



REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE
PROVEDORIA DOS DIREITOS HUMANOS E JUSTIÇA
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Submission from the Office of the Ombudsman for Human Rights and Justice in Timor-Leste to the Universal Periodic Review
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The Office of the Provedor for Human Rights and Justice was established by the Constitution of the Democratic Republic of Timor-Leste in May 2002 and is charged with the oversight over State entities. The main activities of the PDHJ include: cooperation for the development of the human rights framework in Timor Leste; good governance and human rights monitoring; activities for the promotion of human rights; reporting to the United Nations treaty bodies and the UPR; activities for human rights education; conducting investigations in relation to human rights; as well as national and international cooperation.



I. Introduction

The Office of the Ombudsman for Human Rights and Justice (PDHJ) prepared this submission. The information contained in this report has been compiled through meetings with civil society and relevant government. Focus groups and surveys as well as desk research have been used to collect additional data.

II. Background and Framework

A. Normative and Institutional Framework

Timor Leste has ratified different human rights treaties, which is an important step for a country that has recently gained independence. However, it has still not ratified the Convention on the Rights on the Persons with Disabilities, which has been an accepted recommendation from the last UPR, and the Convention for the protection of All Persons from Enforced Disappearances.

Recommendation: Ratify as soon as possible the Convention for the protection of All Persons from Enforced Disappearances.

B. Legislative and Constitutional Framework

The Constitution of the Democratic Republic of Timor Leste (Article 9) accepts the adoption of the general and customary principles of international law and treaties ratified by Timor-Leste. It emphasizes that all national legislation must not be in contradiction with it. During the reporting period the Government of Timor Leste submitted reports to the Convention on the Rights of the Child as well as to the Convention on the Elimination of All Forms of Discrimination Against Women. Despite this, the State has failed to adopt in full the general recommendations of the Committees of these two conventions. Furthermore, Timor Leste is already late in presenting its reports under the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of Racial Discrimination (CERD), the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against All Forms of Torture, Inhumane and Degrading Treatment (CAT).

Recommendation: Submit the reports to the ICESCR, CERD, ICCPR and CAT.

C. Human Rights Infrastructure

The PDHJ is a constitutionally mandated independent institution charged with oversight of state entities. Since the last UPR it has received 949 complaints¹, 487 cases. Recommendations to state entities in relation to 72 cases of human rights violations and good governance.² While relevant ministries have implemented some recommendations, the vast majority has not. The government and state actors consistently fail in their statutory duty to provide information on the progress of the implementation to the Provedor.

¹ From 2012 to 2016, the Office of Provedoria of Human Rights and Justice (PDHJ) has received a total of 949 complaints: in 2012 there were 205 complaints lodged, 246 complaints in 2013, 266 complaints in 2014, 199 complaints in 2015 and finally there are 33 complaints reported in the first quarter of 2016.

² The obstacles faced by the Office of Provedoria are limitation in the areas of human resources and State Budget allocated to the Office of Provedoria which, in turn, heavily impact its work performance.



In addition, the Office of Provedoria sees that the allocation of the Budget to the Office in accordance with the 2011 UPR Recommendations does not reflect these UPR recommendations.³

Recommendation: increased the staffing of the Provedoria as well as the allocation of the State budget to the Office of Provedoria

The mandate of the National Children's Rights Commission (NCRC), should be broadened so that the NCRC is able to undertake institutional interventions against the ministries working in relevant children's rights areas and to receive complaints regarding violations of children's human rights violations. Currently the NCRC under Ministry of State for Coordinating, Social and Education.

Recommendation:

- a. The NCRC should be un-independent statutory
- b. Broaden the mandate of the NCRC to undertake institutional interventions against the ministries working in relevant children's rights areas and to receive complaints regarding violations of children's human rights violations

D. Cooperation of the Country under review with human rights mechanisms

6. Timor Leste cooperates with the following: NHRIs, NGOs, rights holders, human rights defenders and others.

Indeed there is cooperation between the Government and Civil Society Organizations through the Office of Prime Minister with the existing PM's Advisor to Civil Society where state funds can be provided to Civil Society Organizations.

There are consultative processes for all relevant legislative/constitutional developments such as consultation on the draft law, national action plan, etc.

Recommendations: Further strengthen the cooperation established thus far between Government and the Office of Provedoria and Civil Society Organizations.

III. Achievements, best practices, challenges and constraints made by the country under review

A. Children's Human Rights

7. Right to health

Immunization;

Progress: The State of Timor-Leste is implementing the national immunization programs to children from 0-9 years old across the territory of Timor-Leste.

Obstacle: Lack of awareness from the local communities, as well as lack of access by community members living in very remote areas to the services provided by health posts and health centers, which is also complicated by the lack of facility to ensure quality of vaccines.

³From 2012 to 2016 the State Budget allocation to the Office of Provedoria continues to decrease. Data shows that the in 2012 the allocation reached the amount of US\$ 1,322,436; in 2013 the amount was US\$ 2,180,000; for 2014 the amount allocated was US\$ 1,512,000; in 2015 the budget allocated was US\$ 1,411,000; and finally for 2016 the allocation was US\$ 1,469,000.



Recommendations: To raise the awareness of the community on the importance of vaccination through socialization and campaign activities.

- a. Provide adequate health facilities.
- b. Establish health posts and health centers that are accessible by the community.

8. Right to education

Corporal Punishment;

Progress: The Ministry of Education has established a policy by issuing a ministerial order on zero violence in school premises.

Obstacle: There is no seriousness from the Ministry of Education in implementing zero violence against students in schools in order to ensure respect to children's rights⁴.

Recommendations: Government through the Ministry of Education to issue a ministerial order to prevent physical violence by teachers against students as well as violence from students against teachers during teaching and learning process in schools.

School feeding programe;

Progress: The Ministry of Education has implemented School Feeding Program to students attending public schools within the territory of Timor-Leste to increase nutrition quality of students during their learning process.

Obstacle: The delay in allocation of budget affects the implementation of the Program, as established by the Ministry of Education.

Recommendations:

- a. A good management and control of School Feeding Program is required for the success of the program as it does not have significant impacts yet on students' nutrition and health because foods provided are of low quality and often time quantity is also an issue, as well as ineffectiveness in its implementation.
- b. Government through Ministry of Education of Timor-Leste to identify and allocate adequate budget for improvement of school infrastructures supporting the program to ensure its sustainability.
- c. Ministry of Education needs to strengthen and maintain its cooperation with other ministries such as Ministry of Health, Ministry of Agriculture, Ministry of Commerce, Industry and Environment to address the issues of nutrition, quality, quantity and material supplies associated with the School Feeding Program.

9. Right to special protection (Juvenile Justice)

Juvenile Justice;

⁴Findings of a recent survey involving around 150 male and female students from third cycle of basic school and secondary schools where students were asked to freely express their thoughts and feelings in responding to a series of questions asked by the Office of Provedoria indicate that school teachers are still using corporal punishment against students with the view that such punishment is the best unique method available in the form of beating with sticks during school hours.



- a. *Progress:* The State of Timor-Leste through the Ministry of Justice had submitted two draft laws on education to minors and special penal regime to youth aging 16-21 years old to the Council of Ministers to get its approval.
- b. *Obstacle:* The approval of the draft has taken a lot of time and therefore it further gives impacts on the resolution to cases involving children.
- c. *Recommendation:* That the State of Timor-Leste has its commitment to speed up the adoption of these two laws, as they impact the development of juvenile justice in Timor-Leste.

B. Women's Human Rights

11. Right to non-discrimination and equality (Non-Discrimination/Gender Equality/ Participation of women/ Minimum Age for marriage).

Re-entry policy;

Progress: To date there is no legal document or specific decree law by the Ministry of Education to be used as base for leaders in Timor-Leste to apply when a female student gets pregnant during her study. The question of “drop-out” is also a major concern, particularly female students in their final years who have to leave their study because of getting pregnant and therefore have to become mothers.

Obstacle: Cultural and religious practices remain a major challenge for the Ministry of Education in the development of specific law on re-entry policy for female students after giving birth.

Recommendation: That the Government, through the Ministry of Education, needs to issue a ministerial order to regulate the re-entry policy itself.

12. Right to freedom from violence (Violence against women/ Domestic Violence)

Domestic Violence;

Progress: The Law Against Domestic Violence has been adopted and that relevant government's institutions involved in socialization of the Law Against Domestic Violence while others are implementing the law in Timor-Leste.

Obstacle:

- a. Cases of domestic violence remain high in Timor-Leste. There is also long delay in the prosecution which results in allowing those involved in the conflict to adopt mediation measures to find solutions to the case, even though the Law does not allow mediation for cases of domestic violence. Some community members continue to bring domestic violence cases to traditional justice mechanism⁵.
- b. Lack of judicial actors also impact the due process of the domestic violence cases brought to the Court.⁶

Recommendations:

- a. That the State of Timor-Leste recruit more judicial actors in addressing the backlog

⁵Based on the 2012-2015 JSPM monitoring reports (p. 13), percentage of domestic violence in 2012 was 37%, 46.2% in 2013, increased to 48.9% in 2014; whereas the percentage for 2015 is slightly decreased to 37.6%.

⁶Total number of judicial actors in is 94 people, consisting of 34 judges, 30 prosecutors and 30 public defenders.



of due process as well as the quality of their judgment due to lack of sufficient human resources at the Courts.

- b. That the State of Timor-Leste to increase its socialization programs on the Law Against Domestic Violence to local communities.
- c. That the State of Timor-Leste shows its seriousness and commitment to ratify the conventions on the rights of people with disability.

C. Rights of People with Disabilities.

Progress; we appreciate the report that have been done by Government of Timor Leste towards the ratification of the CRPD.

Recommendation; The State should be have a commitment and wiliness to ratify the Convention on People with disabilities.

D. Safety, Justice and Security.

16. Administration of justice

Access to the Court;

Progress: The State of Timor-Leste has implemented Mobile Court to increase access of the people to the court.

Obstacle:

- a. Distance and money is the inhibiting factor for the community to have access to the court, as the court does not exist in every district in Timor-Leste. The Díli District Court has to cover also Aileu and Liquiça Districts.
- b. There is no specific law considering people with disability (vision and hearing) at the Court⁷.
- c. Judicial actors lack knowledge on how to deal with those with specific type of disabilities such as those with vision and hearing.

Recommendations:

- a. That the State of Timor-Leste to continue carrying out its mobile courts in the districts that do not have district courts.
- b. That the State of Timor-Leste to adopt a specific law considering people with disabilities (particularly vision and hearing disabilities) are give their statements as witness at the court.
- c. That the State to provide capacity building in order to increase the knowledge of the judicial actors on issues related to people with disabilities.
- d. A full assistance is needed through the creation of sign language interpreter and equipment.

17. Equality in the Justice System (Accountability of Military)

Accountability of Military;

Progress: The State of Timor-Leste has Justice Department within the FALINTIL-Defense Force of Timor-Leste (F-FDTL) with the task of conducting investigation and making recommendations on disciplinary and administrative sanctions to members of the Defense Force.

Obstacle: There is no military court to judge members of the F-FDTL that committed crimes.

⁷For instance, how to bring a witness with vision disability to the court to testify. In Timor-Leste there is no specific law regulating people with disabilities to make their statements before the court.



To date, crimes committed by the members of the Defense Force are brought to civil courts. Civil judges are not qualified to make decisions.

Recommendations:

- a. That the State of Timor-Leste to establish military courts as mandated by the Constitution of the Republic.
- b. That the State, particularly the Ministry of Defense and the F-FDTL, to send some of the members to take part in courses provided by the Ministry of Justice's Judiciary Training Center.

E. Economic, Social and Cultural Rights

21. Right to Health

Human Resource;

Progress: The State of Timor-Leste, particularly through the Ministry of Health have attempted to provide training and education to its staff with various scholarships to increase professional capacity of its staff and to deploy them in specific areas such as hospitals, health centers, health posts and other facilities.

Obstacle:

- a. Medical staff continues to raise the issue of lack of adequate facilities and equipment allowing them to provide required health services.
- b. Number of midwives is still very minimum and therefore there is no posting to specific areas to provide basic medical assistance to women giving births.

Recommendations:

- a. That the State of Timor-Leste provide further capacity building measures to its staff to deliver quality health service to the general public.
- b. That the State needs to recruit more qualified staff in the areas of midwives, nurses, and specialists.
- c. That the State needs to increase the number of midwives in health facilities to better provide basic medical service to women during their deliveries.
- d. That the State needs to provide adequate resources and equipment to allow the staff carries out their functions in a timely manner.

Facilities:

Progress: The State of Timor-Leste has programs to address the needs of the local community in the health sector however such efforts need to be supported with adequate facilities and equipment to allow health professional to perform better.

Obstacle: There is no proper room, including beds, for mother needing either pre-natal or post-natal cares to make the women to feel secure during their deliveries as well as during their private consultation.

Recommendation: That the State of Timor-Leste provide proper space/room for those needing either pre-natal or post-natal cares.