

**REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE**  
**PROVEDORIA DOS DIREITOS HUMANOS E JUSTIÇA**



**Submission from the Office of the Ombudsman for Human Rights and Justice in  
Timor-Leste to the Universal Periodic Review**

15 July 2021

The Office of the Provedor for Human Rights and Justice<sup>1</sup> 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.

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## **Submission from the Office of the Ombudsman for Human Rights and Justice in Timor-Leste to the Universal Periodic Review**

### **Introduction**

The office of Provedor for Human Rights and Justice (PDHJ), Timor-Leste (TL) prepared this report and submitted to the UN Human Rights Council. This document contains information recommended by UN Human Rights Council during the second (UPR) of TL and the development of human rights situation. This report mainly focuses on the challenges that TL encountered on the realization of human rights and lists all recommendations to improve human rights in TL.

### **I. Background and framework**

#### **Scope of international obligations**

1. During the 1st and 2nd UPR cycle, TL stated that it would ratify the Convention on the Rights of Persons with Disabilities (CRPD) as soon as possible in the coming years. In 2019, the National Parliament's approved a resolution on the adoption of measures regarding the protection of persons with disabilities<sup>2</sup>. The Government through the Ministry of Foreign Affairs (MoFA) has been facilitating the coordination between relevant ministries for the process of ratification of the CRPD, though due to the pandemic situation the process itself has been postponed. TL has yet to ratify the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED).
2. **Recommend:** TL to ratify the CRPD and the ICPPED.

#### **Constitutional and Legislative Framework**

3. Since the 2nd UPR cycle, partly important legislation was approved including a pack of laws on land rights, ownership<sup>3</sup>, and expropriation<sup>4</sup>, a law on combat of illegal drug trafficking<sup>5</sup>,

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<sup>2</sup> Resolution of the National Parliament No. 21/2019 of October 3rd, 2019.

<sup>3</sup> Law No. 13/2017.

<sup>4</sup> Law No. 08/2017.

<sup>5</sup> Law No. 02/2017.

a law on the prevention and combat of human trafficking<sup>6</sup>, a law on Civil Protection<sup>7</sup> and a law on measures to prevent and combat corruption<sup>8</sup>, among others.

4. There are lot of important laws that are still pending including a law on Children’s Rights (which is currently being discusses in the National Parliament). The revision for provisions of the civil code on discriminatory issues such as article 1494 (Internuptial waiting period), recognition of non-Catholic marriages and “de facto unions”, are still pending.
5. **Recommendation:** Develop and approve the important legislation which is pending as well as carry out the necessary revision on the civil code.

### **Institutional and human rights infrastructure and policy measures**

6. On January 20<sup>th</sup>, 2021 the President of the DRTL promulgated the Decree-Law No. 4/2021<sup>9</sup>, which establishes a Public Institute for the Defence of the Rights of Children.
7. On June 30<sup>th</sup>, 2021 the Council of Ministers (CoM) approved a Decree-Law No. 9/2021, establishing the Commission for Combat against Human Trafficking. This commission is very important to manage services provided in attendance of human trafficking cases through 4 main cornerstones: such as prevention, protection, prosecution and justice.
8. **Recommendation:**
  - a) TL to prioritize the implementation of the law on human trafficking with seriousness by accelerating the development and approval in the CoM of the NAP on Human Trafficking.
  - b) Request TL to adequately fund and support the functioning of these newly established entities in order to enable them to implement fully their competency under the law.

## **II. Implementation of international human rights obligations**

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<sup>6</sup> Law No. 03/2017.

<sup>7</sup> Law No. 12/2020.

<sup>8</sup> Law No. 07/2020

<sup>9</sup> Decree-Law No. 4/2021 of 27 of January, 2021, promulgated by the President of the DRTL on the 20<sup>th</sup> of January, 2021.

## **Equality and non-discrimination**

### **Equality On The Basis Of Sexual Orientation and Gender Identity**

9. Research results<sup>10</sup> from 2017 indicated that discrimination to LGBTQI continues to happen in TL and is committed by the community and public entities. One of PDHJ's goals in the Strategic Plan (SP) 2021 – 2025 is to protect vulnerable people against human rights violations and guarantee access to appropriate public services. The expected results include PDHJ's programs being accessible, specially to vulnerable groups, and systematically protecting and responding to vulnerable groups' concerns.

10. Although Article 16 of the CRDTL, which prohibits discrimination, does not expressly prohibit discrimination on the grounds of Sexual Orientation, Gender Identity and Expression and Sexual Characteristics (SOGIESC), constitutional interpretation, through article 23 of the CRDTL, will guarantee compliance of TL with international human rights standards, to provide protection against SOGIESC-related discrimination. Also discrimination on the basis of sexual orientation is recognised in the Penal Code<sup>11</sup> , which considers crimes motivated by discriminatory sentiment on the grounds of SOGIESC (among other grounds) to be aggravating circumstances which may incur greater penalties. Moreover, the Penal Code includes no provisions that criminalise same sex conduct between consenting adults, nor does it make a distinction between the age of consent for heterosexual and homosexual sexual conduct.

#### **11. Recommendation:**

Propose to take measures to eliminate discrimination against LGBTQI through advocacy and dissemination.

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<sup>10</sup> Research Report on the Lives of Lesbian and Bisexual Women and Transgender Men in Timor-Leste conducted by Iram Saeed and Bella Galhos for Rede Feto in 2017.

<sup>11</sup> Article 52 letter e) of the Decree-Law No. 19/2009.

## **People with Disability (PwD)**

12. Government through the Ministry of Social Solidarity and Inclusion (MSSI) has finalized the NAP (2020 – 2030) for PwD, however NAP for PwD and the Decree-Law for the establishment of the National Council of PwD have yet to be presented to the CoM for approval.

13. **Recommendation:** Propose to the Government through MSSI to prioritize the presentation of the NAP PwD in the CoM for appreciation and approval, as well as adequate allocation of budget for the implementation of the NAP PwD.

## **Gender Base Violence (GBV)**

14. The State of Timor-Leste provides for gender equality through the CDRTL<sup>12</sup> which is reflected in other national legislation<sup>13</sup>. However, women's inheritance rights and rights to property and land upon divorce remains an issue due to the patrilineal systems that dominates in TL's traditional law, that ensures in most parts of TL that only men inherit/possess the land and property of the family or couple. Lack of marriage registration in public register also contributes to the perpetuation of the patriarchal system.

15. The issue of indirect discrimination against women and vulnerable groups is also not foreseen in the present domestic legislation, including a clear definition about indirect discrimination, which contributes to the challenge in eliminating discrimination.

## **16. Recommendation:**

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<sup>12</sup> Articles: 16<sup>o</sup>, 17<sup>o</sup>, 50<sup>o</sup> and 63<sup>o</sup> of the CDRTL.

<sup>13</sup> Such as the land rights law, inheritance chapter V of the Civil Code.

- a) TL to intensify outreach in patrilineal families in rural and remotes area on rights for heritage as also on the importance of marriage registration.
- b) TL to implement a comprehensive law on gender equality which defines and protect women and vulnerable groups against indirect discrimination.

### **Domestic Violence**

17. Data shows that in TL domestic violence is still a main problem regarding GBV<sup>14</sup>. The formal judicial process does not yet provide for an accessible, fast and coherent result which ensures victims safety and livelihood, which cause the victims of domestic violence to turn to traditional justice mechanisms and remedies which might not englobe human rights perspective.

#### **18. Recommendation:**

- a) Create the necessary mechanism to implement witness protection law which was promulgate in 2009 but is still not functioning.
- b) Improve access to formal justice system and support for victim's safety and livelihood.
- c) Continue to provide training for judicial actors on gender issues and international human rights laws to help make sentencing more uniform and coherent, in line with international human rights laws that TL has ratified.
- d) Submit to consultation and approve draft law on Traditional Justice to ensure that rules and remedies being applied do not violate international human rights law nor are discriminatory against women.

### **The Right to life, liberty, and security of the person**

19. From 2015-2020, PDHJ in collaboration with the National Police of Timor-Leste (NPTL) and Human Rights Advisor Unit (UN) provided training for NPTL members on human rights<sup>15</sup>, however, PDHJ registered about 1197 complaints (2015-2021), numbers that continue to raise every year. Majority of complaints registered were committed by NPTL and some of the cases

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<sup>14</sup> According to the CSO-JSMP observation in 2018 indicates that 79% cases on GBV against women and girls which categorized as domestic violence.

<sup>15</sup> Members of NPTL who participated in the training about 458 from 4044 or 11.3%.

committed by TL's Defence Forces (TLDF). From cases mentioned, 10 serious human rights violation happened between 2010 to 2021, some of NPTL members caused civilian injuries and death. NPTL members in 2018 killed 3 civilians in Kuluhun, in 2021 2 civilians were killed in Lahane Occidental. Through PDHJ's investigation it was identified the need for NPTL to establish rigorous mechanisms of control of the use of weapons during and after working hours and the need to increase non-lethal weapons for the Police.

20. PDHJ recognises that NPTL institution and Interior Ministry have made efforts to implement recommendations from PDHJ, however, there is budgetary obstacles to increase wellbeing of the members, including facilities to support services of NPTL.

#### **21. Recommendation**

TL to allocate budget for Human Right's training to the NPTL and provide facilities to NPTL for operational activities in the field.

### **Administration of justice, including impunity, and the rule of law**

#### **Juvenile justice system;**

22. NAP and National Development Strategic Plan Government (2011 – 2030) of TL (NDSP) through the Ministry of Justice (MoJ) recognizes the justice sector's crucial role in establishing the legal instruments such as court, public prosecutor, public defender, including establishing laws that are able to respond to minors in conflict with the law, however, those measures are insufficient to resolve issues of human resources. PDHJ's findings show that every year the number of juveniles (age 17-21) offenders increase in Becora Prison, a currently overcrowded prison for male adult's, which ends up impacting the minor's mental and physical health.

#### **23. Recommendation:**

- a) TL should prioritise the creation of a minor educative centre and aid with the reintegration process of minors back into the community.
- b) Give access to "online educational courses" for minors currently in detention.



c) Ensure that actors of the justice sector that engage with juvenile offenders have full knowledge of juvenile rights.

#### **24. Prison and detention centre;**

Data from the National Directorate for Social Reintegration Services (DNSRS), show that Becora Prison exceeds the capacity for prisoners, currently housing 589 prisoners, 339 prisoners over its maximum capacity of 250 inmates. Furthermore, PDHJ has identified that prison facilities for inmates and guards are not adequate, not complying with international human rights standards. Guards lack adequate training and career development and sufficient resources to carry out their job properly.

#### **25. Recommendation**

- a) TL to resolve prison overcrowding issue by distributing more evenly prisoners through TL's prisons.
- b) Ensure separate space for the women and juvenile prisoners and pre-trial detainees, as well as improve the condition of the prison and the facilities provided to the inmates.
- c) Provide training for prison guards and opportunity for career development, proper gear, an adequate number of vehicles to respond to multiple prisoners' needs (medical assistance and court visits).

### **Freedom of expression, association and peaceful assembly, and the right to participate in public and political life**

#### **Freedom of Expression**

26. In 2020 the Government introduced for consultation a draft legislation that aimed to criminalise defamation. PDHJ submitted a legal opinion regarding this issue, concluding that (i) there were already penal, civil and administrative mechanisms in TL to adequately respond to the defamation; (ii) the draft legislation presented failed to satisfy the requirements of article 19 of the ICCPR; (iii) approval of the draft legislation would be in violation of the requirements of article 24 of the CRDRTL, being unnecessary and disproportionate, in violation of the constitution itself and international human rights treaties.

27. **Recommendation:** TL should refrain from approving any such legislation that would violate the CDRTL and international human rights treaties, limiting freedom of expression.

## **The right to an adequate standard of living**

### **Access to Clean Water**

28. The NDSP aims to provide at least 75% of the population with access to water, 24 hours per day, as well as sanitation. During PDHJ's monitoring in 2015 it was concluded that the Government was still well off achieving the goals set out in the NDSP.

29. Based on the PDHJ's 2020 monitoring the main problem identified on access to water issue was lack of budget allocation for water system maintenance, lack of appropriate control from public services, lack of community awareness on conservation of water sources.

### **30. Recommendation:**

- a) Foresee adequate human resources, investment in infrastructure of water pipes instalment and qualified human resources to maintain and develop further infrastructure, guarantee appropriate controlled system with adequate resources with allocate human resources specialist and allocate budget and facilities.
- b) Disseminate law to raise community awareness to contribute to the water source preservation.

### **Access to Education**

31. PDHJ's monitoring has identified that the implementation of national school feeding program in the field has not followed school feeding guidelines established, find that most school have insufficient facilities with poor quality of ingredients for preparing school meals, as well as no adequate storage facility to keep the food, providing meals to the students only 3 or 4 day per week, not according to the school calendar. Also, PDHJ has identified that budget allocation for this program is not based on the number of students, lacking oversight and transparency on budget reports from school and responsible ministry.

### **32. Recommendation:**

- a) To allocate budget timely for school feeding program in accordance with school year and continue improving facilities or infrastructure.

- b) Develop new guidelines and revise the existing guidelines to follow up school feeding program.
- c) Commitment to comply for strengthening policy for increase food production in TL.

### **Corporal Punishment**

33. In 2017 to 2021, PDHJ registered 5 complaints in relation to corporal punishment. PDHJ identified that teachers continue to implement corporal punishment as a way of educating students to respect and focus during the learning process, despite it being a criminal offence under the Penal Code<sup>16</sup>, and the Government having introduced in 2017 new legislation<sup>17</sup> introducing strict disciplinary measures to ban and punish such behaviour, which PDHJ greatly commends.

#### **34. Recommendation:**

- a) Disseminate new legislation to raise awareness in the school community regarding teachers' and children's rights and responsibilities.
- b) Provide adequate training for teachers to learn how to handle difficult situations with students and colleagues.

### **Right to health**

#### **Access to information**

35. PDHJ recognises the great efforts made by the Government, through the Ministry of Health (MoH), in cooperation with development partner, NGOs and community groups to disseminate information to the community on special duty to improve public health, through prevention care in nutrition area, immunization, reproductive health, mental health, environmental health including COVID-19 prevention. Obstacles encountered during implementation: lack of transport to facilitate the activities of dissemination of information; lack of human resources and awareness of the community on implementing rules of COVID-19 preventions.

36. **Recommendation:** Continue to intensify information to the communities, taking relevant actions to promote and bring positive impact to changing community's mind-set in relation to the risks of COVID-19.

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<sup>16</sup> Article 145 (offenses for simple physical integrity), Decree-Law No. 19/2009.

<sup>17</sup> Government Decree 29/2017 and Ministerial Diploma 4/2018.

## Access to Health Facilities

37. PDHJ identified that access to health facilities (Centres and Posts) by the populations during COVID-19 times main obstacles has been lack of transportation, equipment for COVID-19 prevention (thermometer, gloves, alcohol disinfectant, adequate space for screening process, lack of medicine.)

38. **Recommendation:** Forecast adequate budget to improve the access, quality and quantity of equipment and facilities for the public health services.