



## Convention on the Rights of the Child

### COMMITTEE ON THE RIGHTS OF THE CHILD

### CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 8, PARAGRAPH 1, OF THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

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

#### TIMORILESTE\*

[1 March 2007]

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#### I. INTRODUCTION

The date of receipt of Government's accession to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict is 2 August 2004, without reservation, but with the following declaration:

"Pursuant to Article 3, paragraph 2 ... the Government of Timor-Leste declares that the minimum age for voluntary recruitment into its national armed forces is 18 years, as specified by the domestic law of Timor-Leste."

This report generally applies to the period since the restoration of independence in May 2002 up until December 2005.

Although it is not due until the Protocol has been in force for two years (i.e. 2 September 2006), the report is submitted early in order to enable its inclusion within the Government of Timor-Leste's piloting of a consolidated human rights treaty reporting process based on the preparation of an expanded common core document and associated treaty-specific documents.

This report has been prepared in accordance with the provision of article 8.1 of the Optional Protocol and in broad accordance with the guidelines provided in document CRC/OP/AC/1 and is included as part of the report on the Convention on the Rights of the Child (CRC), to which reference may also be made for the broader national context concerning children (that latter document (CRC/C/TLS/1) and the expanded common core document (HRI/CORE/TLS/2007) jointly comprise Timor-Leste's initial CRC report).

#### II. RECENT HISTORICAL BACKGROUND

Even though it precedes the period due to be covered in this document, it is useful to canvass events immediately prior to the restoration of independence in May 2002 (for which the primary reference concerning children is a 2001 UNICEF study). During the period of resistance, many children engaged in military activities, on both sides of the conflict (that is, the FALINTIL (Armed Forces for the Liberation of Timor-Leste) pro-independence resistance and the Indonesian military and pro-Indonesian militia groups).

“On both sides of the conflict the age of child soldiers ranged from 10 to 18 years old, although most were between the age of 15 and 18 years old. Accurate figures on the number of children combatants participating on either side are impossible to obtain. In the past, FALINTIL did not maintain consistent records of the ages of the names of its soldiers ... On the pro-autonomy side, the militia created lists of recruits, including those who were under 18 at the time of recruitment. However these lists were either destroyed or remain with militia leaders or the Indonesian army in Indonesia.”

The 2001 study notes that: “Most children joined [the militia groups] for the following reasons: the prestige and power of being able to carry a gun, wear a uniform and gain respect from elders; coercion such as intimidation and threat of death or the death of family members; payment; and a chance to escape from abusive or impoverished family situations.”

During the public hearings of the Commission for Reception, Truth and Reconciliation (CAVR), several Timorese persons gave evidence of their experiences as children. One male addressed the forced recruitment of children by the Indonesian military to serve as TBOs (*tenaga bantuan operasional*, or assistant to military operations). He was forcibly recruited at the age of 11 years:

“As a TBO, other than work at the base camp, I had to accompany [my recruiting sergeant] when he went to fight. I had to lie down at the back of the army and fill up the magazines in their guns. One day one of the TBOs refused to carry more than the heavy load he was already carrying. The soldier was angry. When they arrived back at base camp, all of the soldiers in the platoon and the TBOs were gathered together. The commander said that a TBO is not allowed to refuse to carry something. The army had come to help and to bring independence. After that, the TBO who had refused to carry the goods was called and before everyone’s eyes he was shot dead. We were let know that if we refused something, our fate would be the same as his. We had to carry heavy goods each time the camp moved. Each time all of the TBOs were given an injection in their left and right hips. The medicine was clear yellow. After the injection the goods didn’t feel heavy and they could keep walking without getting tired. At night my legs were very sore but there was no other side effect.”

With respect to the pro-independence side, the UNICEF study notes that many young people “witnessed abuses against family members and colleagues perpetrated by the Indonesian military. This made them want to join clandestine organizations that served FALINTIL, student groups and other pro-independence groups”.

The study concludes as follows (its conclusion is cited in full):

“Children in East Timor participated in the conflict although for different reasons. The numbers of child soldiers involved are impossible to ascertain. Children who joined the pro-independence clandestine groups and FALINTIL expressed that they did so willingly, and usually as a result of ill-treatment of family members and friends by the Indonesian armed forces. These child soldiers were committed to the cause of an independent East Timor. Some members of the pro-autonomy militias joined because of abuses from the pro-independence side, and a commitment to integration with Indonesia. However most were forcibly recruited with violent compulsion methods, or offers of payment. Children who joined FALINTIL and the clandestine network were treated well by their commanders, whereas those involved in the militia groups reported that their seniors used fear and intimidation to ensure that they carried out their activities. Neither side has provided adequate post-service compensation or services specifically directed at child soldiers. Anecdotal evidence suggests that children involved in the pro-independence side had positive experiences on the whole, although coupled with some negative aspects. However those in the militias were exposed to excessive violence and often show high levels of trauma and antisocial behaviour. The full social implications of the experiences of these children will not be known for years to come and deserve further study.”

**It is in the wake of such experiences that the Government has formed the new provisions governing the protection of children within armed forces and, potentially, in armed conflict.**

### **III. PRIMARY LEGAL AND ADMINISTRATIVE FRAMEWORK**

The main framework underpinning these provisions is the Constitution. The Constitution provides that, on matters of international relations, the State shall be governed by, inter alia, the protection of human rights (sect. 8.1), and that the legal system shall be in accordance with international law (which invalidates any State rules to the contrary) (sect. 9). It further provides that all citizens have the right and duty to defend territorial sovereignty (sect. 49.1), which is to be guaranteed by the national defence force (sect. 146.2), in which service is to be in accordance with the law (sect. 49.2).

The relevant national law is the Organic Law of the FALINTIL/FDTL (Law No. 7/2004). This law came into effect on 5 May 2004 (i.e. four months prior to the Optional Protocol entering into force in Timor-Leste), and provides that the defence force shall be “exclusively made up of citizen volunteers” (art. 14.1). There are presently 1,435 persons employed within the Force, comprising two infantry battalions and one naval component.

A current review by the Secretary of State for Defence (“Force 2020 Study”) is examining all policy aspects. There is believed to be no prospect of amending current provisions concerning recruitment under the age of 18 years. Whilst the option of providing for military conscription is being canvassed, this is viewed as highly unlikely to be supported.

### **IV. CHILDREN AND MILITARY SERVICE**

**Article 14 of the Organic Law (Composition of the F/FDTL) provides that the defence force may comprise only citizen volunteers, and that “2. No person under 18 years of age may be recruited for military service in the FALINTIL/FDTL”.**

Defence advisers state that the United Nations Transitional Administration in East Timor (UNTAET) ID Card issued in early 2001 for the national Constituent Assembly elections is used as the proof of age for enlistment purposes.

Accordingly, article 2 of the CRC Optional Protocol is satisfied in two senses: there is no provision within Timor-Leste for non-voluntary recruitment, and the minimum age of voluntary recruitment is 18 years. As a result, the requirement of article 1 is also satisfied and articles 3 and 5 are not applicable (except to note, with respect to article 5, that the national laws are conducive to the child's rights in accordance with the maximum standards advocated within the Protocol). Article 6.1 is satisfied, except to the extent that there remains an opportunity to more explicitly assign legal status to the Protocol (potentially within the forthcoming Children's Code, but likely preferably within the FALINTIL/FTL Organic Law).

It is believed that these provisions enjoy widespread support, especially in the immediate wake of so many children having been adversely affected by participation in recent armed conflict.

## **V. DEMOBILIZATION, REHABILITATION AND REINTEGRATION**

The Optional Protocol is applicable to children and adolescents to the extent that it may be applied to those involved in or otherwise impacted by the earlier conflict. FALINTIL demobilized during 2000 and officially dissolved on 31 January 2001. On 1 February 2001, coinciding with the formation of the FALINTIL-based new national defence force, the National Council – the interim United Nations-appointed legislative body – decided that the minimum age for military recruitment be 18 years.

The demobilization process was assisted by the FALINTIL Reinsertion Assistance Programme (FRAP), implemented by the International Organization for Migration. The beneficiaries of FRAP-based assistance to demobilized personnel were determined on the basis of names provided by the Fretilin (Revolutionary Front for an Independent East Timor) high command during the period of cantonment. However, the FALINTIL leadership had “sent almost all soldiers under the age of 18 home to their villages and back to school. [There have] been no specific programs aimed at specifically assisting demobilised FALINTIL child soldiers in East Timor ...” (UNICEF (2001), p. 14).

Despite receiving little material assistance, former pro-independence child soldiers were reported in 2001 as being:

“treated well by their communities, and receive respect for their involvement in the armed struggle. Former clandestine youth were underground, and due to the structure of their networks were often unknown to the populace. Although those who are known to the local people are still held in high esteem, those who are feeling disaffected and angry who have become involved in criminal activities are losing the respect of the public. These youth feel left out of the process of rebuilding the country that they fought for. Many feel that they have given a large part of their lives to the movement and therefore neglected their schooling. Now many cannot gain positions at university, as they have not studied properly for years. They have difficulties with gaining meaningful employment that they feel entitled to” (ibid., p. 22).

Those children and adolescents involved in the militia who returned to Timor-Leste have been susceptible to more explicit hostility. The CAVR process has provided a primary means to address such problems of reintegration. In this, many persons involved with the militia or autonomy movement have described and expressed regret and remorse for their behaviour, with corresponding assistance for the reintegration of such people into their communities.

However, it is regrettable that one possible consequence of the already very difficult demobilization process, which expedited the return of children to their communities, is that such children may have been effectively denied the forms of assistance with reintegration and education or employment that was afforded others involved in the struggle for independence. For some communities, such lack of assistance has been a factor in influencing antisocial behaviour (in the face of lack of constructive opportunities) or participation in often-troublesome martial arts groups.

Nevertheless, for the purposes of current reporting, it must be noted that, by December 2005, it is unlikely that any children involved in the armed conflict up until 1999 would still be aged under 18 years.

## **VI. PROMOTION OF THE PROTOCOL**

In these early stages of independence, emphasis was placed on establishing an appropriate legislative and administrative regime; that is, on ensuring compliance with the age provisions of the Optional Protocol to the highest standard advocated (i.e. no recruitment below 18 years). Promotion and advocacy of the principles and priorities of the Optional Protocol have occurred as part of broader efforts by Government – especially in cooperation with UNICEF – to promote and advocate the principles and provisions of CRC. The Government's early accession to both the Convention and its Optional Protocols has enabled a unified approach to community awareness-raising.

Certainly, Government believes that its adoption of the Optional Protocol's highest standards concerning military enlistment favours this broader approach to promoting child rights. Reference should be made to section I.B of the CRC-specific report, with respect to comment concerning article 42.

## **VII. OTHER ARMED GROUPS**

**It is widely held that one continuing legacy of the recent conflict – and especially of militia activity – is the network of martial arts groups across the country. Whilst these groups do not explicitly come within the ambit of article 4 of the Optional Protocol, the Government views it as necessary to monitor their activities to – where possible – foster constructive engagement with such groups to ensure that they commonly provide positive recreational opportunities for many adolescents and to – where necessary – regulate and even intervene where they appear to practise more illicit or**

violent activities. Such issues are discussed within the main body of the CRCI-specific document (sect. VII.C).

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