



**International Convention on the  
Protection of the Rights of  
All Migrant Workers and  
Members of Their Families**

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**Committee on the Protection of the Rights of All  
Migrant Workers and Members of Their Families**

**Consideration of reports submitted by States  
parties under article 73 of the Convention  
pursuant to the simplified reporting procedure**

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

**Timor-Leste\***

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\* The present document is being issued without formal editing.



## List of acronyms

ALFELA	Women and Children's Legal Aid
ASEAN	Association of Southeast Asian Nations
BMS	Border Management System
CCI-TL	Chamber of Commerce and Industry-Timor-Leste
C-RDTL	Constitution of the Democratic Republic of Timor-Leste
DNAK	National Directorate for Consular Issues
DNE	National Directorate for Employment
DNKEPD	National Directorate of Job Placement & Protection for the Unemployed
DNKT	National Directorate for Labour Conditions
DNRT	National Directorate for Labour Relations
DNV	National Directorate for Visas
HAK	Law, Human Rights and Justice Association
IJT	Inspectorate-General for Labour
ILO	International Labour Organization
IOM	International Organization for Migration
IP	Invest People
KAT	Labour Arbitration Board
KSTL	Confederation of Timorese Trade Unions
MCIE	Ministry of Commerce, Industry and the Environment
MCS	Mediation and Conciliation Service
MFAC	Ministry of Foreign Affairs and Cooperation
MH	Ministry of Health
MI	Ministry of Interior
MJ	Ministry of Justice
MOU	Memorandum of Understanding
MPU	Maritime Police Unit
MS	Migration Service
MSS	Ministry of Social Solidarity
PC	Penal Code
PDHJ	The Office of the Ombudsman for Human Rights and Justice
PNTL	National Police of Timor-Leste
PRADET	Psychosocial Recovery and Development in East Timor
SEJD	The Secretariat of State for Youth and Sports

SEPSEM	Secretariat of State for the Support and Socio-Economical Promotion of Women
SEPFOPE	Secretariat of State for Employment Policy and Vocational Training
UNODC	United Nations Office on Drugs and Crime

## Introduction

1. The State of Timor-Leste drafted its initial report on the Implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families based on the list of issues prior to submission of its initial report, which was adopted by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families at its twentieth session, in March and April 2014.

2. This report was prepared by the Secretariat of State for Employment Policy and Vocational Training (SEPFOPE), the Ministry of Justice, the Migration Service (MS), the Ministry of Foreign Affairs and Cooperation (MFAC) and the Secretariat of State for the Support and Socio-Economical Promotion of Women (SEPSEM), with the support of several State entities. The Government also conducted a public consultation with civil society, the private sector and representatives from the embassies in Timor-Leste. The United Nations Human Rights Adviser's Unit and the International Organization for Migration provided technical assistance during the preparation of this report.

### A. General information

#### Reply to the issues raised in paragraph 1 of the list of issues prior to reporting (CMW/C/TLS/QPR/1)

3. The Constitution of the Democratic Republic of Timor-Leste (C-RDTL) states that international conventions, treaties and agreements applied in the internal legal system of Timor-Leste, through their approval, ratification or accession and publication in the official gazette,<sup>1</sup> have authority and invalidate all contrary legal norms.<sup>2</sup> However, these rules are to be adapted in accordance with Article 27.2 of the Vienna Convention on the Law of Treaties together with the constitutional principles that ensure the primacy of the Constitution in the legal framework of Timor-Leste.<sup>3</sup>

4. Nevertheless, the international system of human rights continues to occupy a privileged place in the domestic legal framework and the 1948 Universal Declaration of Human Rights provides standards and guidance for the interpretation of the fundamental rights enshrined in the C-RDTL.<sup>4</sup>

5. In addition, the RDTL Constitution states that the rules set out in international conventions, treaties and agreements will be automatically accepted and have supremacy, therefore all of the domestic laws in force in Timor-Leste will adhere to these international norms. Through this measure the C-RDTL has granted competence to the Supreme Court of Justice or the Court of Appeal<sup>5</sup> to conduct a preventive review of the constitutionality of all legislation that needs to be promulgated by the President of the Republic.<sup>6</sup>

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<sup>1</sup> C-RDTL, Article 9.

<sup>2</sup> This doctrine establishes the automatic acceptance of the rules, to ensure that international conventions, treaties and agreements do not need to be incorporated in a particular law to have validity in the domestic legal framework. Therefore, the important thing is that these international instruments need to be in a legally established form to be accepted in the domestic legal framework, and when they are in the correct form, they are automatically deemed valid in the Timor-Leste legal framework.

<sup>3</sup> C-RDTL, Article 2.

<sup>4</sup> C-RDTL, Article 23.

<sup>5</sup> Article 164.2 of the C-RDTL states that until such a time as the Supreme Court of Justice is established, all powers conferred to it by the Constitution shall be exercised by the highest judicial

6. The Constitution also reinforces a range of fundamental rights that are applicable to Timorese citizens as well as foreigners and stateless persons, for example Article 16 which enshrines the principle of universality and equality. More specifically, the domestic legal framework includes provisions relating to the protection of the rights of migrant workers, in particular the Immigration and Asylum Act (Law No. 9/2003, 15 October) and the Labour Law (Law No. 4/2012, 21 February).

7. In relation to migration, and transnational crime in particular, Timor-Leste has entered into a memorandum of understanding (MOU) with Indonesia to cooperate in regards to preventing and combating transnational crime and to develop collaboration between the National Police of Indonesia and the National Police of Timor-Leste (PNTL). This MOU was entered into on 29 July 2009 for a period of three years and was renewed for the same term in 2012. Following this MOU, the aforementioned entities entered into a technical agreement to implement capacity-building efforts for agents on 26 March 2010 that was valid for five years, and this was renewed in 2015 for the same term.

8. In addition, Timor-Leste has signed a memorandum of understanding (MOU) with the Republic of Korea and also a MOU with Australia to send Timorese citizens to work in these two countries, through technical cooperation between the Government agencies that send the migrant workers (Department of Overseas Employment, within the National Directorate for Employment, within the Timor-Leste Secretariat of State for Employment Policy and Vocational Training (SEPFOPE)) and the agencies that receive the migrant workers (Human Resource Development Service, within the Republic of Korea Ministry for Employment and Labour, and the Australian Government Department of Education, Employment and Workplace Relations).

9. The MOU with the Republic of Korea was entered into in 2012 and was renewed on 13 May 2014 for a period of two years. According to the Work Authorization System for Foreigner Workers, Timorese citizens are admitted after they have participated in Korean language training, have completed physical and mental examinations, as well as fulfilling other requirements, and are placed in fisheries, manufacturing and agriculture services.

10. The MOU with Australia was entered into on 1 December 2011 based on a Seasonal Work Pilot Program that started in 2008. In this program the Timorese workers were placed in hospitality and horticulture.

#### **Reply to the issues raised in paragraph 2 of the list of issues prior to reporting**

11. The policy on migrant workers and members of their families led to the establishment of the National Directorate of Job Placement & Protection for the Unemployed (DNKEPD) under the Inspectorate-General for Labour (IJT), in 2013. This directorate has the competence to regulate the process of allocating placements to migrant workers who come to work in Timor-Leste.

12. Now there is also a technical working group comprising SEPFOPE, the International Organization for Migration (IOM), the Ministry of Social Solidarity (MSS), the Ministry of Commerce, Industry and the Environment (MCIE), the Ministry of Foreign Affairs and Cooperation (MFAC), the Ministry of the Interior (MI), the Ministry of Justice (MJ), the Secretariat of State for Youth and Sport (SEJD), the Secretariat of State for the Support and Socio-Economical Promotion of Women (SEPSEM), the Office of the Ombudsman for Human Rights and Justice (PDHJ) and the International Labour Organization (ILO), to prepare a national action plan on labour migration. The aim of this process is to examine strategic areas and existing frameworks to further strengthen the management of labour

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instance of the judicial organization existing in Timor-Leste.

<sup>6</sup> C-RDRTL, Article 149.

migration and to provide recommendations to the Government of Timor-Leste on management that will benefit all people.

**Reply to the issues raised in paragraph 3 of the list of issues prior to reporting**

13. Pursuant to Decree-Law No. 2/2013, 6 March, Approving the Organic Structure of the Ministry of Justice, the Government established the National Directorate for Human Rights and Citizenship, with the competence to promote policies on human rights, to implement all measures to respect international treaties ratified in the aforementioned area, to draft national action plans on human rights and to monitor their application, and also to monitor implementation, development and progress in this field, to provide opinion papers on legislation and Government policy and to draft all reports on the implementation of international human rights treaties that have been ratified by the State of Timor-Leste.<sup>7</sup>

**Reply to the issues raised in paragraph 4 of the list of issues prior to reporting**

14. Between 2011 and March 2015, the National Directorate for Visas (DNV) within the MFAC issued 3,441 work visas, with the majority of recipients from Indonesia, China and the Philippines.<sup>8</sup>

**Reply to the issues raised in paragraph 5 of the list of issues prior to reporting**

15. Pursuant to the Constitution, Timor-Leste established the Office of the Ombudsman for Human Rights and Justice (PDHJ) as an independent organ, not subject to the direction, control or influence of any person or authority, with the competence to examine complaints, conduct investigations and make appropriate recommendations to the competent organs to prevent and remedy any illegalities or injustices.<sup>9</sup>The Office of the Ombudsman has carried out its functions since 2006 in the field of human rights and good governance and has strengthened its role, and has also exercised its functions independently. The Office of the Ombudsman has the purpose to prevent maladministration and protect human rights and fundamental freedoms throughout the national territory,<sup>10</sup> and also to conduct monitoring and investigations and implement education programs and disseminate information to Government institutions and communities. The Ombudsman was given “A” status by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights after reviews were conducted in 2008 and in 2013.

16. Any citizen who suffers a violation of his/her rights can submit a complaint to the Office of the Ombudsman for Human Rights and Justice by visiting the institution at its national headquarters or at one of its four regional offices, or via telephone, Internet and also via any of the complaint boxes that have been set up in 65 Sub-District Administrations.

17. To date the Ombudsman has not yet received a complaint relating to the rights of migrant workers and their families. However, through monitoring carried out by the Department of Monitoring and Advocacy, the Office of the Ombudsman has obtained some data about migrant workers who have been involved in criminal proceedings. The data indicates that between January and July 2015 there were a total of 21 cases, involving 12 male migrant workers and 9 female migrant workers, specifically the crimes of smuggling, sexual exploitation of others and illegal exploitation of gambling. In two cases prison sentences were imposed, the first involving the crime of aggravated larceny and the second

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<sup>7</sup> Decree-Law No. 2/2013, 6 March, Article 12.2.

<sup>8</sup> 1,620 workers from Indonesia, 601 from China and 432 from the Philippines.

<sup>9</sup> C-RDTL, Article 27.

<sup>10</sup> Law No. 7/2004, 5 May, Article 5.3 and 5.4.

involving the crime of trafficking of narcotics, and in one other case involving driving without a license a fine was imposed. The Office of the Ombudsman has 110 officers and has an annual budget of nearly US\$ 1.4 million.

#### **Reply to the issues raised in paragraph 6 of the list of issues prior to reporting**

18. The Office of the Ombudsman has disseminated information about the ratification of the Convention as well as other human rights Conventions, but has not yet conducted a specific program to increase knowledge about the rights of migrant workers and their families.

19. SEPFOPE, through the National Directorate for Labour Relations (DNRT) and the IJT, and the DNKEPD in particular, conducted awareness-raising activities for employers, workers and local authorities about the Labour Law, which in Article 77 confirms that foreign workers have the same rights and are subject to the same duties applicable to Timorese workers, pursuant to what is provided for in the Convention.

20. With the support of the United Nations Office on Drugs and Crime (UNDOC), the Human Rights Adviser's Unit and the International Organization for Migration (IOM), border police officers have increased their knowledge about human trafficking issues and protection for victims, via training programs in 2013 and 2014.

#### **Reply to the issues raised in paragraph 7 of the list of issues prior to reporting**

21. In civil society, there are at least four organizations involved in the protection of the rights of migrant workers: the Timor-Leste Chamber of Commerce and Industry (CCI-TL), Confederation of Timorese Trade Unions (KSTL), HAK Association and Women and Children's Legal Aid (ALFELA). These organizations conduct monitoring on the rights of migrant workers and their family members, provide legal assistance to migrant workers and are also involved in or pursue mediation in cases of conflict between workers and employers. CCI-TL and HAK took part in a public consultation that SEPFOPE organized on 14 April 2015 to obtain information to be included in this report.

#### **Reply to the issues raised in paragraph 8 of the list of issues prior to reporting**

22. An employment agency, in the form of a company that wants to conduct activities in Timor-Leste, needs to be registered and licensed for the activities it wishes to be engaged in. Decree-Law No. 45/2011, 19 October, establishing the Classification of Economic Activities, defines this activity as "other activities of services provided, in particular, companies that deal with the selection and placement of personnel".<sup>11</sup>

23. In Timor-Leste, there are two agencies that have been licensed by the Government for five years, and are able to renew this license for the same period. These two agencies are KONEKTO and Invest People (IP), and to date there have been no complaints against them.

#### **Reply to the issues raised in paragraph 9 of the list of issues prior to reporting**

24. After the referendum in 1999 that saw violence committed by pro-integration militia groups against the population, nearly 200,000 Timorese fled to West Timor.<sup>12</sup> By 2002, 196,000 of these people had returned to Timor-Leste.<sup>13</sup> At the same time, when Timor-

<sup>11</sup> These activities are included under Group 749 from the Classification of Economic Activities Table.

<sup>12</sup> The island of Timor is split in two: Timor-Leste is the eastern half, and West Timor is the western half (Indonesia).

<sup>13</sup> United Nations Development Programme, 2002.

Leste restored its independence as the result of the aforementioned referendum, Timorese people, especially those living in Australia, Portugal and Mozambique also returned to Timor-Leste, but there is no data on how many returned from these countries.

25. Ten years ago, when an opportunity was presented to work overseas, nearly 33,209 Timorese went to Indonesia, Australia, Great Britain (England and Northern Ireland) and Portugal.<sup>14</sup>The migration flow does not include all Timorese citizens who are overseas, because many of them left on Portuguese passports.<sup>15</sup>

26. In relation to the 1,817 workers sent by SEPFOPE to the Republic of Korea, 287 have returned to Timor-Leste and 1,530 are still working there. From a total of 277 who went to Australia, 141 have returned and 136 are still there.

## **B. Information relating to the articles of the Convention**

### **1. General principles**

#### **Reply to the issues raised in paragraph 10 of the list of issues prior to reporting**

27. The Public Prosecution Service, through the police, are able to investigate crimes, and the Office of the Ombudsman for Human Rights and Justice also has the competence to analyze complaints and forward them or explain how they can be submitted to the courts or other relevant authorities. DNRT and the National Directorate for Labour Conditions (DNKT) within the IJT also have the competence to analyze complaints from all migrant workers and to examine any violations of their rights. Under the DNRT there is the Mediation and Conciliation Service (MCS) that is tasked with resolving conflicts that arise from individual or collective work relations.<sup>16</sup> When there is no agreement, the MCS will forward the decision to the Labour Arbitration Council (KAT).<sup>17</sup>

28. Between 2000 and 2015, the MCS provided support in 2,647 cases of work-related conflict resolution, and 42 cases have involved foreign workers, comprising 33 men and 9 women.

29. Between 2012 and 2014, the DNKT received complaints from 13 foreign workers, comprising 8 men and 5 women.

30. Article 34 of the Labour Law establishes the right to compensation to repair damages resulting from occupational accidents or professional diseases. The compensation can be paid to the spouse of the worker, the descendants, parents or siblings, in the event of the death of the worker.

31. The right to compensation is also provided for in Article 55 of the Labour Law, if an employer removes a worker outside of the procedure that has been established to ensure the rights of the worker. The law allows for the worker to be reintegrated into his/her position or if the worker does not accept this, or if determined by a court, the worker shall be paid compensation based on previous service, for a maximum of six months.

32. The DNRT and DNKT have conducted awareness-raising for employers and workers in the workplace to inform the workers about their rights and duties.

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<sup>14</sup> United Nations Department of Economic and Social Affairs, "Trends in International Migrant Stock: The 2013 Revision", 2013.

<sup>15</sup> All Timorese born before 1999 have the right to obtain Portuguese nationality which also applies to their children.

<sup>16</sup> Labour Law, Article 97.1.

<sup>17</sup> Labour Law, Article 101.4.



33. During the last two years, DNRT has conducted awareness raising for 4,241 workers, comprising 3,990 Timorese and 251 foreigners<sup>18</sup> and the DNKT has provided awareness raising for a total of 2,537 national and foreign workers combined.

## 2. Part II of the Convention

### Reply to the issues raised in paragraph 11 of the list of issues prior to reporting

34. The Timor-Leste Constitution states that all people have the same rights and duties without discrimination of any kind, based on the principle of equality that is enshrined in Article 16.2, as well as rules of interpretation on the protection of the fundamental rights and duties that are set out in the Universal Declaration of Human Rights.<sup>19</sup> The Labour Code states that all workers, which includes migrant workers, have the right to equality of opportunities and treatment insofar as access to employment, training and professional capacity-building, work conditions and remuneration.<sup>20</sup> The law also includes the norms of the Timor-Leste Constitution to establish that no worker may, either directly or indirectly, be benefited, negatively affected, deprived of any right or exempted from any duty on the basis of colour, race, civil status, gender, nationality, ascendancy or ethnic origin, social position or economic status, political or ideological convictions, religion, education or physical condition, age and health.<sup>21</sup> Article 77 of the Labour Code establishes that foreign workers have the same rights and are subject to the same duties as national workers.

35. The Immigration and Asylum Act also contains a similar provision stating that foreigners who reside in Timor-Leste enjoy all of the rights and are subject to all of the duties enshrined in the Constitution and the Laws.<sup>22</sup> This law does not contain a clear and specific provision that prohibits gender based discrimination and does not provide special protection to migrant women.

36. Access to health care in Timor-Leste is equal for nationals and foreigners, including migrant workers and their families. Everyone who receives health treatment and medicine in hospitals and health centers does not need to pay. The Government, through the Ministry of Health (MH) allocates US\$ 2,000 annually to foreigners, from a range of countries such as Portugal, Indonesia, Cuba and the Philippines, who provide services to the Ministry and who are placed in the national hospital and five referral hospitals, with a total of 33 people, to ensure medical assistance to those who are ill.

37. Foreigners, including migrant workers and their families, also benefit from some social services provided by the Government, through the MSS, such as a coffin and a vehicle to transport a deceased or a vehicle to transport those suffering from mental illness. Sometimes children whose parents have left to work overseas seek assistance from the Government to provide them with a visa so that they can join their parents.<sup>23</sup>

38. In the field of education, the children of migrant workers can obtain the same access as Timorese citizens to public schools, however due to language difficulties, many attend private international schools.

<sup>18</sup> 251 Foreign workers were given guidance from the DNRT about the Labour Law, comprising 187 men and 64 women.

<sup>19</sup> Labour Law, Article 23.

<sup>20</sup> Labour Law, Article 6.1.

<sup>21</sup> Labour Law, Article 6.2.

<sup>22</sup> Immigration and Asylum Act, Article 5.

<sup>23</sup> With the idea of reunifying families whose children have been separated from their parents who are working overseas, the MSS has supported these families to obtain visas for their children so they can go and be with their parents.

### 3. Part III of the Convention

#### **Reply to the issues raised in paragraph 12 of the list of issues prior to reporting**

39. The State of Timor-Leste is implementing some concrete measures, through SEPFOPE and the Migration Service (MS). SEPFOPE is required to regulate labour relations between employees and employers in order to ensure compliance with the law, and therefore SEPFOPE, and its IJT in particular, is carrying out its functions in this area by analyzing work contracts and conducting inspections before providing reports on the issuance of work visas, and is conducting regular inspections and “follow-up” inspections in workplaces, through the labour inspector. It also conducts joint inspections with MS, MCIE and MFAC.

40. During the last two years, IJT has conducted regular inspections of 1,819 workplaces with a total number of 5,326 foreign workers, comprising 4,157 men and 1,169 women, and conducted joint inspections of 146 workplaces, involving all workers, with a total of 2,063 nationals and foreigners.

#### **Reply to the issues raised in paragraph 13 of the list of issues prior to reporting**

41. Timor-Leste ratified the International Convention on the Elimination of All Forms of Racial Discrimination through Parliamentary Resolution No. 10/2003, 17 September. In addition, the Penal Code categorizes racial discrimination, hatred or violence as a crime punishable with 4 to 12 years imprisonment.<sup>24</sup>

#### **Reply to the issues raised in paragraph 14 of the list of issues prior to reporting**

42. In cases of administrative crimes or infractions, including those relating to migration, the law ensures that people who are involved in an investigation, arrest and detention have the right to obtain information about their rights, freedom from torture and maltreatment and the right to a fair trial, including legal aid that is free of charge, provided by the Office of the Public Defender, among other things.

43. Migrant workers, just like all Timorese citizens, who are detained in police detention centers for allegedly committing a crime, receive detailed information about their rights, access to facilities to communicate with their family or embassy officials or others, food and drinks at meal times. However, detention centers only have very basic conditions, and for example there are no appropriate chairs or beds yet or adequate ventilation. Timor-Leste does not yet have specific detention facilities for migration-related issues, and there is only one and the same facility.

44. When conducting an inspection, the MS identifies irregular migrant workers, because, for example, they do not possess a work visa. The MS takes alternative measures to detention, such as notifying the worker to make a statement at the MS office. After analyzing irregular situations, the MS Director has the competency to issue a decision. Based on the merits of each case, a decision is made to either notify the migrant worker to pay a fine and to normalize the situation or to provide him/her with the option to voluntarily depart from the territory of Timor-Leste.

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<sup>24</sup> Penal Code, Article 135.

**Reply to the issues raised in paragraph 15 of the list of issues prior to reporting**

45. The Immigration and Asylum Act provides that in order to remove or expel a foreigner who has entered the national territory illegally, there needs to be a final decision handed down after due process,<sup>25</sup> as set out in Articles 71-78.

46. The Immigration and Asylum Act also states that a decision to expel a foreigner can be appealed to the Court of Appeal.<sup>26</sup> In cases where a foreigner has entered and remained in Timor-Leste legally, the decision of expulsion will be suspended pending a response from the courts. However, when a foreigner enters and remains in Timor-Leste illegally, the appeal of the decision has a devolutive effect.<sup>27</sup>

**Reply to the issues raised in paragraph 16 of the list of issues prior to reporting**

47. Between 2011 and 2014, the IJT, via joint operations, identified a total of 159 foreigner workers who were working on tourist visas.<sup>28</sup>

48. To date there have been no registered cases of collective expulsion of migrant workers and members of their family.

**Reply to the issues raised in paragraph 17 of the list of issues prior to reporting**

49. According to the Organic Structure of the Ministry of Foreign Affairs and Cooperation,<sup>29</sup> the National Directorate for Consular Issues (DNAK) provides protection and consular assistance to the Timorese community overseas, such as protection for the families of detainees, resolving problems of repatriation, coordinating the transfer of mortal remains and providing monitoring and informing the Government of risks and emergencies affecting Timorese citizens overseas to organize their evacuation. Consular services in the embassies provide protection to Timorese citizens (regular or irregular) overseas, including the core function of assisting all Timorese citizens, especially in relation to the renewal of passports, transferring of mortal remains, and diplomats follow up criminal cases involving Timorese citizens. The last scenario includes visiting defendants who are in detention and seeking legal aid. To date, the DNAK has provided the aforementioned consular assistance to workers in the Republic of Korea, the Philippines and Australia. Although consular assistance is not provided to Timorese citizens who are living in England and Northern Ireland, because they are using Portuguese passports, the consular service supports Timorese citizens in transferring mortal remains back to Timor-Leste. For those Timorese citizens who are living in Indonesia, the DNAK, through the Embassy's consular service, provided legal aid to support Timorese who were accused and detained in Surabaya and investigated in Yogyakarta.

50. When foreign citizens in Timor-Leste are arrested, detained or expelled, the competent authorities immediately communicate with their embassies so they can provide assistance to their citizens.

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<sup>25</sup> Immigration and Asylum Act, Article 71. 2.

<sup>26</sup> Immigration and Asylum Act, Article 76.

<sup>27</sup> Ibid.

<sup>28</sup> An IJT report in 2014 on foreign workers who were working on tourist visas provided the following data: 2011 — 80 workers, 2012 — 26 workers, 2013 — 16 workers and last year — 37 workers.

<sup>29</sup> Decree-Law No. 9/2014, 19 March, Article 3.2.

**Reply to the issues raised in paragraph 18 of the list of issues prior to reporting**

51. As noted above, Article 77 of the Labour Law states that the rights and duties that are enshrined in the law apply equally to national and foreign workers and there may not be any discrimination whether the foreign worker is in a regular or in an irregular situation.

52. However, the Government has established some criteria to support Timorese citizens in the field of employment. In 2013, SEFPOPE recommended that only Timorese citizens be contracted for certain jobs that were not very complex or technical and that these jobs are not to be given to foreigners, such as staff in bars, restaurants and hotels, shop assistants, drivers (with the exception of 8-wheel vehicles and dockworkers), receptionists, domestic employees (with the exception of those jobs that require a certain skill such as child minding or people with special needs or cooks), security guards for private residences and public places, tellers in commercial locations, warehouse controllers (with the exception of civil construction warehouses and middle or large scale industry), any service assistant, such as photocopying, waste disposal, garden maintenance and street vendors.<sup>30</sup>

53. Another situation set out in the Law on Licensing of Commercial Activities<sup>31</sup> states that the carrying on of commercial activities in traditional markets or street vending is reserved for citizens of Timor-Leste.

54. To complement these criteria, SEFPOPE also issued a decision that foreign workers who have a work authorization card need to perform their function together with at least one Timorese person, to transfer knowledge and experience. When this is not done, the IJT will not renew the work authorization card or will cancel this card and the work contract as well.

55. Some complaints were submitted to the DNKT in which the law was not obeyed, for instance: one case in which a female migrant worker from the Philippines was not given maternity leave for the period established in the law,<sup>32</sup> and in more than one case migrant workers were not given their annual allowance<sup>33</sup> on the grounds that they were given a high salary.

**Reply to the issues raised in paragraph 19 of the list of issues prior to reporting**

56. The Law on Citizenship<sup>34</sup> establishes that all people who are born in the territory of Timor-Leste to parents who are not Timorese have the right to obtain their original nationality. Those who are born overseas to Timorese parents have the same right.

57. Therefore, children born in the territory of Timor-Leste, to Timorese parents or with one foreign parent or both foreign parents, have the right to immediately register nationality at the time of birth via a certificate that is issued by the hospital or health center where the child was born or at the MJ civil registry.

58. One example was a child born to parents from Myanmar who immediately registered the birth and Timor-Leste was listed as the nationality.

59. In addition, the MJ drafted and submitted a draft law on Civil Registry which is currently awaiting discussion and approval from the Council of Ministers. To ensure the

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<sup>30</sup> Instruction No. 232/SEFPOPE-GSE/D/X/2013 on Authorization for Written Employment Contracts and Report on Permanent Residence Visas for Foreign Workers and Employers.

<sup>31</sup> Law 24/2011, 8 June, Article 6.3.

<sup>32</sup> According to Article 59.1 of the Labour Law female workers are entitled to three months of maternity leave.

<sup>33</sup> Labour Law, Article 44.

<sup>34</sup> Law No. 9/2002, 5 November, Article 8.

birth registration of all people in Timor-Leste, in 2015, civil registry officers and also local administration officers were given training by UNICEF, specifically on the registration procedure after giving birth.

60. Regarding access to schools, all school-age children have the same right to access public schools without discrimination based on nationality. To date there has not been a complaint that a public school has prohibited the children of migrant workers from attending school.

#### **4. Part IV of the Convention**

##### **Reply to the issues raised in paragraph 20 of the list of issues prior to reporting**

61. Although the State of Timor-Leste has established diplomatic representations in various countries and has established its own entity that is responsible for elections (National Electoral Commission), the necessary requisites have not yet been put in place to help Timorese citizens who are overseas to vote and to be elected at Timor-Leste elections.

##### **Reply to the issues raised in paragraph 21 of the list of issues prior to reporting**

62. The Immigration and Asylum Act recognizes the right to family reunification in Articles 44-46. However, this right does not cover all foreigners, because the main requirement for submitting a request for reunification is the possession of a valid residence authorization. To obtain this authorization, it is necessary to go through the process of obtaining a permanent residence visa, and there should be no hidden impediments that would constitute a basis for visa denial as well as actual presence in the national territory.<sup>35</sup> This does not correspond with the circumstances of migrant workers who are working in the country and need to have a work visa, rather than the aforementioned visa. Therefore, this is an impediment for all migrant workers in relation to accessing their rights.

63. In response to the current situation, economic development and increasing migration flows, in May 2015, the Council of Ministers approved a new law on Migration and Asylum that was submitted to National Parliament with a request for it to be discussed and approved as a priority and matter of urgency. In this new law, the right to family unification is not just granted to those who have a residence authorization, it also covers migrant workers so as to avoid any discrimination. This law provides for temporary residence authorization, through a permanent residence visa<sup>36</sup> and also a new type of temporary stay visa for families who are dependent on a foreigner holding the special stay authorization, student visa, visa for specialized activities, work visa and Class II business visa.<sup>37</sup>

64. On the other hand, Timorese workers who are working overseas, with reference to those in the Republic of Korea, do not have the right to family reunification in accordance with the applicable law there.

##### **Reply to the issues raised in paragraph 22 of the list of issues prior to reporting**

65. SEPFOPE, via an agreement with the Republic of Korea and Australia, facilitates training in the Korean language to all Timorese who demonstrate an interest in working in the Republic of Korea, information sessions for those who are accepted before they leave Timor-Leste so they have an understanding of the law, culture, work and other issues that are important when living and working in these two countries. When the Timorese workers arrive there, they attend another information session, provided by local entities, such as the

<sup>35</sup> Immigration and Asylum Act, Article 49.

<sup>36</sup> Draft Migration and Asylum Act, Articles 43 and 62.

<sup>37</sup> Draft Migration and Asylum Act, Article 42.

police and human rights institutions, as well as training in the workplace before starting work with the companies or institutions that receive them.

66. All children have the right to attend public schools, including the children of migrant workers. However, the teaching is conducted in the official languages of Timor-Leste.<sup>38</sup> Foreign children in private international schools have better facilities to learn in other languages, for example English.

#### **Reply to the issues raised in paragraph 23 of the list of issues prior to reporting**

67. To date, there are no bilateral or multilateral agreements between Timor-Leste and other countries to regulate the flow of migrant workers, however there is a MOU with the Republic of Korea and an MOU with Australia to send Timorese to work there. These Timorese workers are not subject to double taxation, as they only pay tax in the Republic of Korea and in Australia, and do not pay tax in Timor-Leste.

68. The aforementioned Timorese workers make contributions to the social security system in these two countries, and therefore have the right to receive assistance from the State, for example in the event of a work accident, maternity leave, among other things. When they return to Timor-Leste they can get their insurance premium and contributions back.

69. Timor-Leste does not yet have an agreement with ASEAN Member States about migration and its status continues to be that of an Observer State.

#### **Reply to the issues raised in paragraph 24 of the list of issues prior to reporting**

70. The Immigration and Asylum Act establishes three types of visas: ordinary visa, work visa and permanent residence visa.<sup>39</sup> When a migrant worker has obtained a work visa he/she does not need to obtain another visa to reside in Timor-Leste. Foreigners who come and invest in Timor-Leste need to obtain a permanent residence visa to reside in the country.<sup>40</sup> According to the aforementioned law, a work visa is valid for one year<sup>41</sup> and a permanent residence visa is valid for six months.<sup>42</sup>

71. The Immigration and Asylum Act requires that in order to obtain a residence authorization, the person must possess a permanent residence visa,<sup>43</sup> not a work visa. Therefore, there is no possibility for migrant workers who are working and who have a work visa to request a residence authorization. However, as mentioned above, the law is being amended to strengthen the rights of all migrant workers.

#### **Reply to the issues raised in paragraph 25 of the list of issues prior to reporting**

72. Pursuant to Article 8.3 of the Immigration and Asylum Act, which guarantees the right to work, a person who has obtained a work visa for a particular job which ends before the expiration of his/her visa will not be disadvantaged in regards to the remaining time left, but in order to start a different job he/she is required to obtain express authorization from the Department of Migration and the approval of the Government body responsible for labour.

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<sup>38</sup> Education System Framework Law, Law 14/2008, 29 October, Article 8.

<sup>39</sup> The Immigration and Asylum Act, Article 34.

<sup>40</sup> The Immigration and Asylum Act, Article 37.4.

<sup>41</sup> The Immigration and Asylum Act, Article 36.3.

<sup>42</sup> The Immigration and Asylum Act, Article 37.3.

<sup>43</sup> The Immigration and Asylum Act, Article 49.2 (a).

## 5. Part V of the Convention

### Reply to the issues raised in paragraph 26 of the list of issues prior to reporting

73. To date, there is no register for frontier workers, and a plan does not yet exist to implement any measures to attend to this situation.

74. Although there is no law to define who are frontier workers, as a result of the Convention, which has been ratified and incorporated in domestic law, the definitions in the Convention can be applied in the Timor-Leste legal framework.

75. For the purpose of considering the circumstances faced by the people who live near the border and regularly cross back and forth to access traditional markets or visit family or take part in traditional ceremonies, Timor-Leste and Indonesia entered into an agreement on traditional border crossings and regulated markets via Parliamentary Resolution No. 21/2009, 28 May, to facilitate the movement of citizens, in the form of a border crossing pass which also covers minors. This pass is valid for one year and allows the holder to enter and pass through certain border posts, and when the holder crosses he/she can stay on the other side for up to 10 days.

76. This agreement not only facilitates and regulates the irregular migration practices of the communities on both sides of the border so they can conduct business and strengthen family relations, but also has the aim of reducing irregular migration and smuggling networks. It is also hoped that the two populations living along the Oecusse border area will obtain benefits from the joint efforts of SEPFOPE and the Special Administrative Region of Oecusse and the IOM to implement a plan to deal with the circumstances faced by migrant workers in that region and to support them.

### Reply to the issues raised in paragraph 27 of the list of issues prior to reporting

77. In 2010, Timor-Leste established a Border Management System (BMS) relating to migration to identify those who overstay the time permitted on their visa and who reside illegally in Timor-Leste. When a visa expires and the holder does not exit the national territory or does not extend the visa, the system immediately issues a notification to the Migration Service to search for the holder of that visa at the location that was registered when the person entered Timor-Leste.

78. In addition, Timor-Leste is a member of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, and from the outset it has been acknowledged that Timor-Leste as a new State in the Asia-Pacific region might encounter major challenges just like other countries in relation to irregular migration, human trafficking and other transnational organized crime.

79. Therefore, Timor-Leste entered into a bilateral agreement with Indonesia to prevent and combat transnational crime and to develop collaboration with the Indonesian police and the PNTL, which commenced in 2010 for a term of three years, and was renewed in 2013 for the same term. Based on this agreement, the two countries work together to improve and increase cooperation by sharing information and experience with each other in the fields of education and training and jointly implement operational activities. These two institutions also entered into an agreement on training for a term of five years, renewable for the same term.

80. These measures do not only strengthen collaboration and capacity-building to prevent and combat transnational crimes, but they also facilitate the control of migration flows through the exchange of information and support the Government to develop policies and programs for the migration service to cover all areas.

**Reply to the issues raised in paragraph 28 of the list of issues prior to reporting**

81. The State of Timor-Leste, through SEPFOPE, provides assistance to migrant workers who return to Timor-Leste, in particular those returning from the Republic of Korea and Australia, to register themselves at employment centers. SEPFOPE also provides counselling and mediation services to those who are seeking training or employment overseas or domestically, through a labour market information system called SIMU-BUKA (Receive-Find).

82. In relation to social reintegration, there has been no information to date that any migrant workers and members of their families have encountered problems when they have returned to Timor-Leste. Normally those who return are well and warmly received by the community.

**Reply to the issues raised in paragraph 29 of the list of issues prior to reporting**

83. Timor-Leste has ratified the United Nations Convention against Transnational Organized Crime through Parliamentary Resolution No. 26/2009, 9 September, and its Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.<sup>44</sup> Taking these conventions further, Timor-Leste considers human trafficking to be a crime against personal liberty that is punishable with 8 to 20 years imprisonment,<sup>45</sup> or if aggravated, 12 to 25 years.<sup>46</sup> Finally, to strengthen the existing legislation, the Council of Ministers approved a law against human trafficking that is awaiting approval and adoption by the National Parliament.

84. The new Migration and Asylum Act also provides special protection to victims of human trafficking. In this law, the Government has the duty to ensure that victims of human trafficking and their families are provided with means of subsistence, residence, appropriate physical and mental health treatment, protection, security and legal assistance and a two-year temporary residence authorization.<sup>47</sup>

85. In 2011, the Government established a Working Group on Trafficking, led by the MFAC and comprising ministries, national and international organizations, such as IOM, with the aim of eliminating human trafficking. Under this Working Group, a subcommittee was established to draft specific legislation on human trafficking and another subcommittee was set up to draft a national action plan.

86. Other measures to combat human trafficking include the establishment of a Vulnerable Persons Unit within the PNTL to investigate cases of gender-based violence, which include domestic violence, abduction, child abuse, human trafficking and other crimes against those who do not have the power to defend themselves. This unit operates at the national level with one commander and two officers, and also with seven to eight officers at the municipal level. In 2012, there were a total of 99 officers in the 13 municipalities.

87. In 2012, the Government organized an International Conference on Human Trafficking with the aim of promoting understanding about national and international mechanisms and the legal framework on human trafficking, especially the trafficking of women.

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<sup>44</sup> Parliamentary Resolutions No. 27 and 29/2009, 9 September.

<sup>45</sup> Penal Code, Article 163.

<sup>46</sup> Penal Code, Article 164.

<sup>47</sup> Draft Migration and Asylum Law, Article 62 (e) and Article 65.



88. In 2010, a total of 377 representatives from PNTL and other judicial bodies, NGOs, Timorese embassy and consular officials, were given training in all municipalities by IOM on human trafficking and compliance with the law known as HELP III.

89. Civil society, through PRADET, a national civil society organization, and with the support of the Government, through the MSS and IOM, established a safe house for women and children victims of trafficking which provides them with ongoing support, assistance for physical and mental health, repatriation and reintegration/reinsertion.

90. Between 2008 and 2011, 50 victims of trafficking were identified, with 33 individuals coming from a range of countries such as Myanmar, Cambodia, Indonesia, China and the Philippines. These victims were given assistance by the Migration Service, IOM, the Gender Based Violence Network and other agencies.<sup>48</sup>

91. In 2011, the courts convicted two foreigners, with one of them being sentenced to 13 years imprisonment and the other to six months for committing the crime of human trafficking.

92. In the same year, the subcommittee established under the Working Group to draft legislation the Law to Prevent and Combat Human Trafficking submitted a proposal to the National Parliament. However, due to particular circumstances that impacted on the discussion and approval of this law, in 2013 the MFAC and MJ made revisions to the draft law which was subsequently submitted to the Council of Ministers. The Council of Ministers approved this draft and it will now be submitted to the National Parliament for consideration and approval before it is promulgated by the President of the Republic. The Law to Prevent and Combat Human Trafficking does not only establish measures, procedures and the legal consequences for those involved in such crimes, but it also set out the rights and guarantees for victims, by establishing a special fund to provide compensation to victims of trafficking and measures that need to be taken to improve and enhance national and international cooperation and coordination, especially in relation to identifying victims, and the exchange of information.

#### **Reply to the issues raised in part II of the list of issues prior to reporting**

93. Key legislation relating to the rights of migrant workers and members of the families is the Constitution, Labour Law and Immigration and Asylum Act.

94. The entities that intervene to protect the rights of migrant workers are SEPFOPE, MI (through the MS), MFAC and MJ.

95. To evaluate and improve the circumstances of migrant workers and members of their families in Timor-Leste, in 2015, the Government of Timor-Leste with the support of IOM established a Technical Working Group on Labour Migration comprising SEPFOPE, IOM, MSS, MCIE, MFAC, MI, MJ, SEJD, SEPSEM, PDHJ, IOM and ILO. The Working Group will draft a national action plan and recommendations to the Government on how to improve existing strategies and regulations relating to labour migration, protection and empowerment of male and female migrant workers and young people who are unemployed.

96. Timor-Leste does not yet have a plan to ratify ILO Conventions No. 97, 143 and 189 or to make declarations based on Articles 76 and 77 of the Convention.

97. In 2013, the State of Timor-Leste, through the Migration Service, together with the ACP Observatory on Migration conducted a study on the theme of: "New country, new needs, new responses: irregular labour migration to Timor-Leste", which presents an

<sup>48</sup> 2013 Government reports on the Implementation of the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.

overview of the irregular migration situation in Timor-Leste, with a focus on the circumstances of migrant workers.

**Reply to the issues raised in part III of the list of issues prior to reporting**

98. In January 2015, three men from the Republic of Indonesia were charged and sentenced to prison for the crime of illegal import of goods.<sup>49</sup>

99. Overseas, some Timorese citizens working in England were detained and tried and received prison sentences between six and 11 months. There were 16 Timorese men in total, on Portuguese passports, who were charged and convicted for the crimes of disturbing the peace, violence and possession of dangerous weapons.

100. Timorese citizens, in particular those working in the Republic of Korea, to date have remitted a total of US\$ 4.9 million to Timor-Leste. Timorese citizens working in Australia have remitted a total of US\$ 1.1 million to Timor-Leste.<sup>50</sup> These remittances have resulted in the SEPFPOPE developing its own policy to ensure that Timorese citizens who go to work overseas will continue to contribute to the development of the nation, by providing assistance to their families so they can send their children to school, open businesses, build houses and so on, and in the future, when they return to Timor-Leste, they will have enough cash reserves to support themselves.

101. In relation to the amount of money sent from England, it is estimated that about 9,000 families receive US\$ 370 per month from those Timorese who are working there.

102. From the remittances received, 43 per cent is received on a monthly basis and 28 per cent is received intermittently, and is used in particular for family or social expenses, such as for family needs or for funerals. In addition, 45 per cent is used for ordinary day to day expenses, 41 per cent for improving houses, 30 per cent to pay for school and 10 per cent to pay debts. Only 33 per cent is used to make investments in some kind of business.<sup>51</sup>

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<sup>49</sup> Information obtained from the NGO Judicial System Monitoring Program (JSMP).

<sup>50</sup> Report from the National Directorate for Employment, SEPFPOPE, 2014.

<sup>51</sup> Leveraging Remittances with Microfinance: Timor-Leste Country Report on remittances, December 2007.