

ACCESS TO JUSTICE FOR CHILDREN: TIMOR-LESTE

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I. What is the legal status of the Convention on the Rights of the Child (CRC)?

A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?

Timor-Leste ratified the CRC in 2003, through a parliamentary resolution which was then published in the official gazette.

Furthermore, Timor-Leste ratified the Optional Protocols to the CRC on the Sale of Children, Child Prostitution and Child Pornography (Parliamentary Resolution n. 17/2003) and on the Involvement of Children in Armed Conflict (Parliamentary Resolution n. 18/2003). As at the date of this report, the third Optional Protocol on a communications procedure has not been ratified.

B. Does the CRC take precedence over national law?

The CRC takes precedence over any conflicting national laws. Article 9, Paragraph 3 of the Constitution reads “[a]ll rules that are contrary to the provisions of international conventions, treaties and agreements applied in the internal legal system of Timor-Leste shall be invalid.”¹ Furthermore, Article 23, Paragraph 1 of the Constitution provides that the interpretation of constitutional rights shall not implicitly exclude other human rights.

C. Has the CRC been incorporated into national law?

The CRC and other international instruments ratified by the Timorese government apply directly in the national legal system. Article 9, Paragraph 2 of the Constitution of Timor-Leste states that “[r]ules provided for in international conventions, treaties and agreements shall apply in the internal legal system of Timor-Leste following their approval, ratification or accession by the respective competent organs and after publication in the official gazette.”

The Constitution of Timor-Leste codifies a national responsibility to uphold children’s rights. Article 18, Paragraph 1 enshrines children’s right to protection by the family, the community and the state, particularly against “all forms of abandonment, discrimination, violence, oppression, sexual abuse and exploitation.” Further, Article 18, Paragraph 2 guarantees for children all “universally recognized” rights, including those granted by international treaties that the State has ratified or approved.

¹ Available at: www.constitution.org/cons/east_timor/constitution-eng.doc (English) and http://timor-leste.gov.tl/wp-content/uploads/2010/03/Constituicao_RDTL_PT.pdf (Portuguese).

Despite the enumeration of children's rights in the Constitution and the obligations imposed by the CRC, Timor-Leste does not currently have a comprehensive framework for children's rights in national law. However, the state upholds some of the rights granted in the CRC in three principle pieces of legislation:

- First, the *Código Civil* (Civil Code) imposes responsibilities on parents and relatives for the provision of care for each child.²
- Second, the *Código Penal* (Penal Code) criminalises various offenses that would constitute violations of children's rights, including child prostitution,³ child pornography,⁴ sexual abuse of a minor,⁵ and mistreatment of a minor.⁶
- Finally, the 2012 *Lei Contra a Violência Doméstica* (Law Against Domestic Violence) expanded the legislative basis for the protection of child rights by redefining the enforcement scheme and remedies for crimes against children in the Penal Code.⁷

Furthermore, the draft *Código da Criança* (Child's Code) would reinstate the principles and obligations enshrined in the CRC, though considering that the CRC is already directly applicable in the country, the Child's Code would be redundant and would fail to provide much needed legal procedures for child protection interventions.⁸

D. Can the CRC be directly enforced in the courts?

Although the CRC has assumed a place in national law, the lack of enabling internal legislation limits the applicability of some of its provisions.⁹ Enforcement at present must rest on the overlap between the CRC and the sources of national legislation discussed above.

E. Are there examples of domestic courts using or applying the CRC or other relevant international instruments?

In their judgments, the Timorese courts do not typically apply the CRC or other international instruments without some basis in national legislation.¹⁰ This is changing, however. Earlier this year a court directly applied the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to a domestic violence case.¹¹

² *Código Civil*/ Civil Code 2011, Articles 1754, 1759, and 1761.

³ *Código Civil*/ Civil Code 2011, Article 175.

⁴ *Código Civil*/ Civil Code 2011, Article 176.

⁵ *Código Civil*/ Civil Code 2011, Article 177.

⁶ *Código Civil*/ Civil Code 2011, Article 155.

⁷ *Lei Contra a Violência Doméstica*/Law Against Domestic Violence 2010.

⁸ Comments provided by Mariana Pinto, Child Justice Expert, August 2015.

⁹ East Timor Law and Justice Bulletin, *Violence against children in Timor-Leste*, 19 August 2012, available at: <http://www.easttimorlawandjusticebulletin.com/2012/08/violence-against-children-in-timor-leste.html>.

¹⁰ East Timor Law and Justice Bulletin.

¹¹ See

<http://jsmp.tl/wp-content/uploads/2015/01/JSMPJSMPkongratula-tribunal-tanba-aplika-instrumentu-CED>

In published judgments since 2008, the appellate courts have only mentioned the use of international instruments in the context of children's rights once. The Appeals Court in Dili noted that children in Timor-Leste enjoy the right to special protection by the family, community and the state, particularly against all forms of violence, oppression, sexual abuse and exploitation, "and they enjoy all of the rights that are universally recognized for them, as well as all of those that are enshrined in international conventions duly ratified or approved by the state."¹² All other child protection judgments founded their reasoning in the Civil Code, the Criminal Code, or the Law Against Domestic Violence.¹³

II. What is the legal status of the child?

A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children's rights?

As discussed above, children's rights as contemplated by the CRC are not directly actionable, despite the fact that the CRC has technically been part of the national law since its ratification. A plaintiff can bring a constitutional law claim based on the children's rights provisions of the Constitution (see section III.A below for further details). However, child rights claims are typically based on civil or criminal legislation in Timor-Leste.

In civil matters, the published decisions by the Timorese Court of Appeals rarely deal with issues of child rights. The primary exceptions are custody battles. In such cases, a parent or relative often initiates the case against another with a conflicting claim.¹⁴

In criminal cases, the public prosecutor is charged with enforcing protection from violations of children's rights. The public prosecutor receives complaints and also pursues charges at his or her discretion.¹⁵ A typical child rights violation under criminal law begins with a complaint made on the child's behalf by a concerned guardian or family member, after the child reported the alleged violation to them. Common scenarios include incest or sexual abuse.¹⁶ Most crimes against children, however, are public crimes under Timorese law and therefore procedures do not need to be initiated by a formal complaint from the victim or his or her parents/guardians.¹⁷

[AW-iha-kazu-violensia-domestika_ENGLISH.pdf](#); Comments provided by Mariana Pinto, Child Justice Expert, August 2015.

¹² Processo n 59/CO/09/TR, Tribunal de Recurso, Dili/ Case n 59/CO/TR. Court of Appeals, Dili, 2009. ("...E goza de todos os direitos que lhe são universalmente reconhecidos, bem como de todos aqueles que estejam consagrados em convenções internacionais regularmente ratificadas ou aprovadas pelo estado.")

¹³ See: <http://www.tribunais.tl/?q=node/29>.

¹⁴ Processo n 59/CO/09/TR, Tribunal de Recurso, Dili/ Case n 59/CO/TR. Court of Appeals, Dili, 2009.

¹⁵ *Código do Processo Penal*/ Code of Criminal Procedure 2006, Article 48.

¹⁶ See Ac-20-01-2011-P-79-Co-2010-TR (sexual abuse of an eight year old victim by a nineteen year old defendant); Ac-21-07-2011-P-53-CO-2011-TR (sexual abuse of a twelve year old victim by her stepfather); Ac-25-03-2011-P-22-CO-2011-TR (sexual abuse of father by daughter).

¹⁷ Comments provided by Mariana Pinto, Child Justice Expert, August 2015.

The Law Against Domestic Violence spells out the consent needed for state intervention in situations covered by that law. For children at least sixteen years of age, only the consent of the child is required.¹⁸ Children from twelve to sixteen years old require the consent of a legal guardian to request intervention; however, if the legal guardian is the agent of the crime, or obtaining the requisite consent would take too long to prevent further abuse, the consent of the child is enough.¹⁹ For children under twelve years of age, the child can request help in cases of child abuse.²⁰

B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?

The Civil Code defines a child as anyone under seventeen years who has not been emancipated.²¹ Children “lack the capacity to exercise their rights” unless otherwise specified in the Civil Code.²² Parents are in charge of the disposition of the child’s rights in civil court, except that in cases of a conflict of interest between parent and child, the court will appoint a special trustee to represent an unemancipated minor.²³ A minor in the custody of his or her parents must get this approval to file a claim in Civil Court.²⁴ In the case of disagreement between the parents on the disposition of the case, the court will either select one parent to pursue the child’s interest, appoint a special trustee to represent the child, or entrust the Public Prosecutor with the case.²⁵

In the Criminal Code in general, any crimes that require a referral to begin proceedings must be brought by a legal guardian for anyone under sixteen, unless that guardian is the agent of the crime.²⁶

C. In the case of infants and young children, how would cases typically be brought?

In the case of infants or young children, a case would be brought in the same way as detailed in section II.B. above.

D. Would children or their representatives be eligible to receive free or subsidised legal assistance in bringing these kinds of cases?

Children would be eligible for legal assistance under the Law Against Domestic Violence and through the efforts of various legal aid societies. See sections IV.B. and IV.C. below for further information.

¹⁸ *Lei Contra a Violência Doméstica/Law Against Domestic Violence 2010*, Article 5, Paragraph 2.

¹⁹ *Lei Contra a Violência Doméstica/Law Against Domestic Violence 2010*, Article 5 section 3-4.

²⁰ *Lei Contra a Violência Doméstica/Law Against Domestic Violence 2010*, Article 5 section 5.

²¹ *Código Civil/ Civil Code 2011*, Article 118.

²² *Código Civil/ Civil Code 2011*, Article 119.

²³ *Código Civil/ Civil Code 2011*, Article 1761.

²⁴ *Código do Processo Civil/ Code of Civil Procedure 2007*, Article 15.

²⁵ *Código do Processo Civil/ Code of Civil Procedure 2007*, Article 17.

²⁶ *Código Penal/ Criminal Code 2009*, Article 124; *Código do Processo Penal/ Code of Criminal Procedure 2006*, Article 214. *But see* section IV(A).

- E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

In the case of disagreement between the parents on the disposition of the case, the court will either select one parent to pursue the child's interest, appoint a special trustee to represent the child, or entrust the Public Prosecutor with the case.²⁷ For further details, see section II.B. above.

III. **How can children's rights violations be challenged before national courts?**

- A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

Section II.A underscores the two primary means for redress of children's rights abuses in national law; there are alternative methods to challenge violations. First, the Timorese *Provedor de Direitos Humanos e Justiça* ("PDHJ", Ombudsman for Human Rights and Justice) has the power to challenge government actions that infringe upon Timor-Leste's human rights obligations.²⁸ The PDHJ's mandate is to protect and promote human rights and good governance.²⁹ Article 27, Paragraph 1 of the Timorese Constitution states that the PDHJ shall be an "independent organ in charge to examine and seek to settle citizens' complaints against public bodies, certify the conformity of the acts with the law, prevent and initiate the whole process to remedy injustice." As such, the PDHJ is a likely avenue through which to challenge violations of children's rights, where the violation arises from a public institution. At present, the PDHJ's approach has been to act as a liaison between citizens and the public prosecutor, to which the PDHJ simply referred cases.

Beyond the above, litigants can also try to challenge children's rights violations through constitutional litigation, based on the rights guaranteed in Article 18 of the Timorese Constitution. At present, the highest court available for a constitutional challenge is the Court of Appeals in Dili. No challenges based on the constitutional guarantee of children's rights have yet made it to this court.³⁰ However, the Constitution contemplates the creation of a higher Supreme Court of Justice (*Supremo Tribunal de Justiça*) in Article 124. Included within the mandate of this court would be the administration of justice in constitutional claims.³¹ Although this court has not yet been created, it may eventually prove a more likely avenue for children's rights litigation in the future.

- B. What powers would courts have to review these violations, and what remedies

²⁷ *Código do Processo Civil/ Code of Civil Procedure 2007*, Article 17.

²⁸ See: <http://www.seanf.asia/index.php/about-us/timor-leste>.

²⁹ See: <http://vagaservisutimorleste.wordpress.com/2013/08/09/pdhj-good-governance-research-officer-cd-20th-august-2013/>.

³⁰ See: <http://www.tribunais.tl/?q=node/29>.

³¹ Constitution of Timor-Leste, Article 124 (2).

could they offer?

In civil cases, the courts can rule on the adequacy with which parents provide for the security, health, and education of their children.³² Should the court find that the parent or parents have failed in their obligations to the rights of the child, they can order alternative guardianship for the child.³³ Parents have the right to select a guardian for the child first; if the court rejects their decision, it appoints a guardian.³⁴

In criminal cases, the court can impose a variety of remedies. At the outset of the case, the court can order precautionary measures, such as preventative detention, if there is strong evidence that a crime was committed that could carry a sentence of more than three years.³⁵ Further, in cases of domestic violence, where further psychical, psychological or sexual aggression are “reasonably foreseeable,” the LADV permits the court to remove the accused from the household or to prohibit the accused from contacting the family.³⁶

Following a guilty verdict, the court can choose between incarceration and a lesser sentence. Incarceration time varies by crime, as laid out in the Penal Code.³⁷ If the court elects a lesser penalty which does not involve incarceration, the LADV specifies that in cases of domestic violence the court must be satisfied that the safety of the victim is guaranteed, that such lesser penalty is necessary for the unity of the family, and that the family will receive follow-up visits from social services.³⁸ Furthermore, the court may order the defendant not to contact the victim for up to three years.³⁹

C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?

At present, there appears to be no concrete basis for litigation in which no victim is named. In the future, when the Supreme Court of Justice is convened, rights litigation might be possible on a constitutional basis without naming a specific victim.⁴⁰ However, all constitutional litigation published to date has dealt only with the separation of powers or the unconstitutionality of legislation.⁴¹

D. Is any form of collective action or group litigation possible, with or without naming individual victims?

³² *Código Civil*/ Civil Code 2011, Article 1759.

³³ *Código Civil*/ Civil Code 2011, Article 1806.

³⁴ *Código Civil*/ Civil Code 2011, Article 1815.

³⁵ *Código do Processo Penal*/ Code of Criminal Procedure 2006, Article 194.

³⁶ *Lei Contra a Violência Doméstica*/Law Against Domestic Violence 2010, Article 37.

³⁷ See footnote 53 and 63 infra.

³⁸ *Lei Contra a Violência Doméstica*/Law Against Domestic Violence 2010, Article 38.

³⁹ *Id.*

⁴⁰ Constitution of Timor-Leste, Article 124.

⁴¹ The only cases published span 2001-2011, see: <http://www.tribunais.tl/?q=node/29>.

Group litigation is possible in Timor-Leste. The group must appoint a representative, as controlled by statute or contract.⁴² The representative's function ceases as soon as the action which required representation ends.⁴³ Any group that does not appoint a representative or is not legally constituted, but functions as though it were, can be sued but cannot sue.⁴⁴

E. Are non-governmental organisations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

A properly constituted civil organisation enjoys full "judicial personhood" which means it enjoys the right to sue when harmed and to intervene in cases that implicate its interests.⁴⁵ However, most NGOs focusing on advocacy on behalf of children in Timor-Leste help with legal representation in particular cases or focus on affecting the legislative agenda, and public interest litigation does not seem to be prevalent.⁴⁶

IV. **Practical considerations.**

A. Venue. In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

At present, the four district courts and one appellate court compose the judicial structure of the Timorese judicial system. The district courts sit in Dili, Baucau, Oecussi and Suai; a plaintiff or victim would need to initiate proceedings in one of these four courts. The Court of Appeals also sits in Dili, the capital and largest city in Timor-Leste. This court currently also fills the role of the future independent Supreme Court of Justice envisaged in Article 124 of the Constitution.

To initiate a civil action, the plaintiff files a copy of the pleadings with the judicial secretary of one of the district courts, upon which date they will be held valid.⁴⁷ The filer must consult the Code of Judicial Costs to determine whether a fee is due; if so, the fee must be paid within ten days for the pleadings to count as valid.⁴⁸ The pleadings must be in Tétum or Portuguese,⁴⁹ and must state the facts upon which the claim is founded.⁵⁰ The pleadings must be accompanied by at least one copy when filed.⁵¹

In criminal cases, the mechanism of initiation depends upon the classification of the crime as "public" or "semi-public." For crimes defined as "semi-public," a complaint is required.⁵² This applies to most criminal

⁴² *Código do Processo Civil/ Code of Civil Procedure 2007, Article 24.*

⁴³ *Código do Processo Civil/ Code of Civil Procedure 2007, Article 24(3).*

⁴⁴ *Código do Processo Civil/ Code of Civil Procedure 2007, Article 13.*

⁴⁵ *Código do Processo Civil/ Code of Civil Procedure 2007, Article 11(c).*

⁴⁶ *See Section IV(c) infra.*

⁴⁷ *Código do Processo Civil/ Code of Civil Procedure 2007, Article 157.*

⁴⁸ *Código do Processo Civil/ Code of Civil Procedure 2007, Article 116.*

⁴⁹ *Código do Processo Civil/ Code of Civil Procedure 2007, Article 104.*

⁵⁰ *Código do Processo Civil/ Code of Civil Procedure 2007, Article 117.*

⁵¹ *Código do Processo Civil/ Code of Civil Procedure 2007, Article 118.*

⁵² *Código do Processo Penal/ Code of Criminal Procedure 2006, Article 210(d).*

charges that involve child victims. Note, however, that the LADV recently made various crimes against children, particularly when committed in a case of domestic violence, “public” crimes. This means that the public prosecutor and the police have an affirmative responsibility to seek out and prosecute these crimes, without the requirement of a referral,⁵³ and that any citizen can report these crimes.⁵⁴

- B. Legal aid / Court costs. Under what conditions would free or subsidised legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

The LADV guarantees legal aid to victims of domestic violence, as defined in Article 2. Victims have a right to be accompanied by an attorney or public defender through all steps of the judicial proceedings, provided their financial conditions prevent them from securing an attorney without assistance.⁵⁵ This legal assistance is to include legal counseling, reporting violence to the police or Public Minister, preparing victims, witnesses and family members for trial, monitoring the judicial actors throughout the process, contracting community groups and entities that could provide support, counseling victims on services that may be available, and facilitating access to relevant case information for the parties.⁵⁶

In practice, the Public Defender (the state-funded legal aid provider) usually acts for the defendant in a criminal proceeding and is unable to simultaneously act for the victim. Victims usually receive assistance from non-government legal aid organisations (i.e. ALFeLa, see part IV.C below).

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- C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practising lawyers on a pro bono basis, through a children’s rights organisation, or under an agreement that does not require the payment of legal fees up front?

Various civil society organisations exist which provide legal aid to children among other vulnerable groups. *Assistência Legal ba Feto no Labarik* (“ALFeLa”, Women and Children’s Legal Aid) provides legal assistance to women and children in such cases; it is currently the only organisation in

⁵³ Article 35 of the LADV makes articles 153 (mistreatment of minors) public outright. Additionally, it makes the following crimes public when combined with an element of physical, psychological or economic violence: article 138, article 139, article 146, article 167 (Torture or cruel, degrading or inhuman treatment), 171 (sexual coercion), 172 (rape), 175 (child prostitution), 177 (sexual abuse of a minor), 178 (sexual activity with an adolescent), and 179 (sexual activity with one incapable of resistance).

⁵⁴ *Código do Processo Penal*/ Code of Criminal Procedure 2006, Article 210(c).

⁵⁵ *Lei Contra a Violência Doméstica*/Law Against Domestic Violence 2010, Article 25(1).

⁵⁶ *Lei Contra a Violência Doméstica*/Law Against Domestic Violence 2010, Article 25(2).

⁵⁷ Comments provided by Lisa Mortimer, former Legal and Management Advisor, *Assistência Legal ba Feto no Labarik* (ALFeLa), September 2015.

Timor-Leste providing free legal aid, including to children.⁵⁸ It has offices in Dili, Baucau, Suai and Oe-Cusse.⁵⁹

- D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

In civil cases, plaintiffs have 20 years to file a suit.⁶⁰ However, the presiding judge may grant extensions of this deadline for just cause.⁶¹ In criminal cases, the statute of limitations varies depending upon the crime.⁶² For crimes punishable by 12 years or more imprisonment, victims have 20 years to bring a case; for those punishable by seven to 12 years in prison, victims have 15 years; for those punishable by three to seven years, victims have eight years; and in all other cases, victims have four years to bring a case.⁶³

There are no special rules dealing with the tolling of the statute of limitations for children after they become adults in neither the civil or criminal code.

- E. Evidence. What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

Evidence in civil actions in Timor-Leste is broadly defined, and courts will consider any evidence that proves relevant to the case.⁶⁴ There are no special rules for evidence produced by children; however, the judge must assess the physical or mental aptitude of all who testify before the court.⁶⁵

Evidence rules in criminal actions also permit any evidence not prohibited by law, and the code specifies that the following are acceptable: statements of the accused, statements of the victim, testimony of witnesses, recognitions in court, experts, documents, confrontation of witnesses in court, inspections of the place of the crime, and reconstruction of the facts.⁶⁶ As in civil proceedings, the judge makes a determination about the mental and physical aptitude of the witness before testifying.⁶⁷ The criminal code allows family members of the accused to testify, but remains silent as to whether this applies in cases where the victim is also a family member, which may impact cases of incest because of the possibility for intimidation.⁶⁸ Finally, the LADV states that the judge shall apply all procedural measures necessary

⁵⁸ Comments provided by Mariana Pinto, Child Justice Expert, August 2015.

⁵⁹ See: <http://www.alfela.tl/>.

⁶⁰ *Código do Processo Civil/ Code of Civil Procedure 2007*, Article 300.

⁶¹ *Código do Processo Civil/ Code of Civil Procedure 2007*, Article 110.

⁶² *Código Penal/ Criminal Code 2009*, Articles 125, 144(2), 155, 163, 164, 166, 173, 175, 178 and 226 of the Criminal Code deal with crimes that are either defined by the existence of a minor a victim or include this as an aggravating factor in sentencing.

⁶³ *Código do Processo Penal/ Code of Criminal Procedure 2006*, Articles 110 (1) (a)-(d).

⁶⁴ *Código do Processo Civil/ Code of Civil Procedure 2007*, Article 502.

⁶⁵ *Código do Processo Civil/ Code of Civil Procedure 2007*, Article 544.

⁶⁶ *Código do Processo Penal/ Code of Criminal Procedure 2006*, Article 116.

⁶⁷ *Código do Processo Penal/ Code of Criminal Procedure 2006*, Article 122

⁶⁸ *Código do Processo Penal/ Code of Criminal Procedure 2006*, Article 125.

to ensure the protection of witnesses, victims, and those with knowledge of the relevant facts in cases of domestic violence.⁶⁹

Under the Law on Protection of Witnesses, the court may decide on the request of the Public Prosecutor or demand of the defendant or witness that a witness's testimony or statement must be taken in a manner that protects the witness's identity. This might include concealing the witness's image or using a teleconference.⁷⁰ However, cases where the Law on Protection of Witnesses has actually been applied have not been identified.⁷¹

F. Resolution. How long might it take to get a decision from the court as to whether there has been a violation?

Delayed resolution of cases in Timor-Leste is one of the primary challenges faced by the judicial system. In 2004, prosecutors faced a backlog of roughly 3,000 cases; by 2010, that number had grown to 4,965 cases as cases moved from the customary justice system to the formal justice system.⁷² Delays are endemic in the justice system, and delays in cases of domestic violence tend to be worse than higher profile cases. This can be particularly problematic in cases of violations of children's rights, where pressure from perpetrators in the home can lead to the withdrawal of the case.⁷³

This situation has worsened since the Timorese government effectively expelled all foreign judges and prosecutors from the country in late 2014.⁷⁴

G. Appeal. What are the possibilities for appealing a decision to a higher court?

Currently, all appeals must be made to the Court of Appeals for final disposition. Once the Supreme Court of Justice has been created, it will become the court of final recourse.

In civil cases, appeals are available where the disposition of the case was contrary to law; where the defendant appeals unfavorable decisions for civil indemnification in which the court granted the plaintiff more than half of the maximum permissible indemnification; where there was a violation of the rules of international competence; where the judgment rendered was contrary to prior judgments of the court; and where the judgment was contrary to the jurisprudence of the Supreme Court of Justice.⁷⁵ However, appeals are not permitted in the case of mere delay or those decisions that were within the discretion of the court.⁷⁶

⁶⁹ *Lei Contra a Violência Doméstica*/Law Against Domestic Violence 2010, Article 39.

⁷⁰ Law on Protection of Witnesses, Articles 4-5, available at: <http://www.jornal.gov.tl/lawsTL/RDTL-Law/RDTL-Laws/Law%202-2009.pdf>

⁷¹ Comments provided by Lisa Mortimer, former Legal and Management Advisor, *Assistência Legal ba Feto no Labarik (ALFeLa)*, September 2015.

⁷² "Security Sector Reform Monitor: East Timor," CIGI, 2011:03, p. 13.

⁷³ *Id.*

⁷⁴ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15339&LangID=E>;

Comments provided by Mariana Pinto, Child Justice Expert, August 2015.

⁷⁵ *Código do Processo Civil*/ Code of Civil Procedure 2007, Article 428.

⁷⁶ *Código do Processo Civil*/ Code of Civil Procedure 2007, Article 249.

Timorese law permits all criminal appeals, dealing with matters of fact or law, not expressly prohibited by law.⁷⁷ However, the code prohibits appeals based on mere delay; decisions within the free discretion of the court; and appeals by the defendant against decisions including civil indemnification where the court granted the plaintiff less than half of the maximum permissible value.

- H. **Impact.** What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

Where the perpetrator of the rights infringement is also the party responsible for providing for the victim's family, a favourable judgment may impair the child's access to the resources necessary for development, either by fine (where such fine goes to the state instead of the victim) or by incarceration of the defendant (where the defendant is the primary breadwinner of the household).⁷⁸ This risk may be tempered by successful implementation of the LADV, which guarantees state assistance to victims of domestic violence to the extent that they are not able to support themselves.⁷⁹

- I. **Follow up.** What other concerns or challenges might be anticipated in enforcing a positive decision?

In cases where the rights infringement arises in the context of domestic violence, even when a favourable decision is rendered, this may not be enough to protect the victim or family because of the prevalence of suspended sentences. Between the promulgation of the LADV in 2010 and 2013, a full 52% of defendants applied for and received suspended sentences.⁸⁰ Further, in this time period courts did not apply a single protection order during trial, making it difficult to enforce a decision to guarantee the victim's safety during the case.⁸¹

- V. **Additional factors.** Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

The Timorese judicial system is still under development. There are too few judicial actors, leading to substantial delays in processing litigation, and many international instruments, such as the CRC, have yet to be incorporated fully through enabling legislation. Furthermore, all legal proceedings must be in Tétum or Portuguese,⁸² which many Timorese do not

⁷⁷ *Código do Processo Civil/ Code of Civil Procedure 2007, Article 287.*

⁷⁸ See: http://jsmp.tl/wp-content/uploads/2012/05/Part_Full.pdf

⁷⁹ *Lei Contra a Violência Doméstica/Law Against Domestic Violence 2010, Article 29 and 30.* Note, however, a recent report by The Asia Foundation, which warns about the dangers of making assumptions that victims of domestic violence in Timor-Leste depend economically on the perpetrators, arguing that this is often an assumption based on stereotypes which justifies more lenient sentences. Report available at: <http://asiafoundation.org/publications/pdf/1517>.

⁸⁰ "Law Against Domestic Violence: Obstacles to Implementation Three Years On," Judicial System Monitoring Programme, 2013, p. 2.

⁸¹ *Id.*

⁸² *Código do Processo Penal/ Code of Criminal Procedure 2006, Article 104.*

speak. In sum, a claim for the vindication for child rights in Timor-Leste faces substantial structural obstacles.

As the formal justice system in Timor-Leste only began to function in 2002, most people still rely on customary law and recourse to familial, community, and spiritual authorities to resolve disputes related to the family, which often encompasses matters involving children.⁸³ Most domestic violence claims are still settled by informal justice systems, both because of delay in the formal justice system and traditional norms.⁸⁴ A widely held belief that such matters should be dealt with within customary law may lead to social rejection of anyone who asserts family claims outside of the community; this also acts as a deterrent to many claims entering the justice system in the first place.⁸⁵ In addition to this, it is not uncommon for justice sector professionals themselves to encourage child victims and their families to resort to traditional justice, resulting in further violations of the child's rights.⁸⁶

The right to have children's views heard in court is seldom applied;⁸⁷ for instance, in a judgment from 2007, the Court of Appeals resolved a guardianship case without considering the opinion of the child.⁸⁸ There has been some slight improvement in this regard since the passing of the Civil Code in 2011 (see Article 1860 of the Civil Code regarding adoption). However, provisions regarding children's views are widely misunderstood and misapplied by the Timorese courts.⁸⁹

At present the age of criminal responsibility is 16 years, and only children between 16 and 17 can be charged with offences under the Criminal Code. Those children do not have any special protections at present. Even more problematic, for children under 16 who commit acts that amount to serious crimes (murder, rape, sexual abuse of young children), there is no legal framework to respond. This can lead to violations of those children's rights, as it means they are subject to ad hoc responses by traditional leaders or government authorities without the protections of the formal legal system. It can also lead to violations of the rights of child victims where the victim of

⁸³ The Constitution provides that “the State shall recognize and value the norms and customs of East Timor that are not contrary to the Constitution and to any legislation dealing specifically with customary law,” but no legislation further specifies the relationship between formal and customary law. Article 2(4).

⁸⁴ Breaking the Cycle of Domestic Violence in Timor-Leste: Access to Justice Options, Barriers, and Decision Making Processes in the Context of Legal Pluralism,” UNDP Justice System Programme, 2013, p. ix.

⁸⁵ *Id.* at 39.

⁸⁶ See JSMP, ‘Children's Access to Formal Justice in Timor-Leste’, 2014, p. 75, available at: http://jsmp.tl/wp-content/uploads/2012/05/RelatoriuChildrens-Access-to-Formal-Justice-in-TL_ENGLISH.pdf; Comments provided by Mariana Pinto, Child Justice Expert, August 2015.

⁸⁷ *Initial Report of Timor Leste to the Committee on the Rights of the Child*, CRC/C/TLS/1, 28 June 2007, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsnffS2i6k1LCtUjR1VLRtWiOwZY%2fJwGOXTW7sTpKLbUo0%2b%2bgCQ7K4bpoh45F2rst%2bT9KNa6%2fGQZO4WtEOgMhR38UODKfTv%2bKciqfmvRqMzo7>.

⁸⁸ Case 68/2003, available at: <http://www.tribunais.tl/?q=node/4>.

⁸⁹ JSMP, ‘Children's Access to Formal Justice in Timor-Leste’, p. 77; Comments provided by Mariana Pinto, Child Justice Expert, August 2015.

the crime is also a child. Setting up a practical child protection system with a clear legislative base would be one of the best ways to resolve this issue.⁹⁰

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⁹⁰ Comments provided by Lisa Mortimer, former Legal and Management Advisor, Asistência Legál ba Feto no Labarik (ALFeLa), September 2015.