



**Convention on the  
Rights of the Child**

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**COMMITTEE ON THE RIGHTS OF THE CHILD**

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 44 OF THE CONVENTION**

**Initial report of States parties due in 2005**

**TIMOR-LESTE\***

[1 March 2007]

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\* In accordance with the information transmitted to States parties concerning the processing of their reports, the present document has not been formally edited before being sent to the United Nations translation services.

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## **Foreword**

A child is a gift of life, never to be taken for granted. A child depends upon us for survival, it depends upon us for protection and development. The duty is ours to provide these essential guarantees and freedoms so that our children may grow up to attain their fullest potential.

The Convention on the Rights of the Child is not only a legal document which we must comply with. It is also an important tool which can assist us to devise specific policies and programmes to promote and fulfil the rights of the child. In this initial report, the Government of Timor-Leste affirms the rights of our children, contemplates our small successes, and identifies those areas in which we must redouble our efforts toward child rights realization.

For Timorese, independence marked the watershed of our future. It now falls upon us to reverberate our hard won freedom through respect for human dignity in all of our practices. Through reports such as these and other critical instruments, let us continue to measure our progress and chart a path forward so that one day our children, our human legacies, are guaranteed full realization of their dignity, health, education, and all other freedoms essential to their being.

God bless you all, God bless our children.

José RAMOS HORTA  
Prime Minister  
Government of Timor-Leste

**List of acronyms**

BCG	Bacillus Calmette Guerin
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCD	Common core document
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CESCR	International Covenant on Economic, Social and Cultural Rights
CHC	Community health centre
CMW	International Convention on the Rights of All Migrant Workers and Members of Their Families
CRC	Convention on the Rights of the Child
CRDTL	Constitution of the Democratic Republic of Timor-Leste
DHS	Demographic & Health Survey
DPT	Diphtheria pertussus tetanus vaccine
EPI	Expanded programme of immunization
FALINTIL	Forças Armadas de Libertação Nacional de Timor-Leste (Armed Forces for the Liberation of Timor-Leste)
Fretilin	Revolutionary Front for an Independent East Timor
ICCPR	International Covenant on Civil and Political Rights
ILO	International Labour Organization
IMR	Infant mortality rate
JSMP	Judicial System Monitoring Programme
MDG	Millennium Development Goal
MEC	Ministry of Education and Culture
MECYS	Ministry for Education, Culture, Youth and Sport

MICS	Multiple Indicator Cluster Survey
MLCR	Ministry of Labour and Community Reinsertion
NDP	National Development Plan
NDSS	National Division of Social Services
NGO	Non-governmental organization
NHRAP	National Human Rights Action Plan
OPV	Oral polio vaccine
ORT	Oral rehydration therapy
PNTL	National Police of Timor-Leste
RDTL	Democratic Republic of Timor-Leste
SIP	Sector Investment Programme
SSLS	State Secretariat of Labour and Solidarity
U5MR	Under-five mortality rate
UNDP	United Nations Development Programme
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNTAET	United Nations Transitional Administration in East Timor
VPU	Vulnerable Persons' Unit

## Introduction

1. This report aims to meet Timor-Leste's obligations under article 44.1 (a), in view of the accession on 16 April 2003 by the Democratic Republic of Timor-Leste (RDTL) to the Convention on the Rights of the Child (CRC), as well as those arising under the Optional Protocols to which Timor-Leste is a party.<sup>1</sup> It generally applies to the period since the restoration of independence in May 2002 up until 30 April 2005.<sup>2</sup> It is worthwhile to point out that Timor-Leste ratified the Convention and the two Optional Protocols without reservation.

2. Notably, the CRC report is comprised both of a common core document (CCD) (CRD/C/CORE/TLS/2007) and the present CRC-specific document. These must be read in tandem, in accordance with the decision of the Government of Timor-Leste ("the Government") to adopt a more harmonized human rights treaty reporting framework as set down in the draft guidelines adopted at the third intercommittee meeting of human rights treaty bodies (21-22 June 2004).<sup>3</sup> In view of the limited human and financial resources of Government, the decision to pilot the draft guidelines for reporting was made as a means to streamline reports, eliminate duplication and enhance cohesion between existing treaty bodies.

3. In utilizing this reporting framework, the Government has adopted - for this CRC treaty-specific document - the reporting framework for initial CRC reports.<sup>4</sup> The revised harmonized reporting guidelines (HRI/MC/2005/3) provide that the treaty-specific documents "should contain information relating to the implementation of the treaty which is of specific interest to the [Committee on the Rights of the Child]" provided that "the treaty specific document for one treaty should contain no information which would need to be included in the

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<sup>1</sup> Reference to an "article" ("Art.") is to an article of the Convention on the Rights of the Child unless otherwise stated or apparent from the context.

<sup>2</sup> A clear "cut-off" date is viewed as assisting the reader to understand the period for which progress applies, as well as to facilitate the subsequent preparation of the first periodic CRC report (in determining a benchmark for reporting progress).

<sup>3</sup> Refer to HRI/MC/2004/3 (9 June 2004): "Guidelines on an expanded core document and treaty-specific targeted reports and harmonized guidelines on reporting under the international human rights treaties". A subsequent document HRI/MC/2005/3 (1 June 2005) was due for consideration by the 4th inter-committee meeting of chairpersons of human rights treaty bodies, in late June 2005. That more recent document essentially clarifies, rather than changes, the provisions of the 2004 document.

<sup>4</sup> Refer to CRC/C/5 (30 October 1991): "General guidelines regarding the form and content of initial reports to be submitted by States Parties under article 44, paragraph 1 (a), of the Convention". The harmonised guidelines propose the framework for CCD reporting but defer any actual revised reporting framework for treaty-specific documents.



treaty specific document for another treaty”.<sup>5</sup> Accordingly, CCD includes background information, statistics and thematic human rights issues relevant to two or more treaties whilst the CRC-specific document is designed to identify and focus on specific child rights issues as revealed against the overall context of CCD and human rights promotion and protection in Timor-Leste.

4. Timor-Leste’s recent history presents particular difficulties and challenges in meeting CRC obligations and standards of rights and protections for the child. The destruction of infrastructure, depletion of public services and administrative capacity, diminished social and economic base, and weakened legislative protection and judicial enforcement mechanisms are among some of the reasons for this. Nevertheless, these are also all areas in which significant progress has been made since 1999 and, in particular, since 2002, with considerable assistance and cooperation from the international community, not least the agencies of the United Nations.

5. This means that, whilst progress in such areas has been encouraging and pleasing, there remain many areas of improvement to be addressed. This is so for children as it is for other sectors of the population. Despite considerable progress, this report does acknowledge a number of areas where Timor-Leste does not meet its CRC obligations. The Government readily acknowledges such shortcomings, and reiterates its commitment to maintain necessary efforts to meet its obligations. It similarly takes this opportunity to restate its strong and ongoing commitment to CRC, and to the children of Timor-Leste, who represent approximately 50 per cent<sup>6</sup> of the population and are particularly vulnerable to human rights violations including poverty and all of its associated implications. To this end, the Government is maintaining the necessary and constructive collaboration with partners to address priority areas of child rights within the period to be covered by the initial report in five years’ time.

6. The process leading up to the development of this initial State party report benefited from the conduct of several two-day consultative workshops involving Government and non-governmental, civil society, religious and other agencies or sectors at the district level. Such workshops were conducted in Maubara, Ainaro, Baucau and Dili, during April and May 2005, as well as a broader human rights treaty workshop held in the enclave district of Oecusse in the same period. These workshops yielded many valuable experiences, concerns, suggestions and priorities to inform the report-drafting process, as well as serving to strengthen local awareness of the CRC reporting process, emphasizing the ongoing and revolving nature of CRC reporting (i.e. over a five-year reporting cycle), and reflecting the various stages at which public consultation and participation is encouraged.

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<sup>5</sup> HRI/MC/2005/3, para. 28. See also para. 57, which, taken together, favour minimal duplication between the CRC document and the CCD and the former containing all text deemed relevant to the deliberations of the Committee on the Rights of the Child. Importantly, however, para. 58 states the treaty specific document for one treaty should, in principle, contain no information which would need to be included in the treaty-specific document for another treaty.

<sup>6</sup> Census, 2004, National Directorate of Statistics.

7. In addition, report drafting benefited from several children's consultations, including the report of consultative proceedings from the Children's Forum at the Conference for Developing Children's Legislation (Dili, August 2004), attendance at a national children's consultation in preparation for children's participation in the 7th East Asia and the Pacific Ministerial Consultation on Children (Siem Reap, Cambodia, March 2005), attendance at the national children's consultation in preparation for the Regional Conference on Violence Against Children (Bangkok, June 2005), and a consultative workshop conducted with a group of school students in Tasi Tolu Primary School (Dili District, June 2005). This last consultation on child rights involved a group of children who had been participants in national research on violence and other forms of behaviour exercised by parents and teachers on children, conducted in 2004/05 by the Ministry of Education, Culture, Youth and Sport (MECYS)<sup>7</sup> and the Secretary of State for Labour and Solidarity (SSLS)<sup>8</sup> with support from UNICEF.

8. With respect to the provision of article 44.2, factors and difficulties in meeting CRC obligations are generally described throughout this document. The document also includes a range of opportunities and priorities for action by Government which may strengthen national compliance with CRC. In terms of statistical information and indicators, the Government emphasizes that reliable data in many areas relevant to the child remain unavailable.

9. Finally, this document seeks not only to serve as the national report on CRC compliance for the consideration of the Committee on the Rights of the Child, but also to serve as the basis on which to further advance the status of children in Timor-Leste. It aims to be technically comprehensive and is valuable in highlighting progress in child rights implementation, but also in identifying shortcomings and key areas and mechanisms for future development planning to further promote child rights. As such, this report will serve as a sound basis for the preparation of the Government's next (second periodic) CRC report, and to advance dialogue and consensus-building towards priorities for further action.

## **I. GENERAL MEASURES OF IMPLEMENTATION**

### **A. Measures to implement child rights (art. 4)**

10. As an international treaty, CRC is considered to be an integral part of the domestic legal framework in Timor-Leste. Key pieces of legislation, including the (forthcoming) Civil Code,

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<sup>7</sup> Following the restructuring of the Government in July 2005, the Ministry of Education, Culture, Youth and Sport was transformed to (i) the Ministry of Education and Culture and (ii) the Secretary of State for Youth and Sport, Decree Law 3/2005 of 29 June 2005.

<sup>8</sup> Following the restructuring of the Government in July 2005, the Secretary of State for Labour and Solidarity was changed to the Ministry of Labour and Community Reinsertion, Decree Law 3/2005 of 29 June 2005.

Penal Code and Children's Code, that form part of the Government's ambitious legislative agenda for the future will also serve to give more practical effect to the Government's CRC commitments and to strengthen the national child rights framework.<sup>9</sup>

11. The National Human Rights Action Plan (NHRAP) is being drafted by the Office of the Adviser to the Prime Minister on Human Rights to give explicit attention to the rights of all, including children. The Sector Investment Programmes (SIP) on "social, civil and heritage protection", "education and training", "health care", and "rights, equality and justice" are also valuable instruments for child rights-based development planning.<sup>10</sup>

12. For child rights, measures of coordination include the envisaged establishment of a National Commission for the Rights of the Child. The basis for further development of this body is set down in the Prime Minister's Order dated 24 February 2005, which includes the proposed purposes of "supporting the process of implementation of the Children's Code and [to] make sure Government fulfils its obligations towards child's rights". The same order also anticipates the appointment of a National Commissioner for the Rights of the Child.<sup>11</sup>

13. The National Division of Social Services (NDSS) of the Ministry of Labour and Community Reinsertion (MLCR) is tasked to assist children who are neglected, abused or otherwise vulnerable, and is working towards building an inter-agency approach to child abuse prevention, early intervention and managed services through working in partnership with other government and non-government agencies and communities at all levels of society.

14. The Ministry of Education and Culture (MEC) has commenced the drafting of a National Youth Policy, which is expected to be ready sometime in 2006. The age definition of "youth" is yet to be determined and consultations with "young" people are proposed. Nevertheless, the coordinating agency has considered the possibility of the 17- to 35-year-old age group, provided the person is unmarried.

15. Supportive projects are being completed in "youth mapping" of the aspirations and concerns of young people in Timor-Leste and "institutional assessment" of the capacity and management of youth organizations, as well as the recent conduct of "leadership

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<sup>9</sup> Article 9 of the Constitution provides that "Rules provided for in international conventions, treaties and agreements shall apply in the internal legal system" and that rules to the contrary shall be invalid.

<sup>10</sup> Useful reference may be made to Ministry of Planning and Finance (2005).

<sup>11</sup> Prime Minister's Order to Create a National Commission for the Rights of the Child (23 February 2005). The initial UNICEF conceptual paper in 2003 followed the Government's interest arising from participation in the 6th regional Ministerial Consultation in May 2003 and proposed responsibility by that body for the preparation of the initial/periodic CRC reports, which is still a possible role for the Commission (internal UNICEF memo: "National Council on Children: Conceptual Framework (for discussion purposes)", August 2003).

capacity-building for economic development” which included a focus on training in youth entrepreneurship. Following a youth initiative, a National Youth Council was created and later formally established at the first National Youth Congress held in June 2001, where it was acknowledged and supported by the Office of the Adviser to the Special Representative of the Secretary-General (of UNTAET) on Youth. To date district youth centres have been established in all districts and registered under the Secretary of State for Youth and Sport based on articles 3.1 (b) and article 13 of Decree Law No. 3/2005 of 29 June 2006. The National Youth Council has links to all district youth centres that are currently in operation. The Secretary of State for Youth and Sport has a coordinating role and provides some resource assistance to the district youth centres, but strengthened support is still needed.

### **B. Measures to promote knowledge of child rights (art. 42)**

16. The Government has taken many measures to promote awareness of the principles and provisions of CRC across government agencies, civil society, families and children, many of which are detailed in section II.C.6 of CCD on human rights training and education. Such activities to date have met with considerable success, resulting in reasonably high levels of local awareness of and commitment to child rights, as evidenced during consultations for this report. This experience can also inform and encourage more active promotion of other human rights treaties in future.

17. Media and public broadcasting initiatives have strengthened popular public messaging on children’s issues and child rights and provide a sustainable foundation on which to promote national awareness at local levels. Such media training, capacity-building and promotion of child participation have complemented government/UNICEF efforts to promote widespread awareness across government and non-governmental agencies, and local communities, of CRC and child rights. The success of such efforts was evidenced throughout the consultative process for NHRAP and in district socialization conducted during the early stages of national human rights treaty reporting (late 2004/early 2005) in which children’s issues were a recurring theme raised by local participants.

18. As well as specific training, child rights education and initiatives detailed in CCD, Timor-Leste has also engaged in and undertaken other important child rights events and initiatives, including participation in the United Nations Special Session on Children held from 8 to 10 May 2002 in New York, despite its being held one week prior to Timor-Leste’s independence,<sup>12</sup> and the conduct of several Student Parliament sessions, the first of which was held prior to independence. Two further Student Parliaments have been conducted since, one with a particular focus on the topics of education, health, HIV/AIDS, and law and social culture. This Student Parliament presented recommendations for future action and government lobbying, and submitted these to the President of the National Parliament. The final Student Parliament was held in November 2003 with 54 participants.

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<sup>12</sup> The delegation included by Bishop Belo (Nobel Peace Prize co-recipient, 1996) and comprised two young people, including Jose Cabral, who was appointed spokesperson for young people from the East Asian and Pacific region.

19. Collective efforts to educate the population and to raise awareness of child rights have meant that, by the commencement in October 2004 of the national process to prepare the CRC initial report, the agencies and institutions of Government, the non-governmental sector, the media and broader civil society, as well as many children and their families and communities nationwide, had benefited from a concerted effort to inform the population of the nature of CRC and of the central place of children's rights in the development of Timor-Leste.

20. More recent activities include the launch of "*Jornal Labarik: Representa Labarik*" ("Children's Journal: Representing Children"), a 12-page broadsheet emanating from the November 2004 initiative, published on the occasion of National Children's Day on 1 June 2005, as announced by the Prime Minister. The *Jornal* is produced monthly by the Timor-Leste Journalists' Association and the Syndicate of Journalists, with support from UNICEF. It contains information and messages on a range of child rights issues, articles on core children's health, education and development matters, photographs of children's events and viewpoints expressed by children. It is widely distributed to the Government, United Nations agencies and the community at large.

21. As referred in CCD, booklets of the Convention on the Rights of the Child have been printed in Tetum, Portuguese, Bahasa Indonesia and English. These have been distributed to children, their families and to others concerned by line ministries and by organizations like CARE International, PLAN International and UNICEF. Overall, whilst difficult to measure, it is evident that knowledge and understanding of the Convention and its associated rights has increased, though there are significantly varying levels of understanding of child rights.

### **C. Public distribution of the initial report (art. 44)**

22. This initial report has been prepared following extensive consultations with international, national and United Nations agencies and persons, including several regional/local consultations. This provided valuable input to the drafting process and also served as a means of further raising local awareness of the Convention and of the reporting process itself. Emphasis has been placed on the dynamic nature of the reporting process, such that - over the five-year reporting cycle - the opportunity to have input at several stages in reviewing progress and compliance and shaping national action priorities on CRC was advocated and well understood. The final approved report will be distributed to line ministries, district administrations, NGOs and the community so far as possible, taking into account the significant resource constraints of the Government.

## **II. DEFINITION OF THE CHILD**

23. By virtue of section 9 of the Constitution and its incorporation of CRC directly into the domestic legal framework, in Timor-Leste, a child is defined as being every human being under the age of 18 years. In addition, different legal minimum ages are prescribed in various domestic laws as follows:

- Engagement in light work: 12 years old, UNTAET Regulation No. 2002/5 on the Establishment of a Labour Code for East Timor, section 11.2;
- Employment: 15 years old, UNTAET Regulation No. 2002/5 on the Establishment of a Labour Code for East Timor, section 11.2;

- Hazardous work: 18 years old, UNTAET Regulation No. 2002/5 on the Establishment of a Labour Code for East Timor, section 11.1;
- Sexual consent: 15 years old for females and 18 for males, Indonesian Penal Code, article 287 (draft RDTL Penal Code of December 2005 establishes 14 years as minimum age for sexual consent);
- Marriage: 15 years old for woman and 18 for men, Indonesian Civil Code, article 29;
- Vote: 17 years old, RDTL Constitution, section 47;
- Voluntarily enlistment into the armed forces/conscription into the armed forces: 18 years old, Organic Law of FALINTIL: Decree-Law No. 7/2004, article 14.2;
- Criminal liability: 12 years old for serious crimes and 17 for minor crimes, UNTAET Regulation No. 2001/25, article 45.1 (16 years old, draft RDTL Penal Code, article 21);
- Deprivation of liberty and imprisonment: 12 years old for serious crimes and 17 for minor crimes, UNTAET Regulation No. 2001/25, article 45.1;
- Consumption of alcohol: 16 years old, Indonesian Penal Code, sections 300.1 and 538.

24. The Government is conscious that some minimum ages are currently absent in the domestic legal framework, but since it is still evolving, the existing gaps in minimum legal ages will be resolved in due course. For example, there is no apparent minimum age for purchasing cigarettes, for independently accessing confidential medical services (including for family planning advice), for inheriting property,<sup>13</sup> or for giving testimony in court. There is also no current minimum school-leaving age, but an Education Policy Paper is being drafted and there are ongoing discussions on whether compulsory basic schooling should be six or nine years.

### **III. GENERAL PRINCIPLES**

#### **A. Non-discrimination (art. 2)**

25. CCD provides an overview of individual guarantees to be free from discrimination.

26. The constitutional right of a child to be free from discrimination largely corresponds with the provisions of CRC with the exception of “national origin” and “birth” as specific grounds of discrimination. The Constitution’s article 18.3 guarantee of equal rights and social protection for children born out of wedlock, together with its article 16.2 provisions for “marital status” further assert the rights of many otherwise “at risk” Timorese children. Furthermore, article 18.1 of the

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<sup>13</sup> Indonesian Civil Code, Ss 862-873. This provides that a child resulting from adultery or incest has no inheritance rights and is entitled only to child maintenance payments. This is likely superseded by the Constitution’s equal rights to the child regardless of being born in or out of wedlock.

Constitution is deemed to extend to the child those assurances required under article 2.2 of CRC (whereby the child is protected on the basis of the status, activities, opinions or beliefs of its parents/guardians and family).

27. Discrimination is a complicated issue and appears to occur particularly in remote areas which are isolated from media and other information. For example, there have been reports from rural areas, particularly in areas dominated by the pro-Indonesian militias during the Indonesian occupation, that some children of returnees, particularly those belonging to former pro-Indonesia militants, were facing difficulties in registering for school.

28. Furthermore, reports of children facing difficulties registering for school when not in possession of a baptism certificate were repeatedly raised during consultations in the development of this report, suggesting the possible existence of indirect discrimination on the grounds of religious belief. Children deriving from sexual relationships among family members have also faced difficulties in registering for school, according to the consultations.

29. Another form of discrimination which was raised and discussed during the regional consultations is discrimination on the ground of disability. The fact that children with physical and mental disabilities are not being granted assistance or access to appropriate education and care was shared by most of the participants.<sup>14</sup> Statistics NDSS indicate that in 2002 the total number of people with a disability in the country was 12,957. The information was broken down into the following clusters:

- 2,262 disabled from birth;
- 8,313 disabled due to sickness;
- 2,046 disabled due to an accident;
- 336 disabled from war.

30. The Government is aware of the limited school facilities for children with disability and acknowledges its limited capacity to provide support to these children. Nevertheless, a special division for disability was established within DNSS in 2005. Likewise, a policy on disability was drafted to provide a basis for the development of a plan of action on disability.

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<sup>14</sup> One disabled girl from Aileu district was not able to access to school due to the geographic condition until she was transferred to an orphanage in Dili where she was offered medical treatment and eventually able to study, although at a very late age for enrolment into primary school.

## **2. Best interests of the child (art. 3)**

31. The Constitution acknowledges the primacy of the family, the rights and duties of the parents for the care and protection of the child and the responsibilities of the State and community in this regard.<sup>15</sup> This is more problematic when translated into practice due to weak social support structures and family assistance for those facing persistent situations of entrenched poverty, family hardship and inadequate local services.

32. The principle of the best interest of the child does not appear to be well understood or applied during judicial proceedings or administrative decisions due to the evolving legislative framework and the currently rudimentary state of public administrative and judicial systems and practice.

33. Nevertheless, the principle of the best interest of the child has been highlighted in the continuous programmes of capacity-building amongst key public institutions working with children to promote awareness of CRC and of child rights in general.

34. Notably also, the recently established Office of the Provedor is mandated to ensure that children are able to benefit from the services provided by the Office,<sup>16</sup> and also to visit any place of detention, treatment or care in order to inspect the conditions.<sup>17</sup>

### **C. The right to life, survival and development (art. 6)**

35. The Constitution explicitly guarantees the right to life in section 29 (“right to life”):

1. Human life is inviolable;
2. The State shall recognize and guarantee the right to life;
3. There shall be no death penalty in the Democratic Republic of Timor-Leste.

36. The Government is aware of the barriers to be overcome in adequately ensuring the child’s right to survival and development. As discussed in section VI.B of this document, a high rate of infant mortality and issues of malnutrition compounded by excessively high fertility rates and poor birth spacing, with the potential for many newborn children to suffer compromised life prospects, are among just some of those impediments that need to be addressed. Primary national indicators of child well-being illustrate the progress that is still to be made and that very many systemic factors must also necessarily be tackled to reduce fertility rates, improve health and nutrition standards within rural and remote communities in particular, and strengthen the economic and social welfare of very many impoverished households.

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<sup>15</sup> Sec. 18.1 and Sec. 39 of the Constitution on “Child Protection” and “Family, Marriage and Maternity”.

<sup>16</sup> Section 7.2, Statute of the Office of the Ombudsman for Human Rights and Justice, Law No. 7/2004.

<sup>17</sup> Section 28 (f), *Ibid*, n. 26 above.



37. Certainly, however, the existence of the two essential foundations for the improved survival and development of children - peace and independence - provide the prerequisites for better implementation of article 6 of CRC.

#### **D. Respect for the views of the child (art. 12)**

38. Many of the comments made in section III.B of this report similarly apply here.

39. The concept of respect for the views of the child does not appear to be well understood or used during judicial proceedings and it appears that the views of the child are rarely sought in establishing what may be in its best interests when making decisions relevant to it. For example, the District Tribunal, in making a decision on an application to adopt a child, reports that it relies on the consent of the adult parties (the applicant and the child's birth parents or guardians) with little apparent resort to professional and impartial assessments of the child's best interests. It is expected that awareness and deliberative practices to incorporate the views of the child in this regard will gradually evolve alongside the capacity of the judicial sector.

40. In drafting new national legislation, standards and procedures, the respect for the views of the child has been taken into account, as can be seen. Examples of this include the Rules of Organization and Procedure for the Police as related to dealing with juvenile offenders, children at risk and child abuse, as well as the (forthcoming) Decree Law for Child Care Centres and Boarding Houses.

41. Of equal importance are the measures which Government has taken to strengthen the capacity of children to formulate and express their views. This is critical to ensuring recognition of the value of the child's views in shaping public policy and practice. Children's input to and participation in recent events such as the National Conference for Developing Children's Legislation in Timor-Leste (Children's Forum, Dili, August 2004), the 7th East Asia and the Pacific Ministerial Consultation on Children (Siem Reap, March 2005) and the Regional Conference on Violence Against Children (Bangkok, June 2005) was also sought. The Office of the Adviser to the Prime Minister in Human Rights has also taken steps to enhance the participation of children in particular child rights events.

### **V. CIVIL RIGHTS AND FREEDOMS**

#### **A. Name, nationality and preservation of identity (arts. 7, 8)**

42. The CCD, section III.C.1, includes general information on the regulation of nationality in Timor-Leste.

43. The Government has taken considerable steps to promote the registration at birth of a child's name.<sup>18</sup> With the establishment of UNTAET, a Central Civil Registry was created and

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<sup>18</sup> Much of the information on birth registration is derived from the paper "Birth Registration in Timor-Leste: Country Presentation from Timor-Leste", presented to the UNICEF Regional Workshop on Enhancing Birth Registration in the Pacific (Suva, Fiji, 25-27 May 2005) and from an interview with Central Civil Registry (May 2005).

commenced issuing birth certificates in accordance with UNTAET Regulation No. 2001/3 on the Establishment of the Central Civil Registry for East Timor.<sup>19</sup> However, the rate of birth registration is still very low. According to a 2002 survey, only 22 per cent of children aged under 5 years were reported as having their birth registered (32 per cent urban, 20 per cent rural), although certificates could only be produced for less than 10 per cent. The majority of reasons for non-registration concerned lack of knowledge of the need to register or of how to do so, rather than issues of access. A subsequent study revealed that 53 per cent of births in the preceding five years had been registered in some way, for example, recorded by a hospital or by the village head (only 9 per cent of registered children were registered by the Central Civil Registry).<sup>20</sup>

44. Recent improvements have been achieved by the introduction of a mobile birth registration service within 8 of the 13 districts (Aileu, Bobonaro, Ermera, Suai, Same, Oecussi, Manatuto and Viqueque), targeting children aged under 5 years.<sup>21</sup> Mobile registration has reached an estimated 75-80 per cent of all children in that age group in those districts. However, the mobile birth registration is very resource intense and as the mobile birth registration teams are only employed during a particular period of time, other approaches to birth registration are required to ensure routine registration of children being born in all districts. In late 2004, the Ministries of Justice and Health initiated the use of a Mother and Child Handbook, which includes a birth registration insert that is used to issue a birth certificate by staff of the Civil Registry. This is expected to be a very effective means by which to register children, if the evidence of a 2003 survey is any indication. This survey revealed that 41 per cent of all under-5-year-olds with a form of birth registration had a hospital record, such that “the level of hospital documentation of the birth was much higher than the percentage of women who reported delivering in hospitals. It is possible that the women received the hospital certificate during a postnatal check, or infant health check subsequent to delivery.”<sup>22</sup>

45. The issuance of birth certificates follows, in principle, two types of process:

- A transcription, based on information from existing identification documents: a baptism certificate or similar document, a statement of the child’s identity from the head of the village, or a birth notification in the form contained in the Handbook;

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<sup>19</sup> Sec. 2.1 (e) of the regulation ascribes to the Central Civil Registry a purpose of “issuing civil documents confirming such matters as birth, marriage, divorce, death, and adoption of children”.

<sup>20</sup> The studies are, respectively, UNICEF (2003), “Multiple Indicator Cluster Survey (MICS): Timor-Leste 2002”, p. 81 and “Demographic and Health Survey: Timor-Leste” (DHS) (2003), p. 162. They are referred to in this document as MICS and DHS.

<sup>21</sup> The decision to focus on children aged under 5 years is as per an agreement between the Civil Registry and UNICEF in October 2002. Nevertheless, in practice, older children have also been registered under this initiative.

<sup>22</sup> District Health Survey 2003, p. 161.

- An inscription, where no previous records are registered containing the person's details.

46. The process for issuing birth certificates remains, in practice, fairly centralized and the absence of a comprehensive regulatory framework for civil registry appears to be causing some inconsistencies or challenges in registration. Specifically, within the districts, there are reports<sup>23</sup> that the Civil Registry normally requires a copy of the baptism certificate in order to register the child's name. Cases of children being given animist names upon birth that are subsequently changed on baptism have also been reported. That is causing challenges in the civil registration process. This process is presently being reviewed, particularly in the context of a new Civil Registration Code and operational procedures being elaborated.

47. The low rate of birth registration to date also means that the birth certificate has not been widely used as a form of proof of identity. In practice, the baptism certificate is more widely used. "Indeed, there are reports of teachers who have refused to accept official civil registration certificates and have instead required baptism certificates from the church when parents wanted to enrol their children in school."<sup>24</sup>

48. For baptism, the Church requires the parents' marriage certificate or, if the parents are unmarried, their baptism certificates.<sup>25</sup> If there is no father present or involved, the Church requires the mother to name the father. If the mother cannot or will not name the father, then baptism is denied. If paternity is denied, the mother's statement is accepted. The father's name is assigned to the child and recorded on the baptism certificate, whether or not he agrees to paternity, whether or not the parents are married, and whether or not this is the mother's chosen surname for the child. The Church is believed to apply these practices countrywide and, in Dili, accepts customary names for baptism purposes, though this may not be the situation in the districts. Children are normally baptised between the ages of 7 days and 5 years. Government will work with the Church on matters to do with civil registrations, including birth certificates, to ensure continuity of practice. It is anticipated that this increased collaboration will enhance birth registration in Timor-Leste.

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<sup>23</sup> Reported by districts consulted in the report drafting process.

<sup>24</sup> Extract from the 2005 paper "Birth Registration in Timor-Leste: Country Presentation from Timor-Leste".

<sup>25</sup> The information in this paragraph derives from a meeting with an official of the Dili Diocese Cathedral of the Catholic Church (May 2005).

49. According to the Central Civil Registry, if the child's parents are unmarried, then the mother decides the child's name (including family name). If the named father denies paternity, then "unknown" is registered.<sup>26</sup> If the father later wants to recognize the child, then he must first apply to the court for an order that the birth certificate and record be amended.

50. Finally, a significant concern pertains to children who were separated from their parents in 1999 and involuntarily displaced from Timor-Leste. Anecdotal reports claim that the names and nationality of some of those children have been changed, an issue discussed in greater detail in section VIII.A.

### **B. Freedom of expression (art. 13)<sup>27</sup>**

51. The Constitution guarantees every person's right to freedom of speech, and the right to inform and to be informed impartially<sup>28</sup> (sect. 40 - Freedom of speech and information). This right "shall not be limited by any sort of censorship", apart from any regulation in accordance with the Constitution and human dignity which includes the permissible limitations on rights set out in article 24 of the Constitution.

52. In the history of the struggle for the independence of Timor-Leste children were often strictly limited in their freedom of expression for the greater good of the struggle for independence and associated reasons. Elements of this legacy remain to this day, but overall children now enjoy greater freedom of expression than was traditionally the case. It is also considered that the very same history, in which children were previously more limited in their expression for the greater good of the struggle in the past, has served to instil a culture which values the struggle for freedom, including the freedom of expression that goes with it.

53. The evolving media also play an important role in this regard by disseminating and shaping views, and by providing a mechanism for canvassing a diversity of views and opinions. For children, the media have embraced and developed a constructive role in promoting the child's views and notions of child rights. The nature of these roles and activities are described further in section II.C of CCD, and are considered to have the potential to evolve further. In many cases,

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<sup>26</sup> This is not regulated under UNTAET regulations or subsequent domestic laws, so that the Indonesian Civil Code likely applies. That Code provides that the child is to have the father's surname regardless of whether the child is born in or outside of wedlock, unless the putative father denies paternity in which case the mother's family name is to be assigned to the child (Art. 5a). This discriminatory provision for children born out of wedlock would be deemed to be negated by the provision of S. 18.3 of the Constitution.

<sup>27</sup> It should be noted - within the context of "harmonised" reporting across human rights treaties - that the Covenant on Civil and Political Rights incorporates each of CRC Articles 13, 14, 15 and 16 in, respectively, Articles 19, 18, 21-22, and 17. Parallel reference should also be made to the country documents concerning that Covenant and/or the Common Core Document for Timor-Leste.

<sup>28</sup> Article 40 CRDTL refers.

the freedom of a child to express his/her views received most recognition on annual child rights or children's days. However, there is some regular media programming on children's views and opinions, such as the weekly TV programme *Timor Nia Otas Foun* and the monthly broadsheet *Jornal Labarik: Repezenta Labarik*.

### C. Freedom of thought, conscience and religion (art. 14)

54. Section 45 of the Constitution (Freedom of conscience, religion and worship) guarantees every person "the freedom of conscience, religion and worship". There are provisions for the separation between the State and "religious denominations", non-persecution and non-discrimination on the basis of religious convictions, the right within law to conscientious objection, and the freedom "to teach any religion in the framework of the respective religious denomination".

55. During the period of foreign occupation (1975-1999), Timor-Leste went from being approximately 20 per cent to perhaps more than 90 per cent Catholic, with little attendant accompanying understanding of that adherence.<sup>29</sup> This has created a fertile basis for dialogue between the Government and the Church, as has been reflected in the new education curriculum, particularly in regard to the teaching of religion (section VII.A also refers). The Indonesian legal framework formally acknowledged five religions (Buddhism, Catholicism, Hinduism, Islam and Protestantism), and within the new national curriculum, provision is being made for teaching of religions of three of those religions (Catholicism, Islam and Protestantism) in the public school. The professed adherence of 2-3 per cent of the population to each of the latter two creates the need to ensure mutual respect and understanding, whilst also considering the rights of persons of other minority faiths and, indeed, those without any religious belief.

56. In a recent effort to strike an appropriate balance between the right to freedom of religion and of separation of Church and State, the Government has chosen to make the study of religion in schools a compulsory subject for teaching.

57. As referred to above, a child's freedom of expression and opinion was not traditionally encouraged within the family household. Nevertheless, the new education curriculum encourages critical thought, thereby promoting the importance of a child's freedom of thought and expression within the formal education system. Effecting such change is not easy, however, given the strong nationwide support for maintaining and passing on customary practices, which are often based on hierarchical notions of patriarchy, seniority by age or birth, and community position. The Government is committed to maintain respect for the cultural heritage of Timor-Leste and to encourage the constructive coexistence of customary practices and international human rights.

58. For Timor-Leste, a parent's right and duty to provide direction to the child in the exercise of the child's rights, in terms of religion, often means that children are most commonly raised

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<sup>29</sup> Address by Mgr Basilio do Nascimento, Bishop of Baucau, "Between two Giants of Different Beliefs: How can East Timor Respond?", May 2004, Timor Institute of Development Studies, Dili, May 2004.

within the paradigms of the Catholic religion. However, this does not mean that a child's right to choose his or her own religion is denied as a consequence. The Government has created a formal education structure, elements of which are still under development, that is designed to empower children to make informed decisions for themselves as they acquire the maturity to do so (including the freedom, without discrimination, to practice Lulik or to not practise any religious faith at all).

#### **D. Freedom of association and peaceful assembly (art. 15)**

59. Timorese have certainly embraced their right to freedom of association since the beginning of their long struggle for independence. This has included a strong role of youth and student organizations (attached to political, intellectual or religious movements) working clandestinely to advance that struggle, repeatedly asserting their right to peaceful assembly.

60. Today the Constitution, the law,<sup>30</sup> and the government policy and practice acknowledge and respect the right to freedom of association and peaceful assembly for all Timorese citizens, including children and youths. As referred in CCD, a draft law on freedom of assembly has been developed and is designed to allow Timorese citizens to demonstrate peacefully while, at the same time, preserving law and order and safeguarding demonstrators against the unlawful actions of third parties.

61. The Government acknowledges the importance of such rights as demonstrated by its peaceful response to the 19-day demonstration held in Dili in April 2005. The demonstration, which was well attended by young people, was organized by the Catholic Church in Dili to protest the Government's proposal to remove religious teaching from the education curriculum. During the demonstration, there was a constant presence of police, the atmosphere was friendly and the demonstration came to an end with few incidents. Public order was certainly tested with street closures disrupting many citizens in their normal activities, businesses restricted in their capacity to trade and clear threats to public health due to the sheer number of participants who had arrived from the rural areas without adequate provision of shelter or sanitation. Yet the Government ensured that the demonstration was able to run its course despite the threat of potential public disruption.

62. The conduct of street marches and public gatherings to mark national and international children's days and International Education Day as well as pivotal community events such as the Remembrance Day of the Santa Cruz Massacre (12 November) are further examples of exercise of the right to peacefully assembly in Timor-Leste. Notably too, child participation in the organization and planning of these events is a growing feature.

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<sup>30</sup> Article 42 CRDTL refers.

### **E. Protection of privacy (art. 16)**

63. Articles 36 (Right to honour and privacy) and 37 (Inviolability of home and correspondence) of the Constitution assure the child's rights to privacy and non-interference in the child's honour and reputation, as well as the privacy of the child's home and correspondence, except as may be provided for as a result of criminal proceedings.

64. As discussed elsewhere in this report, the incipient nature of the current justice system, combined with traditional views that diminish the child's rights in this regard, suggest that the child's right to privacy will evolve with improving awareness of the broader range of child rights, especially as they impact upon both family and civil life. Improved awareness of parents and teachers, but also police, judiciary and other professionals also will also be required. Training of the media is one step towards strengthening the child's right to privacy, particularly in light of the fact that there are reports of judicial proceedings in which a child's right to privacy is alleged to have been breached.<sup>31</sup>

### **F. Access to appropriate information (art. 17)**

65. As explained in section II.C of CCD, the obstacles facing Timor-Leste's nationwide mass media have meant that a large proportion of children have very limited access to reliable mass media and other information sources. On the other hand, these early stages of building a new and vibrant independent mass media have afforded opportunities for a range of measures to be adopted, including the dialogue on ethical reporting on children, children's programming on radio and TV (such as "Radio Melodrama", "*Labarik Nia Lian*" and "*Timor Nia Otas Foun*") and the recent print media initiative, "*Jornal Labarik: Repezenta Labarik*".

### **G. The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment (art. 37 (a))**

66. Reference should be made to the discussion within sections V.H. and VIII.B of this document.

67. The Constitution guarantees that "No one shall be subjected to torture and cruel, inhuman or degrading treatment",<sup>32</sup> and also prohibits life imprisonment and unlimited or indefinite periods of sentencing.<sup>33</sup> Consequently, there is also no provision for capital punishment in Timor-Leste.

68. Specific cases of torture against children have not been reported. National human rights NGOs do, however, receive cases of treatment prohibited by article 37 (a) of CRC, categorized as "punishment" within a parent's "right" to raise their children, such as tying the child to a tree

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<sup>31</sup> Refer, for example, to various reports by JSMP on court proceedings.

<sup>32</sup> Article 30.4 CRDTL on the right to personal freedom, security and integrity refers.

<sup>33</sup> Article 32.1 CRDTL, Limits on sentences and security measures refers.

or burying the child's feet in a hole in the ground.<sup>34</sup> A recent study<sup>35</sup> on how parents manage children's behaviours discovered that 38.6 per cent of parents believe it is right for adults to beat a child with a stick. Some parents believe that adults have the right to use other forms of punishment such as threatening the child with a weapon, burning the child with a cigarette, refusing the child any food for a day, tying up the child or calling the child a dog.

69. Even though many parents do not accept these extreme forms of violent punishment, it is evident that there is a general need to raise public awareness of the importance of treating children with all care and dignity.

## **V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE**

### **A. Parental guidance and responsibilities (arts. 5, 18.1-2)**

70. Please refer to section III.E of CCD for detailed information on marriage and family life, including parental guidance and responsibilities and care of children.

### **B. Separation from parents and family reunification (arts. 9, 10)**

71. The population of Timor-Leste has historically demonstrated and continues to demonstrate a widespread acceptance and practice of removing a child from its family for reasons perceived to be in the best interests of the child.

72. During the popular resistance, many children were placed in other households or in institutions by their parents for their safety and to enable parents or older siblings to better support the independence movement. For example, many children were placed in Church-run institutions for improved protection against the authorities and militia groups. In none of these cases was there any judicial review by a competent authority to ensure that such a decision was made in the child's best interests.

73. Since independence, many children have continued to be separated from their families, still in the absence of appropriate judicial review. Perhaps the primary forms of separation of the child from its family that persist today are for reasons of:

- The placement of children (normally with the parents' consent but without any judicial or administrative review) into a residential institution (section V.E below also refers);
- The transfer of children between households as a form of "informal" adoption, (sections V.E and V.G also refer);
- The involuntary cross-border separation of children due to the previous Indonesian occupation, (section VIII.C also refers).

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<sup>34</sup> Regional Consultation in Ainaro, 2005.

<sup>35</sup> UNICEF (forthcoming) "*Speak Nicely to Me - A Study on Practices and Attitudes about Discipline of Children in Timor-Leste*".



74. Circumstances in which the provisions of article 10 CRC may apply are, however, understood to be largely confined to the inter-State situation of separated children, which is discussed in section VIII.A of this document.

75. A burgeoning workload, and the absence of a Timorese Civil Procedure Code until very recently, has resulted in the judicial system being predominantly focused on criminal matters rather than civil disputes. The machinery of public administration is also inadequately equipped to support the making of informed decisions related to the separation of children from their families.

76. Limited governmental resources has meant that, in many instances, non-governmental agencies have intervened in alleged child abuse or neglect matters that - in the best interest of the child - may warrant removal of the child from his or her parents. This is problematic as only authorized governmental agencies have the legal mandate to intervene in such cases. DNSS and VPU have worked closely together to formulate and adopt “Rules for Organization and Procedure” for such matters as the removal of a child who is the victim of abuse or neglect within the home for the child’s improved protection. This is still in its early stages of implementation, and is discussed further in section V.F.

77. The treatment of children when their parents separate or divorce is generally in accordance with customary practice, and reference should be made to comments in section V.D concerning provisions for child maintenance. The separation or divorce of parents is still rarely the subject of judicial review and decision, and neither formal judicial nor customary proceedings are accustomed to seeking the views of the child in such matters. These issues are currently the subject of advocacy and incorporation into procedural guidelines and professional training within the justice system.

### **C. Illicit transfer and non-return (art. 11)**

78. Apart from the children being separated from their parents due to the earlier conflict, referred to in section V.B, there are no confirmed reports of illicit transfer of children out of Timor-Leste. However, there were reports of children having been forcibly separated from their families by the Indonesian militia at the time of their departure from Timor-Leste in 1999. Likewise there have been reports of children being forcibly removed from their families while staying in refugee camps in West Timor following the violence in 1999. Refer to section VIII.A of this document for more information on separated children.

### **D. Recovery of maintenance for the child (art. 27.4)**

79. Current applicable law provides that the court may -upon application for a legal separation -make provisions for “the exercise of their parental authority and the care, support and education of the children” and -with respect to an application for divorce -stipulate a regular financial payment by the non-custodial parent “for the support and the education of one or more children”. Levels of support are “to be proportionate to the needs of the minor and to the income and wealth” of the liable parent, with reference to any other dependents being supported.<sup>36</sup>

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<sup>36</sup> Indonesian *Civil Code*, Arts. 230b, 237 and 329a.

80. Action to strengthen Timor-Leste's domestic legal and administrative framework, especially with respect to establishing an effective domestic child maintenance system, is under way. A new law on provisions regarding maintenance has been drafted by the Office for the Promotion of Equality and is awaiting the consideration of the Council of Ministers.

81. In practice, few judicial applications for child maintenance are made for reasons of lack of awareness, the cost of lodging applications and representation, lack of access, limited judicial competence in "specialist" areas such as family law and the absence of a traditional resort to the court for such rights. Similarly, there is presently no administrative framework for collection or enforcement.

82. As referred in CCD, if parents separate a child will normally remain with the father (if the dowry/bride price has been paid), who will make a payment to the mother for the traditional restoration of her honour. It is possible for the child to remain with the mother, though where a dowry has been paid, she will need to reimburse that payment to the father. In customary practice, an agreement on child maintenance is not necessarily made.

83. It remains most unusual for parents to seek a formal legal divorce, although this may change in view of the increasing number of primarily urban professional Timorese. Existing legal child maintenance provisions can also only be applied to formal legal divorces.

84. The new Civil Procedure Code, articles 830-837, regulates divorce by mutual agreement. According to article 828 (2), divorce by mutual agreement may only be decreed if there is a previous agreement between the spouses on two issues:

- The guardianship and maintenance of the children;
- Division of common assets of the couple.

85. Divorce by mutual agreement provides for more simple and quick procedures and a more harmonious process for the child involved.

86. While, customary practice can potentially play a very constructive role in ensuring that parents support their children, it is not of much practical assistance in those cases involving Timorese children with a non-Timorese parent, especially where that parent has left Timor-Leste. This point is particularly relevant in Timor-Leste due to the presence of significant numbers of international personnel in the country during successive United Nations missions. It is understood that many children may have been born to internationals who subsequently departed the mission.<sup>37</sup> Paternity was particularly difficult to establish in such cases and parents left Timor-Leste without an assumption of ongoing paternal responsibility or financial support for those children.

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<sup>37</sup> Several such cases are believed to have been documented by UN Mission personnel; an unknown number of other cases are reasonably believed to exist.

87. Resolution of this particular issue clearly requires United Nations cooperation and assistance, whether or not Timor-Leste subsequently considered it appropriate to become a signatory to the Hague Convention on the Recognition and Enforcement of Decisions relating to Maintenance Obligations.

#### **E. Children deprived of their family environment (art. 20)**

88. Alternative care for children in Timor-Leste takes the form of what may be described as “informal adoption” or residential institutional care, which will be referred to as an “orphanage” for the purposes of this document.<sup>38</sup>

89. According to a survey from 2002, one or both parents of 5 per cent of children are dead<sup>39</sup>. This translates to approximately 25,000 children. Available data also suggest that approximately 17,000 children aged under 18 years are not living within their birth families (including 2,000 children aged under 5 years).<sup>40</sup>

90. The reasons for “informal adoption” are diverse: alternative family-based care (often within the child’s extended family) due to the death or disappearance of its parents during the struggle for independence, and the transfer of children due to the domestic circumstances in the birth family and the “adopting” family being the two most common reasons. For example, it is common practice to “exchange” children between relatives within the same extended family. If a couple does not have a daughter, they may obtain a girl from a relative in “exchange” for one of their sons. In both cases, it is normal for the transfer of the child to be sanctioned in accordance with customary practices. Information from the regional consultation in Maubara District suggests that some of these children may face discrimination in terms of care and protection in their new home. Reports include discriminatory treatment in relation to access to school, living conditions, access to food and domestic labour.

91. With respect to children in institutional care, there are an estimated 30 orphanages and 21 boarding houses. Most of the boarding houses are managed by religious orders (primarily Catholic.). Current records suggest that approximately 2,700 children are in institutional care.

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<sup>38</sup> Residential institutional care is commonly referred to as either an “orphanage” or a “child care centre”. As the reference to “child care centre” can be misleading and confused with the provision of day-care services for children, the term “orphanage” is used in this document. This is also more consistent with domestic understanding and terminology (including in popular languages). This also serves to make a distinction from a second form of institutional care of children, via boarding houses, the historical origin of children’s institutions in Timor-Leste (a small number being established under Portuguese occupation, to enable attendance by a select few adolescents at the few secondary schools established during that time).

<sup>39</sup> MICS, Annex Table 40.

<sup>40</sup> This is derived from an extrapolation of data from the MICS (Annex Table 40) applied to provisional 2003 Census data on age distribution.

This compares to an estimated 1,242 children in late 2000, which suggests a doubling of the number of children in institutional care over the period to mid-2005.<sup>41</sup> An assessment of the situation of separated children and orphans in May 2001<sup>42</sup> reported that physical conditions in the institutions were generally substandard (such as sleeping conditions, availability of safe water, access to electricity, proximity to schools and health clinics, use of mosquito nets, presence of toilet facilities, adequacy of meals and diet, etc.). DNSS is making efforts to improve its knowledge of the standards of care for children in institutions through field visits and the engagement of institutions in consultations when socializing the Policy and Procedures for Child Care Centres and Boarding Houses.

92. Currently, a Decree Law for Child Care Centres and Boarding Houses is being drafted by the Ministry of Labour and Community Reinsertion and will be submitted to the Council of Ministers in 2006. The Decree Law will ensure that standards of care in institutions are improved, that procedures for placing children in an institution ensure that institutional placement is the most appropriate response, and that institutional placement is viewed as a temporary measure. The Decree Law will further provide for registration and licensing of centres through DNSS.

93. There appear to be two main factors that result in a demand for institutional care. One is the impact of persistent household poverty in rural areas and the other is the apparent active soliciting by individuals (operating various institutions) amongst poor households to encourage them to place their children in institutional care, often for the child's improved moral education as well as to provide standards of accommodation, schooling and meals deemed to be better than what the family can provide.<sup>43</sup> It is likely that these measures are taken with the intention of supporting families and the child, but a lack of knowledge of CRC and the risk associated with institutional placement dictate that increased awareness in this area may be warranted. Other factors such as being orphaned, family-based abuse and neglect, and parental mental illness may also contribute to the institutionalization of children.

94. It is hoped that once in force, the Decree Law will restrict the arbitrary establishment of new institutions. This will be critical to address the Government's concern at the continued growth in the number of children being institutionalized and of new institutions being constructed without the Government's knowledge or approval. As mentioned elsewhere, the

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<sup>41</sup> From "Inventory of Children's Institutions in Timor-Leste", internal UNICEF memorandum (November 2003), DSS database, and see IRC/UNICEF (2002). Most of the population growth appears to have taken place in the period prior to 2003, with a smaller growth since 2003. However, it is known that individual initiatives to develop new institutions continues and will serve to increase institutional populations of children.

<sup>42</sup> "Assessment of the Situation of Separated Children and Orphans in East Timor", May 2001, International Rescue Committee in collaboration with UNICEF East Timor - Child Protection.

<sup>43</sup> These influencing factors have been derived from a number of visits to institutions by UNICEF personnel. It is of additional concern to Government at a time when it is acting to improve institutional standards of care, which may induce further child placement.

Government also plans to develop programmes to support families and the child's retention within its birth/extended family and with its siblings, to curb the increase in children being institutionalized.<sup>44</sup>

95. Children living with families other than their birth families is common in Timor-Leste and in many cases occurred due to households taking in children displaced by earlier conflict. In such cases, the "adoptive" family regards itself as the child's legal guardian and has often provided for the child's care and upbringing for a number of years. Under existing -and proposed -legal provisions this would not be possible without a formal judicial decision made in the child's best interest with due regard to the presence of a birth family and its own wishes. Measures to regularize historical arrangements of this nature, to legalize guardianship and to formalize pre-existing informal arrangements are also required and would need to be carefully managed to redress this situation and to ensure that families and caregivers are not provoked to resist administrative and judicial efforts and to further disenfranchise these children from the system or necessary legal status. For now, procedures for adoption have been drafted and are to be subject to further discussion in 2006.

96. Importantly also, the draft adoption procedures provide that the social inquiry report to the court include reference to "the likelihood of the new family to respect the child's heritage, culture, and background", although the wording of the relevant provision gives this secondary importance as compared with the general nature of the existing domestic arrangement for children in these circumstances. Nevertheless, it is considered that the provisions of article 20.3 would likely be satisfactorily met in such placements.

97. The current priorities of the Ministry of Labour and Community Reinsertion regarding alternative care are the following:

- Adopt and implement the standards of institutional care (including measures to more effectively regulate the construction of additional institutions and the entry of children into them);
- To establish an effective structural response for the promotion of positive parenting practices;
- To establish an appropriate judicial and administrative framework to respond to the current phenomenon of "informal adoptions" so that the guardianship of such children may be formally established in the child's best interests.

#### **F. Periodic review of placement (art. 25)**

98. With reference to the periodic review of placement and treatment, there are presently negligible formal arrangements in place. Initially, this obligation is a particular feature of Government's attention to children in institutional care, with a "protocol" to formalize regular review of placement and of prospects for a return to the family. However, it is also

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<sup>44</sup> Timor-Leste: Social, Civil and Heritage Protection, Sector Investment Program (2006).

acknowledged that effective implementation of this protocol will require considerable training of institutional management and staff, as there is not an evident awareness of the need to ensure that institutional care is temporary and that earliest possible return to the family is desirable.

99. In practice, it has been noted that there are many children in institutional care who, upon attaining 18 years, appear to continue to treat -and to be treated by -the institution as “family”. This also suggests that there is insufficient ongoing contact between the child and his or her family; although many institutions do claim to encourage such regular contact it is often hindered by the fact that many institutions are situated far from the children’s families. According to an assessment conducted in 2001 many children in institutions are not able to go and visit their family and vice versa, because of the distance from their district of origin. The study showed that 17 centres had children from outside their district. The study also highlighted the issue of protection as some of the children were identified as having experienced violence at home and were not allowed by the centres to go home during the holidays for that reason. The study also showed that 15 per cent of 760 children in 37 centres did not go home at all.

100. This underscores the need of DNSS to strengthen the capacity of institutions, and consolidate their role as an important temporary response in appropriate circumstances.

101. Particular attention also needs to be given to a systematic review of placement and treatment within DNSS casework practices for those children with a physical or mental disability who are placed in care and for children placed in care for purposes of protection, as this does not presently occur under a formal placement order or decision.

### **G. Adoption (art. 21)**

102. The adoption of children is formally governed by the provisions of the Indonesian Civil Code as there is not yet a national legal framework governing adoption.

103. As mentioned above, in practice, adoption is only very rarely the subject of judicial review and is generally an “informal” process carried out within local communities, most commonly within an extended family. Prior to the end of occupation, many Timorese children were reported as having been “adopted” by Indonesian military or others. This evidently occurred without any resort to the adoption provisions of the Indonesian law.

104. The reasons for extensive informal adoption, as mentioned elsewhere in this document, include the difficult conditions of displacement and/or popular resistance during the period of occupation, responses to numbers of children left orphaned and/or homeless, and chronic household poverty.

105. Anecdotal reports of “private” (informal) adoptions do exist, even with the professed informed consent of the parents who -due to domestic poverty -may decide that surrendering their child to foreign upbringing will guarantee the child a better future. Of particular note is a recent case in which an adoption order was issued by a district court, enabling the adoption of the child and its subsequent removal from Timor-Leste. Whilst the order is reported to have been made with the voluntary consent of the child’s parents, who were said to be living in abject rural poverty with a large number of children, there were irregularities in the process giving rise to the

adoption order. Overall, it is not clear that the decision was made in accordance with the principles of the best interests of the child or the provisions of the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption.

106. This case and related matters are of serious concern to the Government and highlight the existing gaps in the adoption system. The Government is working determinedly to conclude and implement improved procedures for the formal adoption of children, including reference to intercountry adoption. Specifically, it will be vital for such arrangements and transfers to be made with the specific knowledge and involvement of DNSS. The new legal framework on adoption will serve to regulate such serious issues.

107. In 2003, Government -via MLCR-developed a regulation on adoption procedures for both domestic and intercountry adoption, which also includes attention to a framework for a foster-care system.

108. The regulation derives from extensive national and district-level consultation and includes the following features: assignment of MLCR as the central authority on adoption matters; the requirement that DNSS, as a competent authority, prepare a social inquiry report for the court's consideration, viz. in compliance with article 20 (a) criteria on the child's and the applicant's eligibility to be parties to an adoption; the requirement for the relinquishing parents' consent to be informed; voluntary provision for traditional customs to be a part of the adoption order (where these are not in conflict with international standards, e.g. concerning the child's name, dowry provisions, etc.); specific attention to the circumstances of children presently subject to "informal" adoption; post-placement monitoring by DNSS; and registration of the adoption with the Central Civil Registrar.

109. Current practice essentially establishes that the parents and the applicant are in agreement and understand the permanence of adoption, and that the applicant has the means to adequately care for the child and has suitable motives for adopting.<sup>45</sup>

110. The court is required to formally notify the Central Civil Registry of an adoption order, so that the latter may fulfil its obligation to issue "civil documents confirming such matters as birth, marriage, divorce, death, and adoption of children".<sup>46</sup> However, the Registry reports that it has received only a very small number of child adoption notifications, and it is difficult to verify whether this represents all the formal adoptions that have taken place. In fact, it is understood that there may have been only five or six adoptions before the court in the past five or six years, each being applications by non-Timorese persons.<sup>47</sup>

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<sup>45</sup> Interview with Judge, Dili District Tribunal, January 2005, and Public Defender, July 2005.

<sup>46</sup> UNTAET Regulation No. 2001/3, Sec. 2.1 (e).

<sup>47</sup> Interview with Public Defender, July 2005. Evidently, current practice is to require the applicant to produce official confirmation of identity and address, secure a statement from the applicant's Embassy of proof of identity, and satisfy the court of adequate income and motivation, combined with the birth parents' consent in person.

111. Timor-Leste is committed to strengthening its domestic system as a condition for any provision for intercountry adoption, as well as ensuring that intercountry adoption only takes place where there is no suitable permanent or temporary domestic remedy, and if the State is a party to the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption.

112. In practice, however, it is acknowledged that adoption approvals via the district court have not uniformly or diligently applied such standards.

#### **H. Abuse and neglect, including physical and psychological recovery and social reintegration (arts. 19, 39)**

113. The existing legal framework which deals with child abuse is the Indonesian Penal Code, which prohibits a range of physical and emotional abuse, neglect and abandonment, sexual abuse and exploitation and trafficking, where the child is the victim. In addition, the UNTAET Rules of Criminal Procedures (sect. 12) enshrine certain rights for a victim in judicial proceedings which extend to the child victim, who also has the right to protection by substitute restrictive measures in case of conditional release of the suspect, and by police follow-up on the child's situation (sect. 21.1). The child is also given the right not to be forced to testify or incriminate him or herself in a court where the accused is the child's parent, relative, spouse or partner (sect. 35).

114. The present limited capacity of the domestic judicial system has not satisfactorily addressed cases of child abuse. Monitoring of court cases involving sexual and physical abuse of children have revealed irregularities in the definitions of criminal offences and corresponding sentences, insufficient attention paid to the fact that the victim was a minor, and "gender biased views that could prejudice the effective and sensitive handling of these cases".<sup>48</sup>

115. Prosecution of sexual abuse cases is often hampered by factors including shame, denial, resistance and concealment, which are common consequences of such crimes in which the perpetrator is normally within or known to the family and in a position of some power or influence over the child victim. This situation is compounded by an ill-equipped enforcement and judicial system to respond to such matters. A recent review of criminal cases involving female victims -over the nine-month period to March 2005 -noted that "only a small proportion of cases of violence against women or children are reported to the police, a smaller proportion ever make it to trial, and an even smaller proportion of cases ever reach a final decision... The short sentences being delivered in these cases would not give the victims much faith in the formal justice system, or provide incentive for future victims to endure the difficulties associated with a trial in the formal justice system".<sup>49</sup>

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<sup>48</sup> JSMP, "Women in the Formal Justice Sector: Report on the Dili District Court", April 2004, p. 4 and JSMP "Justice Update", Issue 4/2005, p. 3 (proceedings in Baucau District Court, 26 January 2005) refer.

<sup>49</sup> JSMP, "Analysis of decisions in cases involving women and children victims: June 2004-March 2004", (2005), p. 5.



116. Of the 11 cases involving female victims in that review period in which a decision was made, eight concerned sexual assault of females aged under 18 years (two victims were aged 3 years), and in all cases the perpetrator was known to the victim (primarily relatives living in the same house).<sup>50</sup> The report concludes that the court decisions are “a positive improvement from the district courts’ performance in previous years, where ... no, or very few decisions were issued”. However, it noted also that written decisions were quite inadequate for cases concerning children and “indicate that there is not a sufficient level of reasoned analysis, formerly, by the East Timorese judges, and currently, by the international judges on these serious sexual assault and domestic violence cases”.<sup>51</sup> In some cases, the written decision omitted reference to the fact that the victim was a child.

117. One current concern is the provision within existing law that the sexual abuse of a girl aged under 15 years may only be prosecuted following a complaint by the child’s parents or guardians, except that the State may institute such cases independent of a parental complaint only if the perpetrator is the child’s parent or guardian, or if the sexual abuse results in physical injury or death. Given that perpetrators are so often a family member or a family friend or neighbour, prosecution is normally dependent upon a parent coming forward to the police, in preference to any decision to conceal the matter. The present provision also permits the parent to withdraw the complaint. Importantly, rape is considered a public crime in the new draft Penal Code, which will mean that a complaint is not required to initiate judicial proceedings.

118. The Government is continuing efforts to strengthen domestic laws; build judicial capacity; improve awareness and capacity of police, as well as to mainstream an awareness of gender and child rights within administrative practice.

119. While standard operating procedures for the police attending cases of children in conflict with the law or children as victims of child abuse have been developed, challenges remain in their implementation. These standard operating procedures provide for referral of cases by police to DNSS for assessment and follow-up. From June 2002 until March 2006, DNSS attended 52 cases of children in conflict with the law and child abuse. Since the beginning of 2005, DSS has applied a Case Management Policy which uses an intake form for each client and interviews to enable assessment of need and response, including -if considered necessary -a reference to VPU. In early 2005, MLCR adopted a Child Protection Policy (including a code of conduct for all staff of the agency) which conforms to current international standards.

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<sup>50</sup> Of the eight perpetrators - all found guilty - four were the victim’s father, one was a half-brother, one was a neighbour, one professed to “love and want to marry” the victim, and in one case the details of either the victim or the perpetrator were simply not recorded (including the victim’s age, except to note it was a female child). In one case, a father who learnt that his daughter had been sexually assaulted rubbed oil on her vagina with the intent to prevent her becoming pregnant and informed the police of the assault: he was charged with and convicted of abortion (despite there being no evidence of any actual “fruit of the womb”, as per Indonesian Penal Code (Art. 348)). JSMP (2005).

<sup>51</sup> JSMP (2005), p. 22.

120. Another initiative by Government to strengthen capacity and improve referral mechanisms is the establishment in 2003 of three district-based Child Protection Networks, in the main population centres of Dili, Baucau and Maliana. These networks have been set up under the auspices of MLCR with the aim to provide a local forum of police, Government and non-governmental agencies to raise local awareness of child protection and enable an early multidisciplinary response to child abuse matters. Local government officials and community members have already been given opportunities for learning and networking in the area of child protection and the Government is continuing to undertake capacity-building, reform and expansion of these networks.

121. It is estimated that there are approximately 200-250 children currently living or working on the street in Dili. While most of these children actually have homes to go to, concerns exist regarding the attention they receive there, the incidence of violence and abuse in their home situations, their exposure to exploitation and their being in conflict with the law, as well as their subsequent access to formal education. DNSS is working with local NGOs to reunify children with their families, provide non-formal education and promote re-entry into the formal school system.

122. With respect to violence against children, it is understood that the majority of cases are not reported and prosecuted.<sup>52</sup> The Government is working in collaboration with partners to address violence in homes and in schools in a constructive manner that does not seek to criminalize parents and teachers, but rather to address such behaviours through community and family education and teacher training.

123. In order to gain a clearer understanding of this issue, a study was conducted in 2004/05 by MECYS (now the Ministry of Education and Culture) and the Secretary of State for Labour and Solidarity (now the Ministry of Labour and Community Reinsertion) in collaboration with UNICEF and PLAN International. This study researched first the attitudes and practices of teachers and parents in managing the behaviour of children and second, forms of violent and non-violent behaviour that adults use. This included surveys of and consultations with children, and comparisons of their experiences with the responses of adults.<sup>53</sup>

124. The study produced a number of findings and observations, including:

- Parents and teachers use a wide range of both positive and negative forms of discipline with children;
- Many children accept various forms of negative treatment. For example, of the surveyed children, many believed that a teacher has a “right” to administer certain treatment, such as a beating with a stick (32 per cent), being slapped on the face (42 per cent) and being

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<sup>52</sup> UNICEF “Speak Nicely to Me - A Study on Practices and Attitudes about Discipline of Children in Timor-Leste”.

<sup>53</sup> UNICEF “Speak Nicely to Me - A Study on Practices and Attitudes about Discipline of Children in Timor-Leste”.

violently yelled at (49 per cent); “[51 per cent] of children believe that it is right for teachers to beat children sometimes, and 61 per cent accept that it is right for parents to do this sometimes”;<sup>54</sup>

- “Children are fairly evenly divided between those who regard it as acceptable for teachers and parents to yell violently at children and those who see this as unacceptable” (ibid., p. 84);
- Many adults believe that such negative behaviour toward children is “acceptable discipline”, although many also believe that it is unacceptable for a beating to occur to the point of bruising or bleeding, or with too large a stick or too frequently (ibid., pp. 41, 51);
- Fathers are more likely to accept more violent physical and verbal punishment of children, and mothers “find it easier to accept that adults insult children by cursing them” (ibid., p. 78);
- Most adults also frequently use positive methods of disciplining children, such as hugging, verbal encouragement, the making of a toy, etc.; in fact, positive responses are more common than are negative responses by parents (ibid., p. 38);
- Severe forms of violent discipline were reported, including threatening children with a weapon, denying food for 24 hours and tying children to a bed (ibid.);
- The least frequent positive response (of 16 such responses surveyed) was the one most favoured by children: that the adult simply explain that behaviour is wrong or unwanted (ibid.).

125. This study is likely to enable positive interventions to be made by Government in tackling home and school-based physical abuse of children. Importantly, both parents and teachers understand and practise a wide range of acceptable behaviours towards children, a valuable basis for any action in promoting effective parenting practices and classroom discipline. The study “indicates that children’s values are based on positive reinforcement rather than strong aggressive types of punishment”. In fact, the study states that one important “finding is that all of the parents have a high likelihood of accepting many of the positive actions of showing children affection [including] explaining why an action is not good and asking them to stop it” (ibid., pp. 21, 64).

126. Current priorities are to continue to strengthen the existing framework of institutional capacity (especially within the VPU of PNTL and DNSS), improve the recording of data for monitoring and evaluation purposes, incorporate improved training of teachers in disciplinary behaviours, ensure the adoption of improved domestic legislative provisions, and strengthen judicial awareness and practice (including mainstreaming the professional support role of DNSS

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<sup>54</sup> UNICEF “Speak Nicely to Me - A Study on Practices and Attitudes about Discipline of Children in Timor-Leste”, pp. 21, 50.

in child abuse and neglect prosecutions). The last is particularly important because of the need for a more systematic approach to intervention that seeks to minimize the potential for recidivism in child abuse (such as the promotion of effective parenting).

## **VI. BASIC HEALTH AND WELFARE**

### **A. Children with a disability (art. 23)**

127. Further to the background of disability issues raised in CCD as well the statistics provided in annex I thereto, some of the major causes of disability in infants and young children are malnutrition, poliomyelitis and leprosy<sup>55</sup> and, for adolescents, vehicle collisions.<sup>56</sup>

128. There are many reports of the widespread continuing effects on children (as well as on adults) of exposure to violence - especially in the immediate pre-independence period - and levels of trauma exhibited by many children (see section V.H). Such psychological forms of disability are generally poorly recognized or understood and, despite some small-scale efforts in working within schools with children who may have been witnesses to or victims of torture during the struggle for independence, there is little - if any - systematic effort to address this issue amongst children. In addition, there are various indicators of persistent levels of physical and mental violence against children that underscore this situation.<sup>57</sup>

129. Field visits and district consultations underscored factors that serve to perpetuate high rates of child disability. High fertility rates coupled with poor domestic resources, poor maternal health standards and isolation from formal health services contribute to a dire situation for newborn infants. Poor levels of post-natal care and an almost total absence of professional early diagnosis of - and therefore early intervention in response to - disability in children mean that children with a disability are likely to be over-represented in already high infant and child mortality rates (if their status was diagnosed and recorded).<sup>58</sup>

130. District consultations confirm that children with a disability are more likely to be either kept within the household, away from schools and community life, or placed in residential institutions.

131. As part of its project to formulate a national policy for persons with a disability, SSLS convened a range of local consultations on the issue of disability. These consultation, inter alia, revealed that contrary to the preference shown in general child rights consultations for

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<sup>55</sup> Leprosy is especially prevalent in the enclave district of Oecusse.

<sup>56</sup> SSLS et al. (2005), p. 40.

<sup>57</sup> For example, see UNICEF (forthcoming) "Speak Nicely to Me - A Study on Practices and Attitudes about Discipline of Children in Timor-Leste", and case records being built up by VPU and DNSS.

<sup>58</sup> In this regard, UNICEF has stated that "very few disabled children survive beyond the first years of life" (UNICEF (2004), p. 87), although the substantive basis of this claim is unknown.

purpose-built institutions and schools, the participants in seminars with those with a particular interest in and/or knowledge of disability emphasized a preference for better-trained teachers within “mainstream” schools and community-based responses to rehabilitation needs, which is more consistent with mainstream approaches to disability and development as well as with the provisions and expectations of CRC.

132. As detailed in CCD, a national policy for disabled persons, which necessarily includes disabled children, is currently being developed with the intention of responding to national circumstances and the needs and priorities of disabled persons, including the most vulnerable of disabled groups, disabled children.

### **B. Health and health services (art. 24)**

133. CCD provides general information on the national health system as well as on reproductive health and HIV/AIDS in Timor-Leste.

#### **Child mortality**

134. Data on infant and child mortality are generally quite unreliable, and one is cautioned against making timeline comparisons for pre- and post-independence. The 2002 MICS noted the range of data problems and warned that it is “impossible to talk with any confidence about trends in infant and child mortality”.<sup>59</sup> Similarly, the 2003 DHS reported data problems for neonatal and perinatal mortality which did not adversely impact infant or child mortality data, but which nevertheless indicated that “the ratios of neonatal to all infant deaths are consistently high (between 50 to 58%)”.<sup>60</sup> Nevertheless, there is some consistency between MICS and DHS data concerning infant mortality, but less so in regard to child (and therefore also under-5) mortality.<sup>61</sup>

135. Reference to the more recent DHS data yields infant mortality rates (IMRs) of 90 (boys) and 75 (girls) (average of 83) and under-5 mortality rates (U5MRs) of 113 (boys) and 102 (girls) (average of 107). These translate to IMRs of 72 (urban), 77 (rural lowland) and 106 (rural highland), and U5MRs of 86, 102 and 130, respectively. Mortality rates lower with increases in household wealth, birth spacing, birth weight, antenatal care and delivery assistance, and levels of maternal education within the 18-34 age range.<sup>62</sup>

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<sup>59</sup> MICS, p. 20.

<sup>60</sup> DHS, p. 128.

<sup>61</sup> DHS, p. 128.

<sup>62</sup> DHS, p. 134. Mortality rates are expressed as a proportion of 1000 live births. This is the second poorest of all countries in the East Asian and Pacific region, for which the average rates are 40 (U5MR) and 31 (IMR), and are on a par with the rates for the increasingly AIDS-ravaged Least Developed Countries: 105 (U5MR) and 98 (IMR).

136. As is to be expected for the present - and due to a reliance on surveys in lieu of reliable records on mortality - there are no reliable data on the causes of infant and child mortality. Nevertheless, it is possible to conclude that the timing of successive births (birth spacing) has a positive effect on child survival (the IMR for children born within two years of the previous birth is nearly four times the rate for children born with an interval of at least four years).<sup>63</sup>

137. Analysis of high-risk fertility behaviours related to child survival:<sup>64</sup>

“revealed that 59 per cent of births in Timor-Leste had an elevated mortality risk that was avoidable, 13 per cent had an elevated risk as a first pregnancy that was unavoidable, and 28 per cent of the births had no increased risk. The births of the elevated risk category can be divided into those births for which there is a single high risk factor or for which there are multiple high risk factors. Among those births with increased risk, 23 per cent fell into the group with a single risk, while 37 per cent fell into one of the multiple risk groups that combine maternal age, birth order or birth interval risk groups ... The most common single high-risk is birth order >3 ... and the most common multiple risk factor is mother’s age >34 and birth order >3 ...”

138. These data and their analysis make two conclusions very clear. First, infant and child mortality rates in Timor-Leste are exceptionally high by any standard. Second, the vast majority of infant and child deaths are avoidable, if fertility rates can be reduced, birth spacing increased and pregnancy among the 18-34 age range reduced. Whilst there is a need for continual improvements in pre- and perinatal care and in qualified delivery assistance, the cost of poor levels of fertility knowledge and family planning is that many Timorese children and infants are dying unnecessarily.

### **Immunization**

139. All children should be immunized against the six major preventable childhood diseases: tuberculosis (BCG vaccine), diphtheria, pertussis and tetanus (three doses of DPT: DPT3), polio (four doses of vaccine: OPV3), and measles. These vaccinations should be given to children before their first birthday.

140. Prior to 1999, Timor-Leste was part of the Indonesian expanded programme of immunization (EPI). During that time, the most recent national mass immunization campaign was conducted in 1997. According to the DHS in 1997, just 56 per cent of 1-year-old Timorese children (12-23 months) had received the full immunization cycle, in a range of 59 per cent (OPV3) to 78 per cent (BCG).

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<sup>63</sup> In all district consultations held in the preparation of this document, there was strong advocacy for improved public education - including within the secondary school curriculum - of the importance of birth spacing. This seemed to be a “compromise’ position offered by workshop participants keen to avoid conflict with the church on family planning education, although family planning education was also advocated by a clear majority of participants.

<sup>64</sup> DHS, pp. 138-9.

141. Rates since 1999 have fallen dramatically. The 2002 MICS derived information on vaccination which was mainly based on recall. The coverage of 1-year-old children ranged from 16 per cent (OPV3) to 37 per cent (BCG), with 59 per cent having received no vaccination and only 5 per cent having received all vaccinations.

142. Cooperation between the Ministry of Health, United Nations agencies and other donors has enabled an EPI to be established, with a functioning cold chain system from central through to subdistrict level (i.e. within all CHCs). Immunization coverage was estimated to have increased to 60 per cent by 2003. A national mass campaign in 2002 achieved 97 per cent polio immunization of under-5-year-old children, and a mass campaign in 2003 achieved 99 per cent measles coverage (and 98 per cent vitamin A coverage) of under-5-year-old children. DHS reports that coverage in 2003 was BCG, 75 per cent, OPV3, 26 per cent, DPT3, 38 per cent and measles, 56 per cent, which may underscore the extent of drop-out rates for final polio and DPT vaccinations; 18 per cent of 1-year-old children had received all vaccinations and 18 per cent had received no vaccinations.<sup>65</sup> According to an EPI cluster coverage survey of 1-year-old children conducted in December 2004, immunization coverage was: BCG, 72 per cent, OPV3/DPT3, 57 per cent and measles, 55 per cent. An immunization card could be produced for 26 per cent of children, and 48 per cent of children were considered to be fully immunized.<sup>66</sup>

143. Differences in data between varying reports can largely be attributed to two factors: methodological, including a reliance on recall and/or on written vaccination records which frequently cannot be produced, and timing with respect to the conduct of national immunization campaigns. For example, MICS was held immediately prior to the mass polio vaccination campaign. Nevertheless, further discrepancies between DHS (26 per cent OPV3 in 2003) and the EPI survey (57 per cent OPV3 in 2004), considered to be more accurate, remain.

144. The Government has recently decided to err on the side of caution with respect to polio, especially following reports of polio cases in Indonesia earlier in 2005. Accordingly, national immunization days were conducted in September 2005, aiming to achieve comprehensive polio vaccination coverage (i.e. in excess of 90 per cent nationwide for children aged under 5 years), as well as provision of vitamin A supplementation.

145. Consistent with its commitment to the MDGs, the Ministry of Health has set a target for measles coverage of 80 per cent by 2007 and 90 per cent by 2010.

### **Infant nutrition**

146. Adequate nutrition is critical not just for improving child survival, but also for improving the child's mental and physical development. Babies with birth weights of less than 2,500 grams

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<sup>65</sup> Refer to MICS pp. 51-3, UNICEF (2004), p. 39, and DHS, pp. 165-6.

<sup>66</sup> "Immunization coverage among women and children 12-23 months in the Democratic Republic of Timor Leste Using the EPI cluster survey methodology: December 2004, Final report", World Health Organization, UNICEF, Ministry of Health.

are at greater risk of disease and death in infancy. An absence of exclusive breastfeeding in the first six months and of extended breastfeeding to two years of age reduce the chances for the child's fullest development.

147. Three main measures of child nutrition levels are: wasting (weight for height), underweight (weight for age) and stunting (height for age). All three measures of malnutrition amongst Timorese children less than 5 years of age show that levels are very high:

- 49 per cent show moderate levels of stunting, and 28 per cent display severe stunting;
- 12 per cent show moderate levels of wasting, and 3 per cent display severe wasting;
- 46 per cent are moderately underweight, and 15 per cent are severely underweight.<sup>67</sup>

148. This demonstrates “a high level of child malnutrition across virtually all of the country and among almost all sub-groups of the population. However, for policy, the dominance of stunting ... emphasises both the poverty linkage and the need to generally increase access to nutritional quality as well as quantity of food to children, and particularly around the time and after they are weaned ... [and] is also indicative of poor maternal nutritional status.”<sup>68</sup>

149. This underscores the importance of breastfeeding practices in Timor-Leste. Whilst 96 per cent of infants are breastfed at some time, the median duration of breastfeeding is just over 15 months, which appears to have reduced in recent years and may be associated with high fertility rates and short birth intervals. However, whilst MICS reported exclusive breastfeeding of 53 per cent for infants under four months and 44 per cent for those aged under six months, DHS reported 39 per cent and 18 per cent respectively (with some form of infant formula being fed to 26 per cent of infants under four months, with considerable risk of increased child morbidity rates and diarrhoea). It also reported that 87 per cent of newborn infants are breastfed on their first day.<sup>69</sup>

150. The Alola Foundation (a national NGO) has been instrumental in the establishment of the National Breastfeeding Association, which promotes exclusive breastfeeding through mothers' support groups and is working with the National Assembly to legislate on a National Code on Marketing of Breast Milk Substitutes, which has been drafted and is under review by the Ministry of Health.

151. With respect to micronutrient intake, 62 per cent of children aged less than 3 years consume food rich in vitamin A and 34 per cent of children aged under 5 years receive vitamin A supplements. Household food shortages are reported for 36 per cent of children aged 6 years and over, and for 7 per cent of children aged under 6 years. For children aged less than

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<sup>67</sup> DHS, pp. 206-13. These data are similar to the 2002 results derived from MICS.

<sup>68</sup> MICS, p. 42.

<sup>69</sup> MICS, pp. 43-4, UNICEF (2004), p. 46, and DHS, pp. 187-94.



5 years, 32 per cent are anaemic, 6 per cent suffer moderate-severe anaemia, and 0.8 per cent are severely anaemic. Anaemia is highest in children aged 6-11 months. The corresponding rates for pregnant women are 37 per cent, 7 per cent and 1.3 per cent respectively.<sup>70</sup>

152. These indicators, among others across the adult population, underscore the need for a national policy on nutrition and food security. Accordingly, in 2004, the Ministry of Health - supported by UNICEF - produced a “national nutrition strategy”, which identified the underlying causes of malnutrition as household food security, maternal and child caring practices, and health and environmental sanitation services. The strategy focuses on actions around the key components of maternal and child nutrition and food security, with attention to roles at the national level of central services, service delivery and community and family actions, with monitoring and review mechanisms. The strategy is being integrated within the basic package of services and the national primary health care policy.<sup>71</sup> Further government efforts to address food insecurity, including the establishment of the Emergency Food Aid and Distribution Team discussed in section II.C.3 of CCD, are designed to further complement measures to strengthen the health and nutrition of children.

### **Childhood diseases and morbidity**

153. Timorese children are highly vulnerable to various illnesses and infections. Although the absence of accurate records presently makes it difficult to establish primary causes of mortality or forms of morbidity, and maternal recall is inappropriate for making an informed diagnosis, limited statistics available have identified the most prevalent infectious diseases accompanied by fever in Timor-Leste to include malaria, dengue fever, respiratory and gastrointestinal infections, measles and typhoid.

154. In the two weeks preceding the District Health Survey, acute respiratory infection or fever appeared to afflict 14 per cent of children, particularly in the 6- to 23-month age group. The presence of fever was estimated at 30 per cent and, again, was highest in the 6- to 23-month age group. Less than a quarter of these children were taken to a health facility for treatment. For malaria - which, along with dengue fever, is endemic in Timor-Leste - 19 per cent of affected children receive an anti-malarial drug and 60 per cent receive a non-anti-malarial drug.<sup>72</sup>

155. In the first five months of 2005, there were 1,061 cases of dengue infection (49 per cent in children aged under 5, 30 per cent in children aged 5-14 years, 21 per cent in persons 15 years and over) and 39 deaths (59 per cent, 31 per cent and 10 per cent respectively). For 2004, there were a total of 62,875 clinical cases of malaria in children aged under 5 years (35 per cent of all cases) and 9 deaths (all aged under 5 years).<sup>73</sup>

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<sup>70</sup> DHS, pp. 196, 200, 217.

<sup>71</sup> Ministry of Health (2004).

<sup>72</sup> DHS, pp. 173-5.

<sup>73</sup> World Health Organization and Ministry of Health data. Note that the malaria data do not include the districts of Baucau and Bobonaro.

156. Leading up to 2006, the Ministry of Health developed a malaria and dengue fever strategy, to prepare for the onset of the rainy season. This was focused on integrated vector control activities and refreshment training for clinicians in clinical case management, especially given the high rates of malaria and dengue fever in the under-5-year-old population.

157. At the time of MICS, almost half of all children were sleeping under mosquito nets (77 per cent in urban areas, 39 per cent in rural areas; 77 per cent of the richest quintile, 26 per cent of the poorest). However, only 8 per cent of those nets were reported as having been treated.<sup>74</sup> By 2007, the Government aims to double (to 60 per cent) the proportion of the population in malaria-risk areas who are using effective treatment.

158. In 2003, diarrhoea in children aged under 5 years was estimated at 10 per cent (at least one episode in the two weeks preceding the survey). Fifty-six per cent of those children received oral rehydration therapy (ORT), although only 7 per cent of children received increased fluids. Disturbingly, 43 per cent of children are given less fluid, and 63 per cent less food, during a diarrhoea episode. For the first six months of 2005, there were 6,737 reported cases of diarrhoea in children aged under 5 years (34 per cent in those aged under 1) and 41 deaths (46 per cent in those aged under 1). “Given these results and the high levels of childhood malnutrition, there appears to be a need in Timor-Leste for community promotion of appropriate feeding of children during diarrhoea”. For the first six months of 2005, for children aged less than 5 years, there were also 91 cases of measles and 294 cases of pneumonia (representing 63 per cent of the total), with four deaths (17 per cent of the total).<sup>75</sup>

### **Water and environmental sanitation**

159. Access to safe drinking water and environmental sanitation are central to achieving a child’s rights to healthy development within the family as well as within the school setting, and to guaranteeing the child’s survival (via reduced child mortality and morbidity rates). This is especially critical in rural areas and within poorer households.

160. As detailed in CCD, access to safe water and sanitation has historically been poor across communities and particularly in schools; the situation was exacerbated by the damage caused in 1999. Water and sanitation programmes are being implemented across all districts. Nevertheless, despite interventions to redevelop water and sanitation facilities within 157 schools, and hygiene education, about a third of primary schools remain in need of significant improvement.

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<sup>74</sup> MICS, p. 61.

<sup>75</sup> DHS, pp. 178-183. MICS recorded a 25 per cent rate of diarrhoea, with similar high ORT usage. Both surveys note the limitations of the seasonal measurement of diarrhoea. Data for 2005 are from Ministry of Health weekly reports. For pneumonia, there was a sudden increase in cases in April 2005, which seems to reflect increased case reporting at Dili National Hospital (which represents 88 per cent of all reported cases across all districts).

### **Accident prevention**

161. Data on children injured or killed in traffic accidents are not accurately known, but statistics are believed to be alarmingly high and, as reported in section VI.A, a major cause of physical disability in children. This may be due to a variety of factors, such as lack of awareness of road safety by children and drivers, poor standards of roads and vehicles, widespread use of vehicles for mass transport (backs of trucks or pickups with no safety restraints), poor road signposting and marking, and the common practice of children to walk along roads (for example, to and from school, or to gather water). The police are giving current attention to this matter, with police officers of the Community Protection Unit conducting regular school visits, talking to children about issues of traffic safety. Audio and print advocacy materials promoting traffic safety have also been developed and used by the police officers during these school visits (other topics discussed during the school visits include alcohol and drug abuse, pornography and prostitution).

162. Data on motor vehicle accidents are being collected, including the nature of the accident and its consequences, although this information is not disaggregated by age. NDP provides for universal school coverage for road safety and safe driving campaigns, a public media safety campaign and action to ensure a reduction in the traffic accident rate.<sup>76</sup>

### **C. Social security and childcare services and facilities (arts. 18.3, 26)**

163. For working parents there is still no formal system of daytime childcare services. With only 9 per cent of women engaged in the formal labour market, most would - if required - make private arrangements for childcare assistance with the extended family, with their older children, or within their local community. However, with such high fertility rates and the absence of birth spacing, formal employment is considered by many households not to be a realistic option. As detailed in the CEDAW -specific document also, many women do, however, work as part of the informal labour market, working in the home, often with children in their care, on income-generating activities such as food preparation and handicraft production.

164. While the Labour Code does not specifically promote childcare services, this was explicitly acknowledged as a priority within NDP as a means of supporting working mothers and focuses some attention on the adoption of guidelines for workplace day-care services. A parallel commitment to the expansion of government and private preschool facilities will also have an impact in this regard (section VII.A refers).

### **D. Standard of living (art. 27.1-3)**

165. Very many Timorese children suffer from an inadequate standard of living. As highlighted in CCD, approximately 40 per cent of households are living in poverty, defined as “having income insufficient to purchase ‘a food basket that provides 2100 calories per person per day, and includes an allowance for non-food needs (such as clothing and education)’”(SLS et al. (2005), p. 23). Given the concentration of insufficient income within larger households, this

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<sup>76</sup> “Timor-Leste National Development Plan 2002”, p. 291, 292.

suggests that more than 40 per cent of children are in poverty. This presents enormous challenges to the Government, which was acknowledged in NDP. The focus of national strategic responses has primarily been reactive rather than preventative, due to immediate demands for action and the extent of need, for example, in levels of preventable infant mortality, malnutrition and food insecurity, and child neglect and/or transfer (to other households or into institutional care).

166. CCD details the Government's recent initiative to establish a "Social Solidarity Fund" to support action to assist social groups in special circumstances or with special needs to (a) obtain urgent assistance and (b) support efforts for their improved well-being and sustainable livelihoods in open markets on the basis of equality.

167. More generally, the Government emphasizes its awareness of the multidimensional nature of the child's standard of living, such that broad-ranging measures are required. NDP established a foundation for national development which placed the well-being of all as central to a sustainable new nation. This included a range of specific provisions for children many of which are already being acted upon - or are otherwise incorporated into current government (sector investment) programmes, which are accompanied by budgetary commitments for the current five-year period to 2009. These provisions and initiatives are reflected in various sections of this document.

## **VII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES**

### **A. Education, including vocational training and guidance (art. 28)**

168. As referred in CCD, a history of educational neglect and the destructive events of 1999 led the Government to inherit a meagre educational infrastructure. While much remains to be done to development the education sector today, the emergency response to events of 1999 was rapid. By fiscal year 2004/05, there were 759 primary schools (85.5 per cent government schools), 129 pre-secondary schools (69.8 per cent government) and 76 secondary schools (40.8 per cent government) in operation, with total student populations of 179,892, 39,868 and 24,493 respectively and associated student-teacher ratios of 33, 24 and 34. Non-government (Catholic) schools teach 20.1 per cent of the student population.

169. CCD provides a general background to the aims of education in Timor-Leste as well as general commentary on the current challenges confronting the development of the education system. Accordingly detailed below is more precise information about the education sector and the challenges that it faces in respect of each level of education.

#### **Primary schooling**

170. Primary schooling in Timor-Leste is generally defined as commencing at six years of age. However, the emerging education system has been characterized in its early years of development as comprising "significant levels of overage enrolment as indicated by significant differences between gross and net enrolment rates".<sup>77</sup> For example, 1999/2000 enrolment rates

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<sup>77</sup> MICS, p. 25.

were estimated to be 89 per cent (gross) and 51 per cent (net) and, in 2004/05, rose to 121.3 per cent (gross) and 67.7 per cent (net).<sup>78</sup> This demonstrates an increase in the numbers of older children in primary schools, likely due to the return to school of many children who had previously been denied access to schooling. In fact, 40 per cent of children in grade 1 in 2002 were aged between 8 and 14 years.<sup>79</sup>

171. After strong enrolment growth in 2000 and 2001, the primary school population has stabilized at about 182,000, of whom 48,000 are deemed “overage”(equivalent of 27 per cent of enrolments). There are approximately 240 students per school, with an average of seven teachers per school, although “there are districts with higher education and lower education growth than the national average, resulting from very significant population movement highlighted by the 2004 census and from poor rural areas where there was low enrolment pre independence”.<sup>80</sup>

172. Teacher numbers have similarly grown and stabilized, with more than 4,000 primary school teachers comprising the single largest segment of the government workforce. The average pupil-teacher ratio has declined from 47:1 in 2001 to 34:1 (being slightly lower in Catholic schools).<sup>81</sup>

173. In response to the challenges confronting the rebuilding of the national primary education system, MECYS (now MEC) initiated the “100 Friendly Schools” project, in collaboration with UNICEF in 2002. This sought to be an early rapid response by establishing a series of (eventually 100) “core cluster schools” within all districts, each with several “satellite” schools linked to them, in order to implement models of best practice for primary school education (that is, 100 “clusters” eventually servicing all 749 primary schools countrywide). Initial functions were to facilitate participatory learning, in-service teacher training, school principal training in school administration, management and leadership, establishment of parent-teacher associations, the provision and development of curriculum materials, school financing, and the refurbishment of the Teacher Resource Centre.

174. By 2005, following a review of the project, there was a focus on building the quality of existing structures rather than further rapid expansion, to help the cluster schools to develop sustainability. This has also enabled a merging of functions such as school-based management, parent-teacher associations, teacher training and curriculum development, and better linkages to be developed between early childhood education, “child friendly spaces” and the 100 Friendly Schools project.<sup>82</sup>

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<sup>78</sup> “Timor-Leste: Education and Training Sector Investment Programme”, (draft 2006), p. 7. Gross rates refer to the percentage of primary school population regardless of age (for primary schooling, 6-11 years). Net rates refer to the percentage of population of official primary school age (in this case, 6-11 years).

<sup>79</sup> UNICEF (2004), p. 65.

<sup>80</sup> “Timor-Leste: Education and Training Sector Investment Program” (draft 2006), pp. 13-14.

<sup>81</sup> Ibid, p. 13.

<sup>82</sup> UNICEF Timor-Leste Annual Reports, 2002, p. 35, and 2004, p. 31.

175. Important features of education sector development are that by mid-2005 participating schools were producing improved learning outcomes for children and a diverse involvement of parents in the 194 schools in which parent-teacher associations have been established (with a further 71 associations being introduced).<sup>83</sup>

176. Recent years can be characterized as a period of considerable development in a relatively short period. There remains a dual need for consolidation of efforts and continuing progress. Priority challenges for the primary education sector are:

- The overage student population (which reportedly leads to problems in classroom behaviour, discipline, and repetition and drop-out rates, which may continue due to the practice of many parents to defer the age of initial school enrolment in order to defer costs);
- Children not entering the education system - “net enrolment of 86 percent implies that there are some 21,000 children in the 6-11 year age group that are still not in school”;<sup>84</sup>
- Continuing problems with access to and quality of school facilities (need for additional schools in rural areas, improved facilities within schools, better water and sanitation, etc.);<sup>85</sup>
- Improving academic performance rates, given that 20-25 per cent of students are failing each year, which also means that scarce education outlays are rendered a “lost” investment, especially to the extent that failure leads to repetition;
- Reducing repetition and drop-out rates, which are estimated at 20 per cent and 10 per cent respectively, which means that less than 50 per cent of children reach grade 6;<sup>86</sup>

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<sup>83</sup> “100 Friendly Schools Evaluation Report June 2005”, presentation to Ministry of Education, mid-2005).

<sup>84</sup> Timor-Leste: Education and Training Sector Investment Programme”, (draft 2006), p. 14.

<sup>85</sup> “Over 25 per cent of classrooms [are] in dangerous physical condition; [there is] gross overcrowding in some urban areas”, and “1074 classrooms [are] in serious state of dilapidation”. MECYS Presentation to National Conference on Strategies for the Achievement of Education for All (Dili, June 2005) “As many as 40 per cent of schools have no toilet facilities”, “rehabilitation and/or reconstruction of sanitary facilities is needed in many schools”, and “up to 50 per cent of primary schools do not have access to drinking water”. The average walking time to and from school is estimated at 30 minutes, with many children in rural areas facing a walk each way in excess of an hour, often without having breakfast (due to poverty and/or the time required to undertake domestic chores) or without shoes to wear. The Primary Student Achievement Survey reported that between 32-42 per cent of all primary school-aged students reported school non-attendance in the week prior to the survey. (UNICEF (2004), pp. 69, 70, 74).

- Continuing to improve student-teacher ratios which, whilst recently improving, requires further progress; this is an important aspect of education policy which will be addressed not just by the number of teachers, but by reducing repetition rates. This, in turn, also depends upon improving teaching standards, putting in place the new learning materials, and reducing delayed initial enrolment as a means to lower the overage population;
- The inadequate level of teacher training and professional accreditation. As already noted, the vast majority of teachers left the country in 1999 and teacher quality remains a problem, with limited capacity to produce qualified teachers.<sup>87</sup> The draft Education Policy proposes that a system of teacher licensing and quality control be adopted in 2006, with an opportunity for all teachers to acquire the necessary qualifications by 2010;
- Improving student teaching hours. Prescribed contact hours are already well below recommended international levels and are lowered considerably further by the combined impact of student and teacher absenteeism and “multi-shifting” of classes, especially in earlier grades, which seriously diminish both the quality and quantity of teaching;<sup>88</sup>
- Inadequate learning materials.<sup>89</sup> “More than half of all students have no books. Many of the books that do exist are unsuitable remainders from pre-independence written in Bahasa Indonesian. Textbooks have yet to be written for key areas of the curriculum such as Tetum language and environmental studies”.

177. As is readily apparent, such challenges are interrelated in their requisite responses and policy responses form part of the new education curriculum. For primary schools, this comprises

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<sup>86</sup> Timor-Leste: Education and Training Sector Investment Program, (draft 2006), p. 14.

<sup>87</sup> The Catholic Teachers College in Baucau can produce 50 graduates per annum, whilst it is estimated “that at least 250 primary school teachers will need to graduate per year to meet current and projected demand for coming years”. UNICEF (2004), p. 72.

<sup>88</sup> “Contact hours are very low by international standards. In theory the school year allows for 720 contact hours, which is somewhat lower than the international range of 850-1000 hours for the majority of primary education.” This is further reduced by (a) student and teacher absenteeism, which reduces contact hours to an average maximum of 548 hours, and (b) “multishifting”, whereby two classes (commonly Grades 1 and 2) are taught consecutively in a 4-hour shift. “Children in first or second grade multishift classes will often suffer the triple disadvantage of very low contact hours (no more than 274 in a year); large classes; and classroom instruction in one or even two foreign languages.” Davidson (2005), p. 8.

<sup>89</sup> Davison (2005), p. 15.

a syllabus of six core subjects, including religion.<sup>90</sup> A “teachers’ guide” for implementing the new syllabus is in preparation, as is a National Curriculum Statement, both of which anticipate the imminent approval of the National Education Policy by the Council of Ministers. An overall implementation is set out within the “Reform Curriculum Management Plan”, which extends to 2009.

178. The education policy (and associated curriculum) is to be phased in over that period. From the 2005/06 school year, the new curriculum will be implemented in all primary schools at grades 1 and 2 within 32 “core schools” of the Government’s 100 Friendly Schools project, also supported by UNICEF. For the following school year, implementation will be extended to grade 2 within all schools, and similarly for grade 3 in the 2007/08 school year, through to complete implementation within the primary school sector by academic year 2010/11.

179. As discussed in CCD, the teaching of Tetum and Portuguese recognizes the learning value in the “mother tongue” for early schooling. However, approximately three quarters of children speak one of 14 languages other than either Tetum or Portuguese, so that this remains a problem in education delivery.<sup>91</sup> Such problems are further exacerbated by the inadequate language skills of many teachers and the continuing shortage of suitable Tetum-language textbooks and teaching materials. The Government has sought to minimize the extent of these transitional problems through the preparation of bilingual materials for both teachers and students. If a student has difficulty learning in a particular language, e.g. Portuguese, then the teacher is able to teach that child in his or her mother tongue in order for the child to understand the substance of the subject. This is common practice in most of the schools in rural villages where native languages are mainly spoken, especially in the districts of Lospalos, Oecussi, Baucau and Viqueque.

### **Secondary schooling**

180. Post-primary education in Timor-Leste is divided into three years of pre-secondary education and three years of secondary. The system of the Government is to move towards a system of nine years of basic education for all children. One *escola basica* has already been

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<sup>90</sup> The core subjects are: Tetum, Portuguese, Mathematics, Environmental Studies, Physical Education and Health, and Arts and Culture. Religion comprises teaching of Catholicism, Protestantism or Islam. The question of whether or not this should be mandatory for all children has been the subject of intense debate and lobbying. Government resolved that religion should be mandated for provision by all schools (including Government schools), but that attendance should be on the basis of parental consent. As noted elsewhere in this document, customary religious belief is a traditional form of animism, which many (evidently a persistent vast majority of) Timorese continue to practice as a dominant religious belief in concert with their affiliation to the Catholic Church. There appear to be grounds for considering - consistent with provisions of the CRC (eg. Arts. 14, 29.1(c) and 30) - whether traditional animism should be similarly reflected within the national curriculum (possibly within the context of both religious education and teaching of cultural heritage).

<sup>91</sup> Davison (2005), p. 7.



established by Government to provide both primary and pre-secondary education, with a view to additional schools being gradually added or converted to provide these nine years of basic education.<sup>92</sup>

181. For pre-secondary education there are more than 41,500 students served by 129 schools, a third of which are located in Dili and Baucau. There is an average 322 students per school (255 in Baucau, which has a larger number of Catholic schools, and over 500 in Dili). The student-teacher ratio averaged 25:1 by 2005, a 25 per cent improvement on just two years earlier, reflecting a sharp increase in teacher recruitment.<sup>93</sup>

182. Enrolment rates are poor but improving, at 19.0 per cent (net) and 58.4 per cent (gross) in 2000, rising to 30.4 per cent (net) and 58.6 per cent (gross) in 2004/05. Note, however, that there is wide geographic fluctuation in student growth (for example, student growth ranged from -7 per cent in Manufahi District to +82 per cent in Aileu District). Again, overage children account for around half of students in pre-secondary schools and with a net enrolment ratio of 30 per cent. The implication is that some 49,000 children in the 12-14 age group do not attend pre-secondary education.<sup>94</sup> The secondary sector is also subject to the improved operation of the primary sector in coming years, with efforts to strengthen primary completion and performance rates.

183. Importantly, existing data suggest a huge withdrawal/drop-out rate between primary and pre-secondary schooling; this will be addressed by a closer interrelationship between the two via the move to “basic education” in both concept and practice.

184. Major emphasis has also been placed on the development of the new national curriculum for primary school. This new curriculum was completed and piloted in 2005 and is now being implemented within grade 1, followed by grade 2 for the academic year 2006/07 and grade 3 in 2008/09. The curriculum comprises eight core subjects plus religion.<sup>95</sup> Instruction will continue to move progressively towards use of Portuguese as the principle language of school instruction, though as with primary education, difficulties in recruiting teachers sufficiently fluent in the language remains a problem.

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<sup>92</sup> Timor-Leste: Education and Training Sector Investment Program, (draft 2006), p. 14.

<sup>93</sup> Timor-Leste: Education and Training Sector Investment Program, (draft 2006), pp. 14-15.

<sup>94</sup> Timor-Leste: Education and Training Sector Investment Program, (April 2006), p. 15.

<sup>95</sup> The core subjects are: Tetum, Portuguese, English, Mathematics, Science, Social Studies, Physical Education, and a “living skills” subject (4 hours per week, of which 2 hours dedicated to entrepreneurship based on the UNIDO model). The concerns about the administrative practice of religion expressed for primary education apply for secondary levels, perhaps more so, given diminishing choice for many students of access to Government education in senior years. The “living skills” subject includes content on HIV/AIDS and sexual health, modelled according to the academic progress of the child.

185. The development of the secondary system is far more problematic. There were just 55 schools in 2003, almost half of which are in Dili, with an average population of 382 students. The student-teacher ratio declined from 34:1 in 2000 to 18:1 in 2002 but has since risen back to 34:1 in 2005. Staffing has been particularly difficult at this level as the previous system depended heavily on teachers from Indonesia. Their withdrawal has not been followed by large-scale recruitment because of the lack of appropriately qualified candidates.<sup>96</sup>

186. As at other levels of the education system there is a temporary reliance on volunteer non-Timorese teachers at secondary school. In fact, one in three teachers at secondary school is a volunteer. These teachers are not on the government payroll, but are paid by parental contributions and other funds raised by the school. Some are not well qualified.<sup>97</sup>

187. Enrolment rates are extremely low but net enrolments are improving, having risen to 33.6 per cent in fiscal year 2004/05 from 16.9 percent in fiscal year 2001/02. While overage students still represent a significant problem, the proportion is declining so that today, of 24,493 students, 3,812 (15.56 per cent) are overage as compared with 12,458 of 20,818 students (59.84 per cent).<sup>98</sup>

188. As the Government's priority is currently focused on strengthening entry to schooling, and quality and performance outcomes for the first nine years of basic education, the development of the secondary education sector will be clearer by the time of the Government's next CRC report.

### **Vocational and technical education**

189. Vocational and technical education is provided by Government at the secondary school level and by a number of private organizations. There are currently seven technical vocational schools operated by the Government and three privately operated secondary schools that provide vocational and technical training. Churches and NGOs operate a range of vocational training programmes, but since there are no registration systems in place, the full extent of these programmes is not known. MLCR estimates that there are at least 41 private providers of vocational and technical training, which come under the aegis of MLCR. There are approximately 6,000 students of varying ages enrolled in these government and private programmes, the duration of which varies considerably.<sup>99</sup>

190. Collectively, these training providers offer a range of courses, with more than 50 per cent in the field of information technology, carpentry, sewing and electronics. A 2003 study concluded that the training centres were operating well below their full capacity.<sup>100</sup>

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<sup>96</sup> Timor-Leste: Education and Training Sector Investment Program, (April 2006), p. 16.

<sup>97</sup> Timor-Leste: Education and Training Sector Investment Program, (April 2006), p. 16.

<sup>98</sup> Timor-Leste: Education and Training Sector Investment Program, (April 2006), p. 16.

<sup>99</sup> Timor-Leste: Education and Training Sector Investment Program, (April 2006), p. 41.

<sup>100</sup> UNDP (2004), Skills Training for Gainful Employment Programme (STAGE): Project Document.

191. MEC and MLCR have jointly prepared a medium-term strategy for national vocational and adult education programmes. The main focus is on improving adult literacy, developing school curricula, particularly for technical training, strengthening the relevance of vocational training services, and assisting the entry into the labour force of unemployed young people and school drop-outs. Vocational and technical training programmes are to target various groups in society, in particular youths, veterans and the disabled. A particular concern of the Government that is relevant for the development of vocational and adult education policies and programmes is the empowerment of women and improvement in their access to opportunities for economic and political advancement.<sup>101</sup>

192. The primary vehicle for achieving the necessary coordination of services and capacity-building/training initiatives is the establishment of an Employment and Vocational Training Fund, established by agreement with the International Labour Organization (ILO) and managed via the MLCR Division of Employment and Skill Development. The Fund has two main objectives: to subsidize skills training to strengthen employment prospects, and to facilitate small and micro-enterprises through access to credit.

### **B. Aims of education (art. 29)**

193. A general introduction to the education system, including constitutional provisions in relation to education, is present in CCD.

194. In terms of the Education Policy Framework outlined in CCD, attention will necessarily be focused on the extent to which sound child-centred and values-based foundations of the curriculum are properly integrated into teaching practice. For example, it may be necessary to monitor the effectiveness of teaching as a means to promote such goals as human rights, gender equity and personal responsibility. This is particularly important in areas such as the primary sector, given the new curriculum context of the life and community of the child (which represents a fundamental change in methodology in the teaching guide), and the aim of better meeting the expectations of children. As most children live within non-literate households, the development of the curriculum has explicitly sought to ensure a stronger sequencing of learning throughout the years of primary schooling (also extending into the following three years of pre-secondary schooling).

195. An issue of concern to the Government is that of disciplinary measures taken within schools. A study of current practices - by both teachers and parents - identified a range of positive and affirmative practices that provide a constructive basis upon which to promote suitable disciplinary practices within teaching methods. Nevertheless, the study also identified an alarming range of severe, demeaning and inhuman practices used on children. Such issues will be examined, and addressed alongside teacher training and professional development initiatives. A communication and social mobilization strategy to reduce violence against children in school and in the home will also be developed in order to follow up the recommendations from the report.<sup>102</sup>

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<sup>101</sup> Ministry of Planning & Finance (2005), p. 32.

<sup>102</sup> UNICEF "Speak Nicely to Me - a Study on Practices and Attitudes about Discipline of Children in Timor-Leste" See also discussion in Section V.H of this document.

196. With respect to the specific provisions of article 29, the Division of Culture is examining the need to give more attention to indigenous culture within the educational curriculum. This is commented on further in the following section and in section VIII.D, due to the strength of local feedback from consultations conducted in the course of drafting this document. Certainly, in these early stages of development, there has been a necessary dependence upon the use of external educational materials, especially textbooks, which may not adequately reflect Timor-Leste's "cultural identity, language and values". Even so, it is important to note that the new curriculum emphasizes the benefit of teaching core subject areas of "arts and culture" and "environmental studies" with links to local resources such as traditional leaders and teachers of customary beliefs and practices to give substance to the curriculum with respect to indigenous identity and values.<sup>103</sup>

### **C. Leisure, recreation and cultural activities (art. 31)**

197. In July 2005 the Ministry of Education was changed into the Ministry of Education and Culture. Previously the Ministry of Education had included three separate divisions for Culture, Youth and Sports. Following the restructuring, a Secretary of State for Youth and Sport was designated under the Office of the Prime Minister.

198. The structure of the new Secretariat has the following three-fold approach:

- Physical education including health and hygiene - within schools as a formal part of the curriculum and therefore in collaboration with the Ministry of Education;
- Community recreation - with support for local communities and recreational bodies;
- Competitive sports - assisting in setting standards and supporting various sporting federations.

199. Government actively supports a number of annual national day celebrations with various sporting competitions, at national, regional and district levels. Alongside efforts in school-based sport and recreation, much of Government's focus has been on liaising with the various sporting federations to develop facilities, set standards, and provide equipment for sports activities.

200. An important feature of both culture and recreation in Timor-Leste is the presence of many martial arts groups. This is a contentious matter given the widespread violence exhibited by militia groups operating with apparent impunity within local communities. Many martial arts groups emerged during the Indonesian occupation and are based on Indonesian martial arts movements. Others are clearly more traditional in their nature and origins including two particular groups called "Seven Seven" and KORK. Traditional groups practised a belief in a

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<sup>103</sup> A recent evaluation of parent and teacher associations within primary schools emphasised the role being played by some parents in teaching customary practices to students. The consultations with children at Tasi Tolu Primary School, in the preparation of this document, yielded unanimous support from those children to being taught about Timorese culture and traditional practices within the school program.

supernatural self-defence against bullets during the period of occupation, and include more ceremonial “dance” within their practices. The newer “Indonesian” groups are reported to have previously functioned under the coordination of Indonesian-based groups, and to occasionally lapse into inter-group hostilities that may flow over into violence against civilians, which several districts report is still an all-too-frequent occurrence.

201. Both traditional groups and many newer groups were united in popular resistance to occupation, but unity has not been commonplace since then. Most recently, some of the leading groups have engaged with the mainstream political process. During 2005, one such group (KORK - a traditional group), affiliated with Fretilin, and another group (*Setia Hati Te ratai* - a “modern” group) served as a security team for the April/May 2005 demonstration by the Catholic Church, while the head of a third group (*Kempo* - also a “modern” group) is also the leader of a political party.

202. Children and adolescents are the primary source of recruitment to martial arts groups. Some groups are seen as positive sporting organizations providing valuable skills to children in fitness, discipline and teamwork, whilst others are seen as inherently negative. Despite being viewed as positive, it is argued that membership in such groups can lead to young people misapplying their newly learnt skills through fighting in households, schoolyards and communities.

203. With this background in mind, opinions vary as to whether participation in such groups is constructive or otherwise for many Timorese children. This was evident during the regional consultations for this document (with geographic variations) and is reflected in a national study.<sup>104</sup>

“During two different focus groups, teachers and parents discussed the influence of martial arts groups on children. Some parents believed that martial arts groups displayed athletic ability and therefore influenced children in a positive way, while others believed that they had a negative impact on children, because children mimicked their actions and they used these actions to fight with other children.”

204. Opinions also differ as to what should happen with such groups. In district consultations conducted for the drafting this report, there was widespread support for Government to intervene to regulate their operations. It is, however, more feasible for Government to continue efforts to constructively engage such groups. For example, the Government invited several martial arts groups in the national capital to participate in a mass street march and gathering to mark International Child Rights Day in 2004.<sup>105</sup> This brought in excess of 1,000 children and adolescents - including several hundred children and adolescents of martial arts groups - onto the streets of Dili.

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<sup>104</sup> UNICEF (2005), pp. 45-46.

<sup>105</sup> This was held in 2004 on 20 November, led by the President of the Republic. Subsequent to this event, Government formally announced that 1 June of each year (commencing in 2005) will be celebrated as National Child Rights Day.

205. Immediately following that first march, Government initiated dialogue with the leaders of martial arts groups. A series of national and district-level workshops were conducted between December 2004 and June 2005, as a joint initiative of the Office of the President of the Cabinet and the Asia Foundation, supported by the Division of Youth and Sports. At the present time, it is proposed to establish a national forum of Government and martial arts group leaders to formulate solutions to local problems with some groups and members, to determine a possible mechanism for promoting the groups as a more formal and regulated sporting movement.

206. The Ministry of Education seeks to develop and promote cultural awareness and practice through school- and community-based education, with a focus on traditional handicrafts, art, music, dance and drama. A cultural component is included in the newly created national curriculum for primary schools that is now in force.

207. The importance of promoting cultural awareness - including traditional handicrafts - is recognized by the Government.<sup>106</sup>

208. Data are also lacking regarding the diversity of Timor-Leste's indigenous culture, including its diverse styles of handicrafts which could be lost due to lack of traditional teachers having available resources to pass on knowledge. There is also an unknown store of historic objects kept traditionally in sacred houses. These could be at risk of being lost to the country through lack of preservation regimes being applied, or through willing or unwilling export to overseas collectors.

209. During the Indonesian occupation, little research was allowed on the rock art of Timor-Leste. Now 15 prehistoric rock art sites have been discovered in Timor-Leste, including nine during the period 2000-2001. Many more are expected to be found in a systematic survey. However, due to the deteriorating condition of the sites, they are at risk of being obliterated.

210. The Division of Culture proposes to formulate a policy on the teaching of culture within secondary schools, which may include attention to Timorese oral history and legends. Some early preparatory work is presently being undertaken on customary practices and traditional justice, in cooperation with the Asia Foundation. This includes efforts to be able to incorporate reference to Timorese anthropology in secondary-level studies.

211. Current impediments to efforts to incorporate a cultural component in school curricula are the inadequate training and knowledge of teachers with respect to national cultural studies, and the absence of appropriate textbooks and reference material. A textbook on Timorese history has been prepared and is in the process of translation. The technical limitations of Tetum, the traditional national language, is also a present constraint in the preparation of curriculum

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<sup>106</sup> MLCR et al. (2005), p. 26.

materials at a time when primary and pre-secondary school students are being taught in a “new” language (Portuguese), with many textbooks being centred on other cultures, for example Portugal, Australia, etc., and printed in either Portuguese or Bahasa.<sup>107</sup>

212. Nevertheless, it is hoped that current efforts to strengthen the technical capacity of Tetum, to prepare materials that are culturally relevant nationally, and to progressively incorporate cultural studies within the national curriculum will lead to considerable progress in promoting improved knowledge and awareness by Timorese children of their culture and heritage. Further comment - with respect to the child’s right to know, enjoy and practise his or her culture, and traditional language and religion - is made in section VIII.D.

213. Another cultural activity that merits mention is that of cockfighting, which occurs countrywide and is a popular venue for gambling and alcohol consumption. Throughout consultations for the CRC report, there were calls for cockfighting to be regulated by Government and for children to be prohibited from attending.<sup>108</sup> Such Government intervention is a difficult issue, although the combination of cockfighting and gambling is a problem for many families as it presents a generally negative influence on young people, specifically young males, and may result in scarce household income being gambled away. A number of people attending child rights workshops drew parallels between this problem and household difficulty in meeting schooling costs for the child.

## VIII. SPECIAL PROTECTION MEASURES

### A. Children in situations of emergency (arts. 22, 38, 39)

214. As a result of the foreign occupation and the violence in 1999, many children were separated from their parents against their will. The scope of the problem is highlighted by revealing that, in the first three years following the end of the occupation some 226,000 refugees returned to Timor-Leste. By the end of December 2002 - some seven months after the restitution of independence - the Office of the United Nations High Commissioner for Refugees (UNHCR) estimated that 28,000 Timorese persons were still residing in West Timor. The Government has cooperated fully with UNHCR and other international agencies to institute a programme of

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<sup>107</sup> The linguistic challenge should not be under-estimated, not only due to so few Timorese children having Portuguese competence and the confusion created within households that may normally speak Bahasa Indonesia. The Secretary of State for Culture “is tasked with ... mapping 36 languages and dialects, collecting oral history and documenting disappearing traditions of these groups”, for which insufficient resources are available. The National Institute of Linguistics (within the Ministry of Education) has been “able to prepare several small language profiles on the nation’s vernaculars, [but] is similarly unable to direct its meagre resources to the task of developing literary materials in these languages, while it focuses on strengthening Tetum” (ibid, p. 46).

<sup>108</sup> The Indonesian Civil Code (Art. 544) makes it an offence to conduct a cockfight in a place open to the public, without permission from the head of police or a delegated official.

voluntary repatriation, the monitoring of returnees, management of asylum-seekers, resolution of the incidence of separated children, and the development of appropriate domestic legislation. At this time there were an estimated 2,000-plus “separated children”, in addition to children living within their formerly refugee families.

215. Of the 28,000 Timorese remaining in West Timor by the end of 2002 (i.e. not including those located in other Indonesian provinces), only 452 returned during 2003. By the end of 2003, UNHCR reported that 4,538 separated children had been registered, comprising:<sup>109</sup>

- 2,302 children (51 per cent) who had been reunited with their parents;
- 1,851 children (41 per cent) whose cases had been closed for “other reasons”, including 1,005 who were subject to “other solutions” (e.g. “transfer of responsibility or free and informed decision to stay”) and 846 were “out of mandate” (i.e. had attained 18 years or had died);
- 385 children (8 per cent) whose cases remained open, of whom 53 were in Timor-Leste, 174 were in West Timor, 123 were in other parts of Indonesia, and the whereabouts of 35 were unknown.

216. The problem of resolving the situations of separated children was apparent at an early stage. UNHCR has noted that:<sup>110</sup>

“it appears that some parents were under pressure to release their children without knowing the full consequences of the supposed agreements. Some were forced to sign a consent form, giving up their parental custody and visiting rights to their children. In some cases, after parents returned to East Timor and sought to get their children back, the caretakers have refused to allow children to return or have demanded financial compensation for their return”.

217. It further reported that, in its efforts to facilitate reunification or other durable solutions for children,<sup>111</sup>

“problems encountered concerned caretakers who are often uncooperative and unwilling to facilitate even basic communication (such as exchange of messages) between the children and their parents ... Moreover, the longer the children stay in Indonesia, the more difficult it will be to bring them back to their parents and to enable their reintegration in Timor-Leste”.

218. Many Timorese children seem to have been denied due process in the just resolution of their circumstances.

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<sup>109</sup> UNHCR (2003).

<sup>110</sup> Dolan, Large & Obi (2003), p. 56.

<sup>111</sup> UNHCR (2003), p. 5.



219. With the phasing out of the UNHCR operation, the responsibility for administering the remaining instances of separated children was transferred to the Government by the end of 2004.

220. The Government is concerned about the high numbers of separated children whose status has not been satisfactorily resolved or is not in the child's best interest. It is evident that the active resistance by many temporary caretakers of many children - including individual households and Catholic and Muslim institutions in West Timor - has seriously hindered the capacity of many children to make a "free and informed" decision to remain outside of Timor-Leste.<sup>112</sup> There are reports of children who have had their Catholic and/or Timorese names changed to Islamic names and their religion changed. NDSS acknowledges that it is a challenging task to locate Timorese children, especially at the provincial level. The situation of these children has still not been changed due to the lack of a judicial process or authority to conduct an assessment to review the status of the children in those institutions. Apparently also, many children have been repeatedly told that a return to Timor-Leste would implicate inadequate standards of care and education due to the country's current economic situation.

221. It could be claimed that barely half of the cases of separated children have been satisfactorily dealt with, in terms of reunification. Upon accepting the responsibility for administering the remaining cases, there were officially 99 cases still pending. However, more than 1,200 Timorese children are still in various parts of Indonesia under the scheme of "temporary solution", i.e. a temporary transfer of guardianship of the child. In these instances, UNHCR had closed the case despite the temporary and informal nature of the solution. Thus, in all, there are 1,255 cases of separated children still to be addressed.

222. On 11 December 2004 the Governments of Timor-Leste and Indonesia signed a Memorandum of Understanding concerning joint efforts on separated children, as well as child refugees and child protection issues. This provides for a Joint Task Force to meet three times per year, supported by respective State-based task forces, which have been established. For Timor-Leste, DNSS within MLCR is the responsible agency, in liaison with the Ministry of Foreign Affairs and Cooperation.

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<sup>112</sup> A letter by NGOs and church groups to Indonesian President Sukarnoputri (20 February 2003: [www.etan.org/news/2003a/01chlett.htm](http://www.etan.org/news/2003a/01chlett.htm)) referred to the hostile resistance to reunification of children by Indonesian-based children's institutions ("foundations"):

"many children were taken from their parents under horrendous circumstances. Foundation representatives approached East Timorese families while hostile military and militia members controlled the West Timor refugee camps. At that time, disinformation campaigns about conditions in East Timor were rampant, health and sanitation severely compromised, and educational prospects for children dim. Children [were taken and] sent to orphanages and other institutions throughout Indonesia.

Many observers have concluded that the foundations are brainwashing these children about conditions in East Timor and the country's history and future... [Their} "caretakers" have repeatedly denied parents' requests for the return of their children. They have aggressively thwarted the UNHCR's and the International Rescue Committee's reunification efforts, at times making direct physical threats against agency staff."

223. This follows similar cooperation between MLCR and the Indonesian Ministry of Labour and Social Service on such matters as property disputes and pensions. Government is presently seeking agreement with the Government of Indonesia to supplement the Memorandum to enable improved review of the larger number of cases (1,156), to strengthen the Timor-Leste Government's search for resources to assist in case management beyond the 99 open cases handed over by UNHCR, and to better enable remaining separated children cases to be raised in the associated joint inter-ministerial discussions. A follow-up of a technical meeting will be held on 15 May 2006 to discuss technical issue in regards the matter subject.

224. Particular concerns remain regarding the following issues:

- The capacity of many children to express informed opinions about their preferences have been diminished by reports of children placed in Muslim institutions in provinces in Indonesia having their Timorese identities changed;
- DNSS continues to lack the case files for many of the children, and the associated resources to adequately manage resolution of those cases;
- The protracted nature of intergovernmental and/or inter-agency negotiations means a decreasing likelihood of reunifying many children with their families;
- Those continuing delays also mean - some six years or more since the separation - that a large number of such children are annually denied proper resolution of their circumstances by virtue of attaining adulthood;
- Such delays also make the task of successful reunification more difficult under lengthening estrangement from parents, families, siblings and communities;
- Many such children have effectively "lost" their cultural heritage and background;
- Despite the level of intergovernmental cooperation, a number of Indonesian religious institutions continue to actively resist resolution of many cases of separated children held in their possession;
- The need for as many as possible of the reunified children to have further follow-up home-based visits, requiring additional DNSS resources (especially important in the context of Government's obligations under article 39 and given concerns about the scant attention to date to such matters).

225. In terms of the Government's specific obligations under article 38, reference should be made to the Optional Protocol to the Convention on the involvement of children in armed conflict. To the extent that the provisions of article 38.4 may be applicable, the earlier discussion in this section applies, as does reference elsewhere in this document to such issues as the continuing impact upon children of exposure to conflict and responses either required or being made. With respect to article 38.1, the Government takes this opportunity to reassert its commitment to respect international humanitarian law, including under conditions of armed conflict, as is ensured within the Constitution.

**B. Children involved with the system of administration of juvenile justice  
(arts. 37, 39, 40)**

226. The Indonesian legal provisions and UNTAET Regulations continue to be applicable in Timor-Leste. However, as of December 2005, the Penal Code of RDTL was endorsed by the Council of Ministers and is likely to change some of the provisions, including the age of criminal responsibility. The Government is also in the process of drafting a Children's Code.

227. The current minimum age for criminal responsibility is 12 years (for a serious crime) and 17 (for a minor crime), due to UNTAET Regulation No. 2000/30 on the Transitional Rules of Criminal Procedure, which raised the age from the Indonesian legal minimum age of 8 years. That regulation provides that children<sup>113</sup>

“under 12 years of age shall be deemed incapable of committing a crime and shall not be subjected to criminal proceedings. A minor between 12 and 16 years of age may be prosecuted for criminal offences only in accordance with such rules as may be established in subsequent UNTAET regulations on juvenile justice; provided, however, that minors between 12 and 16 years of age may be prosecuted under the provisions of the present regulation for any offence which under applicable law constitutes murder, rape, or a crime of violence in which serious injury is inflicted upon a victim”.

228. This means that children at the age of 17 years old are prosecuted as adults. The draft Penal Code that has been approved by the Council of Ministers but not yet promulgated by the President provides for criminal responsibility at 16 years old. The Code also states that special regulations for young offenders between 16 and 21 years old will be provided for in a separate law.

229. The UNTAET Regulation also provides that “the court in which any minor is tried shall safeguard the rights of the minor, in accord with the United Nations Convention on the Rights of the Child, and shall consider his or her juvenile condition in every decision made in the case”.<sup>114</sup>

230. Other pertinent provisions of that regulation include that:

- The applicable age is that applying at the time the suspected crime was committed;
- Detention or imprisonment is “a measure of last resort and for the shortest appropriate period of time”;
- The hearing must not be open to the public and no identifying information may be published;

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<sup>113</sup> Section 45.1 refers.

<sup>114</sup> Section 45.11 refers.

- The parents, guardian or closest relative of a minor are entitled - or may be required - to participate in the court proceedings (unless the court believes their exclusion is in the child's interests);
- Any restriction of the child's personal liberty may only occur after consideration of the child's age and needs, the gravity of the offence and the needs of society, and only if there is no other appropriate measure;
- Where a sentence permits imprisonment, lesser sentencing options are to be considered, including supervision orders, counselling, probation, foster care, and training programmes;
- "Until a separate minors panel is created by law", the same group of judges and prosecutors are to be appointed "whenever possible" to conduct proceedings where minors are suspects.

231. According to the Indonesian Juvenile Justice Code, juvenile offenders presently receive a sentence equal to a maximum of half of the maximum sentence applicable to an adult guilty of the same offence.<sup>115</sup> This implies that the maximum applicable sentence for a juvenile is presently 10 years of imprisonment.

232. Where a crime carries a sentence of imprisonment of five years or less, the police are required to report the case immediately to the public prosecutor and to the minor's parents, guardian or closest relative. Otherwise, the police are to inform only the public prosecutor. The public prosecutor may only question the minor in the presence of a family member and the minor's legal representative, unless otherwise ordered by the court. The main problem at present is the comparative unavailability of legal representation, especially where the family cannot afford a lawyer. This is reported as being a major cause of delays in court hearings of juvenile matters.

233. With respect to detention or imprisonment, minors are to be kept separate from adults - "if possible" in separate facilities - and "given special attention to their personal needs, taking into account that the personal needs of young female offenders require special attention. Under no circumstances shall minor female offenders receive less care, protection, assistance, treatment and training than males."<sup>116</sup>

234. Given the formative stages of a domestic justice system, current practice related to the care of juveniles in detention requires improvement. Throughout both Portuguese and Indonesian periods, Timor-Leste had no dedicated juvenile detention facilities: children sentenced to detention under the latter regime were transferred to another province, which virtually assured no contact with the child's family. Nevertheless, at that time "the usual punishment imposed on

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<sup>115</sup> The Indonesian Juvenile Justice Law (No. 3 of 1997).

<sup>116</sup> Section 45.11 refers.

juveniles was public or community work such as cleaning". By the end of Indonesian occupation, there were believed to have been no children sentenced to imprisonment.<sup>117</sup>

235. In March 2001, there were reported to have been six juveniles in detention. This number has remained more or less constant over the past few years. By 30 June 2005 there were 10 boys in Becora prison. Only four had been sentenced - contrary to the UNTAET regulation that had been in force at the time, which stated that pre-trial detention may only be for a maximum period of six months and reviewed every 30 days (unless explicitly varied by the court).<sup>118</sup> For example, a juvenile male presently in prison had his first hearing on 6 March 2003, but was not formally sentenced until 16 November 2004 (more than a year and a half later), to a period in prison of three years (which is reported not to have been discounted by the period already spent in prison in pre-trial detention, contrary to the provision of section 42.5 of the UNTAET regulation). As at April 2006 there were six juveniles in detention, all of them sentenced for serious crimes.

236. There are three prison facilities in Timor-Leste, but juveniles are only placed in the Becora facility in Dili. Even though the six presently detained juveniles are kept in a separate "children's block" at night they are not isolated from the adult prisoners during the daytime. Nevertheless, in 2004 one of the inmates reported to DNSS having being sexually abused by two of the other juvenile inmates. DNSS reported the case to the prison management which did not report it to the police but instead chose to let the national NGO Pradet conduct counselling.

237. The Government has initiated discussions with UNDP and UNICEF on how to ensure that these children are separated from the adult inmates through a separate purpose-built learning centre. With a comparatively small number of juveniles in detention/prison and limited resources available, discussions are still ongoing. The Government is also aware of the risk that creating a separate centre for juveniles might result in more children being sent to this centre instead of community-based alternatives.

238. While a comprehensive and sound criminal reporting system is still being developed by the police, it is believed that during the first five months of 2005, 22 cases against juveniles were brought to the police, 17 involving serious crimes and 5 for lesser offences. Generally, and in line with applicable legislation, the lesser offences are dealt with by the police without resort to a court hearing, normally via local discussions, including with the victim (which may include having the choice as to whether a prosecution should proceed to court). In 2005, the Ministry of Justice in collaboration with World Vision and UNICEF launched a community-based reintegration programme allowing children who have been released from prison to undergo training in electronic repairs. The same programme is also providing vocational training for the children in prison. The children in prison also receive non-formal education from the Ministry of Education and counselling activities with a local NGO.

239. Increasingly, and in line with the Rules of Operation and Procedures, the police are contacting the Courts and Prisons Unit of DNSS when dealing with a case involving a child. The

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<sup>117</sup> UNICEF (2001), pp. 16-18.

<sup>118</sup> Section 20 refers.

Courts and Prisons Unit works with the suspect and his/her family to ensure effective intervention, a fair process, attention to rehabilitation efforts and family/community reunification and community reintegration. The Courts and Prisons Unit seeks to attend initial court hearings for its priority groups of juveniles and women in particular, as well as for adult males.<sup>119</sup> In instances of conditional release, the Unit will visit the young person's family, assess the domestic circumstances, determine opportunities for skills and personal development, monitor the juvenile during the release period, and make a written statement and recommendation to the court. Coordination between all actors, the prison service, the courts and the Courts and Prisons Unit needs to be enhanced.

240. As revealed in CCD, Timor-Leste has faced significant obstacles in the formation of a trained professional cadre of judges, prosecutors, public defenders and defence counsel. Due to the scarce number of public defenders who are able to provide legal aid, children rarely have the opportunity to meet and talk with their lawyer and many juveniles kept in pre-trial detention have been detained for more than nine months without extended warrants. Defence lawyers often do not introduce themselves to their child client and parties may arrive at the court hearing to find that the judge has postponed it and there is no means to contact defence lawyer to discuss the matter. The child suspect - as well as his or her legal representative - may also not understand proceedings as these are conducted predominantly in Portuguese.<sup>120</sup>

241. The Courts and Prisons Unit reported that out of 17 cases of juvenile defenders brought to court in 2003 and 2004, 4 were sentenced to a period of detention (varying between three and eight years), 8 were released (2 unconditionally due to lack of evidence concerning separate sexual harassment cases, 6 on conditional release), and 5 cases were still under way at the time of drafting in late 2005.

242. Monitoring carried out over an 18-month period to the end of 2003 collected data on 34 juveniles, the majority of whom had been imprisoned at some stage. This showed the following characteristics:<sup>121</sup>

- 76 per cent were aged over 16 years and the youngest was 13 years, and two were girls;
- 65 per cent were charged with lesser offences;
- Many of the juveniles smoked cigarettes and some consumed alcohol;
- 47 per cent were single or double orphans;

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<sup>119</sup> DSS (Courts and Prisons Section) has established a Children in Detention Working Group, which comprises police, prison staff, key NGOs, public defenders and key UN agencies, to improve the monitoring and review of such cases.

<sup>120</sup> See also the various problems described in UNICEF (2004), pp. 93-4.

<sup>121</sup> UNICEF (2004), p. 86.

- 25 per cent of the children were illiterate;
- 67 per cent were out of school at the time of their arrest, primarily due to financial hardship.

243. As discussed in CCD, while the values, norms and customs of Timor-Leste are afforded a special place within the constitutional structure of Timor-Leste, the inter-relationship, if any, that the traditional justice system may have to formal justice is yet to be directly addressed. Nevertheless, there may be an opportunity to more formally build effective linkages between the justice system and customary practices with respect to lesser offences, as one primary diversionary and complementary response. Importantly, however, traditional justice is not necessarily always more compliant with child rights standards (not only in terms of the administration of physical punishment but also in inadequately hearing the child's opinions or observing gender equality). In the evolution of two parallel systems in Timor-Leste, there has been a degree of discretion in that a person may choose which system to utilize. The inability for children to choose the system most conducive to decision-making in their best interest suggests that this may not be the most suitable decision-making mechanism for children.

244. To summarize, the areas of particular concern are: the need for new domestic legislation, improvement of judicial capacity, more formalized liaison between DNSS, the police and the judiciary, comprehensive access to legal representation, the establishment of a formal system of diversionary sentencing options, the parallel strengthening of procedures for the diversion from the court system by the police of juveniles accused of lesser offences, measures to ensure court determination of juvenile cases at the earliest opportunity, and improved rehabilitation and vocational and personal development training within the prison.

### **C. Children in situations of exploitation, including physical and psychological recovery and social reintegration (arts. 32-36)**

#### **1. Child labour (art. 32)**

245. The majority of household work performed by children occurs in rural areas where many children of school age commonly assist their families in a range of domestic and agricultural work.<sup>122</sup> Nationwide - in both urban and rural areas - many children are involved in commercial activities such as selling produce on the streets or in markets. According to a 2002 national study, whilst just 0.5 per cent of 5- to 14-year-old children were in paid labour (and 3.7 per cent in unpaid labour), 14.6 per cent of this age group were undertaking work within the household (as distinct from the 86 per cent of 5- to 14-year-olds who were more generally assisting in household "chores"). Even though reliable data on the extent of child labour are unavailable, it is widely known that child labour is a common feature in Timor-Leste.

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<sup>122</sup> MICS, pp. 83-4.

246. The Labour Code<sup>123</sup> establishes, inter alia, the National Division of Social Services,<sup>124</sup> whose functions include the “work and welfare of children”<sup>125</sup> and “labour inspections”.<sup>126</sup> Section 9 of the Code specifies four “fundamental principles”, including a prohibition on forced labour and a prohibition on child labour except in accordance with section 11 of the Code.<sup>127</sup>

247. The Code generally incorporates the provisions of ILO Conventions Nos. 138 and 182, and notably strengthens their provisions by prohibiting the employment of children aged 15 years and under where the child’s health, safety or morals may be jeopardized<sup>128</sup> (Convention No. 138 permits such employment for children aged 16 years and under provided that the child’s health, safety or morals are protected and that the child is provided adequate training in that regard (art. 3.3).)

248. While current revisions of the Code’s provisions are in process, these do not include attention to provisions concerning children, with much of the focus of attention on labour within the formal economy, placing the majority of children engaged in various forms of labour outside of the revision’s mandate.

249. With specific reference to the requirements of article 32.2 of CRC, the Code does provide for protected forms of employment of children from the age of 15 years (sects. 11.1 and 11.2), for hours and conditions of employment (sect. 13) (although with no child-specific provisions beyond those required by sect. 11), and for penalties and sanctions (sect. 29) (although with no additional provisions for breaching labour standards with respect to children).

250. The provision of a complaints mechanism necessarily requires a strong governmental monitoring and enforcement system, especially for those who are more vulnerable and dependent within the labour force (in particular, children engaged in the labour market). In these early years of the development of a new labour market system, emphasis has been placed on ensuring a protective labour environment that enshrines core international standards.

251. Labour inspectors have focused on site inspections of sectors considered primarily weak in enforcement of standards, in particular the coffee industry and concrete construction block manufacturers. A series of inspections of such worksites during 2003 and 2004 detected a

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<sup>123</sup> UNTAET Regulation 2002/5 on the establishment of a Labour Code for Timor-Leste.

<sup>124</sup> Section 8.1 refers.

<sup>125</sup> Section 8.4.1 refers.

<sup>126</sup> Section 8.4 refers.

<sup>127</sup> The other two principles relate to the rights of workers and employers to freedom of association and collective bargaining, and a prohibition on discrimination in employment including “equal remuneration between women and men for work of equal value”.

<sup>128</sup> Section 11.1 refers.



number of children employed in breach of the provisions of the Labour Code. Such practices have now been minimized, and there have been follow-up inspections to verify this. In such cases, child labour was reported to be due to parental pressure on employers to employ these children and domestic hardship. The Labour Division reported such cases to DNSS, for follow-up work with the families.

252. The Government is presently able to employ just eight labour inspectors for the entire country, all of whom are based in Dili. This not only constrains capacity for workplace inspections and the prosecution of violations of the Labour Code, but also prevents the assignment of inspectors to special populations who may require more focused attention, such as children. Importantly also, the Division of Labour specifically addresses the formal waged and salaried workforce but does not have a mandate for the informal labour market. The Government is aware of the need to determine responsibility for that area and to formulate interventions accordingly. In the absence of any such determination, it is likely that such responsibility rests with DNSS to the extent that it constitutes child neglect or exploitation, and with Ministry of Education and Culture to the extent that such children are working in the informal sector at the expense of school participation.

## **2. Drug abuse (art. 33)**

253. Very little is known about different forms of drug use and abuse in Timor-Leste. Most information is anecdotal, including statements to the Commission for Reception, Truth and Reconciliation about Indonesian military personnel encouraging drug usage by children as a means of coercion into playing military support roles.<sup>129</sup> Probably the two most prevalent forms of drug use by many children are tobacco and palm wine. Many children and adolescents are to be seen smoking cigarettes and there seems to be very poor awareness of the associated health risks, especially when many adult males and international personnel can be commonly seen to openly engage in such usage. It is also a common practice for children to be selling cigarettes on the streets and in popular meeting places.

254. Concerns about palm wine abuse are widespread, as was evident in the local consultations for the preparation of this document. These concerns relate to two predominant issues: the abuse of children by parents who are under the influence of alcohol (especially palm wine) and the ease with which many children and adolescents are able to themselves obtain palm wine for consumption (including reports of children attending school under its influence). Given the customary and localized nature of this practice, and its operation outside of the formal economy, Government needs to work carefully and cooperatively with local communities to properly address this issue.

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<sup>129</sup> This was also reported more recently in a National Consultation on Violence against Children (a consultation forum with children in advance of a regional consultation), held in Dili on 23-24 May 2005.

255. Although heroin and amphetamine usage are little known in Timor-Leste,<sup>130</sup> Timorese children may be at risk.<sup>131</sup>

256. “Both drugs are commonly used in youth sub-cultures across South East Asia and injection is often the preferred means of delivery. Evidence suggests that the youth of Timor Leste are aware of popular youth culture and sub-cultures in other South East Asian countries, particularly Indonesia ....”

257. As in Indonesia, this creates a parallel risk of leading to a surge in HIV transmission.<sup>132</sup> This is of particular concern in Timor-Leste because of low levels of public awareness of such issues which would make effective responses difficult and allow a stronger foothold, with its attendant consequences. There is also a known level of amphetamine abuse in and illegal importation into Timor-Leste. This is believed not to be a particular problem amongst children, and Government is permitting private commercial stocks to be exhausted whilst at the same time more stringently regulating importation to confine distribution via the public authority.

258. These are issues that need addressing within public health strategies, educational curricula, relevant legislative provisions, responsive community policing and education efforts, and cooperative arrangements between Government and community leaders. Such responses need to be conscious, however, of the need to give due attention to the dominant health risks of tobacco and alcohol use and abuse, as well as less common - but potentially as hazardous - illicit drug use. To this end, the Minister of Health is currently proposing the introduction of regulations on age-limited access to tobacco products and associated preventative health and drug abuse measures.

### **3. Sexual exploitation and sexual abuse (art. 34)**

259. In addition to the inclusion of the child victim within its general protective provisions (for example, rape outside of marriage, subjection to obscene acts), the Indonesian Penal Code provides that it is a criminal offence:

- To have sexual intercourse with a female under the age of 15 years, whether in or outside of marriage (notwithstanding the legal prohibition on marriage below 15 years);

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<sup>130</sup> UNICEF cites “unconfirmed reports that amphetamines are being traded on the streets of Dili”. (UNICEF (2004), p. 89).

<sup>131</sup> UNICEF (2004), p. 43.

<sup>132</sup> See Pisani et al. (2004), p. 13, for a description of the devastating impact in Jakarta of not tackling HIV transmission via injecting drug users. In Dili, injecting drug use is rare but present: Pisani et al. suggest it is practised amongst a small percentage of tertiary male students and young men having sex with other men.

- To commit obscene acts (including sexual assault or abuse) with a female under 15 years;<sup>133</sup>
- To commit incest with one's own child (including step- or foster child) or pupil or a minor entrusted into one's care;
- For an officer or employee of an institution (such as an orphanage, prison, school, hospital, etc.) to commit obscene acts with a child within such an institution;
- To show or read indecent articles to a minor;
- To commit obscene acts with a minor of the same sex.

260. The draft RDTL Penal Code of December 2005 includes provisions on:

- **Sexual perversion:** to practise any sexual act with a child under 10 years of age (art. 162);
- **Sexual abuse of a minor:** to practise any sexual act with a minor below the age of 14 (art. 169);
- **Sexual acts with adolescents:** to practise any sexual act with a minor between the ages of 14 and 16 (art. 172);
- **Rape:** it is an aggravating circumstance if the victim is below the age of 16 years (arts. 164 and 165).

261. Reference to sexual abuse was made earlier in section V.H, in view of the family being the common site of child sexual abuse. (Further information on other elements of article 34 will be elaborated in response to the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography.)

#### 4. Child abduction and trafficking (art. 35)

262. Other than issues canvassed elsewhere in this report, for example, children forcibly separated from their families in 1999, potential inter-State parenting disputes and child removal, putative illicit movement of children under the guise of intercountry adoption, etc., there are very few known cases of child trafficking involving Timor-Leste. The primary study in this regard, which was largely confined to commercial sex trafficking, concluded that:<sup>134</sup>

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<sup>133</sup> The Indonesian Penal Code defines an obscene act as “any act that violates the chastity (decency) or degrading acts, which are performed in the context of sexual lust, for example: kissing, rubbing of the genitals, rubbing of the breasts. Intercourse is also considered an obscene act, however this is covered by its own provisions”. JSMP (2005), footnote 7, p. 7.

<sup>134</sup> Alola Foundation (2005), p. 4.

“East Timor is a destination country for trafficking for sexual exploitation. No evidence indicates that East Timor is a sending or transit country or that domestic trafficking exists for any form of human trafficking. Trafficking to East Timor for forced labor may also be occurring, although that issue was beyond the scope of the current study.”

263. However, that study cites the view of the Prosecutor General that perhaps 700 foreign construction workers in Timor-Leste may be the victims of trafficking. Although it is not suggested that any of them might be children (*ibid.*, p. 33), this points to the need for improved legislative and administrative provisions. Current provisions in the Immigration and Asylum Act (sect. 81, Law 09/2003) deal with “human trafficking” and strengthen the applicable provisions where a child is concerned as follows:

“3. If the victim of the activities provided for in items 1 and 2 of the present Article is a minor under 18 years of age, the mere transportation, recruitment, transfer, lodging or keeping of these persons for the purposes [of sexual exploitation, forced labour, slavery or human organ trafficking networks], constitutes a crime that shall be punishable by imprisonment of not more than 12 years or fewer than 5.”

264. The draft RDTL Penal Code of December 2005 criminalizes human trafficking and slavery and the sale of human beings. Both relevant articles (arts. 132 and 158) include provisions on aggravating circumstances, such as if the victim is under the age of 18. The Government also proposes to apply the provisions of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime to give stronger effect to existing obligations.

265. Two instances of the sex trafficking of females aged under 18 years into Timor-Leste in 2003 prompted joint attention by the United Nations and Government. The first instance involved several Thai females, including two adolescents, who were repatriated in cooperation with the Thai authorities. Later in 2003, a Vietnamese adolescent female (understood to be aged 17 years) who allegedly escaped from forced labour in a restaurant, was also repatriated to her country of origin.

266. At the initiative of the United Nations, a joint Trafficking Working Group was established in 2003 under the leadership of the Ministry of Foreign Affairs and Cooperation. Its functions emphasize information-sharing, intersectoral cooperation and an advisory role in the development of provisions and procedures, with reference to domestic and cross-border trafficking with a particular “focus on children, women and irregular migrants”. It actively supported the development of operating procedures on human trafficking (drafted in early 2004), which include specific procedures for minors (defined as under 18 years) but which is still awaiting adoption by Government. The Working Group has also provided technical advice on the provisions of the draft Penal Code. Similarly, it advocates the development and adoption of a national action plan on human trafficking.

267. It is also presently anticipated that the United States Department of State will support a joint proposal by the International Organization for Migration and the national NGO the Alola Foundation whose purpose is to raise awareness on human trafficking issues within other relevant agencies (including the police, the judiciary, the media and NGOs) and the wider public.

**D. Children belonging to a minority or an indigenous group (art. 30)**

268. Timor-Leste's population is predominantly of indigenous origin, though a significant minority of its population is either of Indonesian origin (during the period of occupation) or part-Portuguese descent. The issue of the Timorese child's right to know, enjoy and practise his or her cultural heritage - including language, traditional beliefs and religions - is problematic. Unlike in many countries, this is not due to indigenous populations being either a minority or marginalized from political and economic power or influence. A major issue concerns what constitutes traditions and cultural heritage in a country only recently emerged from a protracted period of foreign occupation (Portuguese and Indonesian).

269. Different aspects of this issue are discussed in other sections of this document (including section VII.C concerning recreation and cultural activities and section VIII.B concerning juvenile justice). Overall, however, widespread concern that cultural identity was being eroded and that special measures are required to systematically and formally rectify this situation was echoed in all local consultations.

270. Information on language, traditional justice and practices is further elaborated in the common core document.

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