

Submission by the United Nations High Commissioner for Refugees

For the Office of the High Commissioner for Human Rights' Compilation Report

Universal Periodic Review:

2nd Cycle, 26th Session

TIMOR-LESTE

I. BACKGROUND INFORMATION

Timor-Leste acceded to the *1951 Convention relating to the Status of Refugees* in 2003 and its *1967 Protocol* in 2003 (hereinafter jointly referred to as the *1951 Convention*). Timor-Leste is neither a party to the *1954 Convention Relating to the Status of Stateless Persons (the 1954 Convention)*, nor to the *1961 Convention on the Reduction of Statelessness (the 1961 Convention)*. As of December 2015, Timor-Leste hosts five asylum-seekers and refugees.

The *2002 Constitution of the Democratic Republic of East Timor* recognizes fundamental human rights, in particular those foreseen in international legal instruments,¹ and makes a specific reference to the *Universal Declaration of Human Rights*.² Asylum issues in Timor-Leste are governed by the *2003 Immigration and Asylum Act (the "2003 Act")*. Under the *2003 Act*, individuals seeking asylum must lodge their asylum applications within 72 hours after their arrival in Timor-Leste. This has constituted a substantial impediment to individuals seeking asylum in Timor-Leste and has led to considerable hardship.

Timor-Leste is a source and destination country for men, women and children subjected to forced labor and sex trafficking. Specifically, Timor-Leste may be a source of women and girls sent to Indonesia and other countries for domestic servitude. Foreign migrant women, including those from the Republic of Indonesia, the People's Republic of China, and the Republic of the Philippines, are vulnerable to sex trafficking in Timor-Leste.³

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

¹ *Constitution of the Democratic Republic of East Timor* [Timor-Leste (East Timor)], 20 May 2002, Section 9, available at <http://www.refworld.org/docid/3dd8dd484.html>.

² *Constitution of the Democratic Republic of East Timor* [Timor-Leste (East Timor)], 20 May 2002, Section 23, available at <http://www.refworld.org/docid/3dd8dd484.html>.

³ United States Department of State, *2015 Trafficking in Persons Report - Timor-Leste*, 27 July 2015, available at: <http://www.refworld.org/docid/55b73b8fe.html>.

Positive developments linked to 1st cycle UPR recommendations

Linked to 1st cycle UPR recommendation no. 77.28: “Increase actions against the growing phenomenon of human trafficking for the purpose of sexual exploitation (Algeria)” and no. 79.10: “Accelerate efforts aimed at the effective implementation with full enforcement of its relevant plans of action and policies including that of the anti-trafficking legislation (Cambodia)”.

During 2008, the Inter-agency Trafficking Working Group⁴ started to discuss sustainable and coordinated actions. There was wide participation⁵ in the development of the *National Action Plan to Combat Human Trafficking* (NAP- CHT), resulting in the drafting of the *Law against Trafficking in Persons (LATP)*, in 2011.⁶ Timor-Leste has recently presented to the National Parliament the draft *Law to Prevent and Combat Human Trafficking* and has increased its efforts to investigate potential sex trafficking crimes and to support civil society in establishing a safe house for women and children victims of trafficking.⁷ Moreover, the Government of Timor-Leste is making significant efforts to fully comply with the minimum standards for the elimination of trafficking in persons through increased prosecution and conviction of child sex trafficking offences, and the drafting of guidelines for police to screen potential victims of trafficking in persons.

Linked to 1st cycle UPR recommendation no 77.40: “Increase its efforts to promote civil registration of the Timorese population, particularly of children (Brazil)” and no. 77.41: “In light of what is provided in article 7 of the Convention on the Rights of the Child and with the support of the international community, improve the system of birth registration including by intensifying efforts to sensitize and mobilize public opinion regarding the advantages of birth registration in the process of establishing children’s identity and the enjoyment of their rights (Uruguay)”.

In November 2014, a wide range of States in the Asia Pacific, including Timor-Leste, adopted the *Ministerial Declaration to “Get Every One in the Picture”*, and made a commitment to

⁴ The Government of Timor-Leste, through the Ministry of Foreign Affairs, established the Inter-agency Trafficking Working Group with support from the IOM Secretariat. The group discusses and co-ordinates policies on ways and means of combating human trafficking. See <http://www.baliprocess.net/files/BRMC%20IV%20Timor%20Leste%20Statement.pdf>

⁵ The Ministry of Foreign Affairs led and chaired the Taskforce established to develop the Law against Trafficking in Persons and the National Action Plan to Combat Human Trafficking which was comprised of 12 representatives from the Government Ministries/Directorates and NGOs. IOM provided training and capacity building support to the Taskforce members in drafting of the Law and the National Action Plan and in consultations of the drafts at the central and district levels. Drafting of the Law and the National Action Plan was completed in June 2010. Community consultations on the drafts were conducted in all districts by June 2011, see <http://www.mdgfund.org/sites/default/files/Timor-Leste%20-%20Gender%20-%20Final%20Narrative%20Report.pdf>

⁶ UNWOMEN, Timor-Leste: Supporting gender equality and women’s rights, available at: http://www.unwomen.org/mdgf/a/Timor-Leste_A.html, K. Yamagiwa, *The best practices and lessons learned on the “MDG-F Joint Programme: Supporting Gender Equality and Women’s Rights in Timor-Leste*, July 2012, available at: http://www.mdgfund.org/sites/default/files/GEN_LESSONS%20LEARNED_Timor%20-Leste_Gender%20Programme.pdf.

⁷ Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, *Concluding observations on the initial report of Timor-Leste*, 8 October 2015, CMW/C/TLS/CO/1, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CMW/C/TLS/CO/1&Lang=En.

respect the principle of universal civil registration and to improve the Civil Registration and Vital Statistics (CRVS) systems, in line with that goal. An accompanying *Regional Action Framework* was also endorsed to be implemented from 2015 – 2024.⁸ The *Ministerial Declaration* and the *Regional Action Framework* also included references related to the importance of addressing gaps in Civil Registration coverage for “hard-to-reach and marginalised” populations, including asylum-seekers, refugees and stateless persons of concern to UNHCR.

While the Government of Timor-Leste has taken steps to ensure that children of refugees and asylum-seekers in Timor-Leste have been able to register their births, further measures are encouraged to ensure that those, who may be stateless or at risk of statelessness are able to register the births of their children.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 1st cycle UPR recommendations

Issue 1: Prevention of trafficking

Linked to 1st cycle UPR recommendation no. 79.10: “Accelerate efforts aimed at the effective implementation with full enforcement of its relevant plans of action and policies including that of the anti-trafficking legislation (Cambodia)”.

Although Timor-Leste has made substantial efforts towards the drafting and implementation of anti-trafficking laws and policies, the latter remain incomplete due to a range of factors. Data collection on the scale of trafficking in Timor-Leste remains inadequate, and insufficient resources have been dedicated to detect and eliminate human trafficking. Even though a *draft National Plan of Action to Combat Human Trafficking* was developed, this has not been adopted or implemented yet. Limited training of law enforcement officials on trafficking issues coupled with police forces’ corruption has resulted in, amongst other concerns, inadequate victim identification efforts. The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families has recommended that Timor-Leste should “allocate sufficient resources for the implementation of strategies to detect and eliminate trafficking in persons” and “adopt without delay the *Law on Trafficking in Persons* and ensure its conformity with international human rights standards and its implementation”.⁹

Recommendations:

UNHCR recommends that the Government of Timor-Leste:

- a. Enact a comprehensive anti-trafficking legislation, in accordance with the country’s international obligations, providing protection to victims of human trafficking;
- b. Ensure proper investigation, prosecution and adequate sanctions in all cases of human trafficking, including training of government officials, such as the law enforcement, and the judiciary;

⁸ UNESCAP, *Report of the Ministerial Conference on Civil Registration and Vital Statistics in Asia and the Pacific*, 10 December 2014, UN Doc E/ESCAP/MCCRVS/4 available at: http://www.un.org/ga/search/view_doc.asp?symbol=E/ESCAP/MCCRVS/4.

⁹ Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, *Concluding observations on the initial report of Timor-Leste*, 8 October 2015, CMW/C/TLS/CO/1, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/230/17/PDF/G1523017.pdf?OpenElement>.

- c. Allocate resources to provide adequate protection to victims and witnesses of human trafficking through the establishment and the function of safe shelters; and
- d. Establish via *Regulations* a referral mechanism for victims of human trafficking, who may be in need of international protection.

Additional protection challenges

Issue 2: Access to asylum

The *2003 Act* stipulates that individuals seeking asylum must file their asylum application within 72 hours after their arrival in Timor-Leste. The 72 hour deadline for filing an asylum application can be particularly problematic in a nascent asylum system, due to the lack of understanding of and information about the asylum procedures; of proper interpretation; of measures for persons with specific needs; and of legal aid services. In addition, such a condition could severely restrict human rights enshrined in various international legal instruments,¹⁰ and in the *2002 Constitution of the Democratic Republic of East Timor*.

Recommendations:

UNHCR recommends that the Government of Timor-Leste:

- a. Revise the *2003 Act* to remove the deadline for filing an asylum application; and
- b. Establish an age, gender and diversity sensitive approach to the adjudication of asylum claims, including systematic early identification and continuous assessment of persons with specific needs, in line with UNHCR's *Guidelines*.¹¹

Issue 3: Statelessness

There are currently no available or published statistics regarding the number of stateless persons in Timor-Leste.

Nationality in Timor-Leste is governed by the provisions of the *Constitution of the Democratic Republic of East Timor* (Section 3) and *Law No. 9/2002 on Citizenship*, which incorporate some of the key safeguards outlined in the *1961 Convention*. In particular, citizenship cannot be lost as a result of residence abroad, and there are safeguards to ensure that Timor-Leste citizenship cannot be renounced without the acquisition of another nationality. In addition there is a broad Constitutional protection preventing the arbitrary deprivation of nationality.

¹⁰ For example, the 72 hour deadline prevents the lodging of “sur-place” claims, which may be viewed as a violation of Article 14 of the *Universal Declaration of Human Rights* providing for the right to seek asylum.

¹¹The Guidelines set forth a number of measures to ensure that age and gender-related elements, and other specific needs, are properly considered in the refugee status determination (RSD) process, including, *inter alia*, specific training of officials on how to interview people with these needs. See, UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, HCR/GIP/02/01, available at: <http://www.refworld.org/docid/3d36f1c64.html>; UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, HCR/GIP/09/08, available at: <http://www.refworld.org/docid/4b2f4f6d2.html>; UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 23 October 2012, HCR/GIP/12/01, available at: <http://www.refworld.org/docid/50348afc2.html>.

However, although children of “incognito parents, stateless parents or parents of unknown citizenship” born on Timor-Leste territory acquire Timor-Leste citizenship automatically, gaps remain in respect of the prevention of childhood statelessness. For example, foundlings may be left stateless since they must evidence their birth on the territory to acquire Timor-Leste citizenship. Furthermore children born on Timor-Leste territory to parents who are not stateless, but are otherwise unable to confer their nationality to their children, do not acquire Timor-Leste citizenship.

Accession to the *1961 Convention* and the implementation of its provisions in Timor-Leste’s nationality legislation would help to ensure the right of every person to a nationality by closing the remaining gaps. In addition, accession to the *1954 Convention* would ensure stateless persons would be guaranteed minimum rights, standards of treatment and legal status in Timor-Leste. These rights include, *inter alia*, freedom of movement (Article 26), the right to education (Article 22), employment (Article 17 to 19), housing (Article 21) and public relief (Article 23). Importantly, the *1954 Convention* also guarantees stateless persons a right to identity and travel documents (Article 27) and to administrative assistance (Article 25).

Recommendations:

UNHCR recommends that the Government of Timor-Leste:

- a. Collect accurate statistics on statelessness, disaggregated by age and gender, in order to examine the effects of statelessness on the enjoyment of rights and to identify legal and policy solutions to further prevent and reduce statelessness;
- b. Conduct a study on Timor-Leste’s legal framework relating to the protection of stateless persons and citizenship, in order to identify amendments which may be necessary to facilitate accession to the *1954 Convention* and the *1961 Convention*; and
- c. Accede to the *1954 Convention* and the *1961 Convention*.

**Human Rights Liaison Unit
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ANNEX

Excerpts of Recommendations from the 1st cycle Universal Periodic Review, Concluding Observations from UN Treaty Bodies and Recommendations of Special Procedures mandate holders

TIMOR-LESTE

We would like to bring your attention to the following excerpts from the 2nd cycle UPR recommendations, UN Treaty Monitoring Bodies' Concluding Observations, and recommendations from UN Special Procedures mandate holders' reports relating to issues of interest and persons of concern to UNHCR with regards to Timor-Leste.

I. Universal Periodic Review

Recommendation ¹²	Recommending State/s	Position ¹³
Discrimination against Minorities		
79.36. Strengthen the Government response to incidents of violence against members of minority religious groups;	Canada	Partially supported ¹⁴
OP-CAT		
79.3. Ratify the Optional Protocol to the Convention against Torture and accede to the International Convention for the Protection of All Persons from Enforced Disappearance;	France	Supported ¹⁵

¹² All recommendations made to Timor-Leste during its 1st cycle UPR can be found in: "Report of the Working Group on the Universal Periodic Review: Timor-Leste" (3 January 2012) [A/HRC/19/17](#).

¹³ Timor-Leste's views and replies can be found in: *Addendum*, (15 March 2012) [A/HRC/19/17/Add.1](#).

¹⁴ **Addendum:** "Every person's freedom of conscience, religion and worship is guaranteed in Timor-Leste. Timor-Leste does not establish a classification of religious denominations on the basis of the number of their followers. Nevertheless, Timor-Leste agrees on principle that any action which infringe upon the right of any person to freedom and worship shall acquire immediate attention from law enforcement authorities. As the country is addressing numerous issues inherent to its newness as an independent state, there have been incidents where problems such as ones related to claims of land ownership have manifested themselves in conflicts among members of communities which happen to profess different faiths. These incidents are mere criminal acts, and have been swiftly investigated, and any attempt to depict them as religious conflicts represents a lack of knowledge of the real situation, or is a flagrant misrepresentation of facts."

¹⁵ **Addendum:** "Timor-Leste agrees with these recommendations and is committed to work towards achieving the objectives of the referred Conventions. Timor-Leste is aware that its commitment to the international human rights instruments will first require, as stated in the National Report, that *"the human resources and institutional conditions are in place to ensure compliance with the commitments to be assumed through these instruments"*. These are essential conditions in order for Timor-Leste to fully assume its obligations deriving from the ratification of the international human rights instruments. Work is currently underway for the country to accede to some of the conventions referred to in the recommendations. Timor-Leste has adopted a National Policy on Disabilities. This will soon be followed by the ratification of the Convention on the Rights of Persons with Disabilities. Timor-Leste also wishes to express its clear commitment to ratify the Optional Protocol on the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT), the first Optional Protocol to the International Covenant on Civil and Political Rights, and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. While the ratification of international human

79.5. Ratify the Optional Protocol to the Convention against Torture (OPCAT), which was signed already in 2005;	Estonia	Supported ¹⁶
79.6. Ratify the OPCAT;	United Kingdom of Great Britain and Northern Ireland	Supported ¹⁷
Gender Based Violence		
77.20. Ensure effective and adequate protection of women against domestic violence, including by providing legal assistance and shelters;	Austria	Supported
78.6. Continue to intensify strategies to eliminate violence against women, ensure that women enjoy a legal capacity identical to that of men, and remedy the gender gap faced by women in employment;	Japan	Supported
78.8. Organize campaigns aiming at promoting gender equality and to reinforce existing mechanisms to combat and to punish perpetrators of violence against women;	Brazil	Supported
78.9. Persist in its efforts aimed at the prevention, punishment and eradication of all forms of violence against women as well as its efforts to guarantee equality and ensure equal recognition in the law of civil, political, economic and social rights between men and women;	Argentina	Supported
78.11. Strengthen and intensify actions to combat domestic violence;	Portugal	Supported
78.16. Take steps to support the implementation of its Law Against Domestic Violence including providing law enforcement officials with training on sexual violence;	Canada	Supported
Child marriage		
78.25. Establish a minimum age for marriage in line with international Standards;	Italy	Supported
Trafficking in persons		
77.11. Expedite the completion of statutes that provide a guarantee for further human rights promotion and protection, including on land rights, on access to the courts, and on combating human trafficking;	Indonesia	Supported
77.28. Increase actions against the growing phenomenon of human trafficking for the purpose of sexual exploitation;	Algeria	Supported
79.10. Accelerate efforts aimed at the effective implementation with full enforcement of its relevant plans of action and policies including that of the anti-trafficking legislation;	Cambodia	<i>Supported</i> ¹⁸

rights treaties will take a slower pace, the Constitution of Timor-Leste already provides a far reaching protection for human rights.”

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ **Addendum:** “The Law on Trafficking in Persons is currently in a draft form, awaiting the approval of the Council of Ministers, to be submitted to the Parliament for approval. Timor-Leste attributes great importance to the issue of trafficking in persons. In the Joint Transitional Plan formulated by the Government of Timor-Leste and the United Nations Mission in Timor-Leste, the issue of trafficking in persons has been identified as one of

77.41. In light of what is provided in article 7 of the Convention on the Rights of the Child and with the support of the international community, improve the system of birth registration including by intensifying efforts to sensitize and mobilize public opinion regarding the advantages of birth registration in the process of establishing children's identity and the enjoyment of their rights;	Uruguay	Supported
77.40. Increase its efforts to promote civil registration of the Timorese population, particularly of children;	Brazil	Supported

the priority areas. Timor-Leste has benefitted from the technical support of the United Nations Mission as well as the International Organization for Migration (IOM), both in the area of institutional and human resources strengthening, as well as the development of the legal framework.”