

**NGO Shadow Report Presented to the Child Rights Committee Members
Meeting**

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This is a joint report of

- **Forum Tau Matan – Eyes On Human Rights (FTM)**
- **BA FUTURU**
- **Judicial System Monitoring Program (JSMP)**
- **Alola Foundation**
- **PRADET-TL**
- **Forum Comunicacoes Joventude (FCJ)**
- **Klibur Domin.**

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Summary of Presentation

Presented in 48th Pre-session Working Group

Mrs. Chair Person,

Mr and Ms. Members of the committee,

UN Agency Representatives

Friends from NGOs

Your Excellencies,

As I address this well-regarded body, may I seize the opportunity to extend sincere and respectful thanks to you, Mrs. Chair Person, for allowing an NGO from Timor-Leste to present this report to you. In view of the constraints of time, I shall take no more than 15 minutes to share with Your Excellencies a limited number of issues about the situation of children in Timor-Leste. I will highlight selected issues of concern which feel need to be raised.

The following are three central issues concerning Child Rights in Timor-Leste which I would like to raise to Mrs. Chairperson and members of the committee as follow-up to the Democratic Republic of Timor-Leste Government's report:

Youth and Unemployment

Approximately 60% of the population of Timor-Leste is comprised of children and youth. Historically, youth have played a critical role in the struggle for liberation in Timor-Leste which resulted in independence through the UN administered popular consultation on 30 August 1999.

A source of motivation for the spirit of the resistance was the phrase ``Liberta o Patria e Liberta o Povo`` meaning Free Our Nation and Free Our People.

This phrase is now relevant more than ever in the struggle to free Timor-Leste from poverty, from the lack of education and during the struggle to rebuild the country.

In the five years since independence, the Government has not focused on youth as a priority. This is despite the fact that youth themselves have initiated various activities to assist with district and village level development, just as the phrase "Liberta Patria e Liberta Povo" encourages them to do so.

For example, youth established their own centre in every district to give them the opportunity to exercise their skills and talents in a positive and constructive manner. Despite this type of motivation and activism they continue to be left out by the older generation who forms the Government. This generational divide is argued to be one of the contributing factors in the recent conflict which erupted in April 2006 and is yet to be resolved.

Youth unemployment is another of the factors which contributed to the crisis that Timor-Leste is now facing. Two other youth-related issues have also not been sufficiently addressed by the Government. First, there has been an overall lack of investment in youth centered programs that support literacy and skills training, disabled youth and psychological rehabilitation for those who were detained and tortured by the Indonesian regime. In addition, there has been no help for those who were unable to continue their studies due to their involvement in the liberation struggle. The second area of government shortcoming in terms of youth is that it has yet to acknowledge or recognize the role of youth in the clandestine movement and as combatants. This could be remedied through Government sponsored commemoration days which hold special significance for youth such as the 12 November 1991 Santa Cruz Massacre.

During the recent conflict, police data shows that from July 2006 to September 2007, 130 children were charged with crimes, which is 10% of the 1200 overall cases. Children and youth are members of martial arts groups which fight each other. Although it has not been confirmed whether these crimes are organized or isolated cases, regardless of the outcome, children and youth are heavily affected.

Children and youth have also been involved in the ethnic "East and West" conflict which has contributed to civil unrest and caused the collapse of the police and military in June 2006.

However, youth also play an important role in bringing peace to society through peaceful commemoration of the Santa Cruz Massacre in 2006, by calling for national unity of youth in Timor-Leste and through the recent National Youth Congress held in September. These positive youth activities again illustrate the need for the government to invest in the area of youth development and employment.

With the utmost respect to members of committee, as a representative from the NGO Group from Timor-Leste, I request members of committee to recommend to the Government to invest in the youth sector and support His Excellency President Ramos Horta's initiative to establish a youth parliament, which we believe will provide an opportunity for youth to express their concerns in a formal and respectful manner.

Now I turn to our second issue of concern, the protection of children and development in the country:

Living Conditions

In the case of Timor-Leste, children's issues should be understood as components of a comprehensive approach in analyzing the family environment and parents' ability to care for their children.

Therefore, in terms of this analysis, unemployment is a central issue that the government needs to seriously concentrate on in order to empower each family to be able to provide for the needs of their children.

Moreover, during the recent conflict, dislocation and access to secure housing has also become an issue. Approximately 150,000 people or 5000 households have been displaced. Action needs to be taken to help those who continue to live in the IDP camps. In addition to providing 5000 houses for those who are displaced, the government should also begin planning and implementing longer-term housing programs for all, to avoid tensions and jealousy in the community between people who return from IDP camps and those who were not displaced. As of July 2007 the Timor-Leste Petroleum Fund has accumulated over US\$1.4 billion. These oil and gas revenues should be used in a transparent manner as a means to improve the living standards of the people of Timor-Leste for example by providing long and short-term housing.

Mental health, Juvenile Justice and Human Rights

Excellency Mrs. Chair Person and members of the committee,

On the third topic, that of mental health, juvenile justice and human rights, I bring to your attention two issues. First is psychological rehabilitation for children who have suffered trauma and other mental health issues. Second is the issue of juvenile justice and human rights.

Youth Mental Health

Currently there is a serious lack of resources for mental health services in Timor-Leste. To compound this problem, Timor-Leste has a large number of people who have been severely affected by both historical conflict from April 1974 to October 1999 and the recent conflict in April 2006.

The violence in April 2006 has brought with it numerous cases of homes being destroyed, loss of part or all of personal belongings, exposure to disturbances and threats to one's person.

Many people, young and old, have witnessed horrific events and have experienced major trauma – such as loved ones been killed or tortured, being raped, having one's house burned down and other types of maltreatment.

Many children and young people were involved in the violence which started in April 2006. Children continued to experience traumatic violence, death and injury from fighting between both martial arts and ethnic groups. Tens of thousands of people remain in IDP camps in the capital Dili and elsewhere due to instability and the uncertainty of the political atmosphere. This situation most certainly takes its toll on the mental health of IDPs, particularly children

There are still virtually no trauma facilities or specific programs available for the vast majority of Timorese with mental illnesses. The Government's mental health assistance is under funded and there is a lack of properly trained mental health care professionals.

There are no international organizations with a mental health mandate currently working in Timor-Leste and the local NGOs working in this area are small and can not begin to address the widespread need. This is an important issue for the future of Timor-Leste. If mental health issues are not addressed, the trauma that children and youth have experienced will continue to manifest itself in conflict and outright violence in the future.

Juvenile Justice and Human Rights

The lack of juvenile justice policies to address children who come into contact with the law, both as victims and suspects also merits extreme concern.

Timor-Leste has ratified all seven core Human Rights Treaties and is grateful to the High Commissioner for Human Rights for assisting in the reporting obligations to the Treaty bodies.

In the opinion of Timor-Leste NGO Group, the most important issue is how the treaties can work in the context of Timor-Leste. There are a range of issues that

need to be addressed about the implementation of these Treaties including the issues of Timorese ownership and participation in the process. Discussion about whose responsible it is to carry out implementation and incorporation of the process into domestic legislation, programs and policies is also required.

The crisis of 2006 led to serious breaches of human rights, including the right to life and freedom of movement. The entire justice system continues to be fragile and the juvenile justice components of it are completely lacking.

In addition, it is important for the government to improve the judicial sector in order to gain public confidence, guarantee the rights to life, freedom of movement and protection by the law. The report, conclusions and recommendations of the Independent Commission of Enquiry in the events of the 2006 Crisis mandated by the Secretary-General of the United Nations needs to be considered by each State institution and in particular the justice system.

National human rights mechanisms such as the Office of Provedor of Human Rights and Justice need to be more active in establishing complaint mechanisms and in oversight of each state institution in order to fulfill the recommendations of the Independent Commission of Enquiry.

The Optional Protocol on the Sale of Children, Child Prostitution and Pornography

The sale of children is reported to have declined since independence. During Indonesian occupation there were reports of children being sold by parents to Indonesian soldiers. This continues to happen in West Timor by East Timorese who are living as refugees in Indonesia. There are reports of East Timorese children who live in West Timor being trafficked to some provinces in Indonesia. However, trafficking of children has not been an issue in post-independence Timor -Leste.

Geographically, Timor-Leste is located between two large countries; Indonesia and Australia. This is concerning because there is thus the potential for large markets for trafficked children. In other Asian countries with similar circumstances, such as China and Thailand, the problem of child trafficking has raised such concern that it has become a public issue. Imor-Leste must therefore reflect on the impact of globalization because of the effect it could have on bringing the child trafficking trade from other countries to Timor-Leste. To this end, public awareness needs to be raised about the possibility of trafficking East Timorese children.

Child prostitution and pornography are among others issue of concern which requires Government attention. Reports about the involvement of East Timorese girls in the production of pornographic materials such as DVDs and pictures have raised public concern. Pornography from external media influences is also having an adverse impact on children because they are often used to sell pornographic DVDs and pictures and therefore often become the target of arrest and detention for distribution of illegal materials.

The Optional Protocol on the Involvement of Children in Armed Conflict

The Commission for Reception, Truth and Reconciliation report indicated that many children were used as child soldiers both by the Resistance as well as by the Indonesian military. However there are not yet any rehabilitation programs for ex-child soldiers who suffer mental illness and are handicapped due to trauma they experienced during the Indonesian occupation. During the recent conflict, there have not been reports written on the involvement of children. However as was mentioned above, many children are reportedly involved in the civil unrest which has lead to some children being arrested for their involvement in the violence.

With respect to members of committee, we request you to recommend to the government to develop a comprehensive program to protect and rehabilitate children who are involved in the recent conflict so that they can live in peace and be protected by the community.

Thank you

Submission to the CRC Committee Members

A. Introduction to the preparation of the Shadow Report

This document was prepared to meet the requirement of Article 45 (a) follow-up report to the Government of Timor-Leste's initial report which pertained to the period of May 2002 to June 2005. This report will site some of the issues of concern which the NGO Group feels the need to be addressed by the Government.

This report was prepared together by the Timor-Leste NGO Group which is working on various areas concerning child rights. This report was primarily drafted by Forum Tau Matan (FTM) with the assistance of several representatives from NGOs which also work with issues concerning children in the country.

The Timor-Leste NGO Group is supportive of this report because it aids in sustaining the role of local NGOs to ensure that the CRC will become a reality in the lives of East Timorese children.

During preparation of the initial Government treaty report, NGO participation mainly consisted of providing data and information to the Government for its report. With respect to the provision of Article 45(a), this report will mainly serve as an alternate source of information submitted to the Committee Members for consideration and as a follow-up to the report from the Government of Timor-Leste Government.

B. Selected Thematic Issues of the NGO Shadow Report

1. General Principals

1.1 Non-discrimination Principal (CRC Article 2)

Discrimination is a complex issue in Timor-Leste when referring to equal opportunities for those with disabilities. People with disabilities continue to be disadvantaged in society due to their physical or mental disability. The Government's Initial Report presented data on the number of people with disabilities in the country but this data was not disaggregated on the basis of age, so there are no statistics on the number of children with disabilities. In addition, two organizations which are a part of the Child Rights NGO Network report that children with physical and mental disabilities are not being granted assistance for equal access to appropriate levels of education, care and protection. Particularly those children with disabilities in remote areas cannot access education because there are no means to assist them with their studies.

A further concern is that those children with mental disabilities or illnesses often become the target of sexual abuse. The previous Government (prior to elections in 2007)

did not have policies on care and protection of people with disabilities. Neither does the current Government's Transition Program on Social, Solidarity and Health sector include any specific policy about people (including children) with disabilities.

Recommendation

The Government is requested to create a policy on disability which provides support to the Ministry of Social Solidarity and Ministry of Health to establish national legislation that provides support for people with disabilities.

The Government should grant equal access to education for people with disabilities, support for them to participate freely in public life and provide protection and rehabilitation mechanisms for them to fully develop.

1.2. Best Interests of the Child in Adoption and Divorce

The principle of making decisions based upon the best interest of the child does not apply in judicial proceedings or administrative decisions when it comes to the issue of adoption and divorce. This is due to the absence of national legislation in the case of adoption, and by the fact that in terms of divorce cases, it is very difficult for the judiciary to make a decision because it is often a dilemma about what are the best interests of the child.

In addition to that, when it comes to decisions about sharing parental responsibility over a child, often children are severely neglected or abandoned because of a low family income and unemployment.

FTM has observed two recent divorce cases. Both of which the court decided to transfer the majority of the responsibility of all the children to the mother, while the husband had only a small responsibility for the children. FTM continued to monitor the cases and found that these children were abandoned by both parents. These children are thus at risk to be adopted despite there not being national legislation which regulates adoption.

Recommendation

The Government should establish a policy on both domestic and international adoption. In the cases of divorce, the Government should establish national child care centers in anticipation of children being abandoned due to the lack of means to care for them by divorced parents.

2. Civil Rights and Freedom

In relation to the following articles: Freedom of Expression (Art. 13) and Freedom of Association & Peaceful Assembly (Art. 15), Government Decree Law 2005 on Freedom

of Assembly and Demonstration allows Timorese to freely express their opinions in a manner which respects law and order.

FTM has observed a number of demonstrations which were joined by children and young people including the 19 day demonstration held in Dili in April 2005. This was well attended by young people and was organized by the Catholic Church in Dili to protest against Government's proposal to remove religious teaching from education curriculum. The demonstration was for the most part peaceful and had a friendly atmosphere and almost no major incidents occurred.

Public gatherings to celebrate National and International Children's Days as well as community events such as the Commemoration of the Santa Cruz Massacre on 12 November are examples of youth exercising their right to peacefully assemble. Children and young people's participation in the organization and planning of these events such as the Santa Cruz Massacre commemoration day illustrates the growing awareness that children participated in the struggle for liberation along with adults.

However, several cases of demonstrations which turned violent show that children are also involved as both victims and offenders. FTM monitoring of the campaigns for both the presidential and parliamentary elections in 2007 found that a number of children were involved in several cases of fighting among political party followers. FTM conducted a press release condemning violence during the campaign period. The cases were brought to the attention of National Election Council and UNMIT in the attempt to stop using children for campaigning to prevent them from being involved in political violence. In addition, a public awareness campaign was conducted in the hopes of preventing children from being a part of the election campaigns.

Recommendation

The Government should support NGO initiatives to conduct civic education activities for the community as well as the police, prison staff and community leaders. Legislation concerning the freedom of assembly and demonstration should be made public as part of a civic education program.

The Government needs to provide police with more training on crowd control and better equip police to prevent violence during demonstrations.

2.2 The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment (Art. 37(a))

The joint UNICEF-Plan International report "Speak Nicely To Me' A Study on Practices and Attitudes about Discipline of Children in Timor-Leste" found that parents use physical punishment to manage children's behavior. FTM and JSMP have also documented a number of cases of torture and other cruel, inhuman or degrading treatment towards children during arrest and detention.

During the recent ethnic conflict in 2006 followed by conflict between two martial arts groups; ``77`` against ``SHT``, FTM documented 130 cases of children coming into conflict with the law. FTM also documented a number of cases of torture against children including the excessive use of force when arrested and detainment of suspects.

NGOs continue the campaign for public awareness against torture through disseminating information via public awareness programs at the community as well as by raising complainants in relation to police misconduct to the relevant institutions. NGOs have also made recommendations to the CAVR.

Recommendation

The Government and the Ministry of Justice in particular should develop measures to undertake internal oversight mechanism to address police and prison staff misconduct.

3. Environment and Alternative Care

3.1 Abuse and neglect, including physical and psychological recovery and social reintegration (Arts. 19, 39)

The Victim Support Service Unit within the Judicial System Monitoring Program (JSMP) reports that as of July 2007, 179 cases of sexual violence were brought forward, 24% of which included children as the victims. NGOs continue to provide safe houses and counseling for the victims, however due to their limited capacities NGOs cannot accommodate large numbers of victims. In terms of the neglect of children in Timor-Leste, Forum Comunicacoes Joventude (FCJ) registered between 250 and 400 street children from 2005 to 2007. These children are now a part of the ongoing program of temporary shelter runs by FCJ.

The use of physical punishment in Timor-Leste is extremely prevalent. Violence is used as discipline at home and at schools throughout the country. The ``Speak Nicely to Me`` report found that both teachers and parents use various types of violent punishment to discipline children.

Recommendation

Programs to prevent violence in schools and homes are required, including the protection of orphans and children at risk. The Ministry of Social Solidarity, Ministry of Health and Ministry of Justice are called upon to establish inter-ministerial cooperation in order to create a center for child protection.

The Secretary of State for Security is urged to provide major support to the Vulnerable Persons Unit of the National Police in order for it to function in a professional manner that assists children who come into conflict with the law and those children who are victims of abuse. In addition, laws concerning domestic violence need to be re-

considered by the Council of Ministers. Furthermore, it is requested that the Ministry of Education develop a code of ethics and conduct for teachers including provisions for non-violence in teaching.

4. Basic Health and Welfare

4.1 Mental health

Currently there is a serious lack of resources for mental health services in Timor-Leste and this is exacerbated by the large need for assistance. In addition to the usual mental health issues that every society faces, Timor-Leste has a large number of people who have been severely affected by both historical and recent conflicts.

Many people, young and old, have witnessed horrific events– watching loved ones being killed, tortured, raped and other brutal maltreatment. Others have experienced many of these same injustices. The violence in April 2006 has brought with it numerous cases of homes being destroyed, loss of part or all of one's personal belongings, exposure to daily disturbances and threats to one's person. More than 150,000 people were displaced due to the insecurity which arose in 2006 and to a certain extent which continues now.

The violence and anxiety experienced by children during armed conflict can have both short and long-term effects on their mental health, quality of life and subsequent behaviors as adults¹. There are still almost no trauma facilities or even counselors available for the vast majority of Timorese. The Government's mental health assistance is under funded and there is a lack of properly trained mental health professionals. There are no international organizations with a mental health mandate currently working in Timor-Leste and the local NGOs working in this area are small and cannot begin to address the widespread need. Moreover, this is an important issue for the future of Timor-Leste. If mental health issues are not addressed, the trauma that children and youth currently experience and have experienced in the past could continue to manifest itself in poor social reintegration and violence in the future.

Recommendation

The Government is urged to provide programs for trauma counseling across the country with specialists who can perform diagnoses and can properly treat mental illness. Government should allocate sufficient funds to the Ministry of Health and establish inter-ministerial cooperation with relevant ministries to address this issue.

¹ Machel, Graca, The Impact of armed conflict on children, UN. Doc A/51/306, 26 August 1996.

4.2 Standard of living (Art. 27.1-3)

Inadequate Standard of Living Affects the Lives of Children

The general perception of Timorese people was that one of the factors which contributed to the recent ethnic conflict which arose in 2006 was land and housing disputes among people in the community.

A few months after the civil unrest – the United Nations High Commission for Refugees (UNHCR) erected approximately 4000 tents for people in IDP camps. Many East Timorese children suffer from an inadequate standard of living because their family does not have a house, especially those who are IDPs. Approximately 5000 houses are needed to address the housing requirements of those in the IDP camps.

Recommendation

The Government needs to establish legislation based on Article 58 of the Constitution which concerns housing and land issues to avoid disputes between people in the community over contested land and houses.

By establishing a permanent solution to the housing and land issues it is hoped that future disputes are avoided. This will contribute to making the lives of children more peaceful.

5. Education

Many children do not attend school due to the lack of family income to pay for costs associated with school. In addition, school facilities are very poor, especially in remote areas.

There are few schools in the rural areas and many only have grades one and two. To obtain an education after primary school, children must attend school in cities away from their homes and therefore must live with relatives or attend church-run boarding schools. Living away from their immediate families makes the children more at-risk for dropping out of school and in some cases becoming victims of abuse and neglect. NGOs have documented a number of cases of children being poorly treated by their relatives.

The Government report says a quarter of all children are unable to understand Tetum or Portuguese. Almost no Timorese children speak Portuguese in their homes as their native language. There are very few books published in the Tetum language, which is the language that the majority of the children and parents speak other than local dialects. This is problematic because Tetum and Portuguese are used in primary schools, so often children are denied their full right to education because they cannot understand the language of instruction.

While there are laws concerning the quality of teaching as outlined in the Government's report, professional teacher's training is needed. There is also the need to improve living standards of the teachers. In the districts, most teachers do not live in the remote mountain areas. Therefore they often must walk from 4 to 6 hours to reach the schools in the mountains where they teach. Also, in some rural areas, children have to walk up mountains to reach their school.

Recommendation

The Government needs to establish more schools in the rural areas, provide accommodation so teachers can stay near to the school and improve teaching quality. The Ministry of Education and Ministry of Social Solidarity needs to provide scholarships for children from very poor families access to the nine years of compulsory education. The Government should also increase teachers' salaries and provide more recreational equipments for children in all schools.

6. Special Protection Measures

6.1 Children in the Justice System (Arts. 37, 39, 40)

The Indonesian Penal Code continues to be applicable in Timor-Leste. The current minimum age for criminal responsibility is 16 years. This means that children 17 years of age are prosecuted as adults.

The main problem at present is the unavailability of legal representation, particularly when the family cannot afford a lawyer. This is reported to be a major cause of delay in court hearings related to juveniles and causes long pre-trial detention of juveniles.

With respect to detention or imprisonment, minors should be kept in separate facilities from adults (Section 45(11) CRC), given that they require special assistance. This is particularly the case when taking into account needs of young female offenders.

Current practice related to the care of juveniles in detention requires improvement. Timor-Leste has no separate juvenile detention facilities, has no rehabilitation centre for those who suffer mental illness and has no diversion mechanism or community rehabilitation programs for youth offenders.

During the civil unrest in 2006, by September 2007, reportedly 130 cases against juveniles were brought to the police². These cases involved 10 serious offences committed by children, including some children aged between 10 and 12 years old accused of murder and arson. Approximately 100 other children were charged for lesser offences.

² FTM's interview with Deputy General Commander on Statistic of crimes against children documented by VPU, 26 September 2007.

By September 2007, it was reported that there were seven juveniles detained in Becora Prison. Four had been sentenced for serious offences and two were awaiting trial. The number of children in detention has been relatively constant for the past five years.

There are three prison facilities in Timor-Leste, but juveniles are only placed at the Becora prison in Dili. The four juveniles presently detained are kept in a separate 'children's block'. However, during day and when there is recreational time they are not isolated from the adult prisoners.

During the course of FTM monitoring of the justice system with special attention to juveniles in detention, a number of irregularities and deficiencies have come to our attention regarding the work of the judiciary, prosecution and defense.

The cases concern procedural irregularities violating the rights of juvenile detainees, suspects and the victims of crime. They reflect problems with public defenders, prosecutors, and judges as well as prison authorities, detention and prison conditions.

The performance of the judicial system continues to impact upon the performance of the police investigation unit and prison service. Delays in the provision of justice have resulted in prolonged pre-trial detention and unrest among inmates.

In regards to the procedural irregularities within the Court system, although there is a clear connection to the police, the nature of these irregularities is different than those which occur during the arrest and investigation process.

During the course of FTM monitoring police misconduct, both national and international police have been implicated in improper procedure and misconduct. Such cases are referred to the Police Professional Standards Unit and Office of Ombudsman of Human Rights and Justice.

6.2 Unlawful Detention in Prisons

The number of unlawfully held inmates in Timor-Leste continues to be a matter of serious concern. One significant reason for this is the failure of Judges to review the continued detention of pre-trial detainees.

For example, there is the case of a 17 year old male who was detained for assault from September 2004 until July 2005, when he was granted release by a Habeas Corpus application from FTM's lawyer. In another case, a 17 year old male was imprisoned for eleven months for attempting to steal a live chicken. In June 2006 the situation of unlawful detention of youth in prison had not improved as illustrated by the case where three children who were involved in public disturbances were kept in pre-trial detention for almost one year. A similar situation is faced by adults in prison. For

example, by July 2005, a total of 111 out of 204 people in Becora Prison are pre-trial detainees. 45 people of the 111 are considered to be long-term pre-trial detentions.

Recommendations

Judges and prosecutors should be reminded of the legal requirements to review continued detention of pre-trial detainees accordingly.

A prison oversight mechanism should be established as outlined in the applicable regulations. Also, public defenders and lawyers should be allowed to and indeed be encouraged to regularly visit their clients to assess the status of imprisonment.

6.3. Decisions to Detain Suspects in Pre-trial Detention

The criteria for the imposition of pre-trial detention are set out in Criminal Procedure Code. However, decisions that have been made by Judges to impose pre-trial detention do not appear to have followed these criteria³ even in cases for which the maximum penalty is more than five years. This is contrary to the proper treatment of juvenile suspects, especially when a child is held for a long period in pre-trial detention even for minor crimes like attempting to steal a live chicken.

Recommendation

Judges and prosecutors should be re-instructed about the legal criteria which must be met before a decision can be made concerning pre-trial detention.

6.4 Delays in Hearings and/or Trials

The way in which cases are scheduled for hearing before the trial Judge or panel of Judges is inefficient and permits cases to be 'lost' within the system. This affects the victims and witnesses, especially those from remote areas, because it takes up valuable time returning to court if there are delays. It also contributes to the lack of trust in the formal justice system. People living in rural areas therefore often prefer to take cases to the traditional justice system even if this is inappropriate. For example, in such instances where there are charges of domestic violence and sexual abuse and even when the accused is a family member.

Recommendation

A system of case management for the Court Registry should be established, as well as training for Judges and clerks in case management. The Superior Council of the Magistracy should review the progress of the implementation of the case management system.

³ FORUM TAU MATAN monitoring indicates however that pre-trial detention is frequently not imposed in cases of domestic violence or sexual assault within families. For instance, there is the case of former Minister of Interior who was under house arrest for almost 5 months before being transferred to Becora prison and later was authorized to leave the country for health reason.

6.5 Rights to Defense Counsel

FTM monitoring indicates that detainees are frequently frustrated with the lack of communication with their lawyer. The slow pace of justice and the lack of professional attention from the public defenders and private lawyers to their clients are contributing factors to unrest amongst detainees.

FTM frequently receives complaints from detainees that their counsel does not visit their clients in detention in all three prisons, including Becora.

Interviews by FTM with detainees indicate a great frustration with the lack of communication with their lawyers. Many detainees do not know the name of their counsel and have never received a visit from them.

FTM considers the lack of the most basic professional attention from many of the lawyers a serious contributing factor to unrest and loss of confidence amongst detainees in the formal justice system.

For example, three children who are inmates in Becora Prison frequently complain to FTM about a lack of attention from their counsel. Many of them have never seen their lawyer and have no idea about the status of their case. In February 2005, FTM was informed by the Public Defenders Office that they do not attend these cases while they are attending training courses. It appears that the office continues to lack basic case management.

In July 2005, FTM helped in the release of a 17 year old male and his uncle from Becora Prison. Although they were only suspects, they were held in custody for 11 months for a minor case. The G-RDTL Division of Social Services (DSS) indicated that the case was handled by the Public Defenders Office but the lawyer was only present at the preliminary hearing but after that he never showed up because the public defender was attending a course that was offered to all judicial actors who had not passed the Government assessment.

Recommendations

A duty-roster system should be established to ensure that public defenders are available after hours to assist individuals who are in police custody. Also, a case management system should be established as a matter of urgency which would also ensure that the distribution of cases among the public defenders is appropriate.

A Code of Conduct and appropriate accountability mechanisms should be established for public defenders. The National Parliament needs to produce legislation to regulate the operation of private lawyers in Timor-Leste.

6.6 Courts Outside Dili

The Oecussi, Baucau and Suai District Courts function in a limited way, contributing to delays in judicial proceedings.

Recommendations

Efforts by the Ministry of Justice to fully staff and equip the District Courts outside Dili including improving living conditions and protecting the employees should be supported by the Government.

The Ministry of Justice is called upon to review administrative and other commitments of district judicial officers that require their presence in the districts, including provisions about protection of not only judicial employees, but also witnesses.

7. Lack of Case Management

Inadequate case management at all levels of the judicial system is one factor contributing to unlawful detention in prisons and delays in processing of cases.

In mid of July 2005, upon checking the files for three detainees who had been in pre-trial detention for more than nine months at Becora Prison, Forum Tau Matan found that two detainees had in fact been in prison for more than nine months, with one that was detained for eleven months, since September 2004. This information was recorded in the Becora Prison master list and Office of Prosecutor case registration.

Recommendation

Well-coordinated systems of case management must be implemented in all the sectors of the Court as a matter of urgency, including fully equipped courts, prosecutors, and public defender staff.

8. Treatment of Juvenile Suspects

Inadequate attention appears to be given to the special provisions for juvenile suspects in the law and international standards outlined in the Convention on the Rights of the Child.

Recommendations

Instruction should be issued to Judges, prosecutors, public defenders, prison staff and police regarding the issues surround the special legal provisions for the treatment of juvenile suspects and the obligations of Timor-Leste under the CRC.

Since children between ten to 12 years old have been arrested for serious offences including murder and there exists a culture of retaliation, it is important that training about that the Ministry of Justice conducts training about special provisions for juvenile suspects. This is especially important in the case in terms of the obligations to establish separate detention facilities and or protection centers for children who can be held

accountable for their actions and for those who are not legally accountable due to their young age.

The Ministry of Social Solidarity is called upon to issue instructions to the Division of Social Services and through inter-ministerial collaboration, to establish special facilities for physical and psychological recovery and social reintegration of children as part of the obligations of Timor-Leste under CRC (Arts. 32-36).

9. Traditional Justice System

Delays in achieving justice through the formal justice system contribute to the increasing number of cases being brought to the traditional justice system where in certain cases its appropriateness is called into question. However because the traditional justice system has existed for far longer than the formal justice system and comprises an important part of community life, there is the need for it to be harmonized with national legislation concerning its relations with the formal justice system.

Recommendation

The relationship between traditional justice mechanisms and the formal justice system needs to be defined and some of the positive elements of the traditional justice system need to be incorporated into the formal justice system.

For instance, traditional practices could be incorporated into diversion mechanisms including the procedures, structures and programmers which may enable many - possibly most - minor offenders to be dealt with by non-judicial (traditional justice) bodies instead of the formal court system (CRC 40.3.b).

The Ministry of Justice will need to develop statutory services and administrative bodies to deal with the traditional justice system as part of its social rehabilitation services. Training should be given to community leaders on how to apply traditional justice practices as way for social rehabilitation.

NGOs General Recommendation to Timor-Leste as State Party to the Convention on the Rights of Child

On Children and Youth

Many children and young people were involved in the violence that has taken place since April 2006. Children witnessed and experienced traumatic violence, death and injury from fighting between martial arts groups and as a result of ethnic conflict. Many people were also displaced. Tens of thousands of people remain in IDP camps in the capital Dili and elsewhere due to instability and uncertainty surrounding the political atmosphere.

This situation reminds many Timorese of the situation in the civil war and during Indonesian occupation from 1974 to 1999. The Commission for Reception, Truth and Reconciliation (CAVR) report ``Chega`` indicates that many children were victims of violence, were orphaned, were separated from their parents, and were disadvantaged by the lack of access to health, education and other services during the Indonesian occupation. Some children were taken away from their families by the Indonesian military and officials and continue to remain separated from their families. Taking this and more current events as lessons learned, we request the Committee Members to follow-up with the Government of Timor-Leste to implement the following recommendations:

- Ensure that adequate support is provided to institutions responsible for the implementation of the CRC. In addition, the CRC should be promoted in the community, through both formal and informal education .
- Adequate resources should be allocated to the creation of relevant legislation which encourages the development of infrastructure that supports children's sports so that the potential of sport to contribute to improved community relations can be fully realized. This will assist in the development, protection and participation of children and youth .
- Through bilateral cooperation with Indonesia, both countries must put forward their best efforts to ensure the reunification of children separated from parents and promote the reintegration of those children into their families and communities.
- National Parliament needs to endorse the CAVR report and request the Government to follow-up on all necessary recommendations in regards to children and youth
- Reproductive health education programs that are accurate, balanced, comprehensive and that promote responsibility, should be provided through the formal education system to the youth of Timor-Leste

- Measures need to be taken to ensure that the Government policy of universal formal and informal education is extended in practice to all children, especially to reach orphans, the disabled and those in remote rural communities. Furthermore, there should be a focus on providing the opportunity for all female children to have full and equal access to formal education and vocational training.