



# **47<sup>th</sup> session of the UN Committee on the Rights of the Child**

## **Information Notes on Juvenile Justice**

**Defence for Children International  
February 2008**



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## FOREWORD

The Committee on the Rights of the Child (CRC) is the body of independent experts that monitors implementation of the Convention on the Rights of the Child by its State parties. It also monitors implementation of two optional protocols to the Convention, on involvement of children in armed conflict and on sale of children, child prostitution and child pornography.

All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially two years after acceding to the Convention and then every five years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of “concluding observations”.

Every year, the Committee on the Rights of the Child holds three sessions in January, May-June and September. The 47<sup>th</sup> session was held in Geneva from the 14<sup>th</sup> January to the 1<sup>st</sup> February 2008. During this three week period, members of the Committee on the Rights of the Child reviewed the second periodic report of the Dominican Republic as well as the initial report submitted by East Timor on its implementation of the Convention on the Rights of the Child.

The International Secretariat of Defence for Children International attended this session of the Committee on the Rights of the Child in order to follow the presentations of the reports of East Timor and Dominican Republic, and is happy to present the following information notes on juvenile justice.

Geneva, February 2008



## INFORMATION NOTE

### **2<sup>nd</sup> Periodic Report of the Dominican Republic presented during the 47<sup>th</sup> session of the UN Committee on the Rights of the Child**

#### **Summary of juvenile justice related issues**

**Ratification of the UN Convention on the Rights of the Child by the Dominican Republic:** March 23, 1991

**Previous report presented in:** January 2001 (26<sup>th</sup> session of the CRC)

**Members of the CRC Committee present:** Mr. Zermatten, Mrs. Aidoo, Mrs. Al-Thani, Mrs. Aluoch, Mr. Citarella, Mr. Filali, Mrs. Herczog, Mrs. Khattab, Mr. Kotrane, Mr. Krappmann (country rapporteur), Mrs. Lee, Mrs. Ortiz (country co-rapporteur), Mr. Parfitt, Mr. Pollar, Mr. Puras, Mr. Siddiqui, Mrs. Smith, Mrs. Vuckovic-Sahovic.

**Composition of the delegation from the Dominican Republic:** Mrs. Tilza Ares (Director of the National Council for Children and Adolescents (CONANI), Mrs. Luisa Vicioso (Ambassador for women, children and adolescence at the Dominican Republic foreign ministry), Mr. Alberto Padilla, (Director of Public Policy at the National Council for Children and Adolescents), Mr. Jeffrey Lizardo (Secretary of State at the Ministry of Economy, Planning and Development), Mrs. Alexandra de León (Secretary of State at the Ministry of Public Health and Social Security), Mrs. Librada Vidal (Secretary of State at the Ministry of Education), Mrs. Marisol Tobal (representative of the Ministry of Justice), Mr. Ysset Román Maldonado (Deputy Chief of Mission, Permanent Mission of the Dominican Republic to the United Nations).

#### **Concerns raised during the initial report of the Dominican Republic in 2001:**

At the end of the 26<sup>th</sup> session, the Committee on the Rights of the Child expressed its concern at the high levels of physical and sexual abuse in society. With regard to the administration of juvenile justice, the Committee expressed concern at the slow pace at which the system was being established, the lack of data on children experiencing difficulties within the juvenile justice system, the conditions in specialised detention centres for children in conflict with the law, the situation of children detained with adults, and the limited training programmes given to professionals working in the juvenile justice system.

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## **Juvenile Justice in the Dominican Republic: Key issues**

### **1) Juvenile Justice Legislation**

A reform of the basic legal framework for the protection of children and adolescents was initiated in 2001. This process led to the adoption of Law n°136-03 which creates a new protection system for the basic rights of children and adolescents. In this new system, judges are responsible for supervising the execution of sentences imposed on children. The Dominican Republic reports that it currently has twenty operational courts for children, eleven of which are mandated with the supervision of sentences served by children in conflict with the law.

In their alternative report to the Committee, national NGOs however raise concern about the operational efficiency of these courts which do not meet the standards outlined in Article 359 of Law 136-03.

### **2) Minimum Age of Criminal Responsibility**

Children cannot be held responsible for their acts before the age of 13. A child is considered to have reached the legal age on the day following their 13<sup>th</sup> birthday. In compliance with Law 136-3, a child who is under 13 years of age cannot be imprisoned nor can judicial measures be taken against the child.

### **3) Abuses, Torture and Other Cruel, Degrading and Inhuman Treatment**

In the State party report, no mention was made of corporal punishment; however, the Committee expressed particular concern at this practice, which is still widespread in the Dominican Republic. In fact, a study undertaken by the Women Support Nucleus in the communities of San Juan, Barahona and Azua, located to the southwest of the country, indicated that 50% of parents and teachers in this region still practise corporal punishment. This same report expressed concern with regards to torture and ill-treatment endured by children in institutions, and particularly during detention. According to the Department of Children and Adolescence, over four thousand reports of sexual abuse suffered by Dominican children were received in the nine month period leading up to August 2004. The victims of sexual abuse were aged between 5 and 13 years, 80% were female.<sup>1</sup> In their alternative report, NGOs claim that these figures do not reflect the real situation of young children, who are in need of special protection. Centres giving assistance in situations of violence, ill-treatment and sexual abuse, report that demand actually exceeds what is suggested by these figures.

### **4) Pre-Trial Detention**

According to the State party report, pre-trial detention is carried out in specialised centres, in which children are detained separately from those carrying out custodial sentences. According to the members of the State party delegation, the Office of the Attorney General of the Department for Children and Adolescents has 24 hours to take a child who is in pre-trial

<sup>1</sup> The programme for Preventing and Eliminating the Worst Forms of Child Labour in the Dominican Republic, Goals and Outcomes 2001-2006 (ILO/IPEC).



detention to see a judge. If this deadline passes, the child must be released immediately. The State party claims that this regulation is strictly implemented in order to ensure that the fundamental rights of children in conflict with the law are respected. There will be five detention centres for children in the Dominican Republic, two of which will be created in the capital.

According to statistical data from the Directorate of the Child, Adolescent and Family, the Centre for the Integral Management of Children In Conflict with Law (CAIPACL) recorded 649 cases of children in pre-trial detention, and 666 cases of children sentenced in 2006. However, in their alternative report, NGOs assert that data on the number of children in conflict with the law, the number of sentences passed, and other concrete indicators on the implementation of the Convention are not reflected in the national statistics.

### **5) Separation of Child Detainees from Adults**

Members of the State party reported that no children were being detained with adults.

### **6) Training of Professionals**

According to the State party report, the government established the Central Directorate of specialised judicial police for children and adolescents. Juvenile judges, specialised judicial police officers and the entire staff of juvenile courts are being trained to provide support and follow-up to children and adolescents. In addition, special teachers are present in child detention centres, and a National Plan for the reinsertion of children in conflict with the law has been created.

## **Conclusions and Recommendations**

The members of the Committee on the Rights of the Child appreciated the efforts made by the Dominican Republic in adopting Law 136-03. By adopting this law which creates a protection system for the basic rights of children and adolescents, the Dominican Republic took a major step towards acknowledging children's human rights. However, the Committee was concerned about the lack of concrete information on the application of this law, and recommended its full implementation by restructuring the local judicial and administrative systems wherever necessary.

The Committee recommended that the State party take into consideration its General Comment n° 10 on the administration of juvenile justice (2007), and paragraph 33 in particular. The committee also recommended that all necessary measures should be taken to ensure that the detention of children is used as a last resort and for the shortest possible period of time; in compliance with Articles 37 and 40 of the Convention on the Rights of the Child. The Committee also recommended that the Dominican Republic create special courts for children, and that children's cases be treated as quickly as possible, and that all necessary measures are taken to promote socioeconomic activities to occupy young delinquents. The Committee also encouraged the State party to collaborate with the Interagency Panel on Juvenile Justice, composed of UN agencies and non-governmental organisations, and to seek its technical assistance.

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Finally, the Dominican Republic was requested on an exceptional basis, to submit a consolidated report of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> periodical reports for 2011. Thereafter, the reports will then be due every five years, as required by the Convention.

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**Sources :**

- **United Nations Convention on the Rights of the Child (1989)**
- **United Nations Committee on the Rights of the Child: Concluding Observations and Recommendations on the second periodic report of the Dominican Republic**
- **Second periodic report of the Dominican Republic on implementation of the UN Convention on the Rights of the Child (State party report)**
- **Alternative report of the Dominican Republic NGO Coalition for Child Protection (2001-2005),**
- **Briefing prepared by the Global Initiative to End All Corporal Punishment of Children**



## INFORMATION NOTE

### Initial report of East Timor presented during the 47<sup>th</sup> session of the UN Committee on the Rights of the Child

#### Summary of juvenile justice related issues

**Ratification of the Convention on the Rights of the Child by East Timor :** April 16 2003

**Members of the Committee on the Rights of the Child present:** Mrs. Lee (Chairperson), Mrs. Aidoo, Mr. Al-Thani (temporary deputy for Mrs. Al-Thani), Mrs. Aluoch, Mr. Citarella, Mr. Filali, Mrs. Herczog, Mrs. Khattab (country co-rapporteur), Mr. Kotrane, Mr. Krappmann, Mrs. Ortiz, Mr. Parfitt, Mr. Pollar, Mr. Puras, Mr. Siddiqui, Mrs. Smith, Mrs. Vuckovic-Sahovic, Mr. Zermatten (country co-rapporteur).

**Composition of the East Timor delegation:** Her Excellency Dresse Lúcia Maria Brandão F. Lobato (Minister of Justice of the Democratic Republic of East Timor and Head of delegation), Mr. Licínio Branco (incharge of human rights, Ministry of Foreign Affairs), Mr. Sergio Hornai (Director of the Criminal Defense Council), Mr. Nelinho Vital (incharge of human rights, Ministry of Justice).

#### Juvenile Justice in East Timor: key issues

##### 1) Juvenile Justice Legislation

According to the initial report of East Timor, juvenile justice issues are still governed by the Indonesian legal framework and the regulations set up by the United Nations Transitory Administration in East Timor (UNTAET). However, a national Penal Code was approved in 2005 by the Council of Ministers (which is yet to be adopted by the President), and could bring about changes to certain regulations such as the age of criminal responsibility. A new Penal Procedure Code has also been created but the State party has not clarified its state of development and whether it includes regulations with regards to children in the justice system. The government is also working towards the creation of a Children's Legal Code. The delegation also explained that a law on juvenile justice was being submitted for consultation in the districts (research work, public debates) with the assistance of UNICEF, and that it will be produced soon.

The Committee enquired further on how far the Children's Code was being developed and whether it also included legislation on juvenile justice. The delegation responded that the Code shall be in full compliance with the Convention on the Rights of the Child but that it



must be further elaborated. The procedure will be similar to that used for the law on juvenile justice, with a preliminary public consultation. Given the number of laws to be written in East Timor, the delegation is not certain how quickly this new law will be produced. The Committee strongly recommended East Timor to bring all legislation dealing with children (juvenile justice, adoption, etc.) under one Legal Code, and to make the writing of this code a priority over other laws.

The NGO alternative report also underlined the need to establish a complaints mechanism<sup>2</sup>, as well as to strengthen the judicial system which has been weakened by the crisis of 2006 (district courts are operating with limited capacities, the protection of judicial employees and witnesses must be improved, etc.). According to NGOs, the law on juvenile justice is severely lacking. NGOs advocate for a clear sharing of responsibilities in implementing international standards, as well as in the incorporation of these standards in the legislation, programmes and national policies. Moreover, NGOs highlight that customary law must be harmonised with the formal justice system; for instance, when it comes to the implementation of alternative sanctions.

## **2) Minimum Age of Criminal Responsibility**

Regulation No. 2001/25 of UNTAET sets the minimum age of criminal responsibility and for imprisonment at 12 years for major offences, and at 17 years for minor offences. Article 21 of the Penal Code bill will set this age at 16 years. The Penal Code bill equally mentions that special provisions for young people aged 16-21 will be provided for in a separate law.

The Committee objected to a minimum age of criminal responsibility of 12 years, which is incompatible with the spirit of the Convention on the Rights of the Child. The delegation responded that the minimum age applied in the penal law (which is currently based on Indonesian law), is 16 years. The Committee also expressed concern about the fact that children over the age of 16 are currently being treated as adults. Finally, it recommended East Timor to base its practices on General Comment n° 10 of the Committee on the Rights of the Child (2007).

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<sup>2</sup> Recommendation of the Post-Crisis Inquiry Commission mandated by the Secretary General of the UN (2006).



### **3) Number of Children in Detention and Length of Detention:**

According to the information provided by the State party, on the 30th June 2005 6 boys were being held in pre-trial detention and 4 were being imprisoned following judgment. The durations of pre-trial detention did not comply with UNTAET regulations, which set a maximum period of detention of 6 months. By April 2006, according to the State party report, 6 children were in detention after being sentenced for serious crimes.

The NGO alternative report provides an update of these figures: the number of imprisoned children (which has been relatively constant in the last five years) was 6 in September 2007, with 4 sentences for serious offences and 2 pre-trial detentions. NGOs are worried about the very high number of illegal detentions, as a result of the failure of judges and attorneys to respect their obligation to periodically re-examine the cases of children under preventive detention. A study by Forum Tau Matan shows that the criteria for preventive detention set forth in the Penal Procedure Code, are not respected. NGOs stressed that lawyers and defenders should be encouraged to pay regular visits to prisoners, something which is not currently taking place.

### **4) Alternative Measures to the Deprivation of Liberty**

The East Timor constitution allots a special place for customary law, with the possibility of alternative sanctions. The reports of the State party and NGOs mention the need to examine and formalise the relationships existing between formal law and customary law in dealing with minor offences, as traditional justice is not always in accordance with the standards on the rights of the child. This is the case for example, with respect to corporal punishment, as well as a respect for the opinions of children and gender equity. The NGO alternative report suggests that community heads should be trained on how to use traditional justice for the goal of social rehabilitation.

### **5) Conditions in Detention Centres (hygiene, education, leisure activities, etc.)**

The State party report indicates that a UNICEF professional training programme is being provided to detained children. The Ministry of Education in collaboration with a local NGO has been providing informal education and advice.

### **6) Separation of Children from Adult Prisoners**

The State party report mentions the need to improve on the present practice with regards to the separation of minors from adults as part of the new law on juvenile justice that will soon enter into force. The UNTAET regulations require that minors should be detained separately from adults "where possible". In practice, this separation is only effective during the night. The government has been holding discussions with UNICEF and the UNDP for the creation of learning centres in an effort to enable separation during the day as well. The little resources available and the low number of children concerned are a challenge to the process.

### **7) Abuses, Tortures and Other Degrading and Inhuman Treatment**

According to the initial report of the State party, no torture of children has been recorded in the penal system and such a practice is considered unconstitutional.



However, according to the alternative report of NGOs, Forum Tau Matan (FTM) and the Judicial System Monitoring Programme (JSMP), cases of torture and other cruel, inhuman or degrading treatment endured by children during arrests and detention have been recorded (for instance, excessive use of force). NGOs recommend to the East Timor government, and in particular the Ministry of Justice, to put in place internal mechanisms of monitoring and control.

### **8) Training of Professionals**

The Committee expressed its concern on the insufficient number of judges and lawyers as well as on the problem of the use of only one language in the courts (Portuguese). The Committee also sought to know whether East Timor trained specialised judges for children, and whether an adapted education (for the Children's Code bill) is provided in the universities. The delegation gave a positive response with regards to collaboration with universities. In dealing with the language problem, linked to an insufficient number of judges, the delegation said that East Timor law leaves room for the recruitment of international judges. The delegation acknowledged that this was not an ideal situation but that it was temporary, and explained that judges and magistrates are being trained, while trying as far as possible to recruit local staff. Human resources are also needed for coherent legal translation.

NGOs have requested that judges and attorneys be instructed on the legal criteria for pre-trial detention, and have also called for the training of court staff in case management so that cases do not become lost in the system.

The "common base report" indicates that six persons are employed as social workers by the Division of Social Services of the Ministry of Labour and Community Reinsertion. The Committee noted that this team was very small. It sought to know whether there was specialisation in the domain of juvenile justice. The delegation indicated that a "network for the protection of children" collaborating with the heads of the police and community already exists in three districts and that this will be extended to include the rest of the country.

### **Conclusions and Recommendations**

In its concluding observations, the Committee highlighted the progress made by the State party with regards to human rights in a very short time period; especially given that East Timor only gained independence in 2002, and is only just recovering from the 2006 crisis. The Committee also appreciated the efforts made by East Timor to present four reports<sup>3</sup>, with the help of UN bodies, in a context where there is no pre-established mechanism for data collection.

However, the Committee expressed its concern with the lack of a consistent legal framework in many domains including juvenile justice, and the time taken for the adoption of the laws necessary to apply the Convention on the Rights of the Child. It recommends the State party

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<sup>3</sup> Initial report on the Convention, Common base report, Reports on the two optional protocols



to specifically set as a priority the adoption of a Civil Code, Penal Code and Children's Code. The Committee also recommends the adoption of a national plan of action for childhood, within a defined timeframe.

In the area of juvenile justice, there is also a need to speed up the final stages of the legislation, with particular emphasis on establishing an appropriate minimum age of criminal responsibility. The training of the various professionals must be systematic. Young delinquents must at all times be provided with adequate legal representation. The Committee highlighted once more that deprivation of liberty must be a last resort, and encourages East Timor to continue with and expand its community reinsertion programmes and restorative justice measures. Where detention is unavoidable, it recommends that measures should be taken to separate children from adults and that decisions on the deprivation of liberty should be reviewed. The Committee recommends East Timor to seek the technical assistance of the Interagency Panel on Juvenile Justice, comprised of UN bodies and non-governmental organisations.

Finally, the Committee recommended that East Timor submit a 2<sup>nd</sup> and 3<sup>rd</sup> consolidated report on November 16, 2013. This exceptional measure is due to the large number of reports received. Thereafter, periodical reports shall be due every five years as required by the Convention.

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**Sources :**

- **United Nations Convention on the Rights of the Child (1989)**
- **United Nations Committee on the Rights of the Child: final remarks and recommendations on the initial report of East Timor**
- **Initial report of East Timor on implementation of the United Nations Convention on the Rights of the Child**
- **Report of East Timor NGOs Coalition, and briefing from the Global Initiative to End All Corporal Punishment of Children (alternative Reports)**