



Convention on the Rights of the Child

COMMITTEE ON THE RIGHTS OF THE CHILD

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 12 (1) OF THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

Initial reports of States parties due in 2005

TIMOR-LESTE*

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I. INTRODUCTION

1.The date of receipt of Government's accession to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography is 16 April 2003, without reservation. This report generally applies to the period since the restoration of independence in May 2002 up until 30 December 2005.

2.This report is included in 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. It has been drafted via a process similar to that for the main body of the initial report on the Convention on the Rights of the Child (CRC), including local consultations, agency interviews, literature review and data collation, involving government agencies, non-governmental agencies and local forums.

3.This report has been prepared in accordance with the provision of article 12.1 of the Optional Protocol and in broad accordance with the guidelines provided in document CRC/OP/SA/1. The CRC-specific report (CRC/C/TLS/1) provides for the broader national context concerning children.

4. Since May 2002, the Government has been developing a new legislative framework, including a Penal Code, which would supersede the previously existing legislation, which - in accordance with the national Constitution - continues to apply until new legislation is enacted. Nevertheless, it is important to note that the Constitution also provides that "Rules provided for in international conventions, treaties and agreements shall apply in the internal legal system of East Timor following their approval, ratification or accession ..." (sect. 9.2). This means - in practice - that the courts may not apply "previously existing" laws (notably, in this instance, the Indonesian Penal Code) where they may conflict with the Optional Protocol.

5. Anti-trafficking measures are incorporated in the draft Penal Code. In drafting the text of the Penal Code, the Trafficking Working Group, chaired by the Ministry of Foreign Affairs and Cooperation, submitted technical input to the drafting of the Code, in particular, seeking to ensure that its provisions are more in conformity with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention on Transnational Organized Crime (regardless of whether or not that Protocol is ratified at this stage), as well as urging the development of a national action plan on human trafficking. (Refer to the main text of the CRC-specific report (section VIII.C.4 - Child abduction and trafficking) for additional background).

6. The main government agencies with statutory competence in the fields covered by the Optional Protocol are the Ministry of Labour and Community Reinsertion (with core responsibility for the welfare of children and for labour (including child labour)), and the Immigration and Police agencies (especially by virtue of the Immigration and Asylum Act (Law 09/2003 effective as of 15 October 2003)).

7. In the three years since the restoration of national independence, considerable progress has been made - not the least due to extensive multilateral and bilateral cooperation and assistance - in reconstructing physical and administrative infrastructure, and in recruiting and training the new beginnings of an effective public workforce, including across areas of law enforcement and the judiciary. This has not been without considerable problems due to limited institutional capacity and extensive competing priorities, particularly in the area of justice.

8. Among those problems is the absence of comprehensive data on many issues, including commercial sex work and human trafficking. Importantly then, much of the information presented in this report is not derived from clear evidence, patterns or trends but rather individual cases and anecdotal reports.

A. Sale of children

9. There is little evidence of the sale of children in Timor-Leste. Nevertheless, in the course of the district-level consultative workshops in the preparation of the initial CRC report, there were a couple of reports received from the participants that children were being offered for sale due to reasons of family poverty. One of the participants reported that he had witnessed a father with two young daughters, each of whom had signs displaying the requested sale price hanging around their necks. Although anecdotal, this report came from a reliable community source and, albeit rarely, some other participants similarly reported to have witnessed such incidents.

10. The current absence of proper case management and assessment of the small number of applications for intercountry adoption raise concerns about the potential for child trafficking in this guise. Reference should be made to the CRC-specific report, section V.G on adoption, for additional comments in this regard.

11. The Alola Foundation has expressed concerns that current efforts by Government to expand formal bilateral agreements for Timorese workers to travel abroad on labour contracts may enable human trafficking in the destination country if not properly managed. The Government of Timor-Leste is putting in place proper systems of review to avoid such a possibility, though it is not anticipated that under-18-year-olds will be involved in such arrangements.

B. Child prostitution

12. Prostitution involving persons aged under 18 years allegedly has its origins within the period of Portuguese occupation (until 1974), whereby local village chiefs maintained "positive" relations with Portuguese officials by offering them the sexual services of local young women. One current pimp in Dili has described his role during this earlier period in recruiting female minors in the districts, assuring their parents that their daughters would work as domestic servants in foreigners' homes in Dili and transporting them to Dili to work in brothels (Alola Foundation (2004), p. 11).

13. During the Indonesian occupation (1975-1999), sexual exploitation of Timorese women was more centrally controlled within brothels, under an Indonesian policy of *lokalisasi* (localization). Forced marriages also occurred.

14. "Timorese women were forced to marry Indonesian military members in order to protect other village women and girls from rape ... Other women and girls were simply abducted and later forced into marriages" (ibid., p. 12).

15. The size and comparative wealth of the subsequent United Nations missions in Timor-Leste (1999 to present) has continued to be an important factor in the commercial sex industry, as has the consistent demand of the clientele made up over the longer term by Timorese men.

16. In March-June 2004 a study on the sex industry in Timor-Leste was carried out by the national NGO, the Alola Foundation. Some of the main findings and observations were the following:

There are an estimated 100 female Timorese sex workers in Dili, with the 16 surveyed workers being in the age range of 14-34 years, of whom six started sex work at 14 years, nine came from other districts, and five started sex work as minors as a result of being raped;

None of the surveyed Timorese sex workers reported any coercion in entering into the industry (which, for those entering as minors, is no mitigation of potential trafficking or of the fact that they are rape victims);

There are an estimated 150 female non-Timorese sex workers in Dili, of whom none was identified as being a minor (although much of the data are incomplete) and a majority were deemed to be the victims of trafficking (Indonesian, Thai, Chinese and Filipino);

There was no evidence of “mission hopping” of sex workers into Timor-Leste following United Nations missions, nor of sex tourism to Timor-Leste, nor of any domestic practice of seeking sex with a virgin;

Almost all female sex workers have children to support;

Within the districts, prostitution exists according to the “power” of the village chiefs and comprises only Timorese women, with little, if any, known involvement of underage women (entry into prostitution being due to abandonment by husbands);

There are an estimated 110 male sex workers in Dili (100 Timorese and 10 Indonesian), of whom 75 per cent are estimated to be minors, in an age range of 13-22 years, and an average age of entering sex work of 14.5 years;

Whilst the male workers appear to report little exposure to exploitation or violence (likely because they work independently of pimps), many female workers do (presumably more likely to be the younger women), especially from uniformed Timorese security forces (police and soldiers).

17. It needs to be noted that, on the basis of the Alola study, it appears that the majority of minors engaged in commercial sex work are males, who work independently and on an evidently “voluntary” basis. However, this does not diminish the fact that the “client” of the underage worker is committing a criminal offence. In particular, the Indonesian Penal Code provides that “Any adult who commits any obscene act with a minor of the same sex whose minority he knows or reasonably should presume, shall be punished by a maximum imprisonment of five years” (art. 292).

18. The only known cases of child prostitution concern non-Timorese females, and reference should be made to the CRC-specific report (section VIII.C.4 - Child abduction and trafficking). These matters were dealt with by repatriation.

C. Child pornography

19. There are also anecdotal reports of child pornography, primarily concerning foreign and domestic video cassettes or DVDs portraying children. The Government remains concerned that the influx of cheap “pirate” DVDs into Timor-Leste and the ease of amateur DVD production likely mean that there is a domestic presence of pornography, including printed material. Whether or not such products include the portrayal of children remains unknown. Certainly, the 2003 incident demonstrated the ease with which this issue can gather strong momentum despite lack of evidence (including all the way to the Parliament). There is a current need for appropriate legislation and surveillance mechanisms of commercial outlets, street vendors and border entry points.

20. Simultaneously to the issue of pornography which portrays children, there is the issue of the exposure of children to pornography which, with small but growing access to global Internet sites, will mean that Timor-Leste will have to depend upon global initiatives in making appropriate responses. The Police are aware of the need to improve efforts in preventing child vendors on the streets from selling prohibited material and prosecute those persons who purchase and distribute pornographic products from/to minors.

II. PROHIBITION OF THE SALE OF CHILDREN, CHILD PORNOGRAPHY AND CHILD PROSTITUTION

A. Sale of children

21. The primary legislative framework is the Indonesian Penal Code which provides that it is an offence:

To trade women and minors of the male sex (maximum of six years’ imprisonment) (art. 297);

To deal with slaves on one’s own or another’s account (including operating or working on a ship used for transportation) (arts. 324-7);

To kidnap, abduct or deprive a person of his/her liberty (including to place the person under another’s power or labour) (arts. 328-9 and 333);

To remove a minor from its legal guardian, with additional penalty if deceit, threats or coercion are used or if the child is aged less than 12 years (art. 330);

To conceal such child from the authorities, with additional penalties if the child is aged less than 12 years (art. 331).

22. The sex-based provision of article 297 is likely to be overridden by the national Constitution’s requirement for equality of treatment based on sex and compliance with international human rights instruments (sects. 9 and 17). The “Human trafficking” provisions of the subsequent Timor-Leste Immigration and Asylum Act (art. 81) also qualify those previously existing laws:

“1. All persons who under threat of force or any other form of coercion, fraud, deceit, abuse of power or by taking advantage of the victim’s vulnerability, recruit, transfer, lodge or keep persons with the purpose of exploiting them or placing them in sexual exploitation, forced labour, slavery or human organ trafficking networks, shall be punished by imprisonment of not more than 8 years or fewer than 3 years.

“2.The same penalties shall apply to those who, through payment either in cash or in kind, buy consent from a third party in control of the victim, to perform the activities provided for in item 1 of the present Article.

“3.If the victim of the activities provided for in items 1 and 2 of the present Article is a minor under 18 years of age, the mere transportation, recruitment, transfer, lodging or keeping of these persons for the purposes described in item 1, constitutes a crime that shall be punishable by imprisonment of not more than 12 years or fewer than 5.”

23.For children, the provisions in the Act mean that, compared to the Indonesian Penal Code provisions, the nature of the person’s trafficking is more explicit, the legal provisions are less complex, and the penalty is more severe. There is also now a uniform application to all persons aged under 18 years.

24.The draft Penal Code of the Democratic Republic of Timor-Leste (RDTL) of December 2005 includes provisions on:

Trafficking and slavery of human beings, art. 132;

Sale in human beings, art. 158.

Both articles provide special sections aggravating circumstances if the victim is a child. Accordingly, the penalty for a person who is found guilty of trafficking and slavery of children and sale of children is respectively 12-25 years and 3-12 years.

B. Child pornography

25.The Indonesian Penal Code (art. 283) makes it an offence to give, show or read to a child under the age of 17 years “a writing, a portrait or an article offensive against decency”.

26.The draft RDTL Penal Code of December 2005 includes a provision on:

Child pornography, art. 168.

The provision states that a person who uses a minor under the age of 16 years for pornographic purposes is sentenced to prison for one to six years.

C. Child prostitution

27.Child prostitution is illegal in Timor-Leste according to the following acts in the Indonesian Penal Code:

To have sex with (carnal knowledge of) a female child aged less than 15 years, based on a complaint unless the girl is aged less than 12 years or suffers serious injury or death or is the victim of incest or abuse by her guardian or carer (art. 287);

To commit an obscene act with a female child aged less than 15 years (art. 290);

To commit an obscene act with a minor of the same sex (the perpetrator in this case is defined as an adult, rather than “any person”) (art. 292);

To cause or facilitate the commission by a third party of an obscene act against a child in the person’s care (whether guardian, teacher or in another formal relationship) (art. 295);

To make “an occupation or habit of intentionally causing or facilitating any obscene act by others with third parties” (art. 296);

To “trade in women and minors of the male sex” (art. 297);

To induce, through offers of money or goods or abuse of a power relationship or deceit, “a minor of irreproachable conduct” to commit or tolerate an obscene act (art. 293);

28.It may be noted that prostitution involving adult women is not illegal in Timor-Leste. This has not prevented law enforcement services from apprehending women on the assumption of their engaging in commercial sex work, which underscores current uncertainty or confusion about the situation and a general concern to guard against sex-based offences.

29.The draft RDTL Penal Code of December 2005 includes a provision on child prostitution (art. 167) which provides for the penalty of one to six years of prison for a person who engages a minor under the age of 16 years in prostitution as a client. The same article also provides for a penalty of 3-12 years for a person who facilitates the prostitution of a minor under the age of 16 for lucrative purposes.

30.It is emphasized that the Government is presently drafting a Children’s Code, which will more effectively provide for the protection rights of children. In addition, the Government has been formulating Rules of Organization and Procedure for law enforcement officers and child protection personnel in more appropriately responding to individual cases of, inter alia, child abuse and exploitation. These rules have been incorporated into professional training of law enforcement officers, to improve awareness of the child’s rights in such matters. The Government of Timor-Leste also has been an active participant in regional anti-trafficking initiatives, including the Regional Ministerial Conferences on People Smuggling, Trafficking in Persons and Related Transnational Crimes held in Bali, Indonesia.

31.Collectively, these initiatives aim to ensure that Timor-Leste puts in place an administrative and judicial framework which is more compliant with Timor-Leste’s international obligations, including those of the Optional Protocol.

III. PENAL/CRIMINAL PROCEDURE

32. Consistent with articles 2, 3 and 9 of the Indonesian Penal Code Timor-Leste has jurisdiction over the offences dealt with in the Optional Protocol where those offences were committed by any person within Timor-Leste or outside of Timor-Leste on board a Timorese vessel or aircraft, except as may be qualified by international law.

33. The presence of substantial numbers of international workers in Timor-Leste - most notably within successive United Nations missions - creates added complexity, at the least due to the immunity afforded to United Nations personnel against Timorese law.

34. "Enforcement issues are complicated further by the United Nations' own jurisdictional challenges over its Peace Keeping Forces (PKF). The PKF national contingents are not under the direct command of the general mission. The result is that UNMISSET has no power to discipline a PKF national contingent official and can only recommend to the national contingent commander to take action" (Alola Foundation (2004), p. 45).

35. The discovery of United Nations Police procuring prostitution-related services during raids of premises in 2003 led to UNMISSET issuing directives preventing United Nations personnel from attending massage parlours and other places suspected of prostitution. At least one United Nations Police official was accordingly repatriated (*ibid.*, p. 45).

36. For the Government, emphasis is on ensuring effective screening of possible human trafficking into Timor-Leste at points of entry. For children, reference should be made to the CRC-specific report (section VIII.C.4 - Child abduction and trafficking) concerning two known cases (involving three female children) of child trafficking into Timor-Leste.

IV. PROTECTION OF THE RIGHTS OF CHILD VICTIMS

37. Experience to date makes it difficult to comment on measures to protect the rights of child victims within the scope of the Optional Protocol. There have been no known cases dealt with within the courts, or administratively (apart from the international cases already referred to). However, as noted above, efforts have been taken to finalize and apply Rules of Organization and Procedure when dealing with child victims more generally, and to incorporate associated standards within professional training.

38. Particular concerns at present include:

Applicable domestic laws do not explicitly guarantee the best interests of the child as a primary consideration;

Judicial procedures are not adequately child-sensitive in investigation or deliberation, nor in appropriately seeking the child's views or opinions;

As reported in the CRC-specific report, section VIII.B concerning juvenile justice, there is no current practice of expediting child-related court hearings and the inability to purchase legal representation may lead to further delays for hearing and extended pretrial detention;

Formal identification of the child and verification of its age on the basis of the United Nations Transitional Administration in East Timor (UNTAET) ID card (issued in early 2001 for the national Constituent Assembly elections) or a baptism certificate is far from satisfactory and may not even be available for a child;

There are negligible support services for child victims, primarily confined to a small number of overstretched NGOs; this is compounded by a lack of attention to trafficking victims as distinct from prosecution of offenders (Alola Foundation (2004), p. 47).

V. PREVENTION OF THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

39. With particular regard to the Optional Protocol, there has been no action taken to publicize its provisions to the wider public, nor to put in place a mechanism for periodic monitoring or review of the Protocol. There has been only scant reference to the Optional Protocol to date in professional training (for example, of police, judiciary and legal officers), although there has been inclusion of references to the prohibition on child prostitution and child pornography within such training.

40. To a large extent, the Government believes that it is also true that Timor-Leste is confronting a special task, unlike many other States: to put in place administrative and legislative conditions and associated compliance procedures more in order to prevent the emergence of unwanted domestic phenomena than to contain an existing serious prevalence and range of such phenomena. This is in no way to deny that Timor-Leste currently suffers from the range of problems which the Optional Protocol seeks to mitigate; existing evidence, though scant, points to the range of such problems existing in Timor-Leste but on a small scale. This, in turn, is understood by Government to emphasize the need for urgent action as a sensible public investment in minimizing such problems before they take stronger holds within the national environment.

VI. INTERNATIONAL ASSISTANCE AND COOPERATION

41. The Government has entered into concerted collaboration with key multilateral agencies to address the levels of poverty and its concomitant effects. It is acknowledged that household poverty has been a major factor in the transfer of many children between families, in offering children for formal and "informal" adoption, and in the vulnerability of many girls and young women in moving from the districts into Dili in search of improved opportunities.

42. Nevertheless, as previously stated, there is no reliable evidence of child sex tourism nor even of the use of Timorese children in pornography, even though Government remains concerned and vigilant about such dangers. There are reports of the latter which the

Government has endeavoured to investigate, and the same is so for one or two reports of possible paedophile activity. There is also little if any evidence of domestic poverty leading to prostitution amongst Timorese children. This certainly seems to be the case for prostitution amongst male minors, and evidence of female workers in the districts (i.e. essentially serving a Timorese male clientele) are only of adult workers. Within Dili, there is a small identified group of female minors working as prostitutes, for whom it appears that being raped as a child and/or then rejected by a boyfriend due to loss of virginity is a primary factor in their entry into commercial sex work.

43. Given the entrenched nature of poverty within Timor-Leste, this is not to say that it cannot become a root cause of such forms of exploitation. The Government certainly hopes that its current efforts in putting improved laws and practices in place, combined with separate initiatives with respect to such areas as rural development and improved education access, will serve as part of a preventative strategy in this regard.

44. Given the small numbers of children currently understood to be victims of a breach of rights under this Optional Protocol, associated measures of protection of victims has been largely on an ad hoc basis. More broadly, international cooperation has assisted a small number of NGOs to respond to the needs of victims of abuse and exploitation, including social reintegration and physical and psychological recovery, but this is certainly believed to be inadequate in terms of the special needs of trafficking victims, especially children. Significantly, to the extent that such victims often require a period of special care in discrete separate facilities, it has been reported that “[n]o single East Timorese [non-governmental] organization is currently prepared to run a shelter with the minimum services stipulated in the Trafficking Protocol” (Alola Foundation (2004), p. 48).

45. The Government recognizes this as an important matter deserving close dialogue between Government, NGOs and relevant international agencies. This is especially so in the current time frame of the adoption, implementation and enforcement of new legal provisions and standards. This further emphasizes the size and scope of the challenges confronting Timor-Leste in addressing issues of compliance with the Optional Protocol during the period leading up to its initial report.
