



## **Human Rights Council**

### **Universal Periodic Review (UPR) of the Democratic Republic of Timor-Leste 12<sup>th</sup> Session (October 2011)**

**Joint Stakeholders' Submission on:**

### **The Situation on the Rights of the Child in the Democratic Republic of Timor-Leste**

**Submitted by:**

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**(NGOs in Consultative Status with ECOSOC)**

**and**

**Marist International Solidarity Foundation (FMSI)**

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## **I. Introduction**

1. This stakeholders' report is a joint submission of the above-mentioned organizations. The report highlights key concerns related to the **Rights of the Child** in Timor-Leste in following areas: *juvenile justice system, violence against children and the right to education*. Each section conveys recommendations to the Timor -Leste Government.

2. The data and information obtained for this submission came from various sources and includes information from IIMA's members in Timor-Leste who interviewed children and their families in all IIMA's communities in the country (Baucau, Dili Balide, Dili Comoro, Fuiloro Baucau, Laga Baucau, Mailiana Kailaku e Venilale Baucau). Additional information were also provided by Franciscans International (FI) after organizing a national consultation on the UPR in collaboration with the OHCHR country office in Dili.

3. FI is a faith-based International Non-Governmental Organization (INGO) with General Consultative Status with Economic and Social Council of the United Nations. It was founded in 1982 to bring to the UN the concerns of the most vulnerable.

4. IIMA is an international NGO in special consultative status with Economic and Social Council. It is present in 93 countries where it provides education to children and adolescents, particularly the most disadvantaged and vulnerable.

5. VIDES International is an international NGO in special consultative status with Economic and Social Council. It was founded in 1987 to promote volunteer service at local and international level and to protect children and women's rights.

6. FMSI is an NGO with a special focus on promoting the right of children. The Organization was established in 2008 in Italy as a Non-for-Profit Organization with a Social Purpose (FMSI-ONLUS) and has a presence in nearly eighty countries.

## **II. Juvenile Justice System**

7. Article 18 of the Constitution of Timor-Leste concerns the protection of children and the Ministry of Justice has drafted two laws concerning juvenile justice during 2010. The first law exempts children aged between 12 and 16 from criminal liability pursuant to Article 20 (1) of the Timor-Leste Penal Code. The second law differentiates a Special Penal Regime for Young Adults aged between 16 and 21 years old. These two laws demonstrate an encouraging step forward in separating children and youthful offenders from adult criminals during the stages of arrest, adjudication and detention.

8. However, this NGO coalition shares the same concerns with other civil society organizations in the country, such as the Judicial System and Monitoring Program (JSMP)<sup>1</sup> with regard to some of the provisions of the legislation which seems to infringe human rights principles, in particular the *best interest of the child*.<sup>2</sup> We are particularly concerned about the fact that the draft laws provide for the detention of children and do not ensure the deprivation of liberty of juveniles as a means of last resort which are not consistent with the Government's obligations under the Convention on the Rights of the Child, other applicable international laws and a juvenile justice policy based on the best interests of the child.<sup>3</sup>

9. The best interests of children include reintegration into the community; isolation from adult criminality; opportunity for education; and a paternalistic attitude of individual protection by the court. Children must not be subjected to torture, cruel and unusual or harmful practices, illegal arrests or deprivations of liberty. Children have the right to be treated in a way that takes into consideration their age and maturity. The detrimental effects of lengthy incarceration are self-evident and the deprivation of liberty should be used only as a last resort and if necessary for the protection of society and should be for the shortest time period possible. As an important part of this overarching principle of "best interests of the child", rather than focusing on the protection of society through the punishment or incapacitation of the child, the state should consider the needs of the child as one of the primary goals of all policy.

**10. We urge the Timor-Leste government to:**

- a. Amend the draft law on Juvenile Justice ensuring that children in conflict with the law are deprived of their liberty only as a means of the last resort in line with the recommendation of the CRC;<sup>4</sup>**
- b. Use the principle of "best interests of the child" as a guide for the development of juvenile justice law and policy and put in place prevention programs to reduce juvenile delinquency;**
- c. Honor the child's right to be heard and participate by allowing them to have access to information concerning the charges brought against them, rules of evidence, avenues of appeal, and principles of adjudication.**

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<sup>1</sup> JSPM, *Bulletin on Parliamentary Activities*, May 2010.

<sup>2</sup> According to UNICEF reports, as the juvenile justice system in Timor Leste is still on its draft form, the current judicial system in the country does not offer for a full protection of the rights of the juveniles in conflict with the law, who are often treated as the adults. Moreover, no less than the UN Committee on the Rights of the Child in its concluding observation on Timor Leste in 2008 mentioned that children are often kept in custody for up to 72 hours and in the same detention centers with the adults and still there are no special courts for juveniles and especially trained juvenile judges.

<sup>3</sup> JSPM, *Bulletin on Parliamentary Activities*, May 2010.

<sup>4</sup> CRC/C/TLS/CO/1, 2008.

- d. **Ensure that the opportunity for legal representation is not be denied to children and youthful offenders and inclusion in decision making as an important element in an integrated juvenile justice policy.**
- e. **Provide training for law enforcement officials and the judiciary with regard to the rights of children in conflict with the law.**
- f. **Create special courts for juveniles and ensure that they are detained in separate centers from the adults.**

### **III. Violence against Children**

#### **Street Children**

11. There are an estimated 200 to 250<sup>5</sup> children in street situations in Dili. Most of these children are not homeless or family-less but work in the informal economy as street vendors. Many come from poor rural areas and live with extended family members in the city while trying to make money for themselves or their families in the countryside. They are not in school and so they do not enjoy their right to education and their futures are at risk.

#### **Child Labour**

12. The situation of these children in the street is a part of a wider **child labour** issue in Timor-Leste. Child labour is common regarding support of family income. Few children are in formal labour; only 0.5% of 5-14 year olds are in paid labour and 3.7% in unpaid labour. Most often, children work on family farming plots or in their local villages in the informal economy. Many are involved in work that is dangerous or onerous. Although Timor-Leste ratified the ILO Convention on the Worst Forms of Child Labour (Convention 182), we remain concerned about the non-ratification of the ILO Convention on the Minimum Age of Employment (Convention 138).

#### **Sexual Exploitation**

13. In Timor-Leste, sexual exploitation affects both women and men. Women were victims of sexual exploitation and sexual violence during the foreign occupation and the Indonesian occupation, and today they are often victims of violence in their own families. They are violated by their father, brothers or relatives. Furthermore, many Timorese women work as sex workers in Dili and other big towns in the country. Many of them start to work very young, at age 14, and in general they are minors. It is estimated that 75% of males<sup>6</sup> involved in sex work are minors as well, and they enter sex work at age 14.

#### **Trafficking of Children**

14. Apart from the experiences of forced removal of children during the Indonesian occupation, there have been only a few cases of trafficking officially reported. For example, only three cases of trafficking of young women into Timor-Leste came to police attention during 2003. The most

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<sup>5</sup> [http://www.streetchildren.org.uk/\\_uploads/resources/Street\\_Children\\_Stats\\_FINAL.pdf](http://www.streetchildren.org.uk/_uploads/resources/Street_Children_Stats_FINAL.pdf)

<sup>6</sup> [http://www.dol.gov/ilab/media/reports/external/Annotated\\_Bib\\_VolumeII.pdf](http://www.dol.gov/ilab/media/reports/external/Annotated_Bib_VolumeII.pdf)

comprehensive study of trafficking<sup>7</sup> found that Timor-Leste was not a country of origin or transit for trafficking, but was a country of destination for a relatively small number of persons for sexual exploitation. It estimated that a majority of the female non-Timorese sex workers in Dili could be considered victims of trafficking.

### **Corporal Punishment**

15. There is wide acceptance, even among children themselves, of violence against children in the name of discipline or correction. Few cases of violence against children go to court and even fewer cases of sexual abuse. The law places primary responsibility on parents to initiate cases of sexual abuse for a child under 15 years old, except where the alleged offender is a parent. This leaves the child trapped where the abuse occurs within the family, while the parents refuse to act.

### **Unregistered children at birth**

16. Registration at birth remains an issue of concern. In Timor-Leste, we note low rates of registration: 22% of children under five are formally registered and 53% of children have some form of registration, formal or through a hospital or village head.

### **17. We urge the Timor-Leste government to:**

- a. Prohibit all forms of corporal punishment of children in the school and in the home;**
- b. Develop sensitization programmes and organize awareness-raising campaigns involving families, community leaders and society at large, including children themselves, to curb all other forms of violence against children.**
- c. Improve the system of birth registration, including strengthening its efforts to sensitize and mobilize public opinion with regard to the benefits of birth registrations and by training registry personnel.**
- d. Ensure that every child is protected from all forms of physical, sexual and mental violence and prosecute violators of this abuse;**
- e. Conduct a study on all aspects of domestic violence and child abuse in the home, assessing the scope and nature of this problem and implement legal measures to address violence against children;**
- f. Establish effective procedures and mechanisms to receive, monitor; and**
- g. Ensure that all child victims of violence and abuse have access to adequate care, counselling and assistance with recovery and reintegration services.**

## **IV. Right to Education**

18. Following the 1999 referendum on Timor-Leste's independence from Indonesia, and subsequent widespread violence, it was estimated that less than 5% of all education institutions were left standing<sup>8</sup>. Many non-Timorese teachers (20% of primary schools and 80% of secondary schools teachers) and most administrators left the country during the violence. However, with the assistance of UNICEF and other international aid organizations, many

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<sup>7</sup> [http://www.humantrafficking.org/uploads/publications/ALOLA\\_20TRAFFICKING\\_20REPORT\\_20\\_English\\_.pdf](http://www.humantrafficking.org/uploads/publications/ALOLA_20TRAFFICKING_20REPORT_20_English_.pdf)

<sup>8</sup> <http://www.fmreview.org/FMRpdfs/EducationSupplement/15.pdf>

dedicated Timorese educators returned and quickly reestablished the primary and secondary schools.

19. During these years of a return to normalcy, and with the abolition of school fees, the enrollment in Timor-Leste increased rapidly. However, the basic needs of establishing a functioning system and getting children back in school were prioritized over concerns about the quality of schooling. Unfortunately, when a major crisis erupted in May and June 2006, requiring large-scale intervention by military forces and resulting in the resignation of the Prime Minister, the educational system again suffered disruption<sup>9</sup> and attendance rates fell.

### **Accessibility to education**

20. Despite the efforts of Timor-Leste's government to sustain the educational system in the country, several critical issues continue to persist. We welcomed the decision of Timor-Leste in 2001, to appoint its first Minister of Education who structured the education system in six years of primary education and six years of secondary education, of which nine are compulsory.

21. Despite an impressive increase in enrollments in Timor-Leste in recent years, many children do not have access to school, enter school late, are at risk of repetition, or drop out early. In 2008-2009, 80% of children were regularly enrolled in primary schools. Unfortunately, enrollment rates in junior secondary education drop to 28% and 13% in senior secondary education. Senior secondary education had a lower number of dropouts and repetition rates, in part because students who reached that level tended to be more persistent and also tended to come from wealthier families who can afford to keep them in school. Repetition and dropout rates are lower among girls than boys. Promotion rates also higher among girls than boys. The problem of students dropping out is more serious in rural areas.

22. Many factors affect the demand for education in Timor-Leste. For example, the majority of families feel that their children are not old enough to attend school at ages 5 or 6, while many others still believe that children up to the age of 12 are not yet the right age for school. Some families merely have no interest in sending their children to school because the children are needed to work at home or in the fields. Many parents consider the long distances between children's home and the nearest school as a reason for not sending their children to school.

23. *Discrimination in accessibility to education.* Although the national law recognizes the right of the child and condemns discrimination, in Timor-Leste we note the persistence of discrimination in the access to school, especially for some vulnerable groups of children as those from the poorest families, orphans, and children with disabilities.

24. Orphans in Timor-Leste are often welcome in specific centers for children without parents. In other cases, relatives take care of orphans. Unfortunately, the family is not always the best solution for these children who do not have equal access to education because their relatives do not consider it necessary to invest in their education, especially because they consider orphans less important than their own children.

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<sup>9</sup> <http://www.moreland.vic.gov.au/mccwr/publications/reports/report.pdf>

25. *Children with Disabilities.* The Timor-Leste Constitution recognizes the equality of people with disabilities and their entitlement to protection<sup>10</sup>. There are few reliable statistics about the extent of disabilities in Timor-Leste but estimates put the number of children with disabilities at around 50,000 to 60,000<sup>11</sup>. There are few services that cater for these children. There are some non-government organizations that provide specific programs principally for children with physical disabilities, but they work almost exclusively in and around Dili. The only specialist primary school in the country is located in Dili. In general, discrimination against children with disabilities is due to non-acceptance of these children or to the ignorance of their illness.

### **Availability of Education**

26. The *availability of education* is a major concern where poor physical infrastructure of schools, shortage of textbooks and teaching materials, and too few hours of instruction can prevent the provision of quality education for the children.

27. While substantial progress has been made replacing damaged schools and classrooms, there remains a shortage of facilities in rural areas. Many rural schools contain children who have to walk over one hour to get to school. Distances from school may inhibit the enrollment of young children, particularly girls and may contribute to early drop-out, particularly if reinforced by other factors such as ill health<sup>12</sup>.

28. *Shortages of textbooks and of teaching and learning materials.* Most teaching and learning takes the form of teachers copying their notes on the blackboard and students copying them in their exercise books (chalk and talk is still the main teaching method). High repetition and dropout rates are closely related to the poor quality of education and low student achievement. The shortage of reading materials also makes it impossible for teachers to assign any meaningful homework.

### **Acceptability of education**

29. Good quality education is impeded by a number of factors, including insufficient preparation of teachers and language difficulties.

30. *Teacher preparation.* The vast majority of teachers have varying qualifications, if any at all. In rural areas, teachers are often persons chosen by the community only because they finished the junior secondary education. Teachers do not always have upgraded knowledge of content areas or pedagogy.<sup>13</sup> Furthermore, teachers have overcrowded classes, especially in rural areas where classes can count more than 90 students. Therefore, the children's ages are considerably varied in the classes. As a result teachers have a very difficult task in the teaching performance and the children in the classes have totally different needs and knowledge levels.

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<sup>10</sup> Constitution of the Democratic Republic of East Timor, Part II, Title I, General Principles, 21:1,2

<sup>11</sup> <http://www.crin.org/docs/disabilitystudytimor.pdf>

<sup>12</sup> Timor-Leste Ministry of Education and Culture, *Strategic Plan for Universal Completion by 2015*

<sup>13</sup> It is noted that the government has provided a number of in-services for teachers on the new primary school curriculum in recent years.

31. *Language of instruction.* The constitution designates Portuguese and Tetum as the official languages of the country, with Bahasa Indonesia and English as working languages. The government designated Portuguese as the language of instruction. The implementation of this policy began with Grades 1 and 2 in 2000 and has progressively moved up one grade each year since. Portuguese books are gradually replacing Indonesian books, but are in short supply, and in practice many teachers continue to rely on Tetum to explain lessons to children. Many problems are connected to the language of instruction as not all teachers can speak Portuguese and students studying under teachers who themselves are not proficient in Portuguese are less likely to attain competency in the language. Portuguese is often the second or third language of many students. Tetum is currently more commonly used in schools attended by children of the poorest areas and Portuguese is more commonly used in schools attended by children of the higher income families leading to an economic bias in education.

32. *Teacher and student absenteeism and illness.* Illness is considered to be the primary reason for students' absence from school. Poor nutrition and diarrhea are considered to be major causes of illness. Undernutrition places children at increased risks of morbidity and is associated with impaired mental development. 58% of children under age 5 are stunted, and 33% are severely stunted. 45% of children under age 5 are underweight and 15% are severely underweight.<sup>14</sup> Provision of free healthy meals at school would contribute to an improved diet for Timorese children.

33. *Pre-school education.* In recent times the government has agreed to put significantly more resources into preschool education. *The Timor-Leste National Strategic Plan for Education 2011-2015* plans to have at least half of all children between 3 and 5 years old enrolled and receiving quality preschool education by 2015. This will entail a significant financial commitment from the government to fulfill its plan. The 2005 data indicates that only 5% of children of preschool age had access to a preschool and that most preschool teachers had minimal schooling themselves and no formal training. It is a widely held view that early childhood development programs considerably benefit the ongoing development of the child. Children who participate in pre-school education tend to be more successful in later years of school and are more competent socially and emotionally than those who did not have the benefit of pre-school education.

34. We propose the following recommendations in order to allow the Timorese government to protect and promote the right to quality education:

- a. **Fully implement article 28 of the Convention on the Rights of the Child, without discrimination, particularly for children with disabilities, their right to free and compulsory education and that corporal punishment be in accord with the Convention, respecting the dignity of the person;**
- b. **Use legislative, policy and educational measures, including sensitization and awareness-raising, to overcome the stigmatization of the poorest, orphans and children with disabilities, and to ensure equal access to and participation in quality education for these children;**

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<sup>14</sup> Timor-Leste Demographic and Health Survey 2009-2010, Preliminary Report; p. 17 and 22.

- c. Ratify the Convention on the Rights of Persons with Disabilities and its Optional Protocol;**
- d. Build new schools according to the international standards and modernize the existent infrastructures, guaranteeing in particular: sufficient classrooms, proper sanitation facilities, and adequate water supplies;**
- e. Provide economic subsidies for families of the poorest children, for orphans, and for children with disabilities in order to allow them to attend school;**
- f. Prepare sufficient professionally trained teachers, especially in primary schools, to ensure a quality education in classrooms with an acceptable average pupil-teacher ratio;**
- g. Provide a free nutritious lunch for all children attending primary school to ensure the children receive proper nutrition**
- h. Ensure the full implementation of the government's strategic plan to have at least half of all children between 3 and 5 years old enrolled and receiving quality preschool education by 2015, including fully trained preschools teachers for these classes.**