilla uniforms, whereas KHUNTO's Naimori in the headgear of a traditional chief. As noted in Chapter VII, exclusionary lines were drawn between the leaders from the diplomatic and the resistance fronts. Such motifs that evoke nationalist sentiments to garner support were commonly used during the 2018 elections.



The First President Nicolau Lobato's statue. Lobato continues to be a revered figure and symbol of the Timorese resistance movement.

The occupying Indonesian military forces shot him during the occupation in 1978. No one knows what happened to his body after the Indonesians got hold of him. The Timorese government continue to demand the Indonesian government disclose what happened to his body so that their hero can be given a proper burial. Similar symbolic representations of the resistance movement can be seen throughout the capital city, Dili.



Graffiti opposite the Ministry of Finance, slandering the ex-Minister of Finance, Emilia Pires, whose corruption case I summarised in Chapter VIII. Local residents informed me that the graffiti appeared after Pires was given the clearance to leave for Portugal. Pires had never served her conviction for corruption and her name was often mentioned by the new generation Timorese and the CSO members to point out the challenges that exist within the justice system.



Posters against corruption were common in public spaces. This poster loosely translates as “it might be one person who is corrupt, but it makes many poor”.



The poster shows children posing with placards, “lets fight corruption” and “let’s build a strong future for us”.



“Do not receive or give bribes, Contact CAC. Detest corruption. Shame the corruptor”.