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Situational Assessment: Justice for Children in Timor-Leste



By: Cyndi Banks, Ph.D.
Professor of Criminology & Criminal Justice

Juvenile Justice Specialist
East Timor Justice Sector Support Facility
GRM International Pty Ltd

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East Timor Justice Sector Support Facility,
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Executive Summary

- Most juvenile justice cases are disposed of by the informal justice system and very little is known about how these cases are resolved or their incidence. Very few juvenile justice cases enter the formal justice system each year, perhaps between 20 and 30 cases, and most are disposed of by, in effect, discharging the child, and returning him or her to the parents or guardian. A key need is to collect data on children's experience of both the formal and informal systems and the consequences for them of that experience.
- There is some confusion about the law currently applicable to children but given that in practice there are so few cases entering the formal system with almost all children accused being discharged, questions about the applicable law have not assumed much importance. There is some evidence that one interpretation of the law has the effect of treating children who are married as adults so that they are processed through the system as adults. The reform of the law affecting children through the enactment of the proposed Juvenile Justice law will help resolve the confusion. The VPU should be given a clear mandate to address the needs of child offenders in the system as an addition to their existing mandate to assist child victims.
- The draft Juvenile Justice law should be regarded as a work in progress and sufficient time should be allowed for all comments to be fully considered and necessary improvements made to the draft. The draft should be made available in Tetun and widely distributed.
- In Timor-Leste the conditions may exist now or in the future for a significant level of youth crime due to various causal conditions such as a history of resorting to violence to resolve disputes, a rapidly increasing youth population, urban migration, unfilled expectations about employment, lack of employment and high levels of frustration. Youth unemployment and lack of education are being addressed by appropriate government policies but a strategy that focuses on preventing youth crime is needed. Elements of that strategy include support to the Ministry of Justice in implementing the

juvenile justice reforms and supporting civil society in promoting measures that will prevent youth crime.

- Youth believe that poor leadership and the political manipulation of loyalties are major factors in the violence that has occurred since 1999 and they resent being made the scapegoat for violence and civil unrest. Youth wish to participate in the development of the country and believe that the government should support their efforts to engage themselves in productive and recreational activities that will develop their capacities.
- Caution should be exercised in labelling youth who participate in martial arts groups as 'dangerous', through restrictive legislation. A policy directed toward including all categories of youth in the development process is more likely to promote peace and harmony in the community. Activities involving or sponsored by youth that are intended to enhance a positive identity for youth, to assist the community, and to strengthen linkages and commitment between youth groups and with the wider society should be supported and accelerated.

Recommendations

The terms of reference for this assessment call for:

- an examination of civil society support to juvenile justice and for the identification of gaps which could be addressed by the Facility
- the evaluation of current competencies within agencies for dealing with juvenile justice, identifying gaps and recommending capacity development approaches

This assessment has fully discussed both government and civil society roles and responsibilities in the field of juvenile justice. Discussions with UNICEF have indicated a willingness to collaborate on many issues of common concern but have also identified UNICEF's forthcoming role as primarily linked to development of child protection services in the Ministry of Social Solidarity, the development of a National Commission for Children, birth registration and a

Children's Code with the Ministry of Justice. It appears that no other development partners are significantly active in justice for children issues. Accordingly, it is open to the Facility to build capacity within the Ministry of Justice to implement the forthcoming juvenile justice bill and a proposal to that effect is included below. Given the paucity of information about juvenile delinquency, it is essential that an information collection project be instituted and the parameters of this proposal are indicated below.

In relation to civil society, this assessment has noted the capacity of various NGOs in the field of justice for children. There exists a range of fully functioning NGOs that have the capacity to conduct successful programs and are worthy of support (see Annex C). Accordingly, this assessment recommends support to civil society in two forms: through a project that promotes children's rights, and a project focusing on crime prevention. Experience in other countries has shown that civil society organizations are the most effective agents for delivering these forms of knowledge and assistance.

Ministry of Justice

Information Collection

1. Develop an information collection strategy for the formal and informal systems. Research will need to be conducted to determine the most effective method of obtaining information from the informal system.

A useful guide for the minimum amount of information recording is seen below in Table 1. This information can be used for developing quantitative indicators and can be used as a guide for assessing the extent and quality of recorded information in practice.

Capacity Development within the Ministry of Justice

2. The activities listed in Table 2 should be established within the Ministry of Justice to develop capacity and support the development of juvenile justice reform.

Infrastructure Development within the Ministry of Justice

3. Limited support by way of providing recreational, trainers, training and educational materials should be provided for juveniles at Becora Prison.
4. Consideration should be given to support the construction or renovation of an existing facility to accommodate juveniles in a juvenile rehabilitation unit at a suitable location.

Table 1: Minimum Information that must be collected¹

Information Source	Indicator	Information Required to be recorded by an information system
Police	1: Children in Conflict with the law	Individual record of every child arrested during a 12 month period
Prosecution	1: Children in Conflict with the law	Individual record of every children's case prosecuted during a 12 month period
	11: Pre-sentence diversion/mediation or traditional justice solution	Individual record of each child undergoing mediation or traditional justice process or entering a diversion scheme during a 12 month period
Place of detention	2: Children in detention	Individual record of every child in detention on the date of measurement
	3: Children in pre-sentence detention	Individual record of every child in pre-sentence detention on the date of measurement
	4: Duration of pre-sentence detention	Individual record of the date of commencement and date of completion of pre-sentence detention for each child completing pre-sentence detention during a 12 month period
	5: Duration of sentenced detention	Individual record of the date of commencement and date of completion of sentenced detention for each child completing sentenced detention during a 12 month period
	6: Child deaths in detention	Individual record of each child death in detention during a 12 month period
	7: Separation from adults	Records of the cell or room location of each adult and child held in detention on the date of measurement
	8: Contact with parents and family	Individual record of each visit by parents, guardian or adult family member during a 3 month period
Competent Authority	9: Assisted Freedom	Individual record of each child sentenced to assisted freedom in the community during a 12 month period
	10: Custodial Sentencing	Individual record of each child sentenced to detention during a 12 month period
	11: Pre-sentence diversion	Individual record of each child sentenced to diversion scheme during each 12 month period
	12. Protection Measures	Individual record of each child given a protection measure during each 12 month period
	13: Socio-Education Measures	Individual record of each child sentenced to socio-education measures during each 12 month period

¹ Based on UNODOC & UNICEF 2006. Manual for the measurement of juvenile justice indicators

Table 2: Proposed Support to the MOJ in Juvenile Justice

Objective	Tasks
Enhanced quality of justice for juvenile offenders	- Review new juvenile justice law requirements for reformed juvenile justice system - Formulate plan of action for establishment of Juvenile Justice Coordination Center (JJCC) in accordance with law in consultation with stakeholders - Implement plan of action, including design of structure for JJCC, job descriptions and TOR, estimated annual budget, statement of legal and functional responsibilities - Develop strategy plan for future development of JJCC - Implement strategic plan - Conduct training and training of trainers for all relevant juvenile justice professional groups

Civil Society

1. Support to NGOs Promoting Children's Rights

A project promoting children's rights should be established strengthening the capacity of selected NGOs to protect and promote rights according to the framework in Table 4.

2. Support to Civil Society Programs Relating to Crime Prevention in the Community

It is recommended that proposed projects of crime prevention in the community by civil society be supported. Such projects should be assessed according to the following objectives and suggested activities in Table 3:

Table 3: Crime Prevention Matrix

Objective	Possible Activities
Address the underlying causes of crime	• Research studies on crime and victimization, • Studies on street children, • More effective and expeditious dispute settlement, • Increased knowledge of children's rights • Facilitate and support exercise of legal rights • Increase participation of youth in civic affairs • Increase knowledge of legal procedures and processes • Better access to legal aid services
Reduce crime in communities	• Resolve disputes expeditiously • Create productive and leisure activities • Develop skills in conflict resolution, mediation and peace building • Develop income generating activities in communities
Increase actual and perceived safety in the community	• Support traditional social controls • Conduct Leadership training for youth • Increase safety of girls in community • Sensitivity training in Gender Based Violence • Civic responsibility training • Reduce alcohol and substance abuse • Form community justice groups
Address levels of violence in the community	• Provide skill training in peacemaking skills and anti-violence • Conduct research studies on the use of violence • Reduce levels of GBV • Address mental health issues in the community • Create awareness of child rights in schools especially in relation to corporal punishment • Promote Effective Leadership development • Develop Measures to improve crime reporting • Increase number of safe houses and similar facilities providing protection, counselling, life skills and mentoring • Facilitate community ownership of solutions to violence • Expand the availability of community services for victims

Table 4: Civil Society and Children's Rights

Type of Project: Promotion of Children's Rights				Project Duration: 5 years
Purpose: To strengthen the capacity of selected organisations, and institutions to promote and protect the rights of girls and boys to enhance justice for children				
Activities		Outputs or Short-term Results	Outcomes or Medium-term results	Impact or Long-term results
• Capacity assessments for all participating NGOs and CBOs • Gender analysis • Baseline studies • Advocacy and awareness campaigns • Training in the areas of advocacy, awareness and mainstreaming child rights • Linkages between urban and rural-based NGOs	R E S U L T S	• NGOs, CBOs and selected public institutions improve their skills and knowledge concerning child protection issues • NGOs and CBO initiatives to mainstream child rights successfully undertaken • Effective networking and coordination among participating NGOs and CBOs, public institutions and other assisted projects	• Selected NGOs and CBOs are effectively advocating for and implementing programming which addresses child protection issues • Protection of rights of target children are recognized and respected	• Increased capacity of key national organizations to protect and promote human rights and respect for law • Enhanced role of civil society in decision-making • Selected institutions are influencing public policy around child protection issues
	I N D I C A T O R S	• Quality of training • Number of NGO, CBO and public institutions' representatives trained and demonstrating new skills and knowledge • Level and quality of programming in communities giving children a voice and integrating children's rights • Level of awareness among target groups of selected children's rights issues (M/F) • Number and quality of interactions involving participating NGOs, CBOs, public institutions and other assisted projects	• Change in the level of media attention to child rights issues (number and length of articles, headlines) • Change in the level of discussion in Parliament and other government for of child rights issues • Change in the level of community awareness of and respect for child rights protection • Change in the status of targeted boys and girls (in terms of health, education, contact with judicial system))	• Change in number and scope of government policies and programmes addressing children's issues • Existence and degree of utilization of mechanisms to investigate abuses of children's rights • Change in the number of cases investigated • Change in instances where civil society organizations have participated in public debates on child protection
	R E A C H	Direct Beneficiaries • Members of NGOs and CBOs (M/F) • NGOs • CBOs • Participating public institutions	Direct Beneficiaries • Selected national organizations and institutions • National media • Communities • Other key ministries involved in social sectors	Direct Beneficiaries • Children (M/F) • Civil Society • Decision-makers • Policy-makers

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Framework of Assessment

This Situational Assessment adopts the concept of ‘Justice for Children’ in discussing juvenile issues in Timor-Leste. This is consistent with the UN Common Approach to Justice for Children, March 2008, which notes that the concept of ‘justice for children’ goes beyond juvenile justice to include all children going through justice systems for whatever reasons. This includes victims, witnesses, care, custody, alleged offenders etc (UNICEF 2008: 4). The notion of juvenile justice on the other hand, is generally limited to children in conflict with the law.

Article 18 of the Constitution of the Democratic Republic of Timor-Leste recognizes that children constitute a unique category of persons under the law. It provides that “children shall be entitled to special protection by the family, the community and the state, particularly against all forms of abandonment, discrimination, violence, oppression, sexual abuse and exploitation.” As well, Article 18 (2) gives formal recognition to the concept of child rights by stating “Children shall enjoy all rights that are universally recognized as well as those that are enshrined in international conventions ratified or approved by the state.”²

In discussing justice for children in Timor-Leste it is crucial to take account of the colonial experience, the Indonesian occupation and events since 1999. Historical events and the social, economic, political and cultural context have shaped and will continue to structure the nature and content of issues affecting justice for children. This assessment therefore locates its analysis of justice for

² Timor-Leste ratified the Convention on the Rights of the Child in 2003. The first report was presented to the Committee on Rights of the Child in Geneva in January 2008 and observations have already been received from Geneva.

children within a broad informational framework that draws upon both the historical and contemporary experience in many fields.

Defining Youth

The National Youth Policy defines the term “youth” as a person between the ages of 16 and 30 (Secretary of State for Youth and Sport 2007). In the Tetun language the words ‘*foinsae*’ ‘*otas nurak*’ and ‘*klosan*’ are used to describe a young person. The word “*foinsae*” is literally translated as “grown recently” and “might or might not be married” or as “still an adolescent”. The other terms have a similar meaning to ‘*foinsae*’ referring to adolescents and young persons. The word ‘*klosan*’ means a young unmarried person.

The World Bank (2007a) has proposed that ‘youth’ be categorized in 3 groups for employment and development purposes as follows:

1. those below the age of 18 who should receive formal education
2. up to 25 years who should receive second chance education
3. over 25 years who should receive more specialized curative measures

The proposed Juvenile Justice law classifies youth into 3 categories:

- child: those between the ages of 12 and under 15 years
- adolescent: those between the ages of 15 and under 18 years
- young adult: those between the ages of 18 and under 21 years

In legal and economic policy terms, the various definitions of youth resonate with the cultural fluidity of the concept of ‘youth’. This positive approach will help ensure that culture and tradition are fully engaged in policy making on justice for children.

Background

Economic and Social factors Affecting Children

Poverty

Timor-Leste is the poorest country in the Asian region with an annual per capita income of \$370 (Government of Timor-Leste 2006b) and a population of more than 1 million. An estimated 40% of the population lives below the poverty line of 15.5 dollars per month (World Bank 2007b: 10). Contributing factors to poverty include:

- A high population growth rate variously expressed as 3.1% or higher (Secretary of State for Vocational Training and Employment 2007:12).
- Pressure on limited cultivatable land
- Low productivity agricultural techniques
- Weak private sector
- Limited access to credit
- Low government spending

One out of every 3 persons living in Timor-Leste is between the age of 15 and 35 years (UNDP 2006) and youth aged between 15 and 25 constitute about 1 in 5 of the population. According to the National Census 2004, 290,000 persons are aged between 15 and 25 years. Approximately 1 in 4 of persons aged between 15 and 30 live in urban areas. The 2004 National Census shows that 2 out of 5 young persons living in urban areas have no paid employment and in Dili almost 44% of young persons are unemployed (World Bank 2006: 2). Sixty-two percent of those between the ages of 15 and 19 living in urban Dili are unemployed (World Bank 2007a: 4). In the age range 15 to 24 years, 8 out of every 10 youth in the labour force are engaged in subsistence activities (World Bank 2006).

Education

In relation to education, 3 in 5 persons in the age range 15 to 19 years have received some level of secondary education or higher. However, the National Youth Survey reveals that a third of young persons between 15 and 35 who have completed the 6th year of primary school are only able to read a sentence with difficulty and about 1 in 10 persons in this age range are unable to read at all.

The 2004 National Census reveals that:

- 3 out of 10 persons in the age range 15 to 29 are not literate in Tetun, the lingua franca
- 1 quarter of persons between 15 and 35 are not literate in any of the 4 major languages of the country
- 23% of persons in the age range 15 to 25 years are illiterate
- By comparison with other countries in the region, Timor-Leste has a very low rate of literacy for the age group 15 to 24

The government aims to provide basic education to all children in the age range 6 to 14 years by 2015 (Government of Timor-Leste 2006b: 8-9).

Labour Force

Studies on the labour force show that “the majority of youth will reach adulthood and enter the labor force ill-equipped for productive employment with many going through an initially prolonged phase of unemployment or subsequently life long underemployment” (World Bank 2007a: 7). The labour force increases by at least 15,000 persons each year and about 8,000 youth reach adulthood without having completed five years of primary education, the minimum generally considered necessary for literacy. It is estimated that a growth rate of more than 7% per year is required in the non-oil sector to absorb new entrants joining the labour force every year and to avoid a rise in unemployment. However, between 2000 and 2006 growth in the non-oil sector was minimal (Secretary of State for Vocational Training and Employment 2007: 39). In the formal modern sector there are about 37,000 workers compared to 240,000 in the subsistence agricultural sector (World Bank 2007a: 8). Thus, only about 12% of the labor force is employed in the formal sector (Secretary of State for Vocational Training and Employment 2007: 12) and 77% is employed in agriculture/fishing (Ibid p. 38).

When asked to identify the expected level of daily wage earning, in-school and unemployed respondents on average gave a figure of \$7.13 per day, compared to an average daily wage rate for a working youth of about \$5.56 per day. When asked to identify a minimum daily wage for which they would consider working,

respondents gave an average figure of \$4.24 per day (p. 36). When in-school respondents were asked to identify the sectors they hoped to find work in, about 54% identified working in the government sector as their preference, almost 20% identified the NGO/UN sector and fewer than 15% identified manufacturing and service industries (p. 37). In fact, the government sector employs only 2.44% of the total youth labor force, private industry employs 3.95% and NGOs employ 1.65% (p. 38).

Child Labour

Child labour is a concern given the estimation, that due to conditions of poverty, “between 10% and 30% of primary school age children (around 67,000 children aged 6 – 11) are not in school” (ILO 2007: 21). This situation may be expected to worsen based on the conclusions of an ILO study which established that the net enrolment rate (NER) was 76% for primary school and 27.5% for secondary school in the year 2000. Yet, in 2003 the NER was only 18% for secondary school. This decline has been partly attributed to the lack of secondary schools in rural areas and to the weak employment sector (ibid). The absence of employment incentives combined with the fact that 88% of working Timorese are engaged in subsistence agriculture or are self-employed has meant that the link between education and employment opportunities has not been obvious to the Timorese (Ibid).

An ILO survey study (2007: 10 - 11) in Dili, Ermera and Baucau of 160 child labourers between the ages of 5 and 17 years (the majority between the ages of 10 and 17) and 155 adults (parents and employers) reached the following conclusions in relation to child labour in Timor-Leste:

- Mostly male children are involved in child labour particularly in coffee farming and street marketing/ vending. Many males are also engaged in domestic work (49.1%) conceivably because many were adopted and wished to continue their education in the cities.
- Children engaged in street marketing/ vending and coffee farming are often separated from their families (100% in domestic work and 40.8% in marketing/ vending work).

- Many children began to work before reaching 12 years of age especially in coffee farming (p. 10) and this can be attributed to the socialization children receive in families through engaging in tasks that will teach them their roles and responsibilities in adulthood (p. 22).
- Most child labour is unpaid, especially in coffee farming and domestic work, although the older the age group the more likelihood that the child will be paid.
- Most child labourers combined work and school and felt that work negatively impacted their performance at school. Parental inability to pay was the main reason for children dropping out of school or never enrolling.
- Long hours characterized children who worked as domestic labour and street vendors. Many children engaged in coffee farming worked only certain periods of the year while domestic labourers worked year round (p. 11).
- Children in the agricultural sector were “more vulnerable to illness and work-related accident” (p. 11).
- Child labourers came from families who worked in the informal sector “with 46% of fathers and 49% of mothers earning less than US\$60 per month” and were from households of 6 or 7 members (69%) (p. 11). This explains the need for children to work in these families.
- Many parents thought education was important but did not believe that work impacted negatively on their children and this belief acts as a deterrent to parents withdrawing their children from work (p. 11).
- Children undertaking domestic work, usually work for a relative or adoptive parents while only 10.5% work in households other than their relatives.
- Children engaged in domestic work, although unpaid, usually receive support for their education.

Children and Violence

Timor-Leste’s history includes sustained periods of violence and conflict. In 1912, an anti-Indonesian revolt began in Suai known as the “Great Rebellion” during which Government House in Dili was looted and two Portuguese officers decapitated. The leader was eventually defeated and thousands of Timorese

killed. This uprising prompted the Portuguese to reorganize their administration of the interior of the country.

From 1942 to 1945, the Japanese invaded and occupied the country. In 1975, the Indonesian invasion took place, and in 1991, the Santa Cruz massacre occurred. In 1999 pro-Indonesian militias reacted violently to a referendum on the future of the country and in 2006 and 2008 further incidents of violence occurred.

During the Portuguese occupation, the colonial rulers were constantly threatened by attacks from tribal groups in Timor. In following a policy of divide and rule, the Portuguese turned one tribe against another using mechanisms such as “the oath of blood” through which the Portuguese created fictitious links between the King in Portugal and the local chiefs. The chiefs were given symbols of Portuguese association, such as a sword, and entered into a pact by drinking blood mixed with wine. The chiefs would then ensure that their followers remained loyal to the Portuguese (Nicol 2002: 32 – 33).

On 3 December 2002, Dili High School students protested against the police arrest of a student by burning 2 police motorcycles and 1 car (Commission on Human Rights 2003: 6 – 7). The special police unit was deployed and fired a large number of warning shots. The next day the students attacked the Parliament building and Police Headquarters when a planned meeting with Members of Parliament to listen to their grievances failed to take place and tear gas was used and shots fired to disperse them. Events developed into a major civil disturbance and locations were looted, burnt down and attacked, including the residence of the Prime Minister, Comoro Police Station, Dili mosque, and foreign owned businesses. By the end of the day, two people had died from gun shot wounds and 15 were hospitalized with injuries. 77 persons were arrested and a number of police suffered injuries.

The youth violence involved in the 2006 crisis is discussed later in this assessment.

According to research sponsored by UNICEF/Plan International in a study, “Managing Children’s Behaviour: A Study from Timor-Leste” (Field and Redden

2005) which researched the level of acceptance and use of violence or degrading forms of disciplining children by parents, teachers and caregivers:³

1. More than half of the children interviewed had experienced being beaten with a stick by their parents and about 39% of parents thought it was acceptable for adults to beat a child with a stick. Just over a third of parents believed it was right for adults to use other forms of physical punishment like twisting children's ears and slapping their faces.
2. Many parents expressed the view that it was permissible for parents to beat children with a stick so long as it did not cause bruising or bleeding.
3. Some children experienced other forms of violence as discipline by their parents including being threatened by a weapon, being tied up, being burned with cigarettes, being cursed like an animal and being spit upon. However, most parents found extreme forms of violence to be unacceptable.
4. Only a very few parents reported that adults in their households made a child kneel or run laps as a form of punishment. However, one third of children reported being forced to kneel on the ground by teachers or to stand outside in the hot sun and just over 1 in 4 reported being told to run laps.

Children learn good behaviour from several adults in a household who are responsible for teaching and disciplining them. In most households, both mother and father teach good behaviour and sometimes grandparents assist. Parental experience of violence when they were children revealed that one quarter of them had been beaten until bruised when young and some had been locked in a room, denied food for a day or even burnt with cigarettes.

Children reported that being beaten with a stick was one of the most frequently used violent practices by teachers. While children found it less easy to accept teachers beating them with sticks, they did accept that parents have this right. In addition, over 50% of children and parents believed it was acceptable for

³ This study would have enhanced our understanding further if they had also investigated the circumstances and behaviours for which it was believed by parents, children and teachers that punishment was legitimate and which circumstances and behaviours punishment was considered unwarranted.

adults to yell violently at children and over 50% of children and parents reported that this happened.

According to the report's findings, some teachers and parents are using violence and unacceptable practices to punish children and a coordinated long-term strategy over a period of 10 years would be required to reduce the incidence of violence. As the report notes, the Committee established under the Convention on the Rights of the Child, has consistently pointed out that legal and social acceptance of the physical punishment of children in the home and in institutions is incompatible with the Convention.

The Report points out that related to the issue of discipline is the cultural construction of a "good child". According to the research conducted with teachers, parents, and children, a "good child" in Timor-Leste:

1. Assists his or her parents by doing chores in the house or in the garden including washing plates, clothes, carrying water, collecting wood and helping parents carry vegetables to and from the markets.
2. A good child is diligent, studies, looks after younger siblings, attends church, prays and shows respect to older people.

The study reported that in all six Districts in which research was conducted there was a serious concern about the distribution of pornographic DVDs that children were watching. It was pointed out that even in remote Districts with no television, children travelled to towns where their friends had televisions to watch such DVDs and some children were also involved in selling them.

One community leader in Viqueque noted the problem of some primary school children and junior high school children from that town drinking palm wine until drunk. Other parents complained about cock fighting. They thought this "sport" had a negative effect on children because boys gambled on the outcome of these

fight⁴. Teachers also reported that children watch adults playing cards for money and steal the money and that sometimes children gambled at card games.

In one village, teachers discussed the issue of children writing and passing love letters between themselves and with children from the closest towns. The teachers concern was that children could form relationships and that girls might become pregnant but their parents would refuse to take responsibility, creating problems between families when the parents refused to allow the couple to marry.

A Ministry of Social Solidarity/UNICEF report of May 2008, “Child and Family Welfare Concerns of Children and Families in Timor-Leste”, argues that children’s experience of violence and abuse is so extensive that the children of Timor-Leste “are immersed in violence, abuse and neglect at home, at school, in IDP camps and their own communities” (p. 3). The Report discusses violence in the home, assessments of the Vulnerable Persons Unit concerning home violence, violence in schools and violence in the community, citing the studies also discussed in this assessment in coming to its arguably overstated and wide sweeping conclusion based on the evidence offered.

Nevertheless, the report, based on the literature on inter-generational transmission of violence, reveals an important relationship between maltreatment and an increased risk of behavioural problems, aggression and crime.

State Responsibility for Justice for Children

Ministry of Justice (MOJ)

National Directorate of Legal Advice and Legislation

Under the Organic Law on the Ministry of Justice, the National Directorate of Legal Advice and Legislation is responsible for the drafting of legislative and normative acts within the competency of the Ministry of Justice. This

⁴ The Government has noted that cock-fighting occurs throughout the country and is a venue for gambling and alcohol consumption (Government of Timor-Leste 2006a: 206).

Directorate has taken responsibility for policy development and for the drafting of a proposed juvenile justice law. The Director of NDLAL asked for assistance with training for all relevant professionals and with dissemination of the new law once it is passed.

Public Defender's Office

The Public Defender's Office is represented on the Juvenile Justice Act Working Group formed by the National Directorate of Legal Advice and Legislation to develop the juvenile justice legislation. The Public Defender's Office fully supports separate legislation dealing with children but cautions that the implementation of the Act will require budgetary support, staff, specialized training, a program for dissemination and the creation of a separate centre for the rehabilitation for juveniles.

In the Public Defender's experience, juvenile cases rarely enter the formal system because police often release children due to lack of resources and the complications associated with dealing with a special group. In Dili, the police practice is to contact both the Public Defender and the Office of the Prosecutor General when they received a juvenile case. Although the Public Defender's Office does not collect statistics concerning children, it estimates the office handled between 20 – 30 juvenile cases in the 12-month period between July 2007 and June 2008. In Dili all juvenile cases are referred to the Public Defender's Office for legal representation by the Office of the Prosecutor General who receives cases from the PNTL, UNPOL, and the Directorate of Social Services. If the case does not come through the Office of the Public Prosecutor a private lawyer may represent the child and staff had no knowledge of how many cases this might involve.

The PD noted that while juvenile cases should be processed with expedition, due to the current court backlog of around 3000 cases⁵ and a lack of training and a lack of resources the processing time may be as long as one year.

When children are imprisoned the PD said the Public Defender's Office is quickly informed. However, staff noted that once a youth enters the prison system it is

⁵ Interview, Deputy Public Prosecutor, Office of the Prosecutor General, 30 June 2008.

difficult to remove them because of the absence of facilities dedicated to the detention of children. Often children are placed in monasteries but the monasteries are unable to protect children or deal with serious offenders and offer no rehabilitative programs.

The Public Defender noted several issues of concern:

- the difficulties in identifying children given that body size can be deceptive if relied upon to establish age and the fact that many persons do not know their exact age
- identification of street children who do not have a permanent residence,
- the lack of viable alternatives other than the prison system for children who are detained
- the lack of training for professionals including lawyers
- the lack of public understanding of children's rights, the law and the formal court system
- police abuse⁶ of children who come into conflict with the law The Public Defender's Office suggested that some youth going through the court system (about 2 or 3 cases out of the estimated 20 – 30 cases over the last year) showed signs of physical abuse such as cuts and bruising. However, these children were reluctant to accuse the police of abuse due to fear of reprisal and cases of abuse were not taken further due to lack of witnesses and evidence. Interviews with the OPG and the Deputy Provedor confirmed there had been no formal reports of abuse. When asked how they came to suspect police abuse interviewees said that they questioned the youth when they saw obvious marks of harm on their face and body but the youth often blamed their injuries on an accidental fall. Interviews with the OPG revealed that that office was involved in a Panel set up to evaluate the suitability of individual police officers by assessing their qualifications and record and accusations of abuse are relevant here. If an officer does not pass this certification process the panel can recommend dismissal from PNTL.

⁶ Judges have also expressed concern over this issue noting that it is an issue that sometimes comes to the attention of the court. When the court suspects police abuse the court will notify the prosecutor who has the responsibility to investigate. However, the youth are often unable or unwilling to identify the police officer who abused them (Interview, Judge Maria Natercia. 10 June 2008).

National Directorate of Prisons

There are currently 2 juveniles incarcerated in Becora Prison who are said to be mentally challenged, one to such an extent that he is unable to speak. According to the NGO, Forum Tau Matan, children were detained at Becora prison as follows:

Year	Number of Children in Detention
2002	13
2007	7
2008	5 (now reduced to 2)

The Director of Prisons advised that prior to the 2006 crisis, the Prison Department permitted agencies to conduct non-formal education in electronics, arts, and other vocational training. These programs were terminated following the crisis and have not been revived because Becora prison is being renovated. She noted that the Prison Directorate has plans to construct a separate 70 – 80 bed rehabilitation centre for children because they recognize the need to plan for the future development of the juvenile justice system.

The current facilities for youth at Becora comprise a separate building within the adult compound so that youth are exposed to the bad influence of adults. While the children sleep separately from adults they mix with them during recreation time and are exposed to adults swearing and fighting each other.⁷ The adults are said to manipulate the children by encouraging them to break articles such as plates and cups, and to make complaints to the staff. Children are permitted to watch television but only government stations.

According to the Director, the types of crimes committed by youth include fighting, sexual offenses, rapes, theft of electronics and computers, robbery, and murder. A number of agencies have provided assistance at Becora including

⁷ During the Portuguese and Indonesian periods there were no dedicated juvenile detention facilities. Under the Indonesian regime children sentenced to detention were transferred to another District away from their family but the usual punishment imposed was public or community work such as cleaning (Government of Timor-Leste 2006a: 211).

UNICEF (training, nonformal education), UNDP (materials for training), monasteries (nuns provide counselling), and the NGO Pradet (mental health counselling). Only the nuns and Pradet have remained active following the 2006 crisis. The Director identified the needs of youth in custody as: lack of legal representation, delay in the processing of cases, absence of non-formal education, absence of training, lack of counselling.

The Director has made efforts to assist youth by conducting a meeting in January 2008 with all with all lawyers, public defenders, judges, and the OPG to discuss the issue of access to justice. A program of regular meetings has been established and youth are permitted to see lawyers on Thursdays each week. The Provedor monitors prisons by quarterly visits. The Director requested assistance with training on children's rights for staff, equipment for training and educational programs and support for appropriate trainers, books for the library, and sports equipment.

Provedor

Among its functions the Provedor promotes and protects human rights and maintains a specialized office to address the concerns of juveniles. The office visits the three prisons every three months. Their representative confirmed that there were 2 juveniles currently incarcerated in Becora, both with mental health issues. One has been awaiting trial for 2 years and the second boy is an Indonesian youth whose case is also pending and had been in detention since 1999.

In October 2007 the Provedor recommended to the Ministry of Justice that the Minister issue a Ministerial order assigning a public defender to work on a permanent basis at the Caicoli Detention Centre to provide legal assistance to detainees (Provedor 2007). The police lockup is monitored by the Provedor and many cases since 2006 have involved juveniles arrested during the crisis. The Provedor noted that in that circumstance, families were not informed about the arrest of their children and that juveniles and adults were housed together in the lockup. Conditions in the lockup are poor. For example, there are no beds, or floor covering, and poor sanitation creates health issues. The Office noted that some juveniles entered the lockup with wounds and bruises, possibly from police

abuse. This issue was taken up with the police in a series of meetings and the Office made recommendations for disciplinary action.

Office of the Prosecutor General (OPG)

Under the Constitution, the OPG is given responsibility for ensuring the defence of the under aged. Under the Statute of the Public Prosecution Service, the Service is to “ensure the defence of legally incompetent persons, minors, and absentees”. The Service is to intervene in proceedings when representing minors but the intervention is to cease if the minor’s legal representative opposes it. Nevertheless, even where the Service’s representation ceases, the Prosecution Service may continue intervening to guarantee public interest and uphold legality. The Deputy Prosecutor General noted that they were experiencing great difficulties in terms of backlog, translation issues, human resources, housing, and capacity with the current adult caseload. He was unsure how the office could deal with even greater responsibilities under the proposed juvenile justice legislation without substantial support.

The OPG requested support and recommendations concerning the implementation of the new juvenile justice law once it is passed, and separate training for prosecutors on children’s rights and their responsibilities under the new law.

Ministry of Social Solidarity (MSS)

The MSS is responsible for child protection and under its Organic Law of January 2008 is tasked with “developing and implementing policy and programs in defence of the rights of children”. The Department of National Social Reinsertion within the Ministry of Social Solidarity has established a Child Protection Unit that as at May 2008 had 7 permanent and 3 temporary employees and 3 ancillary staff all based in Dili. The Unit is divided into Departments responsible for

1. Child Protection for violence abuse and exploitation
2. Juvenile Justice and Children in Conflict with the law
3. Child Care Centres, boarding houses, adoption and scholarships

Outside Dili there are 13 District Child Protection Officers to monitor, manage cases and support District Child Protection Networks. DNRS also intends to appoint “Social Animators” in each sub-district (65) who will be responsible for reporting to DNRS on social issues, and for collecting data and for surveillance.⁸ MSS has received adviser assistance, policy support, strategic planning support and case management training from UNICEF. MSS has requested specialized training from the Facility concerning their responsibilities under the new juvenile justice legislation.

PNTL Vulnerable Persons Unit (VPU)

The civilian police component of UNPOL under UNTAET established the Vulnerable Persons Unit in Dili in 2000 (Style-Power and others 2008). The National Vulnerable Persons Unit was created as a unit within the National Investigations Department (NID) of the PNTL in February 2001 and in March 2001 district units were established. After the 2006 crisis, all units of the PNTL NID were discontinued and the UN took control of all policing duties in Timor-Leste. The PNTL was re-established in September 2006 and the VPU began operations once again, this time under the control of UNMIT.

The National Unit of the VPU is comprised of one commander and two officers while the District VPUs comprise two officers (one UNPOL international and one PNTL national officer).

All District VPUs including the Dili District Unit have a mandate to investigate rape, attempted rape, child abuse, domestic violence, sexual assault, missing persons, human trafficking, and any other crimes against persons due to mental or physical handicap or where persons for any reason are less able to defend themselves. There is no mention of juveniles or children in conflict with the law in the VPUs mandate. Each District VPU collects statistics on cases in each District. The VPU operates during the hours of 8:00 am to 5:00 pm but are ‘on-call’ through mobile phones or radio after hours.

⁸ Establishing social workers and social animators in districts and sub-districts can operate as a netwidening measure by producing an increase in the rate of reporting of juvenile offences and child protection cases and bringing more cases to the attention of the police. This does not represent an actual increase in juvenile crime but rather an increase in the rate of reporting of juvenile crime and child protection cases.

Each District VPU is to provide “an enhanced level of victim focused support” and to liaise with local authorities to provide emotional and physical support to victims of cases under investigation, participate in crime scene examinations, preserve evidence, record evidence and statements, establish a case file and registration for each new case, and organize medical attention when needed.

The National VPU is responsible for providing training, setting policy and guidelines, collecting information and statistics, updating the Rules of Procedure and providing assistance to District VPUs for serious crimes such as rape, child abuse, serious domestic violence, and serious sexual assault in relation to cases involving “serious physical injury” as set out in the Indonesian Penal Code 1999.⁹

Given strains on staffing and financial resources as well as the administrative challenges (including the recruitment and retention of qualified staff) faced by the units, statistical data is limited (Styles-Power and others 2008). The Dili District VPU underwent a severe reduction in staffing levels from 19 to 4 after the 2006 crisis (ibid).

These obstacles contribute to skill shortcomings for VPU staff (ibid). An assessment of the VPU reveals that it is hampered by “insufficient human resources, technical and financial resources” such as “radios, fax machines, vehicles and computers” (ibid p. iii). The assessment suggests that staff “lack ... a victim-centered approach in the formal and informal justice system” and that “support to victims – including timely and effective justice – is needed” (p. iv). The assessment also highlights the need for separate legislation for juvenile justice and the creation of separate juvenile courts with trained judges and professionals in those laws and procedures.

⁹ **Article 90, Indonesian Penal Code, 1999** “Serious physical injury” denotes: illness or injury which does not leave any prospect for a complete recovery or through which danger of life exists;
continuous incompetence for performing official and professional activities;
loss of the use of a sense organ;
mutilation;
paralysis;
disturbance of the intellectual capabilities which lasted for more than four weeks;
removal or death of the womb of a woman.

When asked for statistics on child offenders, the VPU Dili staff reported that they do not deal with child offenders, rather they deal only with child victims of gender-based violence.¹⁰ They said that all cases of child offenders are dealt with by PNTL Investigators. However, in an interview with the Director of the PNTL Investigation Unit it was revealed that it was their practice to refer all children's cases to the VPU.¹¹ This difference in understanding may partially relate to a perception about the definition of a "child offender". For example, in a discussion concerning age assessment, the Director PNTL Investigation Unit, noted that although all cases involving children should have special treatment, when those involved were aged 15 or 16 and were married, they would be treated as adults according to the applicable Indonesian law. This view is also consistent with customary notions concerning the fluidity of "childhood" given that one of the signs of achieving adulthood is marriage. Perhaps customary notions of childhood are being transposed onto the formal law, however, Indonesian law No. 3 1997 Chapter 1. Articles 1 – 8, in defining a child, states, "A child is a person who has issues or commits a crime between the ages of 8 and 18 but unmarried." The Director explained that under this law, children who commit a serious offence such as murder or a sexual offence and who are already married at age 15 or 16 years of age are referred to the Investigation Unit as adult offenders.

However, there seems to be an inconsistency between Indonesian Law No. 3 1997 and UNTAET Regulation No. 25/2001 (promulgated by the President 22 November 2005 and entered into force 1 January 2006), Article 22 of which states that the adult court shall not conduct trials for minors because the Criminal Procedure Code 2005 states that juvenile cases must be tried separately.

This confusion concerning the state of the law on child offenders has consequences for the community. The Director of the PNTL Investigations Unit stated that when police attempt to apply the Indonesian Law, the family of a married juvenile will argue that their child cannot be tried as an adult. As he

¹⁰ Sexual abuse of a girl aged under 15 years may only be prosecuted after a complaint has been made by the child's parents or guardians except that the state may bring such a case but only in circumstances where: the perpetrator is the child's parent or guardian or the sexual abuse results in physical injury or death (Government of Timor-Leste 2006a: 185 -186).

¹¹ Interview, Angelo Kelo, Director PNTL Investigation Unit, 2 July 2008.

put it, “they don’t understand the Indonesian statutes and are unhappy when we explain the law to them but we cannot proceed with the arrest until we can make the family understand”.

The VPU has developed a set of child specific police procedures with the support of UNICEF (VPU 2007c), said to be based on both international standards and current national laws. Training on the procedures began in 2008 with 500 UNPOL and PNTL police officers having been trained to date. The procedures are set out in Annex A.

The above description of state institutions concerned with justice for children reveals an adequate structure and allocation of responsibilities that can be enhanced over time through appropriate training, capacity building and resources. The absence of a national centre for juvenile rehabilitation represents a significant gap in justice for children. Outside of the capital, justice for children, like adult justice, connects with the informal system of community justice more than the formal due to various constraints affecting the agencies that comprise the formal system of justice. The forthcoming juvenile justice law will give impetus to improvements in the system and hopefully encourage efforts to educate communities about child rights. It is vital therefore that all appropriate assistance be provided to agencies, especially the Ministry of Justice, to implement the reforms.

Existing Processes and Procedures for Justice for Children

The current VPU criminal procedures relating to prosecutions involving children are set out in Annex A and will continue to apply until the enactment of a new Penal Code or the promulgation of the proposed Juvenile Justice Act. Until then, juvenile cases will continue to be dealt with under the Indonesian Penal Code.

In relation to the formality of court proceedings involving children, a Regulation of the Ministry of Justice of the Republic of Indonesia of 1 June 1983 may be relevant. It provides specifically that the judge, prosecutor and lawyer representing a child in court shall not wear robes as they are ordinarily required

to do and that the inquiry shall be conducted in camera. Although some judges do implement child friendly practices and environments in their courtrooms when dealing with children, concerns were raised by some respondents from the justice system that the courts failed to adopt any special procedures or practices when dealing with children. Nevertheless, some judges are known to “talk gently” with accused youth and to ensure that the proceedings are closed to the public.

The existing Penal Code fixes the age of criminal responsibility at 16 years. If aged under 16 years a child can be ordered to be placed “at the disposal of the Government”¹² in a Government institution for educational purposes until he or she reaches the age of 18 years, unless he or she commits a further offence within two years of a previous offence. In such a case, the court may either place the child at the disposal of the Government or apply a punishment. I was informed by one District Court Judge and by the Deputy Prosecutor General that in most juvenile cases the District Court sends juveniles, apparently under the age of 16, home to their parents, this being their reading of the expression “at the disposal of the government”.

¹² **Article 45 of the Penal Code** states:

In a criminal prosecution of a minor by reason of an act committed before he has reached the age of sixteen years, the judge may:

- Either give the order that the person found guilty be returned to his parents, his guardian or his fosterer without applying a punishment,
- Or, if the act falls under the provision of a crime or of one of the misdemeanours described in the articles 489, 490, 492, 496, 497, 503 – 505, 514, 517 – 519, 526, 531, 532, 536 and 540 and is committed before two years have elapsed since an earlier conviction of the same person of one of these misdemeanours or of a crime has become final, give the order that the person found guilty be placed at the disposal of the Government, without applying a punishment:
- or sentence the offender to a punishment.

Article 46, Indonesian Penal Code

1. If the judge has given the order that the offender be placed at the disposal of the Government, he shall be
Either placed at a Governmental institution in order that he be provided with his education at that place, or later on in another manner, by the Government;
Or entrusted for his education to a certain person or a body corporate or foundation or charitable institution, in order that he be provided with his education by these bodies, or later on in another manner, by the Government;
In both cases at the utmost until he shall reach the age of eighteen years.
2. Provisions for the implementation of the first paragraph of this article shall be fixed by law.

In spite of this apparently clear legal statement concerning the age of criminal responsibility, a Judge and a representative of an NGO advised me that the age of criminal responsibility had been increased by the Transitional Government of Timor-Leste from 8 to 12 years. They did not cite any law that provided this. They also stated that children aged between 12 and 14 years could only be held criminally responsible for serious crimes (rape, murder, arson) and that children aged above 14 and below 16 years could be held criminally responsible for both minor and serious crimes.¹³ Again, I was not directed to any legal authority supporting these distinctions.

In relation to age assessment, the practice is for the court to verify the child's age by referring to documentary evidence from schools, the church, or from parents or guardians.¹⁴ There is no practice of consulting medical professionals.

Statistical data from the formal court system does not disaggregate offences committed by children. One Judge estimated there were approximately 10 – 20 cases each year involving offences such as robbery, stealing cars, murder, assault, and rape.¹⁵ The judge expressed the view that even this low figure was seen as a high rate of offending in Timor-Leste and that consequently there was a real need, not only for a separate law and separate procedures for dealing with juveniles, but for specialized training for judges, prosecutors, and lawyers in the area of juvenile justice and juvenile law.

Clearly, existing misunderstandings concerning the law applicable to children should be immediately resolved. However, this may not occur before the enactment of the new Juvenile Justice law, which will provide an opportunity for all agencies to be fully engaged in understanding and applying the reforms through comprehensive training and awareness programs. Immediate action is however required to establish a proper process of collecting statistical data in cases children in the formal system. In the informal system no research has been conducted into the incidence and nature of dispute resolution concerning juvenile delinquency although a good deal is known about some aspects of informal justice

¹³ Interview, Judge Maria Natercia, Judge Administrator, 10 June 2008; Interview Joao Soares Pequinho, Executive Coordinator, Forum Tau Matan, 11 June 2008.

¹⁴ Interview, Judge Maria Natercia, Judge Administrator. 10 June 2008.

¹⁵ Ibid.

(see later). Appropriate research studies should therefore be conducted in view of the need to protect the rights of children in informal forums especially where there is potential for the rights of the girl child to be given less attention.

Juvenile Justice Reform

In introducing the first Report of Timor-Leste to the Committee on the Rights of the Child under the Convention of the Rights of the Child. In January 2008 the Minister for Justice said that Timor-Leste needed a comprehensive and consistent legal framework to ensure the promotion and protection of the rights of the child (Child Rights Information Network 2008).

Following the crisis in 2006 the Government of Tmor-Leste had plans to construct a juvenile justice rehabilitation centre for youth called the 'Place of Hope' but after many of the children taken into custody during the crisis were released, the Government reprioritized and focused on the development of new separate Juvenile Justice legislation.¹⁶ Once the juvenile legislation is complete and submitted to the Council of Minsters¹⁷, work will begin on developing legislation focused on child protection issues in a separate piece of legislation.¹⁸

The Ministry of Justice and UNICEF have been working together to formulate a new Juvenile Justice law. The draft legislation on juvenile justice sets the age of criminal responsibility as 15 years and adulthood at 18 years. It creates a juvenile justice court, special judges trained in juvenile issues, special protections, and provides socio-education measures as consequences for acts considered offences. Children under 12 years old are not considered criminally responsible in the draft bill. The main features of the legislation are set out in Annex B.

The process of formulating the draft law began in November 2007 when a Task Force was established comprising a team of members from MOJ and UNICEF to travel to 11 Districts including Dili to conduct consultations with communities. A

¹⁶ Meeting with Lauren Rumble, Chief Child Protection UNICEF, 26 June, 2008.

¹⁷ According to Dr Marselina Tilman da Silva, DNAJL, Ministry of Justice, the goal is to submit the legislation to the Council of Ministers by the end of 2008. 22 June 2008.

¹⁸ Meeting with Dr. Marselina Tilman da Silva, Director, DNAJL, Ministry of Justice, 22 June, 2008.

juvenile justice working group was established with members from the Ministry of Justice, Ministry of Education, Ministry of Health, Office of the Provedor, State Secretary of Gender and the Promotion of Equality, Child Protection Unit of the Ministry of Social Solidarity, UNICEF, Secretary of State for Youth and Sport, Courts, Office of the Prosecutor General, and the Public Defender's Office. The Working Group is chaired by the Director of the Division of Legal and Legislative Affairs with the assistance of UNICEF and has met monthly since that date. The JJWG is a "consultative body which will:

- provide the Division of legal and legislative affairs of MOJ with relevant information from different sectors regarding children's needs, existing legislation and implementing institutions as well as local traditions and practices to serve as a basis for the development of the legislation on children in conflict with the law
- review and provide comments on the draft legislation
- create strategies for the forthcoming implementation of the legislation" (Ministry of Justice 2007).

Participation was sought from district administrators, subdivision administrators, Head of villages, youth, parents, and the church. Their views were solicited on how to prevent children from committing offenses, if children were already in conflict with the law, the measures they saw as solutions, the resources the community should provide for these child offenders, how the community could help change these children in a positive manner, and the informal justice system might be involved in resolving cases concerning children.

The team organized focus groups in the Districts who were asked questions based on a questionnaire translated into the four major languages. The questions centred on:

- protections for children and youth,
- the needs of the community in order to prevent crimes,
- the hopes of the community for children and youth, and
- the resources of the traditional justice system to address juvenile crimes.

In all, more than 500 persons participated in the consultations from which emerged various themes expressing community expectations for children and child offenders.¹⁹ Communities were satisfied with the traditional ways of resolving issues and wished to continue using local authorities to achieve a consensus between victims and perpetrators for minor offences including, fighting that results in no serious injuries, disputes over animals, destruction of gardens, and theft of chickens. Crimes regarded as serious and properly referred to the formal system included murder, rape, and arson. Youth expressed their need to take part in economic activities and some communities wanted ethical and moral provisions included in the new law. For example, in Baucau the community thought that youth should be detained in churches and monasteries and not prisons when they commit offences. In Liquica, the community was concerned about the level of professionalism shown by the police. Gleno youth explained that they wanted to take part in the discussions concerning the draft law and in Mariana the community raised issues of respecting women's rights. The consultations produced a list of common concerns.

In addition to the community consultations, a Justice for Youth Working Group was established comprising children aged between 12 and 14 years and chaired by the Director DNAJL, Ministry of Justice. Youth from Dili and the Districts gathered each Friday at the Ministry of Justice to understand the Convention on the Rights of the Child and discuss a draft Bill on Juvenile Justice.

On 25 July 2008 a Consultation workshop was conducted in Dili to seek the views of the youth, civil society, the donor community and institutional agencies (OPG, Public Defenders, private lawyers, police) on the draft bill. A copy of the draft bill was provided in Portuguese to participants who were asked to provide their comments to the Ministry of Justice by 30 August 2008. After this date comments will be considered and a final draft prepared for submission to the Council of Ministers. The Working Group will then begin work on a Children's Code concerning protection issues for children such as adoption, inheritance, age of marriage, etc.

¹⁹ UNICEF consultant, Isabel Lima, during meeting with representatives of Ministry of Youth & Sport, MOJ and Justice Facility. Ministry of Youth & Sport. 3 July 2008; also see UNICEF 2007. Timor-Leste District Consultations: Summary Conclusions and Next Steps for Drafting the Juvenile Justice Legislation.

Summarizing the consultation, the following points emerged:

- The draft bill was available only in Portuguese but many participants were unable to understand the text.
- Representatives of the criminal justice system noted a need for specialized training and a procedure for age determination.
- Taking a child out of school to undergo socio-educational measures (6 months) is too lengthy
- The involvement of the Prosecutor and the Multidisciplinary Technical Team in deciding whether mediation or traditional justice processes would be followed could be a waste of resources for minor cases which are already being resolved in the community through existing processes.
- The draft Bill would need to be consistent with the Penal Code
- Creating procedures for minor offences would increase the time taken to resolve these cases and would keep children out of school
- The MSS representative noted a need to formulate an implementation plan for the legislation so that it could be implemented speedily and fully
- Also, police would need to understand their responsibilities under the law
- She believed it important that there was a full understanding of why a child committed an offence and that the complete context of the offence should be known
- Finally, she believed the Bill ought not to invalidate all existing processes

Other participants raised the following issues:

1. Some thought there was need to create a centre to rehabilitate children and carry out the social and educational measures.
2. A 6 month assisted supervisory period for a minor crime such as stealing an egg was excessive and wastes everyone's time.
3. The option to carry out community work was exploitive of children and community work such as cleaning the streets would cause the child to feel shame.

Recommendations were also made by the participating children, including the following:

- professionals in the justice sector should be trained in child rights
- there is a need for more social workers to be appointed in the districts and in Dili
- there should be continued involvement of youth in the dissemination and review process of lawmaking
- a youth parliament established

The draft legislation has been examined by UN agencies and in June 2008 UNMIT commented on the draft juvenile justice bill in some detail including the following substantive comments:

1. The draft Act imposes a heavy structure and additional bureaucracy on the already overburdened judiciary that raises serious concerns about whether the legislation would be practicable and suitable.
2. A fairly heavy reporting structure, high administrative costs and lack adequate human resources may impede effective implementation
3. Legal professionals who lack sufficient training already will likely find it difficult to understand such a comprehensive piece of legislation and this may result in a backlog of cases.
4. The concept of the Multidisciplinary Technical Team should first be tested in a pilot project together with the social and education measures.
5. It would be preferable to wait until the Penal Code has been enacted to ensure that the new law is consistent with the Code.
6. International standards relating to a fair trial indicate that there should be a mechanism allowing judicial review of a mediation agreement made under the Bill. Regular review of mediation practice by the formal system is desirable to ensure that proportionate measures are imposed.
7. The legislation gives little attention to child victims and witnesses of crime.
8. Arguably, protection measures should be authorized by a judge and not by the prosecutor.

In other comments on the legislation a representative from the Office of the Provedor explained that the main issue from the point of view of human rights protections is that juvenile suspects must be treated as suspects by police and not as offenders. He believed that all parties should treat all children coming into contact with the formal system according to their age. In relation to the informal system he felt that special protections were needed so that children were protected when they face informal system. He expressed a preference for using the informal system for juvenile delinquency. For serious crimes, he felt that the proposed Multidisciplinary Technical Team could help protect a boy who might be faced with acts of revenge by the victim's family. He felt that local people and leaders needed to be taught and socialized to be sensitive to issues of equality. He also suggested that NGOs such as FTM, JSMP, HAK, and UNMIT could help to monitor human rights in each district.

UNICEF has commented on the second draft of the law to the effect that while there have been some improvements in the structure of the text, it is still extremely lengthy, and there are issues of implementation that need further definition. UNICEF notes there is still no provision for age determination where this is in doubt or any procedures concerning interviewing children in conflict with the law. UNICEF is also concerned that there are multiple categories of child, adolescent and young adult and that this unnecessarily complicates protection issues because the CRC refers to special protection for all children less than 18 years.

In my view the legislation remains a work in progress. There are still duplicate provisions which should be edited out; many provisions continue to be unclear in their meaning and effect; and linkages between procedures and processes are not always clearly established. The main issue remains the complexity of the structures created by the draft law and the reality that cumbersome bureaucratic procedures will be difficult to administer. As well, a number of agencies, including the Office of the Public Prosecutor are given extensive responsibilities for which they presently lack any capacity. More clarity is needed on the definition of responsibilities within government agencies to avoid 'turf battles' in the future. Generally, there seems to be a lack of appreciation of the need for the

law to be workable in practice in a country with limited resources and limited human resources and capacity.

Issues in Juvenile Justice

In reviewing reports and studies about youth and in assessing interview material a number of issues in juvenile justice emerged. These are:

- the involvement of youth in the 2006 crisis (as an indicator of the potential of youth to engage in violence in the future);
- the need to give priority and special attention to juvenile justice cases in the formal justice system;
- taking action to recognise children's rights through a range of broadly based activities;
- martial arts clubs and schools (because of their potential as precipitators of violence and instruments of politically motivated violence);
- the phenomenon of the growth of youth groups who have banded together for security and to achieve a sense of belonging, comprising youth marginalized through unemployment and lack of education;
- the growth of youth groups as a response to a failure to provide for their participation in the economic, political and social development of the country.

According to the World Bank (2007b: 1) in 1975 less than 10% of Timorese were literate and tertiary education became available only in the late 1980s. During the Portuguese rule, formal employment was enjoyed by only a tiny urban elite and expanded only to a limited extent under the Indonesian occupation. Most District capitals received electricity only in the 1980s and in 1965, Dili had only about 10,000 residents.

During the Indonesian occupation the Timorese resistance leaders encouraged violence as a legitimate form of resistance and the Indonesians themselves used militia groups of youth to intimidate citizens in the lead up to the August 30, 1999 referendum (World Bank 2007b: 2).

Indicators of previous tensions and crises include: camps for the internally displaced still exist in Dili and its surrounds, communities are said to be divided

along East/West lines, rivalries exist between the political elites, the National Police force, PNTL, is weak and maintains tensions with the army, and in 2006, many youth were involved in widespread violence.

According to the Joint Assessment Mission comprising the World Bank, UN agencies and donors following the referendum in 1999 “youth and adults alike are very much aware that continued unemployment and exclusion of youth may lead to their further militarization, forcing them to adopt violence as a coping strategy to post-conflict misery” (World Bank 2007b: 2).

The World Bank (2007b: 2) notes that the connection between youth violence and political action should not be overemphasized but that in the early stages of the 2006 crisis some political leaders mobilized youth for political purposes.

In January 2008, Caritas Australia published a report by Field, “Acknowledging the past: Shaping the Future” containing the conclusions of a series of discussions held between the researcher and senior representatives of government, churches and civil society. Among the recommendations concerning churches in the country, those consulted recommended that the churches “seek ways to enable marginalized youth to be engaged in activities that empower them to find their rightful place within their communities, help them to see the destructive consequences of being involved in crimes, and assist them to develop skills for the workforce” (Field 2008: 4).

According to Babo-Soares (2004: 16) groups within the country continue to be in conflict about events that occurred during the conflict in 1975 when 1000s were killed and property stolen and destroyed. Similarly, during the Indonesian period from 1974 – 1999 killings occurred which still generate vengeance and retaliatory feelings because of the absence of any accountability for these crimes. He takes the view that the country’s elite has failed to reconcile and that events such as the street fighting between opposing political factions in January 2002 and the militia incursion of January 2003 are evidence of this failed reconciliation (p. 17).

In recounting the role of the church prior to 2002, Field noted that many priests and sisters hid people in their compounds who were on the run from the Indonesian military. The report suggests that this protection may have encouraged some youth to be more provocative in their opposition to the authorities than might otherwise have been the case. A priest gave his view as follows:

“The youth played with us. They would say that the troops did this and when we checked it out it did not happen. Sometimes the youth manipulated the church movement for their particular interests – to fight for independence. For example, if they were supposed to participate in mass, they would use it for demonstrations around the church. They did not participate because of their faith, but because the church was a channel for them to use” (Field 2002: 10-11).

2006 Crisis

The civil disturbances of the 28 – 29th April 2006 and the military police confrontation on 23 – 25 May culminating in shootings at police headquarters on 25 May causing 9 deaths and 27 gun shot injuries are discussed in Report of the “UN Independent Special Commission of Inquiry for Timor-Leste UN Commissioner for Human Rights” 2006. The Commission attributed the cause of the crisis to “frailty of state institutions and the weakness of the rule of law” noting that “governance structures and existing chains of command broke down or were bypassed; roles and responsibilities became blurred; solutions were sought outside the existing legal framework” (UN Commission for Human Rights 2006 Note 4 p. 2). Curtain (2006) questions whether this is an adequate explanation for the 2006 crisis including why did the incident involve mainly young men and why were communal leaders in Dili so ineffective in controlling the violence? He calls for a deeper understanding in the search for longer-term solutions.

A partial response to Curtain’s questioning appears in “Like Stepping Stones in the River: Youth Perspectives on the Crisis in Timor-Leste” (Grove and others May 2007), when a team of researchers organized by Plan International asked youth aged 15 to 25 years in Dili and in the Districts how they understood the crisis? Who was responsible for it and what caused it? The research concluded:

- The crisis was caused by the leadership and not by youth. They deny there is a deep ethnic divide within the population and see the conflict as politics playing out within the community. They criticize leaders for failing to resolve issues and to allowing small grievances to stand in the way of solutions. Some said that leaders gave or promised money, distributed weapons and incited hatred and promised to take care of those who supported them.
- Most youth did not participate in the violence. Youth say only between 10% and 25% were involved in the crisis.
- The crisis provided an opportunity to take revenge for personal disputes. Old grudges that had been dormant came alive in an environment of lawlessness. Youth described their culture of keeping a grudge or refusing to reconcile between individuals, families, neighbourhoods, and even martial arts groups. Once fighting had begun groups coalesced around affinities to show loyalty and protect each other.
- Youth do not believe there is adequate protection against future violence and both the formal and informal systems should be used in this endeavour.
- All youth said they were affected because their schooling was interrupted and they were stopped at barricades and were at risk of becoming involved in the fighting.

Prioritizing Children's Rights

According to the UN Justice Working Group (April 2008) vulnerable and sensitive cases including those involving child victims, witnesses and offenders are not prioritized in the criminal justice system by the police or OPG. The Working Group recommended a prioritization or flagging of such cases especially when they involve children.

In addition, the Report notes a lack of specialization in children's rights in the OPG and lack of awareness amongst police concerning procedures for dealing with child victims, children at risk and in conflict with the law and with respect for mandated protection bodies such as Child Protection Services and the Vulnerable Persons Unit (VPU). It recommends the following:

- recruitment of specialists in youth cases,
- dedicated child rights focal points to be appointed in OPG, Office of Public Defender (OPD) and MOJ,
- child protection and child rights training should be a core component in induction and refresher courses at the Judicial Training Centre,
- training for police should be given on child rights an especially rules of procedure concerning vulnerable children and a child rights advisor should be recruited on a long term basis for MOJ, OPG and OPD.

Recognizing Child Rights

In its Concluding Observations on the country's initial report to the Committee on the Rights of the Child of 1 February 2008, the Committee recommended the following:

- Timor-Leste systematically promotes the establishment and involvement of civil society organizations working with and for children throughout all stages of the implementation of the Convention.
- That TL continue its efforts to systematically disseminate information about the Convention among children, parents, community leaders, civil society organizations and government agencies in appropriate languages including through radio programs and other media and provide all relevant professional groups with targeted and regular training on the provisions and principles of the Convention
- In relation to street children, the Committee recommended that a comprehensive study be carried out to assess the scope, nature and root causes of the presence of street children in the country in order to develop a national policy for prevention.
- Provide street children with shelters, recovery measures and social reintegration measures
- In relation to the administration of juvenile justice the Committee recommended that TL expedite its efforts to finalize juvenile justice legislation, systematically train judges and other professionals in juvenile justice matter and ensure that proper legal representation is properly

available to juvenile offenders, and ensure that children are deprived of their liberty only as a means of last resort

- All child victims of violence and abuse have access to adequate care, counselling and assistance with recovery and reintegration service
- Encourage and promote the positive involvement of the media in the reporting of child victims of violence, abuse and ill treatment and ensure that the media fully respect the right of the child to privacy

Martial Arts Clubs and Schools

In its Report to the Committee on the Rights of the Child, the country recognized the potential risks relating to the attachment of young persons to martial arts groups including the risk of such groups being used for political purposes. The Committee encouraged the monitoring of the activities of martial arts groups and the finalization and adoption of a proposed law on martial arts groups. The Act was passed in July 2008.

Scambary (2006: 1) argues that a large number of youth groups caused the bulk of the destruction in April 2006. Historically, under the Portuguese colonial rule gangs were used as tools of repression and gangs and militias followed this practice during the Indonesian rule. Post-Independence there have been persistent clashes between youth groups. In March 2001 there was a riot between martial arts groups in Viqueque which destroyed most of the houses in two villages. In August 2004, 50 houses were burnt down in Ainaro, and the incidents attributed to martial arts groups. The author argues that for the last six years parts of the eastern city of Baucau have rendered no-go areas after dark because youth groups have erected barricades and extorted money from motorists. There are estimated to be 15 to 20 martial arts groups with a registered membership of 20,000. Some groups are aligned to political factions within the opposition and Scambary argues that these gangs are used for political intimidation (p. 2). According to Scambary, martial arts groups also exist within the security forces and some members interviewed for his study asserted that their loyalty was to their martial arts masters rather than to any other authority.

A National Forum for Communication between the martial arts groups was established within the Office of the President to resolve conflicts and a standard of conduct agreed to on 27 May 2005 (Scambary 2006: p. 2). According to Babo-Soares (in Scambary 2006: 2) there have been continuous clashes between western and eastern gangs in Dili since Independence and even since WW II. He believes the rivalry stems from a dispute over who won the war with easterners claiming the major contribution to victory and labelling westerners as collaborators or militia. A further cause of rivalry is commercial between traders from the western districts of Bobonaro and Ermera and eastern districts of Baucau and Viqueque over control of the markets (p. 2). This dates back to WW 2 and 1999.

The main features of the proposed legislation on martial arts, clubs and schools are:

1. The establishment of a regulatory commission on martial arts under the Secretary of State for Youth and Sport which will supervise the activities of the clubs. The Commission comprises 4 members and a Chairperson appointed by the Secretary of State for Youth and Sport. Other members are a representative of MOJ, a representative of Ministry of Education, and two representatives from the clubs elected by members.
2. The Commission licenses martial arts clubs and schools and issued directives concerning the learning and practice of martial arts. The Commission may issue disciplinary procedures that apply to the clubs and schools but the actual offenses are to be contained in separate regulations made by the Commission. The penalties are specified as warning, fine of up to \$2000, suspension for up to four years, or closure of the club. The disciplinary sanctions that can be imposed on instructors and members are similar except that the fine is limited to \$200, suspension from membership for up to two years and expulsion from the club.
3. It is a crime to teach or practice martial arts other than in a duly licensed club or school. The legislation suggests that martial arts schools will only be licensed if their membership agrees to uphold the established values and social order and where members have been convicted of crimes against public order, it is unlikely that registration will be accepted.

4. The Clubs must keep proper records identifying their members and existing clubs have 120 days to apply for registration with the new Commission from entry into force of the law.
5. The legislation states that clubs and schools are prohibited from associating with political parties in any way.

Youth Groups

According to Scambary (2006: 1) sources for the events of April 2006 include:

- longstanding ethnic tensions concerning the control of the markets and trading groups
- property disputes arising from the 1999 resettlement
- rivalries between factions in the security forces
- endemic youth group rivalries
- a politically driven destabilization campaign by opposition parties

Large numbers of young marginalized males were involved in the events. The causes of their marginalization having been established in a number of studies as including unemployment, concern about security, and lack of access to education (p. 1). Despite the involvement of numbers of youth groups in organized violence there exist hundreds of village based youth groups conducting collective socially oriented activities. They constitute voluntary community based organizations and potential points of engagement with marginalized youth. They could form the basis for future reconciliation and reconstruction programs.

Land disputes since 1999 are a major source of ongoing violence and individual property disputes have provoked attempts to evict eastern families who illegally occupied dwelling left vacant after 1999. There is some evidence that youth groups are enforcing these evictions for money. Gangs appear to be led by former resistance figures loyal to factions within the security forces and political parties and there may be an ongoing war between these groups for control of gambling, extortion and border smuggling rackets (p. 4).

He argues that with high employment in Dili it is easy for youth groups to recruit from disaffected, marginalized groups who have drifted to the city from rural areas (p. 4).

He identifies seven main types of groups²⁰ with 3 subgroups:

- Large disaffected groups with some grievance from eh past to the ruling party (p. 5) with membership drawn from rural unemployed youth from age 13 upwards, poor farmers and ex-FALINTIL. All groups reject the legitimacy of the then government and allegedly conduct petty crime, extortion and cross-border smuggling.
- Martial arts groups. In addition to the approximately 20,000 members, there may be as many as 90,000 unregistered members making about 70% of young Timorese members of such groups. Some martial arts groups have become politicized with the two biggest groups aligned to the opposing political factions and factions within the security forces.
- Magical or mystical or wound groups. Originally forms as secret organizations under Indonesian occupation. The magic group members have an age range between 20 and 51 years and most groups are largely inactive (p. 6).
- Large village based ethnically distinct groups engaged in organized crime with the main groups being led by former resistance figures. They appear to have caused most of the recent violence.
- Youth Groups with 3 subcategories
 - Large village based youth groups, age range 20 – 23, main activity sports, provide social services, unlikely to be involved in violence
 - Large village based youth groups with older leaders, organized like small scale NGOs, run language and computer training courses,

²⁰ Scambary (2006) referred to these as gangs in his report. Youth informants for this situational assessment expressed in interviews that they do not wish the term 'gang' to be used to refer to youth in Timor-Leste because they believe it is derogatory and is reminiscent of derogatory labels used against the Timorese by the Indonesians in the past. Given these sensitivities, they believe the term 'youth group' is more neutral and causes no negative stigma for young persons in Timor-Leste. Any negative behaviours on the part of some youth can then be analyzed within the greater context of the larger majority of youth who do not participate in such anti-social activities.

sports competitions, music, provide some social services, age range 15 – 40 years.

- Small village based male groups with little structure mainly concerned with guitar playing and drinking alcohol, provide informal security to shop keepers in return for cigarettes and alcohol, age range 16 – 24 years.
- Small groups of young males usually neighbours gathering at night when drunk to look for trouble. These are accused of extortion and running rackets
- Church run groups in the 10 – 13 age group. Activities playing music, singing and dancing

Most group members interviewed for the study agreed that providing employment was crucial to ending youth violence (p. 8). As a short-term measure supplying sporting equipment, musical instrument and artistic material would help prevent conflict.

Youth group members gave various reasons for joining groups including, for security, as a way of meeting other youth in their area, to unify local youth to create peace in the bairro/village, to give youth something to do, to give youth from the districts a sense of family, to help the community through social programs, to build unity and good spirit in difficult times (p. 25). Nearly all groups claimed to be of mixed gender but of the 26 groups interviewed women were only present in 4 cases. Only two groups admitted involvement in any violence. Martial arts groups admitted some individual members might have been involved and other groups strongly denied any involvement in the then current violence (p 26). Most groups expressed a wish to play sport to give them something constructive to do. They also mentioned a need for musical instruments, a place to practice and painting materials.

Unlike typical youth groups which form for community purposes and activities and provide a sense of belonging, martial arts groups are constructed as 'dangerous' and as potential sites of violence and crime. This apprehension has been recognised in the draft legislation which seeks to control their membership and activities through a registration and disciplinary process. Rather than

constructing martial arts groups as a 'dangerous class,' an alternative policy approach is to assimilate martial arts groups to the typical youth group and offer them similar benefits on the basis that they too are involved in providing structure and a sense of belonging to youth. There is a risk that dividing youth into classes based on perceptions of dangerousness (membership of a martial arts group) will lead the creation of categories of 'good' and 'bad youth'. Labelling youth in this manner may lead some to reinforce their own perception that they must actively engage in 'dangerous' forms of behaviour. This suggests that a strategy of linking martial arts groups to the wider community and rewarding them for positive contributions to development is likely to be more constructive.

In relation to youth groups generally, the Government has clearly recognised through a series of policy initiatives that this is an area where a targeted approach must be adopted. The National Youth Policy, the promotion of young talents, the focus on youth and sport, strengthening youth organizations and initiatives to promote peace among communities, especially the youth, and the emphasis on private sector development and other measures collectively attempt to address the issues of marginalization and unemployment. The World Bank has planning to follow this strategy by providing resources to youth groups (see later).

Traditional Dispute Settlement

At present most juvenile cases are dealt with within the informal system. Interviewees described the traditional system and the response to crimes committed by children in the community such as making insults, stealing, or throwing stones. They noted that the usual response was to bring the issue to the attention of community leaders who then visit the child's parents and advise the family. As a consequence, the family and father feels shamed and will often respond by beating his child as punishment hoping to deter him from unacceptable behaviours.

According to Grenfell (2006: 316-317) anthropologists and others have identified commonalities in the informal systems of law applying throughout Timor-Leste as follows:

- the social order is based on certain values including kinship, marriage and the exchange of goods
- the marriage relationship is key because it produces a bond between two families or houses
- the practice of giving bride price is common
- within the community, wrongdoing is seen as disturbing the system of “value circulation” thus causing injury interrupts the flow of value and results in an imbalance in the socio-cosmic system
- a breach or threatened breach of the social order is regarded very seriously, for example, a refusal to marry a designated person is of more consequence than an act of domestic violence
- dispute resolution processes generally provide for issues to be resolved between individuals of different families by the elders of those families. This process may involve the *lian nain* (the holder of words) deciding the proceedings. If this process is unsuccessful, the families may refer the dispute to the hamlet chief (chefe d’aldia). If this too is unsuccessful the matter is referred to the chief de suco (village chief). Either chefe may decide to call a meeting of elders including experts in custom. Sometimes issues are referred to a local priest. Generally, the police are considered a last resort.
- Informal processes seek restorative rather than punitive justice with the objective of restoring harmony within the community.
- Justice and punishment are interrelated because compensation paid by one party to another is given in the name of the family and not in the name of the individual perpetrator.
- Reconciliation is perceived as one of the most important stages once compensation for a grievance has been determined and reconciliation ceremonies symbolize the settlement of the grievance.
- Imprisoning a person for an offense is not understood in many local systems as an appropriate form of shaming or punishment because it is regarded as an opportunity for the perpetrator to be provided with food and shelter while others must work to obtain these.

Therefore, removing the perpetrator from the community fails to produce a resolution at the local level. Even after serving a sentence of imprisonment, a perpetrator must conduct a process of reconciliation within the community in order to restore harmony and repair relations.

- Depending on the context, violent assault may not be considered serious in the Western sense and sometimes theft may be considered a more serious act

In July 2002, JSMP conducted a “Workshop on formal and local justice in East Timor” which considered the benefits and disadvantages of the traditional justice system and the formal justice system. Its recommendations included that “the local justice mechanism, which does not currently respect the dignity of women and children, be reformed” (2002: 15) and that support for the local justice system be based on international human rights principle. The Workshop noted that the formal justice system has the positive advantage of being able to protect victim’s rights and that the local justice system sometimes produces decisions which contradict international human rights standards (p. 16). The informal system gives no attention to children’s issues, for example, sexual abuse. The formal system judges cases according to international standards protecting human rights.

The Minister of Justice has requested UNMIT to coordinate a UN proposal on traditional justice mechanisms and their relationship with the formal justice system with the aim of developing a legal framework. UNMIT proposes to conduct an overview of issues and comparative systems and hold a seminar with key stakeholders with the objective advancing possible options for the linking of the formal and informal systems.

In “Forging the Middle Ground: Engaging Non-State justice in Indonesia” May 2008, the World Bank Social Development Unit noted:

- The complexity of informal justice is such that nothing should be done in terms of policy. The justifications for this approach are firstly supporting non-state justice would merely entrench poor

justice for the poor and secondly that non-state justice is too complex and socially embedded and not an appropriate target for intervention

- Much informal justice excludes minority groups and women and many non-state justice functionaries operating at the village level have no capacity to resolve problems
- Power imbalances prevent equal treatment and leave the weak open to accepting unwanted resolutions or unable to enforce agreed outcomes. This means mainly disputes are partially unresolved and are liable to re-emerge possibly associated with violence
- The opaque interface between formal and informal justice creates legal ambiguity and opens up scope for rent-seeking and manipulation of disputes
- Serious criminal cases are inappropriately mediated at the local level often reinforcing existing power structures over obtaining justice for victims
- Often indigenous, ethnic and male elites are in charge of traditional mediations and can promote a narrow conception of local justice which often turns out to be the law of senior males used to rationalize and justify relations of dominance and oppression
- A middle ground approach would accommodate different socio-cultural contexts, customs and habits but at the same time introduce Constitutionally enshrined legal safeguards to protect the marginalized
- Local dispute typologies suggest cases range from minor intra-village disagreements between residents, lengthy violent inter-village disputes, conflicts between villages and external parties. In a survey in East Java police reported the three most common forms of cases they deal with are assault 33%, domestic violence and rape 31% and land 10%
- Dispute resolution actors are usually middle aged or old men. There are almost no women in decision making roles in village institutions

- People who understand their rights are more likely to use and trust the formal legal system to open up options and shift power imbalances in their favour
- Village government apparatus and adat religious and community leaders are the most popular dispute resolution actors. Except for rural village heads, all are appointed rather than popularly elected
- Most complaints reported to the police are mediated or referred back to the village rather than processed through the formal system
- Enforcement ultimately comes down to the willingness of the parties in question and the powerful often fail to honour mediated agreements
- Disputes are often resolved based on local conceptions of justice or fairness or what the local leadership thinks is an appropriate outcome without any reference to state or traditional law
- The governing principle of informal justice is to return communities to harmony and peace but the search for harmony can come at the expense of individual human rights and justice (see quote from Merry pg 30)
- The interface with the formal system is usually triggered when cases turn violent, when the stakes are high, or where interests external to the village are involved
- The majority of disputes that emerge at village level are petty, fights between neighbours or youths, minor thefts and slander. When the stakes are low the informal mechanisms operate smoothly and effectively
- Weaknesses of the informal system p. 44

In December 2002, Asia Foundation conducted a survey in all districts of the country to assess citizen knowledge and attitudes toward law and justice. The report concluded that the East Timorese concept of the justice system comprises both the traditional process and the formal legal system. People are most likely to use the traditional system for what they perceive to be minor offenses or injuries, resorting to the formal system only for more serious issues (Asia Foundation 2002: 2). The informal system is generally used for intra-village or

family issues such as theft and divorce while the formal court system is a forum for cases involving outsiders, business, the government and crimes of violence. People consider the police and the formal legal system as separate entities.

While people generally approve of the formal system, they are most comfortable with the informal system because they are not familiar with the process applying in the district court. There is little awareness of the formal system including public defenders, lawyers and legal aid. The courts and police are well regarded but compared to the informal system the formal system is considered less fair, less accessible, more complex and more of a financial risk.

Citizens generally know that a formal system of laws exist, but are not sure whether the laws are upheld and respected by the authorities. Importantly, community leaders and not the police are identified as being primarily responsible for maintaining law and order (Asia Foundation 2002: 3).

More research, especially qualitative research, needs to be conducted on the ways in which the informal justice system deals with children. It is likely that the informal system will continue to resolve disputes concerning children because the community has confidence and trust in its processes and outcomes. Nevertheless, obligations arising under the CRC require that the informal system be monitored and scrutinized in order to ensure that child rights are protected and enforced. This will be a challenging task.

Juvenile Crime In Timor-Leste

What offenses do juvenile delinquents commit in Timor-Leste, what is the rate of offending for various ages, and is juvenile crime on the increase, decrease or holding steady? There is little or no information on these issues. Limited research suggests that in the informal system the following are considered delinquent acts: the distribution of and/or sale of pornographic DVDs; drinking palm wine until drunk; cock fighting and related gambling; watching adults playing cards for money and stealing the money; gambling in card games; and writing and passing love letters between themselves and with children from the closest towns. Obviously, it is essential to collect data on juvenile crime and processes should be put in place for this purpose.

During interviews many respondents identified the same risk factors in juvenile offending as follows:

- Poverty
- Family – do not give proper guidance to children
 - Do not teach children
 - Do not supervise them
 - Allow boys to run around
 - Allow boys to sell newspapers, wash cars
- Lack of education
- Need to find money to survive
- A dire economic situation causing parents to be fully engaged in providing for their families. Therefore children are not given proper supervision and fall in with the wrong kind of friend and become involved in the wrong kind of activities
- Unemployment
- Peer pressure to misbehave
- Alcohol consumption
- Washing cars/selling newspapers – economic pressures force children to engage in these activities and drop out of school
- Transition from war – big impact on families. Consequences are that children are neglected, uneducated, not loved because family unit is broken.
- A lot of children lost one or both parents in the war and are now living on their own.
- Crisis of 2006 – youth involved in criminal activity. Parents have lost control of youth. Haven't learned positive values in their lives
- Language policy – complicates things. Government introduced new language. People don't understand this language and education system cannot instil a positive view

In describing community beliefs about the causes of juvenile crime, based on the District Consultations conducted by MOJ and UNICEF on the CRC, UNICEF (2007: 4) concluded:

“Children and youth suffer from a lack of education and economic opportunities as well as a dearth in social services. Consequently, many become engaged in violent activity and crime.”

A method commonly adopted to gauge the extent of crime is to conduct a victimization survey that could address the broad concept of justice for children. Survey questions should address the victimization of children; behaviours youth involve themselves in that are considered offensive in the community and under

the law; and the reactions of the community to juvenile delinquency. Other issues to be included are the operation of the informal system in dealing with children, questions concerning parenting, reasons for disciplining children, methods of discipline and punishment used in families, responses involving the informal and/or the formal systems, parental responses to perceived 'bad' behaviours of their children, youth responses to discipline by parents, community, schools, and the informal and formal systems. Other questions addressed to youth might include their perception of needs and expectations, and their participation in activities such as martial arts, sports, cultural activities, art, language training, their communication with parents, elders, leaders, educators, etc. These questions could provide a better understanding of youth and their expectations, needs, concerns, interests as well as the obstacles they may face in families, community, school, and community. A study of this nature would provide important data for policy making in relation to justice for children.

Recommendations by International Organizations & Others for Improved Justice for Children

During discussions with government officials, NGOs, international organizations and other respondents, suggestions were made for improved juvenile justice for children. There were many commonalities in the proposed measures. The recommendations of the World Bank and the UN Working Group set out below incorporate and represent most of the recommendations for improvement communicated during the interview process. They therefore represent a useful summary of the overall consensus on improvements.

World Bank

According to the World Bank Timor-Leste Youth in Crisis: Situational Analysis and Policy Options (2007b: 4):

1. Expand cash/in-kind school programs
2. Re-establish youth centres
3. Indirectly strengthen informal social controls on youth and encourage programs to help link youth with the community.
4. Expand labour intensive youth employment programming

5. Re-establish community driven development programming with a youth focus
6. Support a youth-lead communication program
Strengthen non-violence beliefs, norms and leadership among youth.
7. Support a community justice and safety program
Strengthen the capacity of formal and informal institutions and actors, including police, courts, community leaders and youth leaders to exert appropriate authority over problem youth. Mediation and paralegal programs including training could play a role in rebuilding mechanisms of social control.

The World Bank proposed project Employment and Youth contains two components, the first 400,000 dollars for institutional strengthening to enhance the capacity of the Secretary of State Youth and Sport²¹ to implement the YDP Youth Development. The second component is a Youth for community development program of 1.7 million which enhance youth engagement in community development activities and the capacity of local government to work with youth at the community level. It is expected that both components will address concerns about youth marginalization, contribute to social stability and reduce the likelihood of youth being mobilized for violence. Persistent instability and violence involving youth has underlined the importance of a strategic and systematic approach to addressing social and economic youth ad development issues.

UN Working Group

A UN Justice Working Group meeting in April 2008 identified a number of issues for prosecutors and police working with children's cases. They concluded there is a general lack of awareness in children's rights in the prosecutor's office and confusion and or lack of awareness within police about applicable procedures for dealing with child victims, children at risk and in conflict with the law and

²¹ The Secretary of State for Youth and Sport promotes the well-being and development of youth; designs policies and drafts laws for the promotion an dwell-being and development of youth; promotes activities for young people in the fields of sport, art and culture; and creates peace through musical concerts and traditional music.

respect for the mandated protection bodies (MSS, VPU). The meeting made the following recommendations:

- make continuous efforts to recruit specialists in dealing with sexual assault, domestic violence and youth cases
- modules on gender based violence including sexual assault and domestic violence should be included in the Legal Training Centre courses
- dedicated child rights focal points – appointed by offices in Prosecutor General, Public Defender and Ministry of Justice
- child protection and child rights training should be a core component of the Legal Training Centre both as induction and refresher courses
- training for police is required on child rights and particularly rules of procedure regarding vulnerable children
- a child rights adviser should be recruited on a long term basis within the MOJ, Prosecutor General's Office and Public Defender's Office for more efficient case management as well as enhanced capacity development of national professionals in this area
- There is a need to establish procedures for dealing with child victims and victims of sexual assault

Scambray (2006) recommends the following as short-term options:

- Youth centres – construct a youth centre in each village with sporting and music equipment, using local youth groups as voluntary labour
- Allocate seed money to groups already implementing small-scale community employment or small business programs.
- Establish a youth fund as proposed by UNICEF set up a national fund or budget allocation for youth which would disperse funds to support youth initiatives at national and district levels (p. 9).
- Identify ways of mobilizing youth to participate in the political process to ensure that the voice of youth is heard in policy dialogues at the national level (p. 10). He argues that if youth feel they are able to participate in the decision making process in this manner, this would help to counter their current disregard for elected institutions.
- Conduct a study of areas where communities are free of communal violence and organize seminars by community leaders so others can learn from their example.

In the long term, he suggests that the present situation can only be resolved through dialogue and reconciliation, an improvement in the economy and providing basic social services.

Meetings and interviews with the Secretary of State for Sport and Youth and the National Youth Council revealed that in their view it is important to teach youth their civic responsibilities in nation building to help them understand the impact their choices for engaging in violent or non-violent behaviour has on that process. They also stressed a need to promote and build the capacity of youth leadership so youth can better participate in decision-making and in society generally.

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Legislation

Criminal Procedure Code, 2005

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Draft Juvenile Justice Act, 24 July 2008

Proposed Martial Arts Act, 2008

Interviews, Meetings and Workshops

1. Dr. Marcelina Tilman Da Silva, Director, DNAJL, Ministry of Justice
2. Bendito Dos Santos Freitas, Secretary of State, Vocational Training and Employment
3. Silverio Pinto Baptista, Provedor Adjunto, Provedoria dos Direitos Humanos e Justiça
4. Arcanjo de Jesus Leite, Minister for State Administration
5. Dr. Fernandez Borges, MP and President of Committee A
6. Judge Maria Natercia, Judge Administrator
7. Sergio Hornagy, Coordinator Public Defender's Office
8. Dr. Carieso Exavier, Public Defender's Office
9. Dr. Ivo Valente, Deputy Prosecutor General, Office of the Prosecutor General
10. Helena Gomes, Director of Prisons, Ministry of Justice
11. Eugenio Soares, Permanent Secretary, Ministry of Social Solidarity
12. Antonia Da Cruz, Director of Social Services, Directorate of Social Services, Ministry of Social Solidarity
13. Florenso Gonzaga, Head of Department of Vulnerable Families, Directorate of Social Services, Ministry of Social Solidarity
14. Jose A. Neves, Policy Adviser, Secretary of State for Youth and Sport
15. Fernando da Costa, Adviser, Secretary of State for Youth and Sport
16. Ivete Oliveira, Planning Adviser, Ministry of Planning & Development
17. Leouiqildo da Costa Hornai, President of National Youth Council
18. Padre Aniceto Maia Costa, Deputy Director, Justice and Peace Commission
19. Aurelio Guterres, Deputy Rector and Professor, Faculty of Law, Universidade Nacional Timor-Leste
20. Lauren Rumble, Chief, Child Protection, UNICEF
21. Isabel Lima, UNICEF Consultant on Draft Juvenile Justice Legislation
22. Joao Soares Pequinho, Executive Coordinator, Forum Tau Matan
23. Luis Olivera Sampaio, Coordinator, Victim Support Unit, JSMP
24. Angelo Kelo, Director of Investigation Unit, PNTL
25. Maria Bareto, Fukulpers
26. Cipriano Oliveira, Executive Director, Forum Comunicacoes Juventude FCJ Oratorio Don Bosco.
27. Mandy Cordwell, Acting Team Leader, Victim Support Unit, UNPOL
28. Maria Franco Pereira, Investigator, Victim Support Unit, PNTL
29. Marcus Boorman, Team Leader, Timor-Leste Police Development Program
30. James Stokes, Coordinator, Timor-Leste Police Development Program

31. Loraine Morgan, Program Manager, Timor-Leste Police Development Program
32. Richard Curtain, Consultant, Secretary of State Vocational Training and Development
33. Alan Leary, Prison Adviser, UNDP Prison Project
34. Franz Petutschnig, Judicial Affairs Officer UNMIT
35. Matt Stevens, World Bank
36. Pamela Dale, World Bank
37. Varun Gauri, Senior Economist, World Bank
38. Cheryl Heykoop, IICRD
39. Jose Luis de Oliveira, HAK
40. Tim Budge, Director, Plan International
41. Tiago Sarento, Law Program Manager, Asia Foundation
42. Augusto Soares, Section Manager, Peace Building, Youth and Juvenile Justice Unit, World Vision
43. Meeting with community leaders, youth, women's group, FTM. Bairro Pite. 5 July 2008
44. Meeting of international advisors, agencies and MOJ on Draft Juvenile Justice Legislation, (UNICEF, UNDP, UNMIT, Human Rights, International Public Defender, MOJ Legal Advisors, Justice Facility Juvenile Justice Specialist), 10 July, 2008
45. Consultation Workshop. 'Justica Para Crianca: Fortalecendo A Democracia Em Timor-Leste'. Ministry of Justice. Delta Nova, Dili. 25 July 2008.

Annex A

VPU Rules of Organisation and Procedure

Policia Nacional de Timor-Leste (PNTL)
Regra Organizasaun Nian No Prosedimentu.
Rules of Organisation and Procedure. 2007
and
Relevant Sections of the Penal Code, 1999

Arrest Procedures:

1. Assess the age and identification of the child
2. If the child is under 16 – accompany the child home or to the Social Services
3. Inform the child of his/her due process rights in a manner he/she can understand
4. Facilitate immediate medical treatment if the child is injured
5. Notify parents, Public Defender and Social Services (DNSS).

Detention

1. If the child is less than 16 years old he/she CANNOT be detained
2. If the child is 16 years old and above, bring him/her before the judge not later than 72 hours (maximum)
3. Child detainees should be separated from adults

Investigation

1. All children accused of a crime have the right to have a public defender or a private lawyer present in all legal proceedings
2. Ensure the quickest investigation possible and shortest detention period possible
3. Respect the child's right to confidentiality when carrying out investigations

Rules of Organization and Procedures (ROP)

Definitions

1. Arrest: The Act of taking a suspect or an accused into custody either in 'flagrant delicto' or with and arrest warrant from a judge (Article 218, 219 CPC)²²

²² Criminal Procedural Code 2005

Article 218

Arrest *in flagrante delicto*

1. In the case of *flagrante delicto* in connection with a criminal offence punishable by imprisonment, any police authority may carry out the arrest.
2. If no police authority can carry out the arrest, any person witnessing the *flagrante delicto* offence may do so.
3. The person carrying out the arrest shall immediately hand the detainee over to the nearest police authority, who shall prepare a handover note containing such elements as

2. Child: any person below the age of 18 years (Article 1, CRC)
3. Child in Conflict with the Law: A person below the age of 18 years who is suspected of having committed a crime in breach of the relevant applicable Penal Code.
4. Age of Criminal Responsibility: A person of 16 years and over (Article 45 Indonesian Penal Code, Article 21)²³
5. Crime: any act, action or omission, declared by the RDTL laws as a crime
6. A suspect who is arrested or who is being held in custody by the order of a Judge in accordance with the period of time as determined in the RDTL legislation
7. National Division of Social Services (NDSS) within the Ministry of Social Solidarity has the formal mandate from the Democratic Republic of Timor-Leste Labour Code (Regulation No, 2002/5 Section 8.1) to provide social services to vulnerable groups. The Labour Code also provides that the Division of Social Services comprises several sections that include functions related to the areas of work and welfare of children, women, persons with a disability and the elderly, humanitarian assistance and refugees.
8. DNSS Social Worker: Social workers work with children, families and their communities to ensure that children are protected, safe and do not suffer from abuse.

Procedures upon Initial Contact/ Arrest

1. Where a member of the PNTL observes a child committing a crime or about to commit a crime, the member shall, in accordance with the

referred to in article 220, in addition to the captor's identification and the circumstances surrounding the capture.

4. In the case of a criminal offence the prosecution of which is dependant on the lodgement of a complaint, the arrested person shall be kept under arrest only where, immediately after the arrest, the right to complain is exercised by the person who holds that right, and the complaint shall be entered in the records.

Article 219 *Flagrante delicto*

1. *Flagrante delicto* refers to any crime that is in the process of being committed or that has just been committed.

2. *Flagrante delicto* applies to any case in which the perpetrator is, as soon as the crime has been committed, tracked down by any person or found with items or indications that clearly show that he or she has just committed the crime or has taken part in it.

3. In the case of an ongoing crime, the *flagrante delicto* status continues as long as there are any indications showing that the crime is in the process of being committed and the perpetrator is taking part in it.

²³ *Indonesian Penal Code 1999, Article 21

Light imprisonment shall be served in the area where the sentenced person lives or, in case he does not have a dwelling, stays at the time of the execution of the judicial verdict, unless at his request the Minister of Justice permits him to serve the sentence somewhere else.

***Criminal Procedural Code, 2005 Article 22**

Limitations on relationship

A jurisdictional relationship becomes ineffective between cases that fall under the jurisdictions of:

- (a) juvenile courts;
- (b) the Supreme Court of Justice functioning as a first-instance court where any of the accused should not be tried in that court.

appropriate legislation, take appropriate measures to stop or prevent the crime being committed (Article 52 CPC)²⁴.

2. A member of the PNTL, when dealing with a suspect who is believed to be a child and who on reasonable grounds is believed to have committed a crime, must attempt to ascertain the age and the complete identification of the child. Means available to ascertain age and identity could be for example, evidence of the parent, guardian, child's relatives, chefe de aldeia/suco where the child was born and of other people in the child's community. When there is doubt as to the age of the suspect, assume that the suspect is a child.
3. A child below 16 years old shall not be arrested by a member of the PNTL since prosecution is not allowed. If the child is below 16 years old, the PNTL should, with the permission of the child, accompany the child home to his or her parents, guardians or closest relative and if appropriate in company with the DNSS discuss a plan of delinquency prevention.
4. If the child has previously offended and or the family cannot deal with the child's delinquency coordinate a referral to DNSS.
5. Inform the child of his/her due process rights, (such as public defender) in a language and manner that the child understands.
6. A member of the PNTL must now use handcuffs or other restraints unless the circumstances are such that it is in the interest and safety of the member of the PNTL to use these in an attempt to protect him or herself or to protect another person.
7. Wherever practical a female child suspect shall be arrested and or searched by a female member of the PNTL. It is important to note that children who are involved in a crime, may themselves be recent victims of a crime. Eg rape. Police officers should be aware and sensitive to this and ensure access to medical, legal and other support as needed.
8. A member of the PNTL shall as soon as practicable after a child suspect has been arrested notify the child's parents, guardians, or closest relative of the arrest and the reason for it.
9. A member of the PNTL must not conduct an intrusive body search of a child suspect unless the member has the appropriate legislative authority to do so granted by a RDTL court.
10. As soon as is practicable after the arrest of the child suspect a member of the PNTL shall notify the DNSS of such arrest who can provide and coordinate support services.
11. If the child suspect is injured or is in need of medical treatment a member of the PNTL shall immediately convey the suspect to the nearest Hospital or community health centre.

²⁴ **Criminal Procedural Code 2005, Article 52**

General police powers

1. It is incumbent upon police officers, even on their own initiative, to prevent criminal offences from being committed, gather reports thereof, track down their perpetrators, and take the necessary and urgent precautionary acts in order to secure evidence.
2. It is also incumbent upon the police to assist, upon request, judicial authorities in achieving the objectives of the proceeding, particularly the Public Prosecution Service during the enquiry.

Detention of Children

1. A child below 16 years old shall not be detained by a member of the PNTL since prosecution is not allowed.
2. If the child is accused of a crime for which prosecution is allowed the PNTL officer must immediately present the child before a prosecutor who will decide if the child will be presented for a first hearing or expedited trial in front of the judge within 72 hours. If the child is not presented in front of the judge in 72 hours the child must be released.
3. Child detainees should always be kept in a separate facility or cell from adult detainees and from those of opposite gender as well as from other children when the nature and gravity of the crime or the behaviour of the child requires
4. A member of the PNTL must not use physical restraints on a detained child unless absolutely necessary to protect the child or another person. Where a restraint is used it should be used for a short period of time as not to humiliate or degrade the child
5. Where appropriate a member of the PNTL shall ensure that the personal, social, educational, psychological, medical and physical needs of detained children, especially those of females are given special attention
6. A member of the PNTL shall allow detained children regular visits and correspondence from family members, lawyer or public defender. He or she will immediately notify parents, guardian or appropriate adult of the transfer, release, sickness or injury of a detained child.

Investigation Procedures

- (1) A member of the PNTL must obtain evidence to confirm the child's age by using one of the following means:
 - a. Birth certificate
 - b. Baptismal certificate
 - c. Health/medical/dental records
 - d. School records
 - e. Estimation of age by a medical practitioner; and

If none of the above is available then use testimonies of the child's parents, relatives, chefe de aideia/suco where the child was born, and of other people in the child's community. The DNSS may assist the PNTL assessing these documents.

- (2) The child has the right to have a lawyer or public defender present during the interview
- (3) If possible, notify the defendant and the lawyer or public defender about the proposed interview at least 48 hours before the interview takes place
- (4) Investigation interviews must be undertaken in a private and comfortable place. It is recommendable that the following person may be present before and after questioning the child:
 - a. Parents, guardian, closet relative or an 'appropriate adult' such as a DNSS officer or a person nominated by DSS
 - b. The child's legal counsel, unless this right is waived in writing
 - c. Female suspects should have a female present
 - d. Whenever possible provide transportation for the persons mentioned in paragraph 6.2 and 6.4 above to attend the investigation interview

- (5) The child's parents, guardian, relative or support person may be excluded from an investigation if it is in the child's best interests to do so and the child is of mature age to request that these persons be excluded
- (6) A member of the PNTL must inform the child and the accompanying persons of the child's rights during the investigation. A child must be provided with a written copy of these rights in a language they understand and request them to sign the document to signify that they understood the rights.
- (7) A member of the PNTL must not make derogatory or discriminatory remarks about the child or the child's physical, social or economic status or condition
- (8) A member of the PNTL should complete an investigation of a crime allegedly committed by a child as expeditiously as possible to ensure the shortest possible duration of detention. Under any circumstances, a child suspect must not be kept in pre court detention any longer than is allowed by the RDTL Criminal Procedural Code.
- (9) Maintain absolute confidentiality of all information and records of the child's case. Failure to observe confidentiality may be subject to civil, criminal and disciplinary procedures.
- (10) Where appropriate investigation of crime involving children shall be done by the Vulnerable Persons Unit (VPU), except where such services are not available within the particular district, or where the crime is such that specialist investigators are not required to conduct the investigation.

Disposition of Cases

- (1) In all cases involving a child accused of committing a crime for which he/she can be prosecuted, the PNTL must submit the investigation file to the Prosecutor for legal or investigative directions. The Prosecutor is the only authority in determining whether or not prosecution for the crime should take place. Keep the child informed of developments in their case.

Penal Code, 1999

Indonesia

Article 46

1. If the judge has given the order that the offender be placed at the disposal of the Government, he shall be
Either placed at a Governmental institution in order that he be provided with his education at that place, or later on in another manner, by the Government;
Or entrusted for his education to a certain person or a body corporate or foundation or charitable institution, in order that he be provided with his education by these bodies, or later on in another manner, by the Government;
In both cases at the utmost until he shall reach the age of eighteen years.
2. Provisions for the implementation of the first paragraph of this article shall be fixed by law.

Article 47

1. If the judge sentences the person found guilty to a punishment, the maximum of the basic punishment to be imposed on the punishable act shall be mitigated by one third.
2. If it concerns a crime on which the capital punishment or a crime on which life imprisonment is imposed, a maximum of imprisonment of fifteen years shall be imposed.
3. The additional punishments mentioned in Articles 10 under b, 1st and 3rd shall not be imposed.

Article 21

Light imprisonment shall be served in the area where the sentenced person lives or, in case he does not have a dwelling, stays at the time of the execution of the judicial verdict, unless at his request the Minister of Justice permits him to serve the sentence somewhere else.

Article 503 relates to causing a disturbance relating to public order,

Article 504 relates to begging with the maximum punishment of light imprisonment of 6 weeks below the age of 16 and above 16 years a maximum light imprisonment for 3 months

Article 505 concerns “any person who roams about without means of subsistence shall, being guilty of vagrancy, be punished by a maximum light imprisonment of three months” and above 16 years by a maximum light imprisonment of six months.

Annex B

Summary of Main Features of Proposed Juvenile Justice Act

Categories of Juvenile

There are 3 categories of juvenile for the purposes of the Act as follows:

- a child in conflict with the law – a person above the age of 12 but below the age of 15 who commits a crime.
- Adolescent in conflict with the law – a person above the age of 15 but below the age of 18 who commits a crime and who is subject to the juvenile justice system
- Young adult – a person above the age of 18 but below the age of 21 who commits a crime and is dealt with under the Penal Code.

Age of Criminal Responsibility

The age of criminal responsibility is fixed at 15 years. Below this age a child is legally not capable of committing a crime but the state may under the provisions of the Act assist the child through special measures. The relevant age is the age of the child at the time the offence is committed.

Juvenile Justice System

The Juvenile Justice System has 3 dimensions: preventive; social and educational; and restorative. The juvenile justice system comprises the courts, the OPG, the Public Defender's Office, police, MTT, the juvenile justice system coordination centre as well as the wider community as defined by the Act.

Accountability

The family, community authorities and civil society, schools, religious institutions and the state are given specific responsibilities and made accountable for children and adolescents in conflict with the law.

Juvenile Justice Coordination Centre

This is established by the Act as the body under the responsibility of MOJ, responsible for the operations of the Juvenile Justice System in the country.

Multidisciplinary Technical Team (MTT)

- This is part of the juvenile justice system. It comprises not less than 3 persons with professional qualifications in the areas of welfare, psychology and education. The MTT ensures the protection of the right of children and adolescents in conflict with the law. The MTT has significant responsibilities especially drawing up a protection plan for a child or adolescent in conflict with the law following a psychological and social assessment, presenting evidence to the court. The Ministry of Justice will determine the professionals who will compose this team.

Mediation

- There are two forms of mediation under the Act: community traditional practice CTP and mediation panel MP
- In the case of a semi-public crime where the adolescent and the victim consent, the OPG can order CTP or MP according to the method chosen by the adolescent and the victim. If they cannot agree on the method the OPG must establish a MP

Community Traditional Practice

- CTP based on mediation and reconciliation
- It comprises head of village or head of suco together with adolescent, victim, family representatives
- An agreement resulting from CTP can recommend verbal or written apology to victim and or community, verbal or written promise not to repeat action, compensation for damage caused, promise to respect community
- A mediation agreement follows an agreement by CTP and is promulgated by a judge

Mediation Panel

- At least one member of the MTT participates in the mediation panel.
- Objectives are to reconcile and mediate
- Comprises OPG, victim, adolescent, public defender, family members, member of MTT
- Applies techniques of conflict resolution and peace building

- Where an agreement results from mediation it is recorded in the agreement minute which is promulgated by the judge

Child and Adolescent Protection Plan

- This is prepared by the MTT and is a set of activities especially programmed for the child.
- It remains in force for a minimum of 3 months and a maximum of 6 months.
- For an adolescent the duration of the plan can be reviewed or extended in certain circumstances

Procedure When Child is Accused of Offense

- Where a child is caught in flagrante, the police must deliver him or her to the OPG or where the OPG is absent to the MTT police must assist in locating the parents of the child and request documentation establishing the age of the child.
- Police must prepare a report of the incident involving the child for forwarding to the OPG.
- The OPG is to certify whether or not the child is criminally responsible by examining the documents showing age.
- The OPG refers the child to the MTT and the family must contact the MTT within five days. Within 2 weeks the MTT must forward a report to the OPG with a protection plan.
- The OPG refers the protection plan to the court for promulgation.

Socio-Education Process

- Where the offense committed by the child is a serious offense (punishable with more than 8 years imprisonment) the case is referred to the court for the application of non-institutional socio-educational measures.
- The court will try to obtain consensus for the proposed measures but where consensus cannot be obtained the court will decide
- There is a right of appeal the court decision imposing socio educational measures within 15 days
- Social and educational measures are:
 - A warning

- Prohibition of the right to ride motorcycles
- Reparation to the victim
- Payment of compensation by instalments
- Community work
- Attendance at training programs
- Semi detention in a community residential unit
- Detention in a rehabilitation unit (the only institutional measure)
- A social and educational measure can be extended up to the age of 21 years but not beyond that age.
- The duration of detention in a rehabilitation unit should not two thirds of the prison sentence provided for the offense

Temporary Measures - Adolescents

- The OPG may apply to the court for temporary measures which can include placing the adolescent under the control of the parents, placing the adolescent in a community residential unit,
- Placing the adolescent in a temporary special area in a rehabilitation unit
- A temporary measure may not be extended beyond six months except in special cases where it may be extended for a further 3 months
- A temporary measure must be reviewed every two months

Juvenile justice Case

- A child or adolescent in conflict with the law is entitled to:
 - Access to multidisciplinary professionals specialized in children's law
 - To be represented by lawyer with special training in children's law
 - To be dealt with by a juvenile court
- There are special procedural protections when hearing a juvenile justice case including
 - The right to be heard
 - The assistance of the MTT
 - Right to appeal
 - Right to legal representation
 - Right to have a lawyer present when interrogated
 - Right to privacy in the proceedings

Arrest of an Adolescent

There are specific requirements that must be satisfied before an adolescent can be arrested

Young Adult

- Support measure/support plan – a support measure can be ordered for a person over the age of 18 but under the age of 21 accused of a crime from the commencement of an inquiry until sentence is imposed
- The support measure is part of a support plan prepared by the MTT
- Support measures may be requested by the public defender or a lawyer at any time during an inquiry

Transitional Provisions

- Until the Juvenile Justice Coordination Centre is established, the MOJ designates a National Directorate to assume its responsibilities
- MTT – until MTTs are established the MOJ nominates the professionals to carry out the tasks of the MTT
- Until a juvenile court is established the District court exercises jurisdiction

Note: In light of the difficulties in translating the Portuguese to English in the latest version of the law, this summary cannot be considered definitive. There are many areas where the law is extremely vague and imprecise.

There are no provisions in the draft for verification or assessment of age where this is in dispute despite the fact that in 2006 in their Report to the Committee on the Rights of the Child, the Government of Timor-Leste stated that verifying age through a baptism certificate was far from satisfactory and not always available (Government of Timor-Leste 2006a: 227).

Chart A
Child in Conflict with the Law
Persons aged above 12 years and less than 15 years

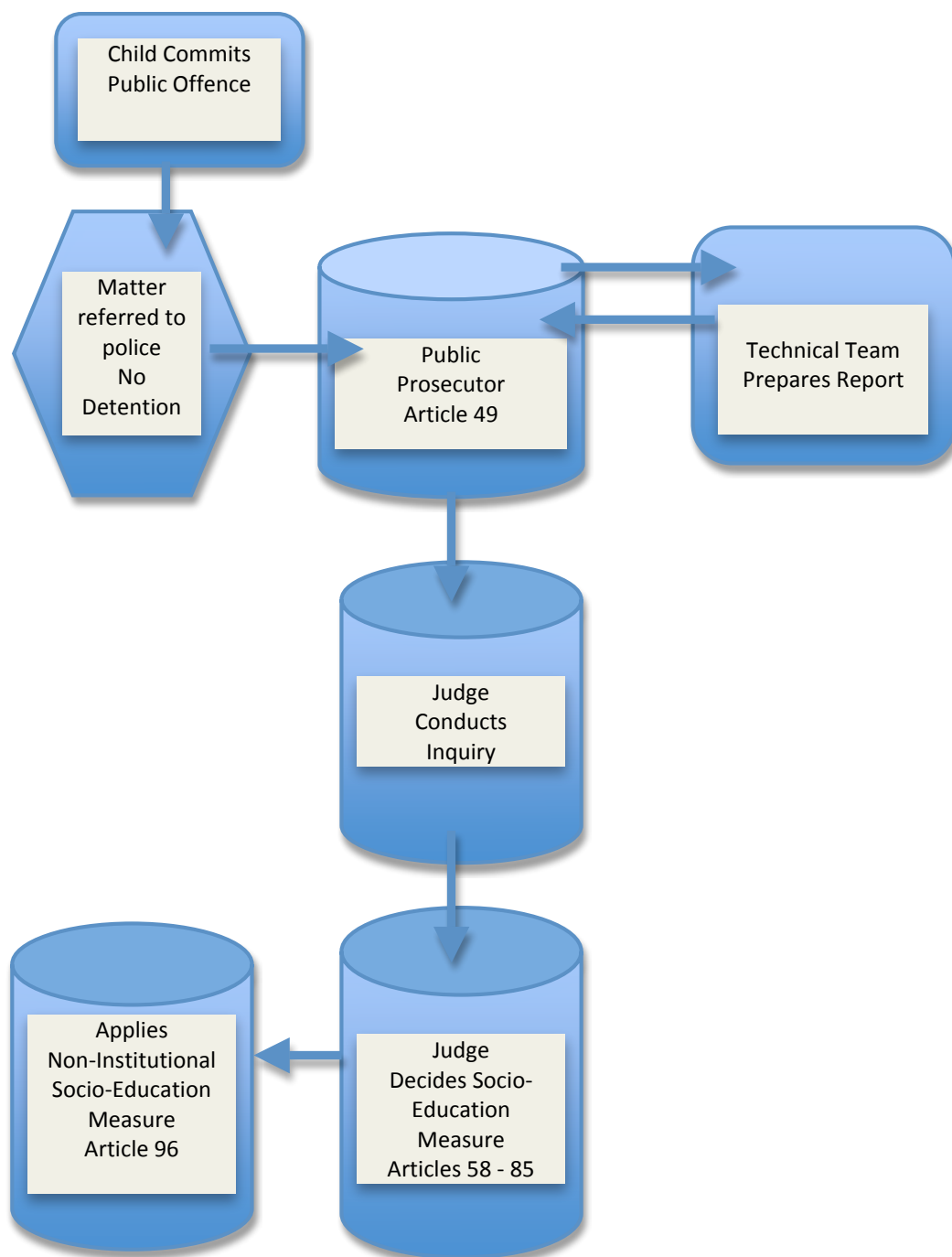


Chart B
Adolescent in Conflict with the Law
Persons aged above 15 years and less than 18 years

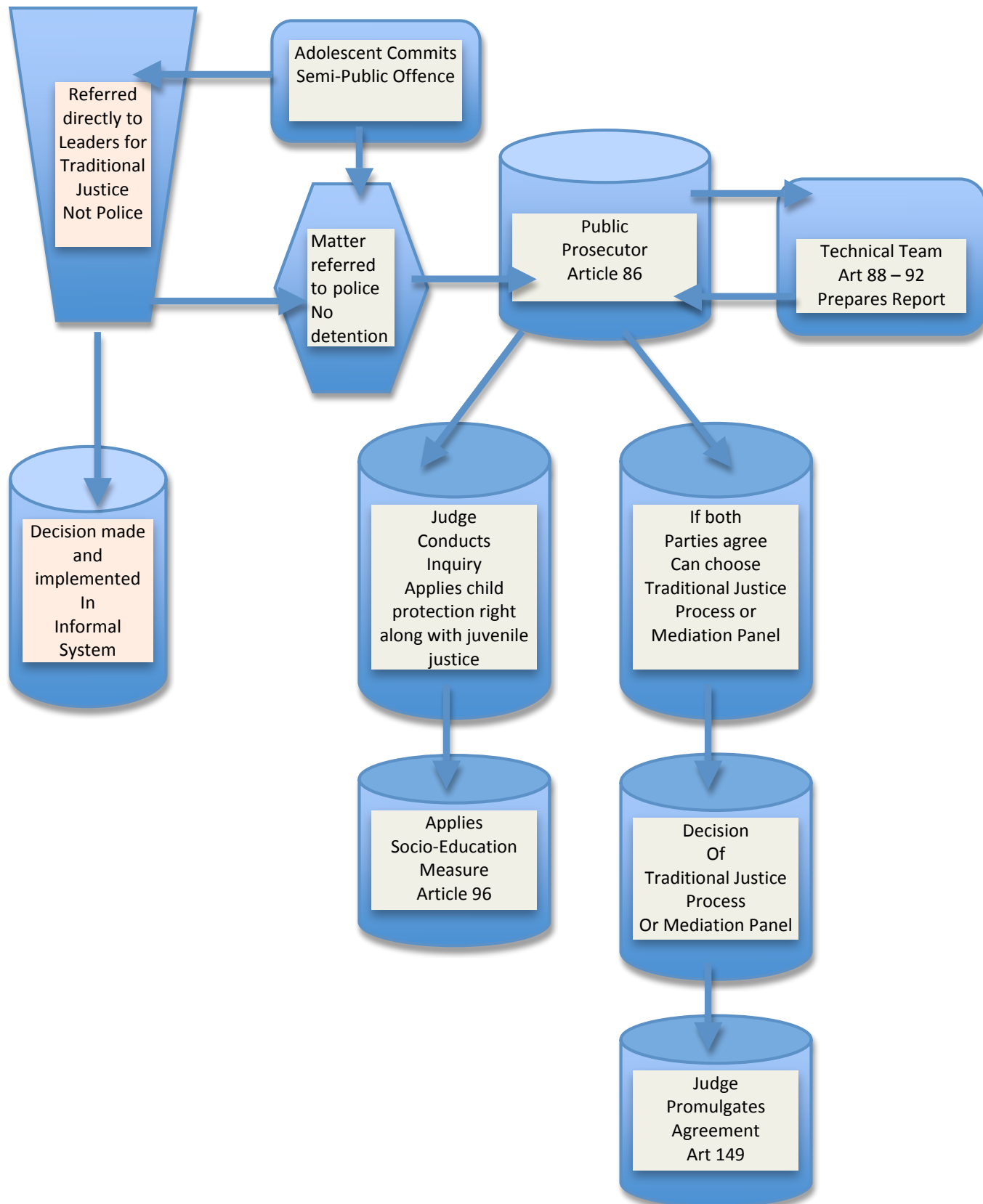
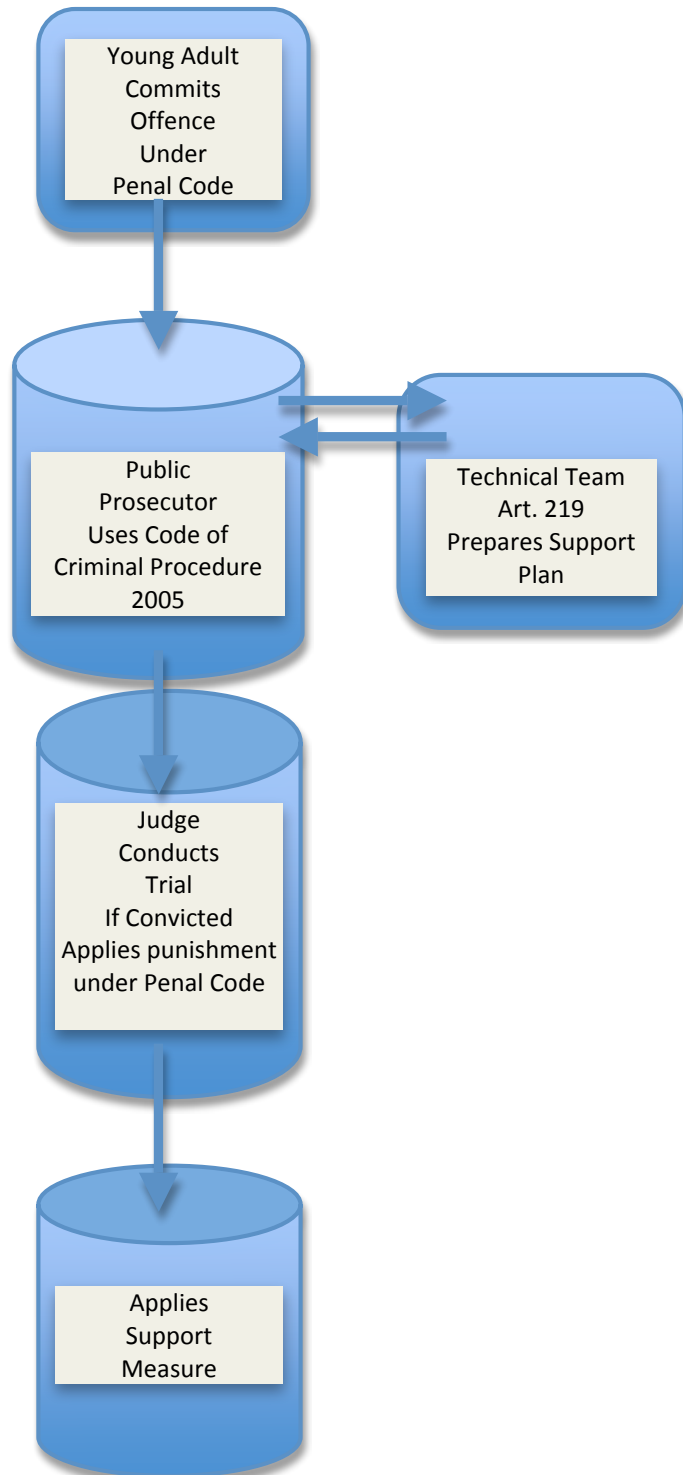


Chart C
Young Adults in Conflict with the Law
Persons aged above 18 years and less than 21 years



Annex C

UNICEF and NGOs Involved in ‘Justice for Children’

UNICEF

In broad terms, plans to work with MOJ and MSS in the following areas after consultation and agreement:

- Creating and operationalising the National Commission for Children (monitoring/ regulation on child rights/ CRC)
- Developing the Children's Code
- Leading training on the ROPs and other relevant training to the police (VPU and Community Police) for child friendly police services
- Developing systems for universal birth registration under five years of age
- Soliciting donor support for advisors/mentors for the OPG, Public Defender and MOJ
- Professionalization of social welfare with MSS (focused on case management, and other priority concerns related to care for children) including developing a core package of services and ensuring training for Child Protection Officers (this is referred to as the "Capacity Building Initiative for Child and Family Welfare). It will involve a partnership with a pool of experts to ensure quality training materials and delivery.

Referral Pathways Working Group

A working group on juveniles in detention has been established comprising Human Rights and Transitional Justice section of UNMIT, Directorate of Social Services, Pradet, World Vision, UNICEF, Forum Tau Matan, and private lawyers from Lembaga Bantuan Hukum. According to FTM, at one such meeting in January 2007, FTM was asked to provide legal assistance to release some juveniles from detention and organise for private lawyers to assist those detained from LBH resulting in the release of a number detainees. The working group called Referral Pathways meets weekly to discuss new and ongoing cases of children in contact with the law.

Forum Tan Matan (FTM)

Forum Tau Matan meaning 'Eyes on Human Rights' was established in December 2003. Since 2004, FTM has been actively involved in advocating for the release of children detained pre-trial for excessive periods. In June 2008, it conducted a workshop on the need to establish a comprehensive juvenile justice system. The organisation has monitored police and prison custody of children since 2004. Since their strategic planning session in December 2007 they have refocused their activities on children in police custody. They visit police stations to assess: conditions of detention, access to lawyers, as well as the level of understanding police possess concerning the treatment of children coming into contact with the law. They have established a relationship with the Ministry of Social Solidarity and are members of the DNSS juvenile justice working group considering issues of children's rights, access to family visits, access to legal representation, and prevention of abuse and torture during arrest and detention.

With the assistance of Irish Aid it has hired a lawyer to provide legal representation to juveniles. The staff lawyer provides intervention on children's behalf with the police and the prosecution. The Executive Director explained that some children are released directly from police custody as a result of FTMs efforts. For example in February 2005, twenty-one children were released.

FTM has two programs with youth. One involves youth in the community who lack education because they have dropped out of school and the second involves university students. In relation to the less educated group, FTM works closely with the community of Bairro Pite and the youth groups in that area. This is an area with a history of violence particularly during the 2006 crisis. The fighting resulted in the death of 4 youths in 2006 and relations between youth groups have been fraught with tension and violence since. Fights are over territory and tensions resulting from the so-called West/East ethnic division, land disputes, and with IDP youth over houses occupied by the IDPs since the crisis. FTM organized a dialogue between the groups but this attempt at peace failed because the youth groups sent only low ranking members to participate. Following this attempt, FTM tried another approach involving working with the youth groups to organize two concrete activities. Consequently, FTM organized 4 youth groups to work together and restore a sports field to be used for basketball, volleyball and

tennis. Care International provided the materials and resources. The 4 groups contributed equal time on the project and each group worked for 8 days each to construct the sporting area. This project opening is planned for September 2008 when Friendship Games will be held between the youth groups to celebrate its opening. The second project involved the youth contributing money and labour to prepare a peace plaque to commemorate the four members of the 77 gang who were killed in 2006. The monument was placed at the end of the road accessing the community and the road was renamed the 'Road To Peace' after a spiritual ceremony. Officials from the government were invited and the plaque was put in place on 11 July 2008.

FTM points out the main lessons they have learned from these projects. The first is when working with different youth groups with a history of conflict is the importance of ensuring that the groups receive equal treatment. In other words, each martial arts group or youth group must participate equally in projects in terms of selection of participants for training, labour for collaborative projects, and in the management and follow-up strategies of any program offered. In income generating projects, it is also important in relation to skill training that once the participants complete their training, the trainers must follow-up with the graduates in the community to monitor their progress as well as their progress in establishing businesses and marketing operations to ensure sustainability. In order to facilitate success, it is important that youth centre be established in communities where it is safe for youth to undergo skill-training courses, participate in cultural programs, undergo conflict resolution and peace building training, or simply to socialize together.

FTM also works with university students in 3 universities holding public discussions about human rights and how to deal with children in conflict with the law. The goal is to teach the students critical thinking skills and create a group of human rights activists who have the leadership skills to critically analyse social issues and take action to promote and enhance the rights of children in the community. These students assisted with the community consultations organized by MOJ and UNICEF on the CRC in 2007.

The students debated questions such as ‘should children be held accountable for their actions?’ and ‘what conditions should children be kept in detention and how should they be treated?’ Their responses included that the restrictions on children should be different than adults and that they should be kept in a separate, safe place and be given programs for rehabilitation. They also gave the view that if a child who commits an offense is simply released under a certain age that he or she will not learn the lesson about his or her behaviour. Consequently students have suggested that restorative justice practices be used to ensure that children are held accountable for their actions. At the same time they argue that offending youth should be provided with a safe place to stay and be taught skills through vocational training. They also supported the idea of conditional release provided that the child is required to report to the police 6 times a month while staying in a transitional centre to learn skills. The students explained that they were afraid that if the children were simply released they would join youth groups and be influenced to participate in violent and negative behaviours.

Fokupers (Forum Komunikasi untuk Perempuan Timor Lorosa’e)

Fokupers was established in 1997 to protect women and child victims of gender based violence (sexual abuse, rape, domestic violence). It was initially established to give support to women victims of sexual abuse by the Indonesian military as well as to women political prisoners, widows and the wives of political prisoners. After Independence in 1999, the organization broadened their mandate to assist women victims of gender-based violence in general. Their programs address advocacy at the state policy level; support for women and child victims of GBV; and the promotion of public awareness through publications and dissemination of information, and training.

Support for victims include counselling, legal aid and accompanying victims through the formal system involving the police, prosecution and court. They also take victims for medical assistance and provide a shelter (Uma Mahon). Outside of court they assist victims by searching for family members, and providing skill training for victims in the shelter. Most of the victims of violence according to staff at Fokupers involve children. They report a high incidence of child sexual

abuse (rape, sexual assault, prostitution and incest) based on the complaints they received in 2007 in Dili and the Districts they are active in such as Liquisa (6 cases), Ocussei (4 cases) and Suai (7 cases).²⁵ They suggest that most cases they deal with involve victims who are minors and most of the time such cases do not come to the immediate attention of any organization or the formal system. However, in the Districts Fokupers has volunteer community organisers (42) who are trained to advocate for women, and to disseminate information and to support child and women victims brought to their attention. Cases usually come to their attention after a process that starts with rumours in the village about someone who is suspected of having been victimized. The rumours come to the attention of the head of the village, the head of the suco or the church who in turn will inform the community organizer of Fokupers. Representatives of Fokupers must then turn up to the location quickly or the parties will settle the matter using traditional justice and an agreed compensation of buffaloes, horses or cash and although this process restores peace between the families, it does not deal with the psychological trauma experienced by the victim (Fokpers 2007: 79). Once they arrive, the representatives explain the nature of the crime to the victim and her family, how the formal system works and how they can proceed with the case through the official system. According to Fokupers staff, once victims of rape are aware of the formal processes and system they will often choose to proceed with the criminal case. In contrast, the victim of domestic violence often opts to undergo mediation with Fokupers staff, traditional leaders, local authorities and the church.

A big problem for victims of gender-based violence in the formal system, according to Fokupers staff, is the lack of sensitivity to gender issues and toward victims, especially child victims (Fokupers 2007: 20). In a report on violence against women in 2005-2006, the problems faced by children in court was explained as follows:

“For cases where the victim is a child, courtroom atmosphere can be intimidating as well. This is compounded by the way judges and prosecutors ask questions in the same way they ask adults. This makes children stressed and cannot speak well. For instance, a child would feel

²⁵ Interview, Maria Bareto, Fokupers 4 July 2008.

awkward and confused when a judge addresses her with “Ita bo’ ot” (a formal form of “you”) (Fokupers 2007: 20).

Players in the formal system demonstrate this lack of sensitivity in the system including the police, prosecutor, lawyers and the judge. These professionals are often rude and will frighten victims and witnesses when questioning them both inside and outside court. They do not take time to explain the court process and both victims and witnesses feel frightened and ashamed within a process they do not understand. Commonly this results in their failure to provide the evidence required for the case and, it either does not proceed to court, or, if it does, is dismissed or results in a lenient sentence such as conditional freedom.

Other issues include the problem that “prosecutors sometimes blame victims for not giving them the right information” (Fokupers 2007: 21) and this is compounded by the fear and shame victims experience and their lack of knowledge of the formal system. Prosecutors cite their workload and translation problems as reasons for not filing appeals against sentences seen as “too light” (ibid. p.21).

Other problems that impede criminal proceedings against the perpetrators of gender-based violence include the fact that the Public Defenders office handles most victims’ cases. Given the shortage of staff and the ongoing education of current staff, local staff contracts are for short periods only and staff frequently change. Cases are often completed by a different public defender than the one who started dealing with the case because the first lawyers contract has expired (Fokupers 2007: 20). This causes delays due to the need for the replacement public defender to study the case from the beginning.

Fokupers inform the VPU of cases and will transport the victim to the VPU and support them while they report their case. Fokupers staff said that it is important that they accompany victims through this process because the police are less sensitive toward victims when they deal with them on their own. Staff report that this is especially true in the Districts where officers within the VPU “often need to be encouraged to do their job”. Staff note that the police also face problems in the Districts to carry out their job due to lack of transportation and Fokupers community organisers are often faced with the need to bring both the

victim and the offender to court to ensure the case goes forward, sometimes at the same time.

Prosecutors and police often encourage the families themselves to resolve domestic violence and rape cases at the police station where the family must make a statement prepared by the police and prosecutors (Fokupers 2007: 21). Once the statement is made, the court case must be withdrawn by the victim's family. Police are also accused of insensitivity in cases of gender based violence and may say the victim of domestic violence has a "big mouth" or ask rape victims "why didn't you scream?" (p. 21).

The organization in Dili also provides a shelter for women and children of violence which has the capacity to accommodate 7 women with their children but commonly shelter 20 to 25. They also provide day care for children of working mothers to avoid an interruption in their education. Victims reside in the shelter anywhere from one day to one year (Fokupers 2007). There, victims receive counselling and skills training. Fokupers faces financial constraints and challenges because of this increase in demand in terms of capacity but also in terms of increasing food and transportation costs. They also face criticism from the community. Some members of the community regard organizations like Fokupers as "an organization whose aim is to break up families and wives and their families" (Fokupers 2007: 21).

JSMP - Victim Support Services

The VSS was established in 2005 to improve access to justice to women and children victims of gender based violence. VSS is a unit within the JSMP employing 5 full time staff members. The program operates within Dili and Baucau. The objectives of the VSS program are the following:

- To provide a quality victim support service that assists women and children affected by gender based violence access the justice system
- To increase public awareness of the VSS and the rights of victims
- To strengthening the policing and prosecutorial process of cases involving gender based violence from the initial complaint to the conclusion of the case

- To build an organizational network among providers of support for women victims
- To advocate and campaign in relation to issues affecting victims of gender based violence
- To develop the capacity of VSS staff to provide a professional legal service and independently manage the program

As at May 2008 the VSS had assisted 254 victims (mostly victims of domestic violence and sexual violence) by accompanying them to the police station, prosecution office and the courts, advising them about the legal process and court decisions, and giving practical assistance such as transportation and food. These victims include both women and children. Staff approach prosecutors, police, VPU and judges in order to assist victims to speak with officials throughout the process. They explain the system and advise victims how to speak to the police and prosecutor and to use effective communication skills. As well, they have worked with police and prosecutors to help them become more sensitive to the needs of victims in the court process.

The VSS aims to become independent of JSMP within the next 2 years because they are concerned about a conflict of interest with JSMP which focuses on court monitoring. For now they depend on JSMP especially for transportation. The unit also offers victim's rights training for up to 30 VPU officers and criminal investigation officers and for women's groups in Dili (usually 1 – 2 days). Police training focuses on the legal process, criminal code procedure as well as on teaching police to be sensitive when speaking with victims of GBV.

Forum Comunicações Juventude Oratorio Don Bosco

FCJ Oratorio was established in 1997 but did not begin its activities until 1999. Its focus is on children under 18 years old who are victims or who are at risk and living on the streets of Dili. They have two target groups called Category A and Category B. They have 10 full time staff, 5 part time staff and 5 volunteers working in the drop-in centre, outreach program, education, and management and support.

Category A includes children living and/or working on the street. Many do not live on the street but return to their parents home or a family home at night. FCJ considers such children to be a high risk for victimization or for committing illegal behaviours and coming into contact with the law at some point.

For Group A children, FCJ has a drop in centre open 24 hours a day as well as an outreach program where staff go onto the street to identify at-risk children or children in need and will either invite them to attend program activities or bring them to the shelter. For those children identified as at-risk, FCJ outreach staff develop relationships and monitor their situation to ensure they have support and protection. Many of these are boys who have lost one or more of their parents and live and sleep on the street. While on the street these children survive by collecting empty cans, selling fruits and vegetables, selling phone cards, or begging. FCJ provide these children with emergency food, shelter, and clothing. While at the shelter staff collect information about the children concerning how and why they are on the street and will attempt to locate the family with the ultimate goal of reunifying the child with his family.

FCJ runs a short-term shelter for street children often victims of domestic violence, broken homes, or migrants to Dili to find economic means to support themselves and their families. The longest period of stay at the centre is three to four months during which time the priority is for staff to work on family reunification. The shelter also houses children who need a place to stay while the NDSS of the Ministry of Social Solidarity conducts an assessment of a child in conflict with the law, of a child in need of protection from retaliation, or while DSS is working to reintegrate a child released from detention or prison.

Group B children are those who continue to live with their family or guardians. They often do not attend school although some do attend school but work on the street after school. These children attend weekly activities after which they return to their homes. Staff collect information about these children in order to find out their situation at home and will invite their families to come to the centre so they can inform them of the risks for their children on the streets.

FCJ encourage children to remain or return to school. It also conducts educational programs for literacy and math for children accommodated temporarily at the shelter. They also support some children to undergo vocational training at Don Bosco.

At the time of interview in July 2008, FCJ had 7 children ages 13 – 15 years staying at the shelter. In 2007 they dealt with the following numbers of children in both categories:

Outcome	Number of Children
Category A	57
Category B	121
Reunified	25
Attended Activities	9
Ran away from Centre	10
Referrals from DSS	4
Referrals from Police	1
Victim of 2006 Crisis	10
Attended Vocational Training	32

FCJ has secured funding from the Portuguese Mission of \$174,000 to build a second building in 2009. When the second building is complete they plan to open their services up to girls as well as boys.

FCJ has also secured funding from the Body Shop (UK) in order to conduct radio programs for children on children's issues including street children, child labour, CRC, child rights etc. They have been promised financial support from NDSS in the next budget year to provide shelter for children and help with NDSS programs for protection, reintegration and assessment work with children.

Ba Futuru

Ba Futuru was established in Timor-Leste in 2004 and has the stated aim “to transform mistrust and violence into peace and self-directed growth by supporting the people of Timor-Leste to engage in creating a positive future for themselves, their families and their communities.” The name “Ba Futuru,” in

Tetun means “For the Future.” Ba Futuru's mission is to contribute to peace-building and sustainable human development by facilitating the psychosocial recovery of conflict-affected, vulnerable and at-risk children and youth, and by developing the knowledge, skills and values of community leaders, young people and their carers in the areas of human rights, children's rights, child protection and non-violent conflict transformation. Ba Futuru's activities are based on the principles of mutual learning, capacity development, artistic self-expression and the rights of the child.

Ba Futuru aims to address the psychosocial needs of children and youth through:

- Providing capacity development training mechanisms for community leaders and those that care for children concerning healing and skill development for children and youth based on the lessons of the Transformative Arts and Human Rights Education (TAHRE) curriculum – one dedicated to youth and adults and a second designed for children.

The TAHRE curriculum includes modules on peace building, conflict resolution, human rights and children's rights. Other modules are concerned with how to process anger or overcome loss and grief. This training package is also supplemented by a number of recreation activities: sports, drama, theatre, art and dancing for children and youth and include activities conducted at the Seroja youth center in Comoro. UNICEF supports the organization in the areas of training design, mentorship training, and training in the identification and follow-up of child abuse.

Since 2004 Ba Futuru has provided programs for more than 15,000 conflict-affected young people to develop their peace building skills through artistic workshops on conflict resolution, human rights and civic education. Ba Futuru has also provided training in child protection, conflict resolution, children's rights and positive (non-violent) discipline to more than 1,000 parents, orphanage staff, teachers and community leaders in Timor-Leste.

The organisation also runs the Seroja Youth Center, in a high conflict area of Dili. Hundreds of children and youth attend Seroja Center regularly, where Ba

Futuru runs courses on various topics including: English, sports, drama, photography, music, art, self-defense for women, basic health and hygiene, traditional and modern dance and yoga. Courses are also offered on child protection, human rights, positive discipline, civic education, conflict resolution and peace building.

Pradet

Pradet is a local NGO established since 2000. Pradet has been providing support to children detained at the Becora Prison since the 2006 crisis. Their programs are: Program Assistance for Mental Health; a gender based violence safe room for victims of sexual assault, rape, child abuse and domestic violence; and a program called Peace Democracy for Juvenile Justice. They provide counselling support for children in detention between the ages of 13 and 18 years. They also offer group and individual counselling to help detainees increase their coping skills for prison life, support for families to visit their children detained in prison, as well as support for young persons once they leave prison.

Pradet received permission from the MOJ to provide counselling to youth at Becora prison and in 2007 has held group counselling sessions with 19 children each Wednesday to discuss alcohol and stress management at the prison. Individual counselling sessions include stress management, relaxation and trauma counselling. They also conduct group activities involving music, drawing and arts and teach youth how to deal with violence in their lives as well as how to solve problems. As part of their work with children, Pradet counsellors ensure that families are able to visit their child and will help them with transportation and food if necessary or in cases where a child has not seen their family for a long time, they will visit the family in the community to try to encourage and support them to visit their child. Pradet visited 10 children in Becora in 2007 and the 2 children left there in 2008. They continue to follow up in the community with children and youth released from prison long after the court sentence is completed. They assist them to set up businesses or to undertake training at Don Bosco vocational training. In interviews they stated that they are currently working with approximately 50 children and youth in the community.

Pradet is part of a network of organizations such as FTM, HAK, Provedor, and the Ministry of Social Solidarity which are called on to provide the court with information about a child's behaviour, attitude and psycho-social condition. Pradet counsellors make referrals for legal representation to other NGOs such as Forum Tau Matan and work with the Ministry of Social Solidarity to assist released children to reintegrate into the community. Prior to the child's release, counsellors will talk to community leaders, heads of the suco, the police and family of the victim to prepare them for the child's return to the community. Part of their objective is to ensure that the child is safe from potential retaliation from the victim's family and thus staff work in close cooperation with the local police and leaders. They especially focus on encouraging youth to continue their studies in school as well as at the Comoro Vocational Training centre. The organization is hoping to develop a peace building and human rights training program and a train the trainer course.

Outside the prison, they work with youth in the sucos especially in areas that have a high degree of violence precipitated by youth who for example commit acts of arson and throwing stones. They also provide conflict resolution training and disseminate information about children's rights in rural areas where the youth are engaging in violent activities as well as arranging for sporting competitions which they call Friendly Games.

Catholic Justice and Peace Commission

The Justice and Peace Commission's programs with youth have three components. They work with youth groups, in IDP Camps and in Parishes. The assumption underlying their work with youth groups is that these groups are a source of violence and can be easily manipulated and exploited by others due to the political context and to general unemployment amongst youth. The Commission aims to reduce violence in Timor-Leste in general and in Dili in particular. The question for them is how to involve the youth in re-building the country especially in the justice and peace area. Padre Aniceto Maia Costa explained that the Commission aims to work with youth "to find out how they can become instruments of peace". As an example of their work, Padre Costa said that after the violent attack on the Prime Minister and President on 11 February 2008, youth came to the Commission to ask for their advice. The youth

were told that instead of reacting with protest and violence and to avoid being manipulated they should use their brains and look for the root cause of the incident by using the conflict analysis skills they learned in workshops run by the Commission.

Since 2006 the Commission has been active in training youth in non-violence and in asking them to promote the learned principles within their communities. There are 18 Bairos and 31 parishes in Dili. Each parish has 5 ‘promoters’ and the Commission works 1 promoter in each parish help organize the training workshops. The Commission has conducted non-violence training in each vicarage and in the IDP camps. The training is based on a training manual written in Tetun that includes modules on the nature of violence, on alternative options for solving problems, conflict resolution, leadership communication skills, and a spiritual aspect – active non-violence based on Christianity. Usually between 50 and 100 participants attend each training which lasts between 3 and 5 days depending on the education level of the group. The local police and government officials in the parish are also invited to attend. The training is based on a prepared manual and if the group has high school education or less the trainers omit the section on conflict analysis. The Commission provides the venue, transportation, notebooks, and pens. They end each training course by giving participants a t-shirt and certificate. The t-shirt reads “John II for Active Non-Violence.” The youth are asked to wear the t-shirt and also to live up to the spirit of the t-shirt. They end with a ritual ceremony.

They have trained 2000 youth in non-violence skills since 2006. Parish promoters work with each community to build a ‘peace plan’ which involves developing sporting activities to build relations between bairos, holding friendship games, concerts, conducting monthly meetings with the youth leader, cross visits between youth groups and IDP camps and the parish. They also ask youth to share personal experiences about their lives and activities before their involvement with the Commission and afterwards. As a follow-up the Commission provides English language training to those who have already undergone non-violence training in each Bairro. They also support some youth to attend vocational training at Don Bosco for carpentry, welding etc. To date they have supported approximately 50 youth to attend training at Don Bosco. Padre

Costa stated that there are noticeable changes in the youths' behaviour after taking the non-violence training especially in the youth leaders who he claims actively instruct their members to avoid violence. It was his view that this was evident during the state of emergency earlier this year when most youth avoided violent confrontations with the police despite the fact that the PNTL Task Force punished any groups of youth they found on the streets with brutality.

The Padre pointed out that the Commission has a substantial advantage over NGOs because the Commission already has the trust of the communities through the church and parish. Consequently, during times of crisis, while NGOs will have difficulty entering communities, the church is already embedded in all communities. The Commission has focused on non-violence training for 2 years since 2006. In 2009 the Commission plans to re-focus its programs onto human rights training and dissemination of information about how to use the services of government and the formal system.

Community Development Interest (CDI)

CDI was established in November 2006 and is comprised of university students who offer monitoring, advocacy and non-formal education in the areas of HIV/AIDs and juvenile justice. Their mission includes:

- Promoting health through HIV/AIDs prevention campaigns
- Supporting human rights by monitoring and advocating the rights of children in legal and social environments

Their child protection program monitors the courts, and staff accompany children through the justice process with the aim of protecting children's rights and ensuring the implementation of the CRC in Timor-Leste. CDI has conducted a few small one-time funded activities such as a campaign for child rights funded by UNDP for \$1,800 and a pilot in Los Palos for 6 months in 6 villages, funded by UNICEF.

Avocats Sans Frontiere

ASF through its project "Providing access to justice legal awareness at the grassroots level" provides training modules to a network of community legal

liaisons. The training modules provide paralegal type information on topics including the Constitution, human rights, conflict resolution, gender, access to justice, the difference between civil and criminal cases, mediation and the court system. The Community Legal Liaisons are elected community leaders who are involved in delivering legal education programs. In November 2007 there were approximately 110 active CLLs, 42 village chiefs, 23 women leaders, 19 youth leaders, 13 traditional leaders, 8 hamlet leaders, 3 religious leaders, 1 member of the police force and 1 teacher. 26 CLLs were female. The CLLs conduct district workshops, community dialogues and village workshops covering six major topics including child rights.

UNICEF is working to develop a collaborative project with Avocats Sans Frontieres in the area of legal aid for children. The proposed program will provide mobile legal aid clinics, advocacy, as well as training to communities on child rights and access to formal justice mechanisms.

Asia Foundation

Asia Foundation has an Access to Justice program which focuses on “building an independent judicial system; establishing competent, accessible legal aid services and dispute resolution mechanisms with an emphasis on reaching rural populations and the most disadvantaged; and furthering citizens’ knowledge of justice” (Asia Foundation 2008). The Foundation provides support for the reports of JSMP (Judicial System Monitoring Program). It also supports the Ministry of Justice with its public legal information campaign which employs call-in radio programs, public meetings in rural areas, as well as informational brochures and posters. Asia Foundation also supports a network of legal aid organizations to extend legal and mediation services to disadvantaged persons and especially to enhance women’s rights. The aim is to provide support to legal aid organizations at the grass roots level in the districts. The emphasis is to build a women’s network of lawyers by supporting and building the capacity of women lawyers to carry out investigations, collect information and provide legal assistance in cases of gender based violence. They have supported 2 women lawyers in Dili, 1 women lawyer in Oeussi, 2 in Ura and are seeking 1 in Suai.

The network of NGO organizations providing legal and mediation services to disadvantaged persons across the country provide monthly statistics to Asia Foundation. Examining the statistics collected in all their locations between December 2007 and May 2008 reveal only 3 children's cases: 2 in Suai and 1 in Matebian. However, they do not disaggregate children's cases by sex and do not identify children's cases by type.

Plan International

Plan has programs that focus on child protection and child rights. They run programs in schools around the issue of violence in schools and the use of corporal punishment. This is part of their global program for education called 'Learn without Fear'. Plan and UNICEF funded a study by Field and Reden in 2005 called "Tau Matan Ba Labarik Sira Nia Haholok: Managing Children's Behaviour – a Study from Timor-Leste". The study surveyed children, parents and teachers about their use of and experience of violence at home and in school. They will use this study to help inform their work with the Ministry of Education and to promote the prevention of violence in schools and in families.

The organization works with the National Youth Council to help it become more representative in the Districts. They also work with community based youth groups that provide opportunities for youth to reclaim their culture especially in relation to music and sport. To this end, they support the youth in sporting competitions, recording traditional music, train the trainers, and a mobile recording studio. They also support opportunities for bringing youth from East and West Timor together in an effort to help break down beliefs about the barriers between the two regions. Plan supported a media NGO to develop 4 short programs that focus on young people in leadership positions in the community as a way of helping to create positive role models for youth. They also run a Youth Livelihoods Program that involves providing cash for work projects aimed at helping the community to identify projects and supporting them with small grants to create work and enhance skills for youth in the community such as in food preparation, sewing, carpentry, plumbing etc. These projects usually last 2 weeks and are combined with a 4-day life skills program. Plan also run programs in the IDP camps to bring youth together in sporting and music events.

Plan has also worked with DNSS in the Ministry of Social Solidarity by seconding the Plan Child Protection Adviser to the Ministry to help DSS prepare 13 new staff for their positions as social workers in the Districts. They plan, in collaboration with UNICEF and the Ministry, to assist DNSS further by supporting the Child Protection Officers in the Districts and to provide them with training on child rights, child abuse, violence, disciplining children and making communities safe for children.

World Vision

World Vision began a project called Peace building, Youth and Juvenile Justice in 2005 with support from UNICEF. They are currently funded by World Vision Australia. They work with the Police, DNSS and MOJ to create opportunities for youth by providing skills through training in electronics and carpentry. Prior to the 2006 crisis, World Vision provided skill training at Becora Prison for children including an electrician course but this program ceased operating during the crisis. Currently, with only two children with mental health issues incarcerated at Becora, there are no plans to begin training courses again in the near future for children.

World Vision also offers six-month courses for youth in their Youth Training Centre located in the Dili in IT and the hospitality industry. They also have a branch in Baucau for youth and conduct courses in electronics and office skills. The curriculum comprises 5 months of theory and practical instruction and one month as an intern in a work placement in the field. During the training course, youth are also given instruction in citizenship, peace building, character building and spiritual nurturing.