



**REPUBLIKA DEMOCRATICA DE TIMOR-LESTE**  
**PROVEDORIA DOS DIREITUS HUMANUS E JUSTIÇA**



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## **Complementary NHRI report on the implementation of the Convention on the Rights of the Child**

Review of the Democratic Republic of Timor-Leste by the UN Committee on the  
Rights of the Child during its 70<sup>th</sup> Session (February 2015)

### **Information submitted by:**

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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 first opened its doors in 2006. It is charged with providing oversight over State entities. The main activities of the PDHJ include: cooperation with national and international entities for the advancement of a human rights framework in Timor-Leste, good governance and human rights monitoring, activities for the promotion of human rights and good governance principles, reporting to the United Nations treaty bodies and the UPR, activities for human rights education as well as conducting investigations in relation to human rights issues or abuses.

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## List of abbreviations

|         |   |
|---------|---|
| CEDAW   | Convention on the Elimination of All Forms of Discrimination against Women                      |
| CICL    | Children in conflict with the law   |
| CRC     | Convention on the Rights of the Child   |
| DRTL    | Democratic Republic of Timor-Leste  |
| GIEACPC | Global Initiative to End All Corporal Punishment on Children                                    |
| JSMP    | Justice System Monitoring Programme   |
| JSSP    | Justice Sector Strategic Plan 2011 – 2030   |
| MoE     | Ministry of Education   |
| MoJ     | Ministry of Justice   |
| MSS     | Ministry of Social Solidarity   |
| NER     | Net Enrolment Rate  |
| NESP    | National Education Strategic Plan   |
| PDHJ    | Provedoria dos Direitos Humanos e Justiça (Office of the Provedor for Human Rights and Justice) |
| PNTL    | Polícia Nacional Timor-Leste (National Police of Timor-Leste)                                   |
| RDTL    | República Democrática de Timor-Leste  |
| SDP     | Strategic Development Plan 2011 – 2030  |
| TLDHS   | Timor-Leste Demographic and Health Survey   |
| UN      | United Nations  |

## List of key recommendations

The Provedor for Human Rights and Justice invites the UN Committee on the Rights of the Child to recommend the State of Timor-Leste to

### General

- Adopt and implement, without delay, the Children's Code

### Corporal punishment

- Explicitly prohibit all forms of corporal punishment in all settings
- Train all public servants whose work involves children, such as teachers, legal professionals and police officers on the negative consequences of corporal punishment
- Continue and intensify awareness-raising campaigns for teachers, children, parents and community leaders on the negative consequences of corporal punishment and alternative ways to discipline children
- Include alternatives to corporal punishment in the teacher training curriculum
- Ensure the uniform training of teachers to a minimum quality standard
- Ensure that children who are victims of corporal punishment have access to reporting mechanisms and adequate remedies
- Assign one State institution to collect and share data in order to map the practice of corporal punishment

### Access to education

- Adopt and implement, without delay, an Inclusive Education Policy that includes clear and verifiable outcomes and indicators to measure these outcomes
- Ratify the Convention on the Rights of Persons with Disabilities
- Draft clear and concise indicators and timeframes to implement the 'National policy for inclusion and promotion of the rights of people with disabilities' and appoint actors who can be held accountable for implementing each goal within the policy
- Amend the Education System Framework Law to include teaching in local languages rather than focusing on acquiring Portuguese, Tetum and a foreign language.
- Continue and scale up the pilot-program for using mother-tongue based languages within the primary education system
- Ensure that primary education is free of any costs, including 'hidden costs' such as books, uniforms, transportation etc.

- Include specific provisions in the regulations for school buildings concerning bathroom facilities for girls

## Juvenile justice

- Adopt and implement, without delay, the Juvenile Justice Bill
- Adopt and implement, without delay, the Special Regime for Young Criminal Offenders
- Bring the minimum age for criminal responsibility in line with either the domestic definition of a child (i.e. 17 years) or with the international definition of a child (i.e. 18 years)
- Ensure separation between children and adults at all stages of the justice process
- Adopt and implement policies that aim at preventing crime amongst youth
- Ensure the protection of the rights enshrined in the Convention on the Rights of the Child and in other international and national legislation when children in conflict with the law are processed through the traditional justice system

## Introduction

The Office of the Provedor for Human Rights and Justice (PDHJ) prepared the following submission to the UN Committee on the Rights of the Child. The report was compiled for the review of the Democratic Republic of Timor-Leste in the 70<sup>th</sup> session of the Committee and relates to the reporting period from February 2008 until January 2015.

Despite progress in some areas, this submission addresses several concerns in relation to the human rights of children in Timor-Leste, which have remained unaddressed or insufficiently addressed by the State since the last review of Timor-Leste's compliance with the Convention on the Rights of the Child (CRC) in 2008, during the Committee's 47th Session. The compilation of the information for this submission followed a broad consultative process that engaged with state actors, as well as civil society organisations and international organisations.<sup>1</sup>

As children<sup>2</sup> account for 48% of the population of Timor-Leste<sup>3</sup>, the future of the country rests to a large extent on the fate of its children. The PDHJ has made use of consultations, qualitative research and surveys to identify key areas that need to be addressed in relation to children's rights in Timor-Leste. This submission focuses on three identified key areas: corporal punishment, access to education and juvenile justice. It is hoped that this submission will complement the information from the State report and NGO submissions to the committee.

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<sup>1</sup> Inter alia: Alfela, Ba Futuru, Belun, FOKUPERS, Forum Tau Matan, Global Initiative to End All Corporal Punishment on Children, JSMP, PRADET; Becora Prison Facility Director, PNTL Detention Facility Director, Ministry of Education, Ministry of Social Solidarity; UNESCO National Commission for Timor-Leste, IOM, UNICEF.

<sup>2</sup> Defined as people under the age of 18 years.

<sup>3</sup> TLDHS 2010, Table 2.1, 12.

## **Substantive analysis**

### **General Measures of Implementation**

NA

### **Definition of the Child**

NA

### **General principles**

NA

### **Civil Rights and Freedoms**

#### **Corporal punishment**

Article 19 of the CRC obliges States to take all appropriate measures to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation while in the care of parents, legal guardians or any other person who has a duty of care over the child. Article 28 establishes that school discipline is to be administered in a manner consistent with the child's human dignity. Furthermore, article 37 prohibits the use of torture or other cruel, inhuman or degrading treatment or punishment. The latter right was already established in article 7 of the International Covenant on Civil and Political Rights. A number of international documents, including CRC General Comment no. 8 (2006) on 'The right to protection from corporal punishment' and CRC General Comment no. 13 (2011) on 'The right of the child to freedom from all forms of violence', further elaborate on the obligations of the State to prohibit and prevent all forms of corporal punishment in all settings.

#### **Situation analysis**

A number of both Timorese and international organisations have pointed out that corporal punishment, as defined by the UN Committee on the CRC in General Comment no. 8 (2006), is a common and widespread phenomenon in domestic, educational, detention and other

settings in Timor-Leste.<sup>4</sup> A major problem related to addressing this issue is a lack of reliable data.<sup>5</sup> This analysis makes use of the limited number of cases and studies that are available.

As the National Human Rights Institution entitled to receive complaints from Timorese citizens, the PDHJ has received complaints that involve corporal punishment in 2014.<sup>6</sup> All complaints are related to corporal punishment in a school setting. In one case, a teacher asked students to put up their hand if they did not understand the material that was being taught. One student who did so was hit on the hand and on the head until he bled.<sup>7</sup> Another student who got hit for similar reasons complained to the teacher about the teacher's actions and for that reason got hit again.<sup>8</sup> A third case involved a student who was unable to sit properly due to the fact that his chair was broken. The teacher slapped and cursed the student for the manner in which he was sitting. The student responded by pushing the teacher and, for this reason, was not allowed to return to school.<sup>9</sup> A final example involved a student who arrived late at a ceremony and therefore was beaten by his teacher. His injuries were so severe that he had to go to the hospital for treatment.<sup>10</sup>

A 2006 UNICEF study 'Speak Nicely to Me' found that violence in classrooms is not exceptional. 67 percent of children who were part of the study reported to have been beaten with a stick at least sometimes.<sup>11</sup> 39 percent experienced being slapped in the face by their teacher. Other forms of punishment found in classrooms included making the student kneel on the ground, making the student stand outside in the sun, hitting the child on the back and spitting at the child. Similarly, 60 percent of the students reported that their parents used a stick to discipline them.<sup>12</sup> Forms of punishment that would occur more often at home than at school were found to be: threatening the child with a weapon, tying up the child in the house or refusing to feed the child.<sup>13</sup>

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<sup>4</sup> Inter alia: Justice System Monitoring Programme, Children's access to formal justice in Timor-Leste – A status report (2014), 21. UNICEF, Situation Analysis of Children in Timor-Leste (2014), 146. Ba Futuru, Lessons learned: Simple & effective strategies for transforming Timorese classrooms (2011), 4. Global Initiative to End All Corporal Punishment of Children, Corporal punishment of children in Timor-Leste (2014), 1.

<sup>5</sup> UNICEF, Situation Analysis, 21.

<sup>6</sup> Since complaints are not classified as 'corporal punishment' but rather as 'torture and cruel or degrading treatment', the exact number of complaints that explicitly concern corporal punishment is unknown. As documented in the PDHJ Annual Report 2013, 57 human rights violation complaints were accepted. These involved 27 cases of torture, cruel, inhuman and other degrading treatment and threats; 3 cases of rape and sexual abuse; 9 cases of arbitrary arrest and detention; 2 cases of arbitrary shootings; 4 cases of abandonment, 4 cases of arbitrary interference with people's homes; 2 cases of arbitrary attacks on people's honour and reputation; 2 cases of denial of the right to asylum; and 4 cases of denial of the right to access to the courts.

<sup>7</sup> Complaint filed to PDHJ, case number 82/2014/DH.

<sup>8</sup> Complaint filed to PDHJ, case number 80/2014/DH.

<sup>9</sup> Complaint filed to PDHJ, case number 59/2014/DH.

<sup>10</sup> Complaint filed to PDHJ, case number 20/2014/DH.

<sup>11</sup> UNICEF, Speak nicely to me (2006), 38.

<sup>12</sup> UNICEF, Speak nicely to me (2006), 49.

<sup>13</sup> UNICEF, Speak nicely to me (2006), 52.



In a survey conducted by the Timorese NGO Ba Futuru in 2011, 84 percent of students participating reported regularly seeing violence in their day-to-day lives.<sup>14</sup> Almost 40 percent of the students questioned reported that they had been beaten at least once a week and 13 percent had been punished more than three times per week. Over half of the students reported that they saw their teacher hit other students at least once a week.<sup>15</sup>

In 2012, the PDHJ carried out a survey among 422 students asking them the question: ‘Do you receive physical punishment in school?’. 88 percent of the participants of the survey confirmed that they are subject to corporal punishment. A 2014 survey carried out by the PDHJ in the district of Oecusse confirms the prevalence of corporal punishment as a means to discipline children in schools.<sup>16</sup> 86 percent of students surveyed confirmed that they have experienced physical punishment. Among the most prevalent methods of punishment in the latter survey were, pulling of the ear (experienced by 61 percent) and being forced to kneel on the ground or squat (50 percent). Other forms of punishment include beating the child with a stick or by hand. During the same survey, a focus group composed of teachers answered a number of questions, including on corporal punishment. None of the teachers questioned had received any training on the consequences of corporal punishment. They were not aware of any campaigns of the state aimed at reducing the use of corporal punishment.

## **State responses**

In its 2013 combined 2<sup>nd</sup>/3<sup>rd</sup> state report to the Committee on the CRC, the government has expressed recognition of the problem and widespread occurrence of corporal punishment in schools. The state claims to have developed a ‘zero tolerance policy’ for teachers using corporal punishment as a disciplinary measure. Furthermore, it has been stated that co-ordination between the Ministry of Education, the Ministry of Social Solidarity and the PNTL has been established to ‘increase teacher awareness and implement the [zero tolerance] policy’. Furthermore, information on child protection in school environments has supposedly been disseminated. According to the state, a number of teachers and parents have also been prosecuted for corporal punishment.<sup>17</sup>

The State has published a number of policy documents that touch upon the issue of corporal punishment. The Strategic Development Plan 2011 – 2030 (SDP) identifies a number of strategies to protect vulnerable children. Many of the objectives however, such as ‘establishing effective monitoring and evaluation systems for child protection’ or community education to eradicate harmful practices including domestic violence, remain insufficiently implemented and their effects are therefore negligible.<sup>18</sup>

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<sup>14</sup> Ba Futuru, Lessons learned (2011), 5.

<sup>15</sup> Ba Futuru, Lessons learned (2011), 6.

<sup>16</sup> Survey carried out in Oecusse, 24 – 28 November 2014.

<sup>17</sup> Timor-Leste 2<sup>nd</sup>/3<sup>rd</sup> combined report to the CRC (2013), 26.

<sup>18</sup> RDTL, SDP 2011 – 2030, 47.

In the National Education Strategic Plan 2011 – 2030 (NESP), prepared by the Ministry of Education (MoE), the State Party recognises ‘violence in schools’ as one of the main reasons for high drop-out rates although this is not exclusively related to corporal punishment.<sup>19</sup>

The Ministry of Education has adopted the *Escola Basica* policy. One of its pillars is ‘Positive school environment’ which encourages a positive relationship between all individuals involved in the school system as well as promoting the physical and psychological wellbeing of all people within the school.<sup>20</sup>

Although the PDHJ recognises and appreciates the efforts that have been made by the government to address the usage of corporal punishment as a disciplinary measure, mainly in schools and at home, concerns about the effectiveness of these efforts persist. These concerns are reinforced by the apparent acceptance of corporal punishment in schools and in other settings. Both in terms of legal measures, policy implementation and practical outcomes, it would appear to the PDHJ that further efforts should be made by the State in order to fulfil its obligations under the CRC in relation to corporal punishment.

## Legal measures

The legal framework on child protection provides insufficient protection against corporal punishment.

The Constitution, in Section 18, grants children special protection against all forms of violence.<sup>21</sup> The State is obliged to ensure that all children can enjoy internationally recognised rights, including those contained in the CRC.<sup>22</sup>

The Penal Code contains a number of provisions that are relevant to corporal punishment.

- Article 145 criminalises simple offences against physical integrity, theoretically providing children with protection against corporal punishment. An important problem with this law is the provision that ‘prosecution depends on the filing of a complaint’. Lack of awareness of legal remedies for children, particularly in remote areas, and the impossibility for the public prosecutor to press charges through their own initiative under this article result in very few prosecutions for cases of corporal punishment.
- Article 146 criminalises serious offences against physical integrity. However, unless the punishment is extremely grave (for example, leading to the loss of an organ or limb), corporal punishment cannot be understood to fall within this article.
- Article 155 criminalises mistreatment of a minor. The article specifically mentions ‘harm to the minor’s body or health or inflicts physical or mental mistreatment or

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<sup>19</sup> MoE, NESP 2011 – 2030, 127.

<sup>20</sup> MoE, NESP 2011 – 2030, 80.

<sup>21</sup> DRTL, Constitution, Section 18, Child Protection.

<sup>22</sup> DRTL, Constitution, Section 9, International Law.

cruel treatment'. It applies to persons who provide guardianship or custody over the minor or who are responsible for their upbringing, which would include both parents and teachers. This article could provide children in Timor-Leste with protection against corporal punishment. However the article is rarely applied in an institution setting. Although it is not entirely clear why, it might be related to a misunderstanding of the concept and legality of corporal punishment by parents, teachers and actors in the justice system.

- Article 167 criminalises torture or other cruel, degrading or inhuman treatment. This article explicitly prohibits torture or other cruel, degrading or inhuman treatment in order to punish that person but is only applicable to any person who works for or with the police, military or prison services.

Other articles in the Penal Code that can be relevant to corporal punishment include provisions on sexual harassment, rape and sexual coercion.

The Law on Domestic Violence prohibits physical, psychological, sexual and economic violence but does not explicitly criminalize corporal punishment. A rather complex legal construction exists through the Law on Domestic Violence which makes it possible to press charges under article 155 of the Penal Code on 'Mistreatment of a minor' which is then considered to be domestic violence. However, monitoring by the Judicial System Monitoring Program (JSMP) reveals that since 2010, only 5 cases have been filed under article 155.<sup>23</sup> The majority (71.3 percent) of the cases of domestic violence were filed under article 145 of the Penal Code; it is unclear whether those include cases of violence against children. The existence of article 155 however makes it unlikely that violence against children would be charged under article 145.

Decree Law 23/2010, which approves the Statute of Careers for Child Educators and Teachers of Basic and Secondary Education, aims to 'promote a standard of discipline and interaction among students that fosters the development of a healthy environment and respect for teaching'. It is unclear what this 'standard of discipline' entails and through which means it could be achieved.

## **Analysis**

The legal framework does not provide children with sufficient and all-encompassing protection against corporal punishment.<sup>24</sup> Corporal punishment is not explicitly prohibited in all settings, even though a number of legal provisions, most notably Article 145 and Article 155 of the Penal Code, are specific enough to make the act illegal. However the prohibition of physical and psychological violence in a number of legal documents as mentioned before is not always understood to include corporal punishment and as a consequence does clearly

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<sup>23</sup> JSMP, Law against domestic violence. Obstacles to implementation three years on (2011), 15.

<sup>24</sup> GIEACPC, Country report Timor-Leste (2014), 1 – 4.

not result in a reduction of the practice. Lack of access to legal remedies for children further reduces their protection.

The widespread occurrence of corporal punishment indicates a lack of awareness among teachers, parents and other caregivers on the negative consequences of corporal punishment, showing that the awareness-raising campaigns as mentioned by the State in its reply to the CRC are either for certain groups or ineffective. The PDHJ has not been able to retrieve any information on the alleged prosecutions of parents and teachers on charges of corporal punishment. As a general note, the lack of data on the prevalence of corporal punishment and on measures taken by the government against it, significantly reduce possibilities to monitor the issue and to draft effective and efficient policy responses.

The problems with the ineffective legal protection would be resolved with the adoption of the Children's Code, which has been published in draft in 2012. Article 43 of the draft Code explicitly prohibits corporal punishment in all settings, including at school and at home. The Committee on the CRC, in its General Comment no. 8 on 'The right to protection from corporal punishment and other cruel or degrading forms of punishment' (2006) has already pointed out that corporal punishment should not be allowed in any setting, and that the prohibition should be consistent throughout all settings without any margin of appreciation.

A stronger and more pro-active effort by the government is necessary in order to inform all individuals involved in the process of childrearing, including parents and teachers, about the negative consequences of corporal punishment. Currently, prospective and current teachers do not receive sufficient information about alternatives to corporal punishment as means of disciplining children.

The fourth issue, on information gathering, should be resolved by conducting nation-wide surveys on corporal punishment and by including all information on corporal punishment in a centralized database open for public consultation.

## **Recommendations**

In line with and building on the recommendations contained in the Committee on the Rights of the Child's Concluding Observations (2008), the Committee on CEDAW's Concluding Observations (2009) and the First Cycle of the Universal Periodic Review on Timor-Leste (2012), the Provedor for Human Rights and Justice invites the Committee on the Rights of the Child to recommend the State of Timor-Leste to

- Explicitly prohibit all forms of corporal punishment in all settings
- Train all public servants whose work involves children, such as teachers, legal professionals and police officers on the negative consequences of corporal punishment

- Continue and intensify awareness-raising campaigns for teachers, children, parents and community leaders on the negative consequences of corporal punishment and alternative ways to discipline children
- Include alternatives to corporal punishment in the teacher training curriculum
- Ensure the uniform training of teachers to a minimum quality standard
- Ensure that children who are victims of corporal punishment have access to reporting mechanisms and adequate remedies
- Assign one State institution to collect and share data in order to map the practice of corporal punishment

## Family Environment and Alternative Care

NA

## Disability, Basic Health and Welfare

NA

## Education, Leisure and Cultural Activities

### Access to education

Article 28 of the Convention on the Rights of the Child clearly outlines the obligations that the State of Timor-Leste assumed by ratifying the Convention in (2003). The right to education is reiterated in a number of international conventions and other sources. The International Covenant on Economic, Social and Cultural Rights, ratified by Timor-Leste in 2003, establishes the right to education for all citizens in articles 13 and 14. The Committee on Economic, Social and Cultural Rights' General Comment No. 13 on the Right to Education establishes that accessibility is an essential feature of a functioning education system. In particular non-discrimination, physical accessibility and economic accessibility should be guaranteed at all times.

### Situation analysis

Since its independence in 2002, Timor-Leste has made strong progress in providing children with education. Especially considering the poor infrastructure that Timor-Leste was left with after it became independent, the PDHJ acknowledges and appreciates the efforts made by the State and the results to which these efforts have led.

Key achievements:<sup>25</sup>

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<sup>25</sup> UNICEF, Situation Analysis (2014), 123.

- Net Enrolment Rate (NER) of 94% for grades 1-6 (up from 64% in 2005)
- Number of primary schools increased from 674 in 2000 to 1070 in 2010
- Number of teachers increased from 3860 in 2000 to 7500 in 2010
- A national education legal and policy framework has been established
- 'Child friendly school' principles have been adopted
- Gender equality in primary educations school enrolment has been achieved

However, challenges remain. Children belonging to certain vulnerable groups are more likely to either not attend school at all or to drop out before completing primary education. Among children that face difficulties with either being able to access basic education or with completing it are, in particular, girls, children with a disability, children living in rural areas, children born in poverty and children from a different linguistic background.<sup>26</sup>

## Girls

Article 2 of the CRC ensures all the rights in the CRC to all children without discrimination, including based on sex. Being bound by the Convention on the Elimination of All Forms of Discrimination against Women, Timor-Leste is obliged to do all that it can to ensure girls with equal access to education, including the implementation of special programmes to reduce girls' drop-out rates, for example because of pregnancy, and to ensure girls the same benefit from scholarships.<sup>27</sup> These rights have been reiterated and further explained in a number of General Recommendations.<sup>28</sup>

Timor-Leste has made great improvement in the intake of girls in primary schools, as is shown in the table below. Nevertheless, mainly in rural areas there are still many issues with girls' access to education. Problems with access to education for girls are often cross-cutting; for example, poor families might try to get their daughters married at a young age to get a dowry.<sup>29</sup> Despite these constraints, girls have an almost equal enrolment rate, lower dropout and repetition rates and the youth literacy is almost equal for men and women alike.

|       | Net enrolment rate | Drop-out rate | Repetition rate | Primary completion rate | Literacy rate, 15+ | Literacy rate, 15 – 24 |
|-------|--------------------|---------------|-----------------|-------------------------|--------------------|------------------------|
| Boys  | 92                 | 18            | 18              | 70                      | 64                 | 80                     |
| Girls | 90                 | 15            | 14              | 72                      | 53                 | 79                     |

Young mothers face particular difficulties with regards to access to education.<sup>30</sup> In interviews with the Ministry of Social Solidarity, it was confirmed that there were reports of schools refusing to allow pregnant girls to enjoy education during and after their pregnancy. This

<sup>26</sup> UNICEF, Situation Analysis (2014), 127.

<sup>27</sup> CEDAW, article 10.

<sup>28</sup> For example, CEDAW General Recommendation no. 3 (1987).

<sup>29</sup> UNICEF, Situation Analysis (2014), 166.

<sup>30</sup> UNICEF, Situation Analysis (2014), 124.

occasionally happened after pressure from parents of fellow students or at the decision of the school board.<sup>31</sup>

A shortage of proper school infrastructure and limited availability of WASH facilities (65 percent of basic education schools have toilet facilities and 38 percent have daily access to running water)<sup>32</sup> and a lack of school safety and security, including gender-based violence and sexual harassment, are further reducing girls' ability to access education. For example, 10 cases of sexual violence in school were reported to the MoE's Inspector-General of Education in 2010-2011.<sup>33</sup> In 2011-2012 this number was 9.<sup>34</sup> A study conducted by USAID in 2013 revealed that 35 percent of girls in grade 4 – 6 feel unsafe going to school. Another 26% do not feel safe at school.<sup>35</sup>

### **Children with a disability**

Article 2 of the CRC ensures all the rights in the CRC to all children without discrimination, including based on disability. Article 23 further elaborates the right to special assistance for children with a disability and obliges the State to do all that lies within its powers to ensure children with a disability equal access to education. These rights have been further defined in CRC General Comment No. 9 (2006) on 'The rights of children with disabilities' and ICESCR General Comment No. 5 (1994) on 'Persons with disabilities'.

Timorese children with a disability face clear disadvantages in many aspects of life, both as a consequence of practical barriers and stigmatization. Access to education is no exception.<sup>36</sup> As a consequence, people with a disability in Timor-Leste who were part of a UNMIT/UNHCR consultation on the rights of people with a disability ranked access to education as the area that most needs improvement.<sup>37</sup>

A distinction should be made between different types of disability. Children with a physical disability are in need of different forms of support than children with a mental and/or learning disability. According to data provided by the Ministry of Statistics of Timor-Leste, physical disabilities such as those related to walking, hearing and/or seeing are more common than mental disabilities.<sup>38</sup> Furthermore, most people with a disability live in rural areas.<sup>39</sup>

Children with a disability are less likely to have ever attended school as 34 percent of children aged 6-14 with a disability have never had the possibility to attend school,

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<sup>31</sup> PDHJ interview with Child Protection Officer of the MSS – Oecusse Office. Thursday, 27 November 2014.

<sup>32</sup> UNICEF, Situation Analysis (2014), 102.

<sup>33</sup> Timor-Leste Specific Report on Health and Education to CEDAW (2011), paragraph 91, page 22.

<sup>34</sup> Timor-Leste Combined 2<sup>nd</sup>/3<sup>rd</sup> periodic report to CEDAW (2013), 44-45.

<sup>35</sup> USAID, School Dropout Prevention Pilot Program: Timor-Leste Situational Analysis as cited in: Asian Development Bank, Timor-Leste Gender Country Assessment (2014), 21.

<sup>36</sup> CRC General Comment No. 9 (2006) on 'The rights of children with disabilities', 1.

<sup>37</sup> UNMIT/UNHCR, Report on the Rights of Persons with Disabilities in Timor-Leste (2012), 19.

<sup>38</sup> Ministry of Statistics, Disability Monograph (2010), 22.

<sup>39</sup> Ministry of Statistics, Disability Monograph (2010), 12.

compared to 20 percent of all children in this age group.<sup>40</sup> It is unclear which type of disability is most likely to cause a child not to attend or dropout from school.

Numbers from the 2010 Population and Housing Census clearly show the disadvantaged position of children with a disability:<sup>41</sup>

| Level of education | Children with a disability enrolled | Total enrolled children |
|--------------------|-------------------------------------|-------------------------|
| Primary            | 59.3 %                              | 93.6 %                  |
| Pre-secondary      | 14.5 %                              | 30.3 %                  |
| Secondary          | 10.2 %                              | 19.5 %                  |

The consequences of the lower levels of access to education are shown in the statistics on literacy. While the total level of literacy for youth aged 15 – 24 years old is 79 percent, this is only 52 percent for youth with a disability.<sup>42</sup> The discrepancy between overall literacy and literacy among girls with a disability is higher than for boys, indicating that girls with a disability are less likely to attend school than boys with a disability.

As with many issues, disability is a typical cross-cutting issue. For example, children with a disability who are living far away from school and/or who were born in poverty are significantly less likely to attend school compared to their peers without a disability.<sup>43</sup> Since children with a disability are more likely to live in poverty, their chances to enjoy their right to education are low relative to other children.<sup>44</sup>

**Children from a different linguistic background**

Article 29 of the CRC establishes that education of the child shall be directed to development of respect for child’s own cultural identity, language and values. In addition, in line with article 30, children who belong to linguistic minorities shall not be denied the right to enjoy their own culture or to use their own language.

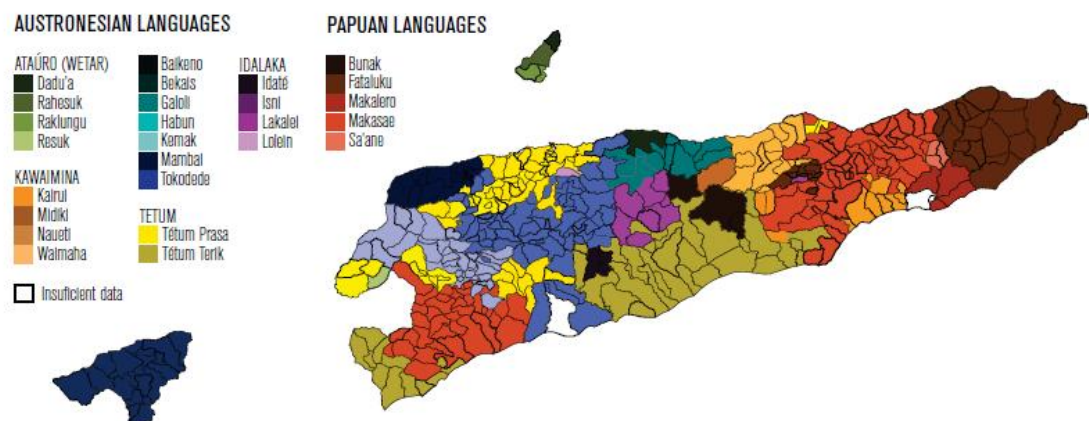
In addition to Tetum and Portuguese, the two official national languages of Timor-Leste as designated in the Constitution,<sup>45</sup> Timor-Leste has more than 30 national languages, which are spoken throughout the country.<sup>46</sup> Tetum and Portuguese are the two official languages of the educational system.<sup>47</sup> The Constitution establishes English and Bahasa Indonesia as ‘working languages within the civil service’.<sup>48</sup>

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<sup>40</sup> Ministry of Statistics, Disability Monograph (2010), 8.  
<sup>41</sup> Ministry of Statistics, Disability Monograph (2010), 23. UNICEF, Situation Analysis (2014), 176.  
<sup>42</sup> Ministry of Statistics, Disability Monograph (2010), 26.  
<sup>43</sup> UNMIT/UNHCR, Report on the Rights of Persons with Disabilities in Timor-Leste, 2012, 15.  
<sup>44</sup> UNICEF, Situation Analysis (2014), 152.  
<sup>45</sup> RDTL, Constitution, Section 13.  
<sup>46</sup> UNICEF, Situation Analysis (2014), 17.  
<sup>47</sup> Education System Framework Law (2008), Article 8.  
<sup>48</sup> RDTL, Constitution, Section 159.



The concept of 'linguistic minority' is rather complex in the Timorese context: it could be said that all Timorese belong to a linguistic minority considering that none of the languages is the first language of a majority of the population. This is clearly visible on the map below, which shows the most widely spoken language per Suku:<sup>49</sup>



Not all inhabitants are able to speak Tetum or Portuguese. Of the population of 5 years and older, 53 percent speak, read and write in Tetum and 24 percent speak, read and write in Portuguese.

Most children in Timor-Leste are therefore faced with an educational system that uses languages that they do not speak or understand which leads to exclusion from education.<sup>50</sup> For example, from the first grade onwards children have to complete their exams and written assessments in Portuguese.<sup>51</sup> Combined with teachers' lack of mastering the Portuguese language,<sup>52</sup> obvious constraints in teaching methods prevent children from fully benefiting from education.

### Children born in poverty

The CRC, in article 27, recognises the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development, with particular regards to nutrition, clothing and housing. The International Convention on Economic, Social and Cultural Rights, in article 11, recognises the right to an adequate standard of living including food, clothing and housing, and to the continuous improvement of living conditions.

<sup>49</sup> Map taken from: UNICEF, Situation Analysis (2014), 132.

<sup>50</sup> UNICEF, Situation Analysis (2014), 127.

<sup>51</sup> Direct observation in Oecusse, 25 November 2014; Interview with Timor-Leste National Commission for UNESCO, 10 December 2014.

<sup>52</sup> UNICEF, Situation Analysis (2014), 23.

However in Timor-Leste, poverty is a root cause for children dropping out or not going to school. The economic pressure on a family often pushes young boys out of school, under the pressure of finding a job to financially contribute to the household. For young girls, poverty often put them at risk of an early marriage: the dowry or bride price being seen as a coping mechanism against economic pressures.<sup>53</sup>

Considering that almost 50 percent of the people in Timor-Leste live below the national poverty line of \$ 0.88 per day,<sup>54</sup> poverty puts serious constraints on children's ability to enjoy their right to education. The statistics confirm this. Among children who are part of the richest quintile of the population, 11 percent are out of school. For the poorest quintile, this stands at 28 percent.

Although basic education is free of charge by law,<sup>55</sup> in practice a number of so-called 'hidden costs' prevent the poorest children from enjoying their right to education. Children are in need of books, uniforms and often transportation, for which they sometimes have to pay. These economic barriers can prevent children living in poverty from accessing education.

### **Children living in rural areas**

Children living in rural areas are less likely to attend school for a number of reasons. Children do not attend school for the simple fact that they live in a rural area, rather they do not attend because poverty is more prevalent in rural areas than in urban areas,<sup>56</sup> schools are concentrated in urban areas, more children with disabilities live in rural areas compared to urban areas<sup>57</sup> and their access to health care facilities is worse. In addition, traditional customs practised more rigidly by those living in rural areas often make children marry at a lower age and the obvious fact that agriculture is more common in rural areas makes child labour, especially in the harvesting season, more prevalent.<sup>58</sup>

70 percent of the population live in rural areas with relatively poor access to education compared to urban areas.<sup>59</sup> The Net Attendance Rate for primary school is 80.2 percent in urban areas and 67.4 percent in rural areas. For pre-secondary, these rates are 40.4 percent in urban areas and 17.1 percent in rural areas.<sup>60</sup> These statistics show the unequal access to education facing children living in rural areas.

Since its independence, Timor-Leste has invested heavily in building new schools.<sup>61</sup> Despite these efforts, schools are distributed unequally throughout the country, with concentrations

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<sup>53</sup> UNICEF, Situation Analysis (2014), 168.

<sup>54</sup> UNICEF, Situation Analysis (2014), 178.

<sup>55</sup> Constitution, Section 59, Education and Culture.

<sup>56</sup> NESP, 127. UNICEF, Situation Analysis (2014), 46.

<sup>57</sup> Timor-Leste Population and Housing Census 2010, Analytical report on disability (Volume 10), 26.

<sup>58</sup> UNICEF, Situation Analysis (2014), 124.

<sup>59</sup> UNICEF, Situation Analysis (2014), 24.

<sup>60</sup> UNICEF, Situation Analysis (2014), 122.

<sup>61</sup> UNICEF, Situation Analysis (2014), 129.

in certain areas and closer to the main roads.<sup>62</sup> Partly as a consequence, youth illiteracy is concentrated in the most remote *sukus* (villages), mainly in Oecusse, Ermera and Manatuto.<sup>63</sup>

## State responses

In order to achieve its obligations under the constitution, and particularly in order to achieve the progressive realisation of economic, social and cultural rights, the Government of Timor-Leste has established a strategic development framework.

The **Timor-Leste Strategic Development Plan 2011 – 2030** sets out the overarching strategy of the Government of Timor-Leste for the development of the country through three key areas: “Human Capital” (comprised of education, health, social inclusion, environment and culture and heritage), Infrastructure Development and Economic Development. The SDP outlines a strategy to realise universal basic education. Reforms identified to implement this strategy include:<sup>64</sup>

- Researching, analysing and addressing the factors hindering school enrolments and causing school drop outs;
- Ensuring schools have the buildings and facilities needed to deliver education and respond to the strong population growth of school age children; and
- Implementing a new, decentralised school management system including greater participation by the community.

The SDP presents the vision that ‘all Timorese children should attend school and receive a quality education that gives them the knowledge and skills to lead healthy, productive lives and to actively contribute to our nation’s development’. It has a specific highlight of ‘Social inclusion in the education system’, which underlines the importance of ensuring the right to education for all, especially the most vulnerable, and eliminating exclusion for any reasons, such as economic status, gender, disability and language.

The **Program of the 5th Constitutional Government 2012 – 2017** echoes the SDP’s focus on universal quality education for all people, and reaffirms the Government’s commitment in achieving this goal.<sup>65</sup>

The **National Education Strategic Plan 2011 – 2030** states that ‘All individuals will have the same opportunity for access to quality education that will allow them to participate in the economic, social and political development process, ensuring social equity and national

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<sup>62</sup> UNICEF, Situation Analysis (2014), 129.

<sup>63</sup> UNICEF, Situation Analysis (2014), 126.

<sup>64</sup> Timor-Leste, Strategic Development Plan 2011 – 2013, 21.

<sup>65</sup> Timor-Leste Presidency of the Council of Ministers, Program of the Fifth Constitutional Government. 2012 – 2017 Legislature, 13.

unity'. 'Social Inclusion' is a specific priority area, which aims at creating 'policies and measures to promote the educational rights of socially marginalised groups and to ensure full access to the same opportunities, rights and services that are accessed by the mainstream of society are developed and implemented'.<sup>66</sup>

The 'Inclusive Education Policy' has not been adopted yet, despite the fact that the NESP set the deadline for its development and implementation at 2011.

## **Girls**

The NESP aims at a complete gender balance in all the educational areas by 2015.<sup>67</sup> To achieve this, the government aims at:<sup>68</sup>

- Increasing the staff capacity at the Ministry of Education who can identify and resolve gender related problems
- Increasing awareness of gender equity as a human right
- Establishing clear procedures and monitoring systems to eliminate gender based violence in schools
- Establishing a scholarship program for girls
- Review curricula to make them gender friendly

In the National Action Plan on Gender Based Violence, the government acknowledges that women suffer from discrimination in accessing education.<sup>69</sup>

The reply by the State to the Committee contains a paragraph mentioning a 'Plan for Gender Equality in Education', supposedly a 'comprehensive' policy to increase female enrolment in education. This plan, however, is part of the Inclusive Education Policy which has not been finalised yet.<sup>70</sup>

## **Children with a disability**

In the Strategic Development Plan 2011 – 2030, the government objective is that 40% more children with disabilities will be in basic education by 2015. This objective is repeated in the NESP, which aims to 'substantially increase enrolment of children with disabilities in basic education by 2015'.<sup>71</sup>

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<sup>66</sup> MoE, NESP 2011 – 2030, 131.

<sup>67</sup> MoE, NESP 2011 – 2030, 266.

<sup>68</sup> MoE, NESP 2011 – 2030, 130.

<sup>69</sup> National Action Plan on Gender-Based Violence, 9.

<sup>70</sup> PDHJ interview with Inclusive Education Office of the Ministry of Education, 16 December 2014.

<sup>71</sup> MoE, NESP 2011 – 2030, 267.

The National Strategic Education Plan 2011 – 2030 must ‘ensure that children with specific education needs, resulting mainly from physical and mental disabilities, are provided with proper conditions to develop and use their capabilities to the full’.<sup>72</sup>

The NESP wants to achieve this through the following activities:<sup>73</sup>

- *Establish 250 focal points working in all school clusters in 2012*
- *Provide training and professional development to support the 250 teams of inclusive education in each cluster*
- *Increase awareness of the importance of early childhood education for children with moderate/ severe disabilities in order to prepare them for inclusion in mainstream basic education*
- *Establish a Central Resource and Support Centre for Inclusive Education (Dili) to act as the catalyst for training, resources, information, professional development (Braille and Sign Language)*
- *Establish a child-friendly environment for children with disabilities in Basic Education*
- *Review current policies, laws, legislations, regulations and procedures regarding the education of children with special needs, specifically focusing on inclusive education by 2011.*

The ‘National Policy for Inclusion and Promotion of the Rights of People with Disabilities’ has established the manner in which children with disabilities should be guaranteed their right to education. Unfortunately, the policy is rather vague. For access to education, the Government wants to ‘take steps to an inclusive education, particularly through the creation of legal rules governing special education, in terms of pedagogy, assessment and other relevant aspects’.<sup>74</sup> In addition, special school equipment, sign language and ‘specialised professionals’ should enable children with a disability to access schools.

Interviews with the Ministry of Education have revealed that children with a disability face both practical obstacles to accessing schools, such as distance to the school and the lack of facilities in school, as well as social stigmatisation; parents think that children with a disability are not worth the investment and that it is pointless for them to go to school. The focal points for children with a disability are not yet functioning. A small proportion of teachers have received training about educative needs for children with a disability.<sup>75</sup>

Currently, the government response to those problems has been inadequate. The ‘National Action Plan for People with Disabilities’ for example, is insufficiently precise in defining indicators and a timeframe for the proposed objectives.<sup>76</sup>

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<sup>72</sup> MoE, NESP 2011 – 2030, 44.

<sup>73</sup> MoE, NESP 2011 – 2030, 131.

<sup>74</sup> National policy for inclusion and promotion of the rights of people with disabilities, Education Strategy.

<sup>75</sup> PDHJ interview with the Inclusive Education Office of the Ministry of Education, 16 December 2014.

<sup>76</sup> Ministry of Social Solidarity, ‘National Action Plan for People with Disabilities 2014 – 2018’.

## Children born in poverty

Timor-Leste's Strategic Development Plan 2011 – 2030 strongly focuses on poverty alleviation: 'The economic vision of the Strategic Development Plan is that by 2030 Timor-Leste will have joined the ranks of upper middle income countries, eradicated extreme poverty and established a sustainable and diversified non-oil economy'.<sup>77</sup>

The National Education Strategic Plan 2011 – 2030 aims to 'prepare and implement a plan to ensure the educational rights for all children living in poverty'.<sup>78</sup> The ambition is therefore that children 'should be protected, and their rights to education and other basic services be met by designing measures that allow families to send them to school'.<sup>79</sup>

One major program to fight the consequences of poverty through schools is the School Feeding Program. The school feeding program is addressed specifically in the section dealing with social inclusion in the education system. In particular, the commentary indicates that the school feeding program is concerned with access to education:

*Programs such as school grants and the school feeding program are being implemented to ensure that children are not excluded from education on the basis of their economic status.*

*Our first step will be to establish a policy of social inclusion to ensure that our most vulnerable people have a right to education. We will also introduce measures to help children from poorer families to access and continue their education, including further development of the school feeding program.*

Another program is the 'Bolsa Mae' (Mother Purse), a so-called 'Conditional Cash Transfer' program. The program provides households headed by women with financial contributions on the condition that those contributions will (partly) be used to send their children to school. According to numbers provided by the Ministry of Social Solidarity, 13.931 families benefited from the program in 2012. The total budget for that same year was 2.228.520 USD.<sup>80</sup>

## Children from a different linguistic background

In the Program of the 5<sup>th</sup> Constitutional Government 2012 – 2017, the Government has outlined the main priorities for basic education. One of these is the implementation of a 'Multilanguage Education Policy based on the Maternal Languages of Timor-Leste'.<sup>81</sup>

The National Strategic Education Plan 2011 – 2030 however, is ambiguous. One of its objectives is 'the development of a quality curriculum' that 'will teach our children about our

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<sup>77</sup> RDTL, SDP, 196.

<sup>78</sup> MoE, NESP 2011 – 2030, 84.

<sup>79</sup> MoE, NESP 2011 – 2030, 127.

<sup>80</sup> Timor-Leste 2<sup>nd</sup>/3<sup>rd</sup> combined report to the CRC (2013), 81.

<sup>81</sup> RDTL, Program of the 5th Constitutional Government 2012 – 2017, 14.

national values, history, and culture promoting fluency in our two official languages [Portuguese and Tetum], and opportunities to acquire English'.<sup>82</sup> Another objective is to 'understand the potential of mother tongues in education'.<sup>83</sup>

In 2013 the Ministry of Education and the UNESCO National Commission, which is a semi-governmental organisation, introduced the 'Mother Tongue-based Multilingual Education Policy'. It has four pillars.<sup>84</sup>

- Cultural identity and citizenship rights
- Enhanced and transferable literacy
- Educational access, attainment and success
- Preparation for later learning in official (national) and international languages

The policy introduces a new educational teaching method in which children whose native language is not Tetum or Portuguese will be taught in a language they speak during pre-education and for the first three grades of primary education. The policy was implemented as a pilot program in 11 schools spread over 3 districts and initially lasted for 2 years. Currently, plans are being developed to extend the pilot program on a larger scale.

At the time of writing, evaluation reports had not been published yet and monitoring is needed for an adequate assessment of the success of the pilot program. The PDHJ recognises the increased effectiveness, quality and accessibility of schools through reform of the language of instruction of education.

## Legal measures

The right to education that compulsory, universal and free of charge is guaranteed in Section 59 of the Constitution. In particular, the Constitution establishes that 'everyone has the right to equal opportunities for education and vocational training' and that 'the State should ensure the access of every citizen, in accordance to their abilities, to the highest levels of education, scientific research and artistic creativity'.<sup>85</sup>

In addition, the Constitution contains a provision on universality and equality prohibiting discrimination. Unfortunately, this list is exhaustive, meaning that only those specific groups mentioned in the provision are protected against discrimination. As such, the article prohibits discrimination 'on grounds of colour, race, marital status, gender, ethnical origin, language, social or economic status, political or ideological convictions, religion, education and physical or mental condition'.<sup>86</sup>

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<sup>82</sup> MoE, NESP 2011 – 2030, 79.

<sup>83</sup> MoE, NESP 2011 – 2030, 127.

<sup>84</sup> MoE, Mother Tongue-based Multilingual Education for Timor-Leste National Policy, 1.

<sup>85</sup> RDTL, Constitution, Section 59.2 and 59.4.

<sup>86</sup> RDTL, Constitution, Section 16.2.

The right to education is further elaborated on in the Education System Framework Law of 2008. Article 2.1 reiterates the right to education. Article 11.1 establishes that primary education is universal, compulsory and free and lasts for nine years.

Besides the general rights and protection that children in Timor-Leste are entitled to, as outlined above, specific laws and provisions apply to a number of groups of children who are more vulnerable to discrimination in access to education.

- Section 17 of the Constitution ensures equality between men and women in all areas of family, political, economic, social and cultural life. There are no specific legal measures to ensure equal access to education for **girls**. The Law on Domestic Violence obliges the government to adapt school curricula to include topics on gender with the purpose of fighting violence.<sup>87</sup>
- **Children with a disability** are guaranteed the enjoyment of all rights equal to other citizens in the Constitution. The State ‘shall promote the protection of disabled citizens as may be practicable and in accordance with the law’.<sup>88</sup> The Education System Framework Law stipulates that students may enjoy free transportation if necessary.<sup>89</sup> The same law establishes that ‘children with special needs [shall] enjoy conditions adequate to their development and full attainment of their capabilities’.<sup>90</sup> The law specifically guarantees ‘the right to adequate educational responses’ to children with ‘special educative needs’, for example resulting from ‘accentuated limitations in the areas of hearing, vision, motor, cognitive, speech, language and communication, emotional and physical health’. It is ‘the responsibility of the State to promote and support special education’.<sup>91</sup> Lastly, ‘in the design of school buildings and the choice of equipment, consideration should be given to the special needs of handicapped persons’.<sup>92</sup> Government Resolution 14/2012 established the ‘National policy for inclusion and promotion of the rights of people with disabilities’, which has been discussed previously in this report. The policy reiterates the rights established in the Constitution and the Education System Framework Law but fails to establish how these laws should be implemented.
- **Children belonging to linguistic minorities** enjoy special rights. Although the Constitution establishes Portuguese and Tetum as the official languages of the country, other national languages shall be ‘valued and developed by the State’.<sup>93</sup> The Education System Framework Law however establishes Portuguese and Tetum as the official languages of the educational system, the mastery of which is an objective of primary education. Learning of a ‘first foreign language’ (as opposed to Tetum,

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<sup>87</sup> Law on Domestic Violence, 7/2010, Article 11.

<sup>88</sup> RDTL, Constitution, Section 21.

<sup>89</sup> Education System Framework Law, 14/2008, Article 11.

<sup>90</sup> Education System Framework Law, 14/2008, Article 12.

<sup>91</sup> Education System Framework Law, 14/2008, Article 29.

<sup>92</sup> Education System Framework Law, 14/2008, Article 53.

<sup>93</sup> RDTL, Constitution, Section 13.



Portuguese or the national languages) is an objective of primary education as well, while national languages are not mentioned.<sup>94</sup> The Statute of teaching careers establishes that teachers' 'competency to recognise and promote social integration and smooth coexistence among the different cultural and linguistic customs in the schools' is part of their professional ethics.<sup>95</sup>

- **Children born in poverty**, or 'the most economically deprived students', shall enjoy special assistance enabling them to enjoy their right to education. The Education System Framework Law provides for measures to assist children lacking the financial means to afford access to school, mainly because of so-called 'hidden costs'. Examples are school meals under the School Feeding Programme (which are available to all students but directly targeted at those economically deprived), school transportation, school materials and scholarships.<sup>96</sup>
- **Children in rural areas**, who might live too far away from school to walk, are entitled to school transportation under the Education System Framework Law.

## Analysis

Although there are a number of laws and policies that aim to remove barriers on access to education, serious issues persist.

Concerning access to education for girls, the PDHJ commends the government on the fact that overall, as many girls as boys enjoy primary, pre-secondary and secondary education. However the government has insufficiently succeeded in addressing gender-based violence in schools, including sexual violence, in adapting school buildings to the special needs of girls, in particular in pre-secondary education and higher and in ensuring the right to education for adolescent mothers.

Concerning access to education for children with a disability, the PDHJ is concerned about the small proportion of children with a disability who attend school compared with the overall child population. The Government should make strong efforts mainly in providing children with a disability with the necessary equipment and in organizing awareness-raising campaigns in order to break the stigmatisation of the group as a whole.

Concerning access to education for children from a different linguistic background, the PDHJ commends the government on experimenting with the use of local languages as the language of instruction in the first grades of primary education. However, currently the vast majority of children are taught in a language they have not sufficiently mastered by teachers who have insufficient training and expertise in non-mother-tongue languages.

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<sup>94</sup> Education System Framework Law, 14/2008, Articles 8 and 12.

<sup>95</sup> Statute of teaching careers, Decree law 23/2010, Article 17.

<sup>96</sup> Education System Framework Law, 14/2008, Article 40.

Concerning access to education for children born in poverty, the government should ensure the right to free education for all children. In particular the negative consequences of ‘hidden costs’, for example for acquiring essential learning materials and school equipment, on accessibility to education should be addressed.

The government should particularly address cross-cutting issues, which certain groups of vulnerable children must confront with regards to access to education. For example, poverty is more apparent in rural areas than in urban areas. As a consequence, boys are more likely to be forced to work and girls are more likely to be married younger and become pregnant. As schools are less concentrated in rural areas, children often live further away from school, making the need for school transportation more urgent. Considering the lack of financial means due to poverty, children are less likely to be able to afford transportation or buy school equipment and, if necessary, special equipment to assist with a disability.

The Provedor for Human Rights and Justice invites the Committee on the Rights of the Child to recommend the State of Timor-Leste to

## **Recommendations**

- Adopt and implement, without delay, an Inclusive Education Policy that includes clear and verifiable outcomes and indicators to measure these outcomes
- Ratify the Convention on the Rights of Persons with Disabilities
- Draft clear and concise indicators and timeframes to implement the ‘National policy for inclusion and promotion of the rights of people with disabilities’ and appoint actors who can be held accountable for implementing each goal within the policy
- Amend the Education System Framework Law to include teaching in local languages rather than focusing on acquiring Portuguese, Tetum and a foreign language.
- Continue and scale up the pilot-program for using mother-tongue based languages within the primary education system
- Ensure that primary education is free of any costs, including ‘hidden costs’ such as books, uniforms, transportation etc.
- Include specific provisions in the regulations for school buildings concerning bathroom facilities for girls

## **Special Protection Measures**

### **Juvenile Justice**

The PDHJ has noted with regret that the administration of juvenile justice is an area of strong human rights concern. In a number of areas, the State has not been able to guarantee the rights of juvenile offenders and children in conflict with the law.

Relevant CRC articles

As formulated in the UN Guidelines for the Prevention of Juvenile Delinquency (1990), ‘the prevention of juvenile delinquency is an essential part of crime prevention in society’. Appropriate response mechanisms to children in conflict with the law, which includes prevention policies, a judicial system that takes into account the age of the offender and respects the dignity and special needs of children and the prioritization of reintegration in society, are essential in fulfilling the rights of children under the CRC and for a healthy and safe society. Currently, these essential aspects of the legal system are not in place.

Complaints about possible violations of the rights of children in conflict with the law have been filed to the PDHJ. For example, a number of youths, who were involved in fighting on the street, got arrested by the PNTL. They were detained for 72 hours and beaten by the police. After that they were brought straight to the court instead of through the public prosecutor, as is the official procedure. In a closed court hearing and without any evidence, the youths (whose ages are unknown) were sent to Becora prison for 15 days ‘to teach them a lesson’.<sup>97</sup>

Generally, the number of children in contact with the law in Timor-Leste is not adequately reported. A centralised data collection system is absent as a consequence of which the number of children in contact with the law is unknown.<sup>98</sup> Both the Ministry of Social Solidarity through the Child Protection Officers, the PNTL’s Vulnerable Person’s Unit (VPU), the Xefe Sukus<sup>99</sup> and the public offender can be involved in the system. Incidents can be reported to one, multiple or none of these actors.

Research and fieldwork by UNICEF have revealed some indications about the characteristics of children in conflict with the law. They are mostly boys, charged with minor offenses, often out of school and almost half of the children were single or double orphans.<sup>100</sup>

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<sup>97</sup> Complaint filed to PDHJ, case number 002/2014/DH

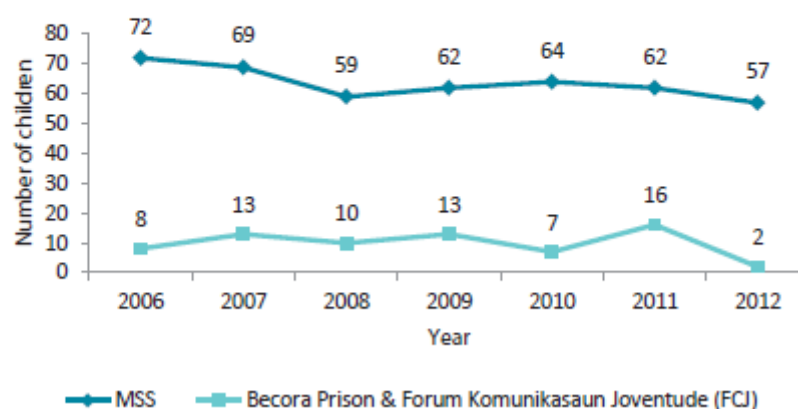
<sup>98</sup> UNICEF, Juvenile justice strategy paper, 8.

<sup>99</sup> ‘Xefe Suku’ refers to ‘village chief’.

<sup>100</sup> UNICEF, Juvenile justice strategy paper, 8.

Figure 6.7: Number of children in conflict with the law, by year

Source: UNICEF (2012) Juvenile Justice Strategy Paper.



The NGO Belun has initiated the Early Warning, Early Response (EWER) system. Their monthly reports clearly indicate that there is a strong need for an integral, multidisciplinary approach to preventing and resolving issues related to children in conflict with the law. As the table below shows, both the perpetrators and the victims of potentially criminal incidents are often youth.<sup>101</sup> Even though the term ‘youth’ is not clearly defined (Belun did not specify an age limit in its report), these numbers suggest that the legal gap for children and youth in conflict with the law is problematic.

| Identity of Perpetrator(s) | # Incidents | %     | Identity of Victim(s) | # Incidents | %     |
|----------------------------|-------------|-------|-----------------------|-------------|-------|
| Youth                      | 80          | 37.7% | Youth                 | 73          | 34.4% |
| Other                      | 46          | 21.7% | Other                 | 57          | 26.9% |
| Family member              | 45          | 21.2% | Family member         | 48          | 22.6% |
| Farmer                     | 22          | 10.4% | Student               | 22          | 10.4% |
| Neighbor                   | 16          | 7.5%  | Farmer                | 22          | 10.4% |
| Student                    | 12          | 5.7%  | Neighbor              | 16          | 7.5%  |
| Unknown                    | 11          | 5.2%  | Martial Arts          | 6           | 2.8%  |
| Police                     | 8           | 3.8%  | Local Leader          | 5           | 2.4%  |
| Local Leader               | 4           | 1.9%  | Government Official   | 5           | 2.4%  |
| Martial Arts               | 3           | 1.4%  | Police                | 4           | 1.9%  |
| Government Official        | 3           | 1.4%  | Political Party       | 1           | 0.5%  |
| Military                   | 2           | 0.9%  |                       |             |       |

Table 7: Identity of Perpetrators and Victims<sup>9</sup>. June - September 2013. Source: EWER.

The number of children in conflict with the law who are processed through the traditional justice system rather than the formal justice system is unknown. However a survey conducted by The Asia Foundation in 2013 found that an overwhelming majority of people

<sup>101</sup> Table taken from: Belun, Conflict Potential Analysis Timor-Leste, Trimester XIV: June to September 2013, 13.

feels that community authorities are primarily responsible for upholding the rule of law in their community.<sup>102</sup> As a consequence 'local leaders presumably handle many cases of children in conflict with the law'.<sup>103</sup> Interviews with Xefe Sukus have revealed that capital crimes (including murder and rape) will be reported to the police but that most other crimes are being resolved through the customary means.<sup>104</sup> Lack of understanding of the formal justice system and how it can complement the traditional justice system is an issue of concern.<sup>105</sup>

The Timorese NGO Justice System Monitoring Project (JSMP) reports a decline in children detained in state prisons.<sup>106</sup> The government has not provided information on the number of cases that involved child perpetrators. The government did provide numbers on detained persons under 18 between 2009 and 2012:

**Table 63 - Number and age of persons under than 18 detained either on remand or after sentenced (new entry to custody only-not ongoing remands) 2009 – 2012:<sup>100</sup>**

| Year  | Age group | Numbers | Grand total |
|-------|-----------|---------|-------------|
| 2009  | 17        | 3       | 3           |
| 2010  | 17        | 1       | 1           |
| 2011  | 16-17     | 13      | 13          |
| 2012  | 17-18     | 2       | 2           |
| Total |           |         | 29          |

From: State reply to CRC Recommendations, page 112

An official request for information to Becora Prison in Dili, one of two main prisons in the country, revealed that there are currently 2 prisoners of 16 years old, 5 prisoners of 17 years old and, in total, 28 prisoners who are between the ages of 16 and 21 years old.<sup>107</sup> Young offenders (until 21 years old) who are detained in Becora are kept together in a separate bloc. They are supposed to eat separately from the adult detainees and they are entitled to education. In practice it appears that, for example during the distribution of the food or with sporting and other social activities, juvenile offenders are in close proximity and communication with adult prisoners.<sup>108</sup> This has been acknowledged by the State yet no effective measures to counter the issue have been implemented.

## State responses

In its 2013 combined 2<sup>nd</sup>/3<sup>rd</sup> report to the CRC, the State has declared that 'the juvenile justice regime is currently undergoing significant review and reform'. In addition, a number of professionals working with children in conflict with the law have received training on child rights and child protection. For judges, members of the Police force and members of the

<sup>102</sup> The Asia Foundation, Timor-Leste Law and Justice Survey 2013, 18.

<sup>103</sup> MSS and UNICEF, Child protection system mapping (2011), 49.

<sup>104</sup> MSS and UNICEF, Child Protection System Mapping (2011), 76.

<sup>105</sup> MSS and UNICEF, Child Protection System Mapping (2011), 77.

<sup>106</sup> JSMP, Children's Access to Formal Justice in Timor-Leste – A Status Report (2014), 20.

<sup>107</sup> Becora Prison, 'Lista prisioneiros jovem no estabelecimento prisional de Becora', Dili, 31/10/2014.

<sup>108</sup> Information based on prison monitoring visit conducted on 5 November 2014.

Defence Force the number of beneficiaries was not available. 640 teachers have participated in training. The influence of customary law is not specifically mentioned.

In the Justice Sector Strategic Plan 2011 – 2030, the government aims at ‘developing alternative schemes to prison sentences, especially for juveniles, (...)’. The Ministry of Justice aims at implementing all children’s rights contained in the CRC and in the Constitution of Timor-Leste. It wants to do so by:<sup>109</sup>

- Completing bills on Juvenile Justice and Children’s Code
- Ensuring monitoring of rights by NCRC
- Establishing special centres for CIJL
- Implementing alternatives to prison sentences for young people
- Ensuring participation of young people in crime prevention programmes

Creating detention centres for young people has been identified as a main challenge.<sup>110</sup> Although a youth detention centre is supposed to be constructed by 2015, it is unlikely that it will be completed by then as planning or design has not yet commenced.

The Ministry of Justice has established the drafting and implementation of a Law on Juvenile Justice and a Special Criminal Regime for Young Offenders as objectives that are part of its efforts to complete the legal framework for the justice sector.<sup>111</sup>

The Ministry of Justice has acknowledged the gaps in the current legal framework and is aware that ‘a very substantial proportion of conflicts are addressed through traditional justice mechanisms, often involving the violation of fundamental rights, particularly with regard to women and children’.<sup>112</sup> One of the objectives of the Justice Sector Strategic Plan is therefore to draft a ‘Law on Traditional/Customary Justice’.<sup>113</sup>

## Legal measures

The most important legal provision in the penal code that concerns juvenile justice is article 20:

*Penal Code – Article 20. Exemption from criminal liability by reason of age*

1. *Minors under 16 are exempt from criminal liability.*
2. *For persons over 16 years of age and less than 21, the law shall determine specific provisions concerning application and execution of criminal penalties in any and all cases not provided for in specific legislation.*

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<sup>109</sup> MoJ, JSSP 2011 – 2030, 91.

<sup>110</sup> MoJ, JSSP 2011 – 2030, 22.

<sup>111</sup> MoJ, JSSP 2011 – 2030, 60.

<sup>112</sup> MoJ, JSSP 2011 – 2030, 10.

<sup>113</sup> MoJ, JSSP 2011 – 2030, 61.

This article clearly establishes that all children who have not yet reached the age of 16 years cannot be prosecuted under the Penal Code. In addition, a special legal regime should be adopted that applies to youth between 16 and 21 years of age.

The Criminal Procedure Code does not further specify special regulations for children in conflict with the law, except that in the case of a criminal offence against a person aged less than 18 years, the proceeding will not be public.<sup>114</sup> The Civil Code defines a minor as ‘a person who has not yet reached 17 years of age’.<sup>115</sup>

Article 12 of the Prison Reform Law (14/2014) establishes that ‘the implementation of the prison sentence imposed to young people between 16 and 21 years old, should favour especially their reintegration into society through the development of activities and programs in the areas of education, vocational guidance and training and acquisition of personal and social skills’. Furthermore, youth until 21 years old shall be separated from the other prisoners (article 18).

A government resolution on ‘The extinction of martial arts groups’ (16/2013) aims at prohibiting certain groups that engage in criminal activities. Since male youths aged 15 – 25 years old are the main perpetrators of martial arts-related violence, the law affects juvenile delinquents as well.<sup>116</sup>

The Draft Juvenile Justice Bill, the Draft Special Regime for Young Criminal Offenders and the Draft Children’s Code have been published for public consultation. These legal regimes, once adopted, could provide children in conflict with the law with the protection they currently lack.

The Draft Juvenile Justice Bill, sometimes referred to as the Education Guardianship of Children Law,<sup>117</sup> applies to children between 12 and 16 years old. It establishes that the best interests of the child should always prevail, that education in prison should be promoted and that deprivation of liberty should only be used as a measure of last resort.<sup>118</sup> As such, it includes a list of measures that should be considered prior to sentencing the suspect to a custodial sentence.<sup>119</sup> Furthermore, the draft law prohibits degrading treatment and corporal punishment.<sup>120</sup>

The Draft Children’s Code confirms the special status that children in conflict with the law should enjoy in accordance with the Penal Code. It repeats that detention is a measure of last resort only, that minors should be separated from adults at all stages of the criminal process and that children in conflict with the law have the right to immediate legal assistance.<sup>121</sup>

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<sup>114</sup> Criminal Procedure Code, Article 76.

<sup>115</sup> Civil Code, Article 118.

<sup>116</sup> NGO Belun, Dynamics of martial arts related conflict and violence in Timor-Leste (2014), 9.

<sup>117</sup> For example in the CRC State Reply, 77.

<sup>118</sup> Draft Juvenile Justice Bill, article 4.

<sup>119</sup> Draft Juvenile Justice Bill, article 5.

<sup>120</sup> Draft Juvenile Justice Bill, article 172.

<sup>121</sup> Draft Children’s Code, article 75.

The Draft Special Regime for Young Criminal Offenders is, according to the draft, based on two fundamental ideas. Firstly, to clearly establish the criminal legal status of citizens aged between 16 and 21 years old in line with the Penal Code and secondly, to the extent possible, avoid prison sentences and other freedom depriving measures for citizens aged between 16 and 21 years old and replace them with other, more appropriate measures.<sup>122</sup>

The Organic Statute of the Ministry of Justice has identified the National Directorate for Prison Services and Social Reintegration as the responsible authority for *inter alia* the promotion of social reintegration of young people.<sup>123</sup>

**Analysis**

The PDHJ is concerned about the significant gaps in the legal framework that applies to children in conflict with the law. These gaps are such that it leaves children in conflict with the law with unacceptable high levels of vulnerability and lack of protection.

At this moment, there is no legal regime for children below age 16 who are in conflict with the law; article 20 of the penal code exempts them from criminal liability and the Juvenile Justice Code has not been adopted. Youth between 16 and 21 years old are subject to ‘specific provisions’ under article 20 of the Penal Code; however these specific provisions have not been adopted.<sup>124</sup> Generally, relevant actors such as the PNTL, the judiciary and the ministries seem to be unaware of which laws, regulations or guidelines apply to children younger than 16 in conflict with the law.<sup>125</sup> As a consequence, minors between 16 and 21 years old are subject to adult criminal procedures by law and those who are younger, in practice.

|                   | Theory   | Practice   |
|-------------------|--|--|
| 0 – 11 years old  | Child Protection System                                    | Child Protection System  |
| 12 – 15 years old | Juvenile Justice Code                                      | Penal Code<br>Traditional Justice<br>Other, non-legal measures |
| 16 – 21 years old | Special Penal Regime for Youth between 16 and 21 years old | Penal Code<br>Traditional Justice                              |
| 21+ years old     | Penal Code   | Penal Code<br>Traditional Justice                              |

The definition of what constitutes a minor is confusing. The Constitution sets the minimum age for voting at 17 years, and the Civil Code defines a minor as a person who has not yet completed 17 years of age. At the same time, children assume criminal responsibility at the age of 16. Children are therefore not entitled to the same rights as adults, such as voting, while they are subject to the same obligations under the penal code. The child does

<sup>122</sup> Draft Special Regime for Young Criminal Offenders, preamble.  
<sup>123</sup> Decree Law 2/2013, Approving the Organic Structure of the Ministry of Justice, Article 14.  
<sup>124</sup> JSMP, Children’s access to formal justice in Timor-Leste (2014), 20.  
<sup>125</sup> Partly based on interviews with Director of Becora Prison and Director of Dili Detention Facility of the PNTL, both conducted on 5 November 2014.



therefore not benefit from sufficient protection, which should include taking the best interest of the child as a primary consideration, as established in the CRC.

Considering that policies need a basis in law and that specific law concerning juvenile justice is inexistent, children in conflict with the law in Timor-Leste are currently in an extremely vulnerable position.

## **Recommendations**

The Provedor for Human Rights and Justice invites the Committee on the Rights of the Child to recommend the State of Timor-Leste to

- Adopt and implement, without delay, the Juvenile Justice Bill
- Adopt and implement, without delay, the Special Regime for Young Criminal Offenders
- Bring the minimum age for criminal responsibility in line with either the domestic definition of a child (i.e. 17 years) or with the international definition of a child (i.e. 18 years)
- Ensure separation between children and adults at all stages of the justice process
- Adopt and implement policies that aim at preventing crime amongst youth
- Ensure the protection of the rights enshrined in the Convention on the Rights of the Child and in other international and national legislation when children in conflict with the law are processed through the traditional justice system