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## A. Scope of international obligations

1. In line with recommendations made by the State Delegations participating in the first Universal Periodic Review of Timor-Leste by the Human Rights Council in 2011 (hereafter 'UPR 2011')<sup>1</sup> and recommendations of treaty bodies,<sup>2</sup> the Government of Timor-Leste has repeatedly expressed its intention to ratify additional human rights instruments. That commitment is however often conditioned upon having human resources and institutional conditions in place to ensure compliance with international human rights obligations resulting from ratification.<sup>3</sup> Civil society believes the resource argument reflects a lack of political will. Ratification may serve as an impetus to human rights compliance of the domestic legal framework, including establishing institutions required and allocation of the necessary human and financial resources. In particular with regard to the Convention on the Rights of the Persons with Disabilities (CRPD), resources have already been allocated and civil society is working with Government towards imminent ratification.

**2. Government should ratify additional human rights instruments as pledged during the first Universal Periodic review in 2011.**

## B. Implementation of international human rights obligations

### 1. Equality and non-discrimination

#### *Persons with disabilities*

3. In line with UPR 2011 recommendations,<sup>4</sup> the Government of Timor-Leste adopted a national policy for the inclusion and promotion of the rights of persons with disabilities in May 2012<sup>5</sup> and in 2013 drafted a corresponding national action plan (NAP) 2014-2018. Focal points on disability have been appointed in at least 9 relevant ministries and parts of the national action plan are being implemented.<sup>6</sup> Consultations on a draft mental health strategy started in December 2015 and civil

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<sup>1</sup> Recommendations 77.1-8 and 79.1-8 recommended ratification of the Convention on the Rights of the Persons with Disabilities (CRPD) and its Optional Protocol; the First Optional Protocol to the International Covenant on Civil and Political Rights, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights as well as the International Convention for the Protection of All Persons from Enforced Disappearance

<sup>2</sup> For example: Committee on the Rights of the Child, *Concluding Observations on the combined second and third periodic reports of Timor-Leste*, UN Doc. CRC/C/TLS/CO/2-3, 2 October 2015, para.45(h)

<sup>3</sup> Human Rights Council, *National report Timor-Leste*, UN Doc. A/HRC/WG.6/12/TLS/1, 19 July 2011, para.16 and 116; Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Timor-Leste, Addendum [Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review]*, UN Doc. A/HRC/19/17/Add.1, 15 March 2012 para.4. All documentation related to first review can be accessed on <http://www.ohchr.org/EN/HRBodies/UPR/Pages/TLSession12.aspx>

<sup>4</sup> Recommendation 77.6 recommended Timor-Leste would finalize as soon as possible a national policy to implement the rights for persons with disabilities.

<sup>5</sup> Government Resolution No 14/2012

<sup>6</sup> Opinions differ as to whether Council of Ministers approval is needed of this technical document.

society has advised to include a wider range of therapies.<sup>7</sup> Government also intends to establish a National Council for Persons with disabilities in compliance with UN-CRPD and has sought inputs from civil society on relevant draft legislation.<sup>8</sup>

4. Fourteen non-governmental organizations (NGOs) currently receive funding (210.748.76 USD) from the Ministry for Social Solidarity (MSS) to facilitate courses on braille, sign language, speech therapy, rehabilitation measures and community awareness. These grants are welcome steps, however the strategy on community-based rehabilitation needs improvement. Rather than investing in centrally located services, services ought to be available within communities to ensure persons with disabilities can remain with their family and avoid prolonged dependency on organisations. Vocational training at present only offers limited opportunities to persons with disabilities.<sup>9</sup>

5. Children with disabilities are not eligible for disability allowances and there is no carers' allowance to support parents or carers of people with disabilities. People with disabilities, because of their disability, often have difficulty providing documentary evidence required when applying for those benefits.<sup>10</sup> Civil society does not have access to the procedural handbook required by law and details of how applications are assessed remain unclear.<sup>11</sup>

**6. Government (Ministry for Social Solidarity) should continue its consultations on the regulatory framework for a National Council advocating the rights of people with disabilities, adopt it and establish the Council as soon as possible. The mental health strategy should include a broader range of therapies. A clear and integrated strategy on community-based rehabilitation needs to be developed that aims to widen the reach of rehabilitation services beyond Dili. The Ministry should review the age eligibility criteria for disability allowances and increase transparency of its process for assessment and evaluation. Government should allocate sufficient resources within**

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<sup>7</sup> The peak body, the Association for Persons with Disabilities in Timor-Leste (ADTL), recommends inclusion of psychological therapy, audiology clinic, speech therapy, physical and occupational therapy and training and learning centre in a mental health strategy.

<sup>8</sup> MSS with ADTL and Handicap International have conducted regional consultations in Liquica, Baucau, Ainaro, Oecusse and Dili. The National Council (*Konsellu Nasionál ba Direitu Ema ho Defisiénsia*) would become an independent body and oversee implementation of the national action plan as well as the UN-CRPD, once ratified by TL.

<sup>9</sup> With financial support from Handicap International, the National Training Centre in Tibar accommodated access for 2 persons with disabilities out of more than 200 trainees attending vocational training in 2016.

<sup>10</sup> Decree-Law 19/2008 regulating support allowances for elderly and disabled persons in article 6.1(c) stipulates that disabled applicants for support allowances have to be 18 years or above; Article 19.4 stipulates a copy of the electoral card and a certification of residence by the community leader are to be enclosed in the application. Ra'es Hadomi Timor Oan (RHTO), a leading disabled persons' organisation in Timor-Leste, has documented instances of persons with disabilities facing hurdles in claiming benefits due to inability to travel and/or lack of support from family or community leaders. See Submission of RHTO to the pre-sessional working group of the CEDAW Committee, 2015 at:

[http://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwiHzYm\\_4svLahXWB44KHbBtDzcQFggBMAA&url=http%3A%2F%2Finternet.ohchr.org%2FTreaties%2FCEDAW%2FShared%2520Documents%2FTLS%2FINT\\_CEDAW\\_NGO\\_TLS\\_19350\\_E.doc&usq=AFQjCNGO71vp1yvoKkYspJNCoIReMmgQaA&sig2=7w\\_yuV0a1Ujlp8bkK3sp1Q](http://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwiHzYm_4svLahXWB44KHbBtDzcQFggBMAA&url=http%3A%2F%2Finternet.ohchr.org%2FTreaties%2FCEDAW%2FShared%2520Documents%2FTLS%2FINT_CEDAW_NGO_TLS_19350_E.doc&usq=AFQjCNGO71vp1yvoKkYspJNCoIReMmgQaA&sig2=7w_yuV0a1Ujlp8bkK3sp1Q)

<sup>11</sup> The Ministry of Social Solidarity is meant to produce a Procedural Handbook pursuant to article 49 of Decree-Law 19/2008. Note that a team commissioned by DFAT (then AusAID) in 2013 'despite several attempts, was unable to locate a copy of the assessment criteria for disability pension eligibility nor information on people currently receiving the pension payments' - see Mc Coy, Gomes, Morais & Soares, *Access to Mainstream Health and Rehabilitation Services for People with Disability in Timor-Leste. Situational Analysis*, July 2013 p.10 available at <https://dfat.gov.au/about-us/publications/Documents/timor-leste-access-health-rehab-services-people-disability-sit-analysis.pdf>

<sup>11</sup> Timor-Leste Child Rights Coalition, *Timor-Leste civil society alternative report*

**the State Budget (to be adopted by Parliament) to implement the national action plan and realize the rights of persons with disabilities.**

7. Persons with disabilities face continued physical and other obstacles in their access to courts. Legally judges are required to facilitate access by for example ensuring technical assistance from interpreters for speaking and/or hearing impaired persons but in practice this rarely occurs.<sup>12</sup>

**8. The Superior Council of Judicial Magistrates should remind judges of its legal obligations to provide technical assistance to persons with disabilities and Government (Ministry of Justice and MSS) should ensure that assistance is available.**

#### *Gender equality*

9. A comprehensive definition of (direct and indirect) discrimination against women remains absent from the domestic legal framework<sup>13</sup> and the Civil Code still contains some discriminatory provisions, i.e. by not recognising religious marriages other than Catholic and not recognising de facto relationships. The vast majority of women in Timor-Leste are in de facto unions, or have not yet registered their traditional marriage in the absence of a civil registration code. This has consequences for women's rights to marital property and spousal alimony.<sup>14</sup>

**10. Parliament should adopt a comprehensive definition of discrimination against women that encompasses both direct and indirect discrimination in all areas of life. Government should amend the Civil Code to specifically recognise other (non-Catholic) religious marriages and de facto unions as well as immediately finalize the draft Civil Registration Code, discuss and approve in the Council of Ministers and forward to Parliament for approval.**

11. Furthermore, more must be done to ensure equal access to justice. Women who come into contact with the justice sector as litigants, victims and defendants, constantly face negative attitudes and gender stereotypes. This has particularly serious consequences for women who are charged with domestic violence in cases of self-defence.<sup>15</sup> Such actions are rarely considered as 'legitimate' self-defence, and women who use weapons to protect themselves from abusive partners are more likely to be charged with a serious offence compared with men who commit serious physical and other abuse over prolonged periods. Where justice sector actors make discriminatory comments and decisions, they are not sanctioned by a disciplinary body.<sup>16</sup>

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<sup>12</sup> RDTL Criminal Procedure Code (Decree-Law No 13/2005) Article 83 and Civil Procedure Code (Law No 1/2006) Article 106

<sup>13</sup> Non-compliance with UPR 2011 recommendations 78.6, 78.9; Shadow report from NGOs (JSMP, PRADET & ALFeLa), *Timor-Leste Government's progress in implementing CEDAW*, June 2015, p.4 and Committee on the Elimination of Discrimination against Women, *Combined second and third periodic reports of States Parties due in 2013*, Timor-Leste UN Doc. CEDAW/C/TLS/2-3, 24 November 2015, paras 8-9

<sup>14</sup> Shadow report from NGOs (JSMP, PRADET & ALFeLa), *Timor-Leste Government's progress in implementing CEDAW*, June 2015, p.14

<sup>15</sup> One such case is the subject of the first ever individual communication from Timor-Leste to the CEDAW Committee submitted with support of civil society in February 2015. Civil society does not have clear information whether Timor-Leste has responded yet to the Committee

<sup>16</sup> Shadow report from NGOs (JSMP, PRADET & ALFeLa), *Timor-Leste Government's progress in implementing CEDAW*, June 2015, p.11

**12. Government should legislate mandatory continuing legal education for judges, prosecutors, public defenders and private lawyers on gender equality, women's human rights and root causes of violence against women. The respective disciplinary bodies<sup>17</sup> should take disciplinary action against justice actors who consistently discriminate against women.**

## 2. Right to life, liberty and security of the person

13. Enhanced accountability of security forces - as recommended during UPR 2011<sup>18</sup> - remains a key priority for local human rights groups in Timor-Leste who continue to receive frequent complaints of alleged excessive use of force by police and military. For example, based on monitoring by an Early Warning Early Response (EWER) system between 2012 and 2015 PNTL was allegedly involved in 111 incidents of violence and F-FDTL was allegedly involved in 53 incidents of violence.<sup>19</sup> There are also continued reports of security forces dealing with personal matters while in uniform, and security forces being members of martial arts groups or other groups that contribute to conflict in the community.<sup>20</sup>

14. Military are regularly involved in joint operations to address what Government considers serious disturbances of law and order<sup>21</sup>. Government asserts joint operations of national police (PNTL) and military (F-FDTL) are managed with respect to human rights<sup>22</sup>. While police and military demonstrated a certain degree of professionalism in these operations, human rights groups also documented numerous alleged human rights violations during joint operations conducted in 2014 and 2015, including ill-treatment during arrest and detention, arbitrary arrest and detention and arbitrary interference with privacy and home (including destruction of property).<sup>23</sup>

15. Concerns have also been raised over military usurping powers exclusive to police under the Law on Internal Security and Criminal Procedure Code,<sup>24</sup> and a lack of transparency of operational procedures issued under the rules of engagement of such operations.<sup>25</sup> Furthermore, civil society

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<sup>17</sup> Superior Council of Judicial Magistrates, Superior Council of the Prosecution Service and Ministry of Justice in the absence of a Superior Council of The Office of Public defenders

<sup>18</sup> UPR 2011 Recommendation 78.20-21

<sup>19</sup> Belun, EWER monitoring reports available at: [www.belun.tl/en/publications/](http://www.belun.tl/en/publications/). Incidents of violence may involve slapping, beating, kicking, hitting with baton and/or gunshots fired.

<sup>20</sup> Results of monitoring reports HAK association and Belun.

<sup>21</sup> Under Articles 34 and following of RDTL Law No 2/2010 on National Security 'a joint operation may be decided in crisis situations such as a public calamity, natural catastrophes or disasters and serious disturbances of law and order that do not warrant the declaration of a state of constitutional exception'.

<sup>22</sup> VI Constitutional Government, Media release, *Joint operation seeks no confrontation*, 15 May 2015 available at <http://timor-leste.gov.tl/wp-content/uploads/2015/05/Joint-Operation-seeks-no-confrontation.pdf>

<sup>23</sup> Fundasaun Mahein, *The Joint Operation: Bad Practices in the Security Sector*, Mahein's Voice No. 99, 24 March 2015 at: [http://www.fundasaunmahein.org/wp-content/uploads/2015/03/MNL-Nu.-99- The-Joint-Operation\\_24032015\\_English-Version.pdf](http://www.fundasaunmahein.org/wp-content/uploads/2015/03/MNL-Nu.-99- The-Joint-Operation_24032015_English-Version.pdf); HAK Association, *Annual report on the human rights in Timor-Leste*, 2014, p.4 and 2015, pp.7-9 at [http://www.haktl.org/wp-content/uploads/2016/02/Relatoriu\\_anual\\_2015\\_3.pdf](http://www.haktl.org/wp-content/uploads/2016/02/Relatoriu_anual_2015_3.pdf); AJAR and HAK association, *Press release - Result of monitoring of joint operation F-FDTL and PNTL regarding Mau Maruk and his group*, 22 April 2015; Amnesty International, *Urgent action – Dozens arrested and tortured in Timor*, 12 May 2015 available at <http://www.amnestyusa.org/get-involved/take-action-now/timor-leste-stop-the-arrest-and-torture-of-dozens-of-individuals-ua-10615>

<sup>24</sup> RDTL Law Internal Security No. 4/2010 and RDTL Criminal Procedure Code Decree-Law No 13/2005 Articles 52-57

<sup>25</sup> Government Resolution No 29/2015 and Presidential Decree No 41/2015

have expressed doubts over the legality of 2014 parliamentary and government resolutions<sup>26</sup> that authorized some of the joint operations because it outlawed certain groups (*Conselho da Revolução do Povo Maubere* and CPD-RDTL) without assessing specific (criminal) actions by individuals – thus usurping the role of prosecutors.<sup>27</sup>

16. Internal accountability mechanisms exist<sup>28</sup> for both security forces but appear ineffective in remedying alleged human rights violations and the results of disciplinary processes are not transparent, further enhancing public perception that security personnel enjoy impunity.

**17. Government should strengthen training on human rights standards to PNTL and F-FDTL and ensure that operational procedures of both security forces and rules of engagement of joint operations are in compliance with human rights standards enshrined in IHRL, the RDTL Constitution and the Law on Internal Security. Government should strengthen internal accountability mechanisms within PNTL and F-FDTL and increase transparency of results of investigations into allegations human rights violations raised by civil society, families of victims and/or the NHRI (Provedoria for Human Rights and Justice).**

### 3. Administration of justice, including impunity, and the rule of law

*Legal framework on child protection and juvenile justice*<sup>29</sup>

18. Important gaps remain in the legislative, policy and institutional framework for child protection and juvenile justice: The overarching Children’s Code (now under Ministry of Justice) – meant to regulate fundamental rights of children in Timor-Leste and establish a national protection system for children - has still not been adopted. Some measures under a new Child and Family Welfare Policy are however being piloted by the Ministry of Social Solidarity. Two drafts laws relating to juvenile justice - Tutelary and Education Law for children 12 to 16 years of age and Special Penal Regime for 16 to 21 year-olds - have also not moved forward within the Ministry of Justice and need further

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<sup>26</sup> Parliament Resolution No 4/2014 and Government Resolution No 8/2014

<sup>27</sup> *Joint civil society declaration on the Joint PNTL - F-FDTL Operation Implementing Parliamentary Resolution No.5/2014 and Council of Ministers Resolution No. 8/2014*, 22 April 2014 available at <http://www.laohamutuk.org/Justice/DeklarasaunCSOPNTLFFDTL22Abr2014en.pdf> ; Fundasaun Mahein, *Friendship (Habelun) Operation: Re-integrate or Threats?*, Mahein’s Voice No 80, 26 June 2014, at: [http://www.fundasaunmahein.org/wp-content/uploads/2014/06/MNL\\_Nu.80\\_26062014\\_Operation.pdf](http://www.fundasaunmahein.org/wp-content/uploads/2014/06/MNL_Nu.80_26062014_Operation.pdf)

<sup>28</sup> Justice Department (*Departamentu Justisa*) within PNTL as per Article 24 of RDTL Decree-Law No. 9/2009 Organic Law PNTL and (in practice) military police as delegated by the *Chefe do Estado-Maior General das Forças Armadas* as per Article 75 of RDTL Decree-Law No 17/2006 pending adoption of a (new) regulation for military discipline and a Code of military justice pursuant to article 19 RDTL Decree-Law No 7/2014 F-FDTL Statutes

<sup>29</sup> UPR 2011 recommended to adopt the children’s Code as a matter of priority (77.9), to ensure that the principle of best interest is adequately reflected in laws (77.10) and to adopt specific legislation to explicitly prohibit all forms of corporal punishment (77.27); UPR 2011 also recommended a continued development – in cooperation with UNICEF and the Commission on the rights of children - on a specific legal framework on juvenile justice that integrates the principle of best interest of child and reflects local context and available resources (77.35-36 & 79.33); Lastly UPR2011 recommended that Timor-Leste provides the National Commission for the Rights of the Child with the necessary resources to carry out its mandate (77.17); amends NCRC statute to include legal competencies to undertake institutional interventions against ministers working against children’s rights and receive complaints of rights violations (79.11) and considers a national action plan on children (77.16).

consultation.<sup>30</sup> The Commission for the Rights of Child (KDL) currently still lacks the resources and independence to properly fulfil its mandate: Its office remains within the Ministry of Justice (even though it now falls under another ministry), it only has six staff and its Consultative Council (comprised of members of civil society and government) remains inactive pending a revision of their statutes.<sup>31</sup> There is still no independent complaints mechanism for children.<sup>32</sup>

**19. Government should immediately adopt the Children’s Code and ensure a coordinated legal drafting process between relevant line ministries (at a minimum Justice, Social Solidarity and Education) on a comprehensive and integrated legal framework on child protection and juvenile justice that is in compliance with human rights standards enshrined in IHRL and the RDTL Constitution and a framework that is adapted to the current situation in Timor-Leste, to ensure they are capable of full implementation, and to build on existing informal practices of diversion and family welfare.**

**20. Government should strengthen the Commission for the Rights of the Child (KDL) by providing greater institutional independence, allocating appropriate levels of resources and reactivating the Consultative Council. Government should ensure an appropriately resourced children’s unit is established within the Provedoria for Human Rights and Justice (PDHJ) tasked with receiving and investigating children’s rights complaints.**

*Access to justice for women victims of violence*<sup>33</sup>

21. The legal framework required to enable the State to with due diligence prevent, punish and eliminate all forms of violence against women and children needs to be strengthened. In 2015 civil society proposed detailed amendments to the RDTL Penal Code and the Law Against Domestic Violence<sup>34</sup> - most notably to create specific crimes of incest and marital rape, amend evidentiary rules for sexual coercion and rape in accordance with international best practice, and add

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<sup>30</sup> There is a lack of access to the latest version of the drafts but deficiencies appear to include: They are overly punitive, failure to recognize the responsibility of family and the community for children, do not have sufficient restorative justice principles and rely on the creation of a number new institutions (such as several different types of juvenile detention centres and family courts) which considering the weakness of the adult justice system and the severe lack of qualified human resources, funds and formal justice infrastructure, is unlikely to be feasible in the short term. See Judicial System Monitoring Programme, *Children’s Access to Formal Justice in Timor-Leste: A Status Report*, 2014, p.27; Timor-Leste Child Rights Coalition, *Timor-Leste civil society alternative report on the combined second and third periodic reports of Timor-Leste to the Committee on the Rights of the Child*, December 2014, p.27 and 32; Committee on the Rights of the Child, *Concluding Observations on the combined second and third periodic reports of Timor-Leste*, UN Doc. CRC/C/TLS/CO/2-3, 2 October 2015, para.62 (a)

<sup>31</sup> Under the Organic structure of the VI Constitutional Government, the commission was renamed and placed under the supervision of the Minister of State, Coordinator of Social Affairs (who in practice is also Minister of Education) – as per Article 13.1(f) of RDTL Decree-Law No 6/2015. Nevertheless the KDL still has its office in the Ministry of Justice.

<sup>32</sup> Timor-Leste Child Rights Coalition, *Timor-Leste civil society alternative report on the combined second and third periodic reports of Timor-Leste to the Committee on the Rights of the Child*, December 2014, p.14-15

<sup>33</sup> UPR 2011 recommended to continue or step up Government efforts in preventing, punishing and eliminating all forms violence against women, to fully implementing the law against domestic violence, increase human and technical resources to do so, and to accord a higher priority to the investigation and prosecution of domestic violence cases (77.20-26; 78.6, 78.9-16; 79.22); UPR 2011 also recommended to expedite adoption and implementation of anti-trafficking legislation and related policies (77.11, 77.28, 79.10)

<sup>34</sup> JSMP and ALFeLa, *Improving the Penal Code to better protect women and children*, Submission to the National Parliament of Timor-Leste, January 2015

aggravating circumstances for sexual offences - and has also recommended changes in a draft law on human trafficking under consideration since 2009.<sup>35</sup>

**22. Parliament should discuss and adopt the proposed amendments to the Penal Code and the Law Against Domestic Violence, as well as discuss the draft (anti) Human Trafficking Law with due consideration for comments submitted by civil society.**

23. A 2015 health and life experiences study confirmed the high incidence in Timor-Leste of partner violence against women (59%) and non-partner violence (14 % of women surveyed raped by non-partner),<sup>36</sup> thus confirming a continued need for well-planned interventions. Government has evaluated the results of a 2012-2014 national action plan on gender-based violence. NGOs have been consulted and look forward to hearing the conclusions and participating in the development of the new revised plan for 2016-2019.

24. Between 2012 and 2014 just one coordination meeting was held between agencies and NGOs working on the prevention pillar of the NAP on GBV.<sup>37</sup> The aforementioned 2015 study indicated the clear need for prevention strategies to address men's street violence and target pre-teens.<sup>38</sup>

**25. Government (The Secretariat of State for the Support and Socio-Economical Promotion of Women (SEM)) should use lessons learnt from the evaluation of the previous NAP and clearly define in the revised NAP on GBV the roles and responsibilities of Government and civil society respectively. The action plan should include a strong fourth monitoring and evaluation pillar and an evidenced-based prevention pillar. Government should ensure that all activities under the revised NAP are fully costed and that sufficient budget is allocated by Parliament in future State Budgets.<sup>39</sup>**

26. Court monitoring by civil society indicates that now more than half of all cases in district courts

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<sup>35</sup> IOM submission on the Timor-Leste Trafficking in Persons Law, 2014 (with participation of civil society organisations such as Alola and JSMP): Recommendations focused on definition of a child and of human trafficking; compensation to victims, reflection period, legal advice and representation, measures at the border and identification of child victims.

<sup>36</sup> A 2015 study by The Asia Foundation documenting the prevalence of partner and non-partner violence against women in Timor-Leste showed that three in five (59%) women aged 15-49 years, who have ever been in a relationship (ever-partnered), reported having experienced some form of physical or sexual partner violence, or both, by a male partner in their lifetime, and 47% in the 12 months before the interview. More than one in ten (14%) of all women surveyed said they had experienced rape by a man who was not their intimate partner at least once in their lifetime, and one in ten (10%) reported experiencing this in the last 12 months. See The Asia Foundation, *The Nabilan Health and Life Experiences Study, Fact sheet 1. Intimate partner violence: Women's experiences and men's perpetration of violence against women in Timor-Leste* and *Fact sheet 4. Sexual violence against women by someone other than their intimate partner in Timor-Leste*, 2015 available at: <http://asiafoundation.org/publications/pdf/1572> and <http://asiafoundation.org/publications/pdf/1575>

<sup>37</sup> Rede Feto Timor-Leste, *NGO shadow report, Implementation of CEDAW in Timor Leste*, September 2015, p.53 at: [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/TLS/INT\\_CEDAW\\_NGO\\_TLS\\_21963\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/TLS/INT_CEDAW_NGO_TLS_21963_E.pdf)

<sup>38</sup> The abovementioned 2015 TAF study may aid in formulating prevention strategies: There is a need to address men's street violence to protect women because men who are not involved in fights with weapons and male partners who do not fight with other men are significantly less likely to perpetrate intimate partner violence. The study also pointed to the need for messaging about respectful and consensual sexual relationships targeted at pre-teens given that 59% of men who had perpetrated rape did so for the first time when they were teenagers or younger.

<sup>39</sup> Shadow report from NGOs (JSMP, PRADET & ALFeLa), *Timor-Leste Government's progress in implementing CEDAW*, June 2015, pp.23-24; Committee on the Rights of the Child, *Concluding Observations on the combined second and third periodic reports of Timor-Leste*, UN Doc. CRC/C/TLS/CO/2-3, 2 October 2015, para.37(f)



are cases of violence against women and girls.<sup>40</sup> While women's access to formal justice has increased since the adoption of the Law Against Domestic Violence in 2010,<sup>41</sup> results of extensive monitoring of violence against women - 564 cases monitored in 2015 alone, of which 428 cases pertained to domestic violence – also point towards continued obstacles: With regard to charging legal errors are made (charging a lesser crime) and prosecution of rape within marriage is virtually non-existent. Lack of resistance by victims is often seen as evidence of consent, and little effort is made to look for corroborating evidence when there is no medical evidence available. Sentences are often suspended, involve fines and lack auxiliary orders such as reporting conditions by perpetrators. In general sentences are not commensurate with the gravity of crime. Sentences tend to take into account the defendant's social position or profession and informal mediation without verifying the victim's free and consensual involvement in that out-of-court process. While civil compensation to victims is increasingly being awarded, for example in eight sexual violence cases and in one domestic violence case in 2015, district courts should more consistently apply this reparation measure as amounts vary and are only applied by two district courts: Suai and Dili.<sup>42</sup>

**27. The Office of the Prosecutor-General should issue charging directives, and the President of the Court of Appeal should develop sentencing directives in accordance with the State's due diligence obligations in responding to violence against women.**<sup>43</sup>

28. The Ministry of Social Solidarity has revised the operational guidance for the referral network on gender-based violence to better reflect the reality, clarify roles of all agencies involved and ensure case management aims to protect women victims of violence rather than be seen as purpose in itself. Some facilities providing services for women who have experienced violence have been made accessible to persons with disabilities<sup>44</sup> and coverage of essential services has increased. However, the majority of services are still provided by NGOs that only receive about 10 % of core funding from Government, with the rest of their funding from international donors.

**29. Government and Parliament should provide long-term funding (as a Temporary Special Measure in the State Budget) to NGOs providing essential support services for women and girls affected by violence.**

30. The implementation of legal mechanisms for protection of victims and witnesses –of particular concern for women and children victims of violence - needs to be strengthened. With regard to domestic violence, legal options to victims such as protection orders and provisional alimony have so

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<sup>40</sup> Shadow report from NGOs (JSMP, PRADET & ALFeLa), *Timor-Leste Government's progress in implementing CEDAW*, June 2015, p.5

<sup>41</sup> RDTL Law No 7/2010

<sup>42</sup> JSMP, *Charging, Trials and Sentencing in Cases of Sexual Violence in Timor-Leste 2012-2015*, 11 March 2016, pp.34-36 available at [http://jsmp.tl/wp-content/uploads/2012/05/sexual-violence-report-FINAL\\_ENGLISH-VERSION-PDF.pdf](http://jsmp.tl/wp-content/uploads/2012/05/sexual-violence-report-FINAL_ENGLISH-VERSION-PDF.pdf); JSMP, *Overview of Justice Sector 2015*, section 2.1-3 (forthcoming)

<sup>43</sup> More detailed recommendation have been made to CEDAW - Shadow report from NGOs (JSMP, PRADET & ALFeLa), *Timor-Leste Government's progress in implementing CEDAW*, June 2015, p.19-20: Charging directives should seek to ensure cases of domestic violence are appropriately charged, considering all aggravating factors such as use or threatened use of a weapon, threats against the victim's life, and the risk of serious physical harm to the victim. Sentencing directives should clearly outline general sentencing principles, aggravating and mitigating factors using examples, rules for repeat offenders, guidance on alternative penalties and provide for the calculation of civil compensation.

<sup>44</sup> The Asia Foundation, Press release, 16 December 2015 at: <http://asiafoundation.org/news/2015/12/asia-foundations-ending-violence-against-women-project-nabilan-announces-facilities-upgrade-in-timor-leste/>

far not been applied by judges. There is no civil protection order system that allows women to continue living in the home with their children.<sup>45</sup> The Government of Timor-Leste has acknowledged that the 2009 law on the protection of witnesses largely remains inoperative, attributing it to a lack of coordination and financial and material resources needed to implement the law.<sup>46</sup> Civil society monitoring shows that witnesses and victims are not in practice afforded effective protection measures even when there are obvious threats to their safety and well-being.<sup>47</sup> However, many protection measures are low-cost and could easily be implemented in courts across Timor-Leste.

**31. Government should allocate sufficient resources in the State Budget (to be adopted by Parliament) to fully implement the Witness Protection Law without further delay. Timor-Leste courts should uniformly implement the use of screens and special seating arrangements to protect victims and to limit contact between victims and the accused.<sup>48</sup>**

*Independence of judiciary, adequate resources and capacity building of justice sector<sup>49</sup>*

32. Resolutions by parliament and government in October 2014 resulted in the immediate expulsion from Timor-Leste of five international judges, two prosecutors and one anti-Corruption Commission investigator. These resolutions were widely condemned for interfering with the independence of the judiciary and separation of powers.<sup>50</sup> Courts are to be commended for their public refusal to adhere to the resolutions.<sup>51</sup> In March 2016 an Association of Judicial Magistrates (AMJTL) was established in Timor-Leste.<sup>52</sup> As a direct consequence of the resolutions, the Legal Training Centre (CFJ) was forced to suspend training to magistrates.<sup>53</sup> A Protocol was signed in February 2016 between Timor-Leste and Portugal re-establishing full cooperation in the area of justice,<sup>54</sup> but training for magistrates has yet to resume.

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<sup>45</sup> Shadow report from NGOs (JSMP, PRADET & ALFeLa), *Timor-Leste Government's progress in implementing CEDAW*, June 2015, pp.20-21

<sup>46</sup> Committee on the Elimination of Discrimination against Women, *Combined second and third periodic reports of States Parties due in 2013*, Timor-Leste UN Doc. CEDAW/C/TLS/2-3, 24 November 2015, paras 76 and 142.

<sup>47</sup> Judicial System Monitoring Program, *Children's Access to Formal Justice in Timor-Leste: A Status Report*, 2014, p.25.

<sup>48</sup> JSMP, *Charging, Trials and Sentencing in Cases of Sexual Violence in Timor-Leste 2012-2015*, 11 March 2016, p.27; Shadow report from NGOs (JSMP, PRADET & ALFeLa), *Timor-Leste Government's progress in implementing CEDAW*, June 2015, p.18-21

<sup>49</sup> UPR 2011 recommended increased capacity building of the legal professions through the Legal Training Centre (CFJ), adequate staffing and material resources, improved remuneration of public defenders and prosecutors, an expansion of mobile courts, provision of forensic equipment, acceleration of efforts to clear backlog of cases and early conclusion of a study to strengthen judicial system (77.31-34, 79.32).

<sup>50</sup> JSMP, *Dismissal of international officials and advisors in the Timor-Leste judicial sector*, December 2014, available at [http://jsmp.tl/wpcontent/uploads/2012/05/Report-dismissal-of-international-judicial-officialsFINAL\\_ENGLISH1.pdf](http://jsmp.tl/wpcontent/uploads/2012/05/Report-dismissal-of-international-judicial-officialsFINAL_ENGLISH1.pdf);

Amnesty International, *Timor-Leste: Victims' rights and independence of judiciary threatened by arbitrary removal of judicial officers*, 21 November 2014 at

<https://www.amnesty.org/en/documents/ASA57/003/2014/en/>; UN Special Rapporteur on the independence of judges and lawyers, 24 November 2014 at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15339&LangID=E#sthash.w6x2AIQG.dpuf>

<sup>51</sup> JSMP, *Press Release, Courts return to work after 2014 holidays*, January 2015 available at: <http://jsmp.tl/wp-content/uploads/2015/01/PR-feriadu-judisial-Jeff-proof-read-ENGLISH-SK-sujestaun.pdf>

<sup>52</sup> The Asia Foundation, *Press Release. The establishment of the Association of the Judicial Magistrates of Timor –Leste*, 4 March 2016

<sup>53</sup> Capacity-building of notary and private lawyers continued.

<sup>54</sup> Government of Timor-Leste, *Press Release. Protocol re-establishes full cooperation with Portugal in the area of Justice*, 25 February 2016

**33. Government and National Parliament should respect the independence of the judiciary. Government must ensure that the Legal Training Centre (CFJ) recommences training for new prosecutors and judges immediately.**

34. While budget allocated to the justice sector has increased (by almost 21 % between 2014 and 2015), court buildings are being rehabilitated and additional cars and computers have been allocated, the Public Defenders' Office continues to face major challenges partly due to the lack of its own separate budget.<sup>55</sup> Salaries of public defenders have not increased, and the profession is generally undervalued despite the fact their role is key in ensuring the right to a fair trial.<sup>56</sup> In practice there are significant shortcomings in how Public Defenders fulfil that role (see below under prisons). Many cases remain pending. For example, in the court in Dili, 853 cases were pending in 2012, 1831 in 2013 and 2451 in 2014/2015.<sup>57</sup> Mobile courts were expanded but their funding now appears at risk. Mobile Courts often lack a suitable location to hold trials and lack facilities for defendants and victims to wait separately.<sup>58</sup>

**35. Government and Parliament should provide the Public Defenders' Office with its own budget and ensure the draft law on remuneration for judicial actors provides for more equitable pay and conditions for public defenders. This needs to be accompanied by an enhanced oversight of their performance to ensure quality legal aid. Government and Parliament must provide sufficient resources to the municipal Courts to hold mobile courts in permanent facilities in each municipality, particularly to ensure that victims can wait separately from perpetrators.**

*Transitional justice*<sup>59</sup>

36. Despite repeated calls by victims, draft legislation on transitional justice (reparations and public memory institute) is still pending and some areas in the draft legislation need to be strengthened.<sup>60</sup> Impunity for past human rights violations continues: The large majority of perpetrators of gross human rights violations committed during the Indonesian occupation of Timor-Leste remain at large. The Special Panel for Serious Crimes have been unable to convene in the absence of international judges (2 required) following their removal pursuant to the above mentioned resolutions in 2014.

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<sup>55</sup> JSMP, *Overview of Justice Sector 2015*, section 1.3.1 (forthcoming)

<sup>56</sup> JSMP, *Access to Justice in Timor-Leste: The welfare of judicial actors and capacity of legal institutions*, 2013 available at: [http://jsmp.tl/wp-content/uploads/2012/05/RelatoriuBemEstarAutorJUDISIARIU\\_ENGLISH.pdf](http://jsmp.tl/wp-content/uploads/2012/05/RelatoriuBemEstarAutorJUDISIARIU_ENGLISH.pdf); JSMP, *Overview of Justice Sector 2015*, section 1.3.3 (forthcoming)

<sup>57</sup> *Jornal Nacional Diário*, 17 January 2016, p.18

<sup>58</sup> JSMP, *Overview of Justice Sector 2015*, section 1.5 (forthcoming)

<sup>59</sup> UPR 2011 recommended continued and/or increased efforts to address past human rights violations, including implementation of recommendations made by the CAVR and CTF Commissions and adoption of legislation on reparations and establishment of public memory institute (78.19 and 79.23-25 and 79.27-31)

<sup>60</sup> The Association of Victims met with parliament in February 2013 and April 2015. The public memory institute is meant to implement and monitor the implementation of CAVR and CTF recommendation and assist Government in providing reparations. The draft law on reparations envisages a national commemoration program for all victims, individual reparations for vulnerable victims and collective reparations for communities gravely affected by the conflict; La'o Hamutuk, *Briefing on transitional justice legislation*, undated available at <http://www.laohamutuk.org/Justice/Reparations/BriefingJulEn.pdf>; Amnesty International, *Remembering the past. Recommendations to effectively establish a the national reparations program and public memory institute*, 2012

**37. Government should adopt the law on reparations for victims and the law on the public memory institute, or at a minimum, the latter. Government should revive the Special Panel for Serious Crimes and should request assistance from the United Nations to enable continued investigation and prosecution of past human rights abuses.**

38. Despite an initial commitment from parliament in 2009, many recommendations of CAVR and CTF have not been implemented and a public debate on the final report of CAVR (Chega!) in its entirety has not happened beyond a brief and partial discussion in 2010.<sup>61</sup> Participatory action research conducted with women victims in 2012-2015 revealed that women victims are marginalized from government benefits and unable to access health, education, psychosocial or economic support services easily. Some women receive a pension or allowance as the surviving spouse or child of a veteran rather than as a veteran themselves, thus omitting an acknowledgment of their own contribution to the struggle for independence. Social stigma continues discriminating against women who were sexually abused by Indonesian forces during the conflict, and the stigma is transferred to their children. Only one out of 16 support programs and services reviewed in the research focusses explicitly on the needs of victims of the conflict.<sup>62</sup>

**39. Government should explicitly extend its referral network, including shelters and psychological support services, to women conflict victims. Government should increase its efforts to provide support to conflict victims for housing, health, transport, employment, micro-credit and education for their children. Government should establish a focal point tasked with disseminating information to conflict victims on how to access government support.**

#### *Access to justice for prisoners*

40. Civil society monitoring of detention facilities in Becora and Gleno in 2013 point towards a relatively high number of detainees held in pre-trial detention: For example, 30.3% of the total prison population in 2013 and 24% in 2015.<sup>63</sup> One of the factors causing prolonged pre-trial detention is detainees' lack of access to legal assistance. In interviews with civil society, detainees complain that Public Defenders almost never visit their clients in prison and that detainees tend to meet their lawyer for the first time in court.<sup>64</sup> This affects the detainees' right to a fair trial (including presumption of innocence). Civil society also observes that many detainees who lack legal assistance tend to be ordinary citizens without influence. In contrast, public defenders tend to provide legal assistance with diligence in cases of more powerful clients, such as the former Minister of Justice and former Minister of Foreign Affairs, resulting in their cases being tried quickly. Internal complaint mechanisms exist in law but in practice prisoners do not have access to them.<sup>65</sup>

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<sup>61</sup> Parliament Resolution 24/2009

<sup>62</sup> Several pieces of research documented in ACbit (Asosiasaun Chega! Ba Ita), Chega +10 – Where are women now?, November 2015 and AJAR (Asia Justice and Rights), *Enduring Impunity - Women Surviving atrocities in the absence of Justice*, October 2015 at <http://asia-ajar.org/2015/07/participatory-action-research-on-women-and-impunity/>

<sup>63</sup> In 2013 prisons held 419 persons, of which 127 people as pre-trial detention. In 2015, prisons held 579 inhabitants of which 139 pre-trial detainees. HAK Association, *Annual report on the human rights in Timor-Leste*, 2013, pp.11-12 and 2015 pp.9-11

<sup>64</sup> HAK Association, *Annual report on the human rights situation in Timor-Leste*, 2015, pp.9-11

<sup>65</sup> RDTL Decree-Law No.14/2014 Article 17 allows prisoners to file complaints with prison staff, the director of the prison, the head of the prison service at national level and with inspectors from the Ministry of Justice. In addition, prisoners can file complaints with the independent NHRI (Provedoria for Human Rights and Justice).

**41. The Ministry of Justice – in the absence of a Superior Council of the Office of Public Defenders<sup>66</sup> - should enhance its oversight of the performance of Public Defenders to ensure rights of accused persons, including those who are detained, to integrity, defence and fair trial are respected. The Ministry of Justice should strengthen complaints mechanisms within the prison service to ensure prisoners have access to them in practice and without fear of reprisals.**

#### **4. Rights to work and to just and favourable conditions of work**

42. Between 2012 and 2015 one labour union alone received 1220 complaints regarding violations of the Labour Code from workers of 80 national and international companies, mostly based in Dili.<sup>67</sup> Complaints pertain to unfair dismissals, inadequate compensation after termination of contract and violations of the legal maximum working time (44 hours/week), unpaid overtime, lack of health insurance and cover for accidents in the workplace and lack of paid leave. The minimum wage remains 115 USD and is considered inadequate. Another challenge is restrictions placed by police on the right to strike guaranteed in the law.<sup>68</sup> There appears to be a lack of awareness by employers and police of the applicable law and weak oversight by labour inspectors<sup>69</sup> further exacerbates infringements on the right to work.

**43. Government (SEPFOP) through the General Labour Inspectorate should conduct regular, comprehensive and impartial inspections of working conditions in all enterprises in Timor-Leste. Government (SEPFOP) through the National Labour Council should raise the minimum wage by 50 % (to 175 USD). Government (Ministry of Interior) should ensure that police are aware of, and respect and protect workers’ right to strike.**

#### **5. Right to social security and to an adequate standards of living**

##### *National budget allocation to combating poverty<sup>70</sup>*

44. Although the 2011-2030 Strategic Development Plan aims to ‘works towards Timor-Leste becoming a nation with a well- educated and skilled population, quality universal health care, [...] and a prosperous society with adequate income, food and shelter for all our people’,<sup>71</sup> these stated objectives are not evidenced in the national budget for 2016: 45 % of the budget (697 million USD) is allocated to infra-structure, including road and bridges, water and sanitation and the Tasi Mane project (Suai supply base); 14 % (218 million USD) to the Oecusse Regional Administration and

<sup>66</sup> RDTL Decree-Law No 38/2008 and RDTL Government, *Justice Sector Strategic Plan for Timor-Leste 2011-2030*, pp.9-10

<sup>67</sup> Labour Code, RDTL Law No 4/2012. Complaints documented in Annual reports presented by *Front Traballador Maubere* (FORAM) to the Secretary of State for Policy on Vocational Training and Labour (SEPFOP)

<sup>68</sup> Law on the right to strike, RDTL Law No. 5/2012

<sup>69</sup> RDTL Decree-Law No. 19/2010 as amended by Decree-Law No. 12/2013: Labour inspectors can impose fines for infractions of the Labour Code and should notify prosecution service of crimes discovered during inspections

<sup>70</sup> UPR 2011 recommended to persevere, intensify or speed up its efforts and the implementation of policies related to poverty reduction, access to health, education, safe drinking water and sanitation, and basic social services (77.42-45; 78.26-35; 79.35)

<sup>71</sup> Timor-Leste Strategic Development Plan 2011-2030, p.216

Special Zone for Social Market Economy (ZEESM). In contrast only 13 % (201 million USD) is allocated to education and health, and less than 2 % (30 million USD) to agriculture. This represents an increased investment in infrastructure projects without a proven effective return, such as ZEESM and the Tasi Mane South Coast Petroleum Development project, while reducing public spending for health, education and agriculture. 75% of the population depend on agriculture for basic needs and subsistence. In December 2015, the President of Timor-Leste therefore vetoed the proposed 2016 budget, but his veto was overturned by Parliament in January 2016 and the budget came into force without changes.<sup>72</sup>

*Impact of large infrastructure projects on the community's access to housing and an adequate standard of living*

45. While there are some socialization campaigns, there are no meaningful consultation processes regarding the large infrastructure projects and the affected communities are neither informed nor active participants in these processes. Civil society has received reports of misinformation and a lack of impartiality when risks associated with these projects are being presented. Civil society has also documented cases of threats and intimidation during evictions. Persons evicted have so far not received legal assistance. Overall, community understanding of deals made when expropriating land for these projects is severely limited. In some cases relocation is offered instead of compensation which may result in marginalisation and impoverishment if people do not manage to re-establish a livelihood in the new location. There is a lack of a robust social impact assessment and insufficient monitoring by Government of the process and social and economic impacts of cash payments at the household level.<sup>73</sup>

**46. Government should ensure meaningful participation and access to impartial and accurate information for communities affected by large infrastructure projects, and ensure that the affected communities have the opportunity to participate in shaping land agreements and benefit from them fairly and on an equal basis. Government should strengthen its social impact assessment and monitoring systems to ensure affected communities right to an adequate standard of living is not adversely affected.**

*Legal framework on land<sup>74</sup>*

47. A package of three land laws — the Expropriation Law, the Real Estate Financial Fund and the Special Regime for the Definition of Ownership of Immovable Property — remains pending. It was vetoed by the then President in 2012 because he felt it did not protect the rights of the poorest and most vulnerable. The Ministry of Justice facilitated additional consultations – albeit limited<sup>75</sup> - and made some positive changes to the law in response to suggestions from civil society and

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<sup>72</sup> La'o Hamutuk, *2016 General State Budget*, update 16 February 2016 available at <http://www.laohamutuk.org/econ/OGE16/15OGE16.htm>

<sup>73</sup> Australian National University (Cryan, Meabh), *Impacts of the Suai Supply Base project in Timor-Leste*, In Brief 2015/47 available at <http://ips.cap.anu.edu.au/ssgm/publications/impacts-suai-supply-base-project-timor-leste>

<sup>74</sup> UPR 2011 recommended expediting the completion of statutes on land rights (77.11).

<sup>75</sup> First round of consultation limited to a few hours in each municipality, the second round was only held at national level. See also limited participation of women in consultations documented in: Rede ba Rai and Global Initiative, *Parallel report submitted to CEDAW*, 2015, p.4



communities.<sup>76</sup> However, current versions of the draft laws still give a lot of power to the State, individuals with land certificates issued through largely unjust and non-transparent processes during Portuguese era or Indonesian occupation, and rich people. Instead of placing a legal obligation on the state to provide alternative housing to people facing eviction, the draft law extends the eviction period to 18 months. While the law contains some protections for community property, the provisions are unclear and do not reflect customary land ownership structures in Timor-Leste. There is a risk that local elite land owners and community and customary leaders could take advantage of unclear provisions relating to customary land and that without proper analysis these provisions could also put women's access to land at further risk.<sup>77</sup>

**48. Government should further review the package of land laws, to ensure compliance with the right to an adequate standard of living, the right to adequate compensation and the principles of free, prior and informed consent. Once revised in compliance with international human rights standards enshrined in the RDTL Constitution, Parliament should adopt the legal framework.**

#### *Social assistance*

49. The amount of resources spent on social assistance in Timor-Leste - do not result in a corresponding level of improved welfare. One of the reasons is the large portion (75 % in 2015)<sup>78</sup> of the total social assistance budget consumed by veteran payments that only benefit 1 % of the population and predominantly benefits men. The *Bolsa da Mãe* (mother's purse) targets families in a situation of high vulnerability living below the poverty line, on condition that their children attend school and are immunised. The program has great potential but is too small in coverage and the size of the benefit is too low to have an appreciable impact<sup>79</sup>. There are also concerns over a lack of effective control mechanisms to ensure the schooling and immunization requirements are fulfilled and that community leaders do not impede access to vulnerable persons who are eligible, or grant access to those that are not eligible.<sup>80</sup>

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<sup>76</sup> These include for example: A significantly better definition of state land (no longer automatically resulting in all previous Indonesian and Portuguese era state land becoming Timor-Leste state when there is a dispute; Opening the door to long-term informal rights (direitu kostumáriu); clarifying hierarchy on property rights; strengthening an important special protection for people being evicted; explaining who is entitled to compensation and refund and linking compensation to people's actual lives. La'o Hamutuk, Briefing on package of land laws available at <http://www.laohamutuk.org/Agri/land/10TransitionalLandLawEn.htm>

<sup>77</sup> Centre of Studies for Peace and Development Timor-Leste, *Women's Access to Land and Property Rights in the Plural Justice System of Timor-Leste*, 2014, pp. 51-53; Shadow report from NGOs (JSMP, PRADET & ALFeLa), *Timor-Leste Government's progress in implementing CEDAW*, June 2015, p.10 and 12; Rede ba Rai and Global Initiative, *Parallel report submitted to CEDAW*, 2015, p.5 USAID, *Non-Customary Primary Industry Land Survey: Landholdings and Management*, June 2005.

<sup>78</sup> Shadow report from NGOs (JSMP, PRADET & ALFeLa), *Timor-Leste Government's progress in implementing CEDAW*, June 2015, p.10. In the 2016 State Budget, the amounts regarding social assistance are as follows: For *bolsa da mãe* (8,449.5 million), elderly and disabled benefit (30,867 million), veterans (106,070 million) and retirement pensions-transitory scheme of the contributory system (1,324 million).

<sup>79</sup> World Bank, *Timor-Leste Social Assistance Public Expenditure and Program Performance Report*, Report No: 73484-TP, 24 June 2013; La'o Hamutuk, *The national impact of benefits for former combatants. Belun seminar presentation*, March 2013 available at [www.laohamutuk.org/econ/pension/VetPension6Mar2013en.pps](http://www.laohamutuk.org/econ/pension/VetPension6Mar2013en.pps); Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined second and third periodic reports of Timor-Leste*, UN Doc. CEDAW/C/TLS/CO/2-3, 24 November 2015, para.32

<sup>80</sup> *Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, Mission to Timor-Leste*, UN Doc. A/HRC/20/25/Add.1, 24 May 2012, paras 71-72; [check article] <http://www.thediliweekly.com/tl/noticias/labarik/13165-mss-failha-kontrola-programa-bolsa-da-mae>

50. Government should allocate the resources required within the State Budget (to be adopted by Parliament), and Government (Ministry of Social Solidarity) should implement a *Bolsa da Mãe program* increased in coverage and size, and with strengthened accountability mechanisms including clear guidelines to community leaders and regular oversight by technical MSS staff at municipal and administrative post level.

## 6. Right to education

51. In a positive development<sup>81</sup> the new curricula developed by government for pre-school and primary education<sup>82</sup> are rights based, inclusive and age-appropriate. The legislation also attempts to find a balance between the use of a language children already know and learning both official languages of Timor-Leste: Portuguese and Tetum.

52. School facilities remain inadequate in number and conditions (such as lack of access to learning materials, sanitation and classroom furniture). Almost half of public schools monitored by civil society in 2013 had structural and physical problems, and despite intensive Government efforts 32 % of schools monitored in 2013 still had structural problems. Civil society monitoring also reveals frequent absenteeism of teachers.<sup>83</sup> The Government has now committed to building - over the next five years - at least 250 new pre-schools and refurbish all presently degraded classrooms in basic schools.<sup>84</sup>

53. A working group comprised of civil society has advocated since 2012 for an official re-entry policy for girls and adolescent women, and documented continued obstacles faced by those who wish to return to school.<sup>85</sup> A draft national policy on inclusive education acknowledges pregnant girls and young mothers as a group that is at risk of unofficial exclusion. The same policy formulates actions to ensure physical or cognitive needs of children with a disability are met. So far Government has focused investments on removing physical barriers to education and on establishing three regional resource centres that provide hearing, visual and intellectual aids. People with disabilities agree that inclusive education is desirable in the long-term but in the short to mid-term more strategic support is needed to ensure teachers and students and properly trained in the use of these devices.<sup>86</sup>

### 54. We commend the Ministry of Education's efforts in developing new curricula. Parliament

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<sup>81</sup> UPR 2011 recommended continued efforts to strengthen its education system, to offer universal education for all – inter alia by increasing support to economically disadvantaged and vulnerable children and children with disabilities – and take steps to close the gender gap by increasing enrolment of girls in secondary and higher education, preventing sexual abuse and harassment and enabling women to return to school after pregnancy (78.36-40)

<sup>82</sup> Adopted by Decree-Law 3/2015 and Decree-Law 4/2015

<sup>83</sup> HAK Association, *Annual Reports on Human Rights in Timor-Leste*, 2013, pp.32-34; 2014 (English version), pp.9-10 and 2015, pp. 14-15 available at <http://www.haktl.org/publikasaun/relatorio/>

<sup>84</sup> Ministry of Education, *Timor Leste national Education For All (EFA) 2015 review*, May 2015, p.47

<sup>85</sup> Rede Feto Timor-Leste, *NGO shadow report, Implementation of CEDAW in Timor Leste*, September 2015, pp.61-63

<sup>86</sup> Briefings and advocacy by ADTL, the Timor-Leste Coalition for Education and others including a submission to the Ministry of Education dated 21 July 2015 on the national inclusive education policy.



should increase State Budget allocation to education. The Government (Ministry for Education) should adhere to its Education For All (EFA) commitments aimed at improving school infrastructure. The Ministry of Education should enhance its monitoring and oversight of teachers to address absenteeism and compliance to the new curricula. Government should adopt the national inclusive education policy with due consideration for inputs by civil society, in particular to ensure an official re-entry policy for women and girls after pregnancy and more strategic support for children with a disability.

## 7. Right to freedom of expression, assembly and association

### *Harassment of human rights defenders*

55. Since UPR 2011, there have been several instances of restrictions placed upon human rights defenders in Timor-Leste. For example, in July 2013 human rights defenders were prevented by police (PNTL) from monitoring and interviewing a group of about 99 potential asylum seekers from Myanmar and Bangladesh.<sup>87</sup> In July 2014, intelligence officers removed from civil society offices banners advocating against life-long pensions for parliamentarians.<sup>88</sup> In a more recent example, a local human rights organization received repeated calls from police to inquire whether it planned a demonstration during the President of Indonesia's visit to Timor-Leste on 26 January 2016. Two armed members of the Timor-Leste Defence Force (F-FDTL) also visited the NGO's office and requested to use the space as a security base due to its proximity to the Indonesian Embassy in Dili, a request the NGO declined. An Intelligence Officer also approached a human rights defender and requested that he immediately remove his t-shirt because it carried the slogan "Free West Papua". Feeling intimidated, the staff complied and that night found alternative accommodation fearing further harassment. Some students visiting the NGO office were arbitrarily searched by police. The NGO lodged a complaint with the prosecutor.<sup>89</sup>

**56. Government should respect the right to freedom of assembly and association enshrined in the RDTL Constitution and should ensure the protection of human rights defenders by holding security personnel involved in harassment of human rights defenders accountable.**

### *Law on media*

57. In 2014, a Press Law was adopted.<sup>90</sup> After intensive advocacy by civil society, including media and human rights groups, the President sought a review of Constitutionality prior to promulgating the law. Some provisions were found unconstitutional by the Court of Appeal, and

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<sup>87</sup> FONGTIL (NGO Forum Timor-Leste), *Letter to President, Prime Minister and NHRI (Provedoria for Human Rights and Justice)*, 26 July 2013

<sup>88</sup> FONGTIL (NGO Forum Timor-Leste), *Letter to General Commander of PNTL and the Head of Intelligence (SNI)*, 24 July 2014

<sup>89</sup> Amnesty International, *Urgent Action*, 27 January 2016 at:

<https://www.amnesty.org/en/documents/asa57/3334/2016/en/>;

The Asian Federation Against Involuntary Disappearances (AFAD), *Statement*, 27 January 2016, at <http://www.afad-online.org/news/10-statements/277-afad-condemns-timor-leste-government-s-harassment-against-asosiasaun-hak-members>

<sup>90</sup> RDTL Law Media Law No 5/2014

consequently removed from the law.<sup>91</sup> However, a government-funded Press Council still has the power to grant, renew, suspend, and revoke journalists' credentials and administer disciplinary sanctions (including fines) for contraventions of the law<sup>92</sup> and thus human rights concerns remain over how the Council - established in 2016<sup>93</sup> - will interpret its role.

**58. Government and the Press Council should respect the right to freedom of expression enshrined in the RDTL Constitution and the ICCPR ratified by Timor-Leste.**

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<sup>91</sup> Briefings and advocacy by La'o Hamutuk on: <http://www.laohamutuk.org/misc/MediaLaw/14MediaLaw.htm#promug>; Freedom House, *Country Report Timor-Leste* at: <https://freedomhouse.org/report/freedom-press/2015/east-timor>

<sup>92</sup> RDTL Law Media Law No 5/2014 article 40 and 44

<sup>93</sup> RDTL Decree-Law 15/2015; Members appointed by parliament in March 2016.