

Submission by the United Nations High Commissioner for Refugees

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

Universal Periodic Review: 3rd Cycle, 40th Session

TIMOR-LESTE

I. BACKGROUND INFORMATION

Timor-Leste acceded to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* in 2003 (hereinafter jointly referred to as the *1951 Convention*). Timor-Leste is neither a party to the *1954 Convention Relating to the Status of Stateless Persons (the 1954 Convention)*, nor to the *1961 Convention on the Reduction of Statelessness (the 1961 Convention)*. In addition, in 2003, Timor-Leste also acceded to major international human rights instruments, notably the *1966 International Covenant on Civil and Political Rights (ICCPR)*, the *1966 International Covenant on Economic, Social and Cultural Rights (ICESCR)*, the *1966 Convention on the Elimination of All Forms of Racial Discrimination (CERD)*, the *1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, the *1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)*, and the *1989 Convention on the Rights of the Child (CRC)*.

The *2002 Constitution of the Democratic Republic of East Timor* recognizes fundamental human rights, in particular those foreseen in international legal instruments,¹ and makes a specific reference to the *Universal Declaration of Human Rights*.² Asylum issues in Timor-Leste are governed by the *2017 Immigration and Asylum Act (the "2017 Act")*.³ As of 29 June 2021, UNHCR is unaware of any individuals who have benefitted or are currently benefitting from international protection provided by the Government of Timor-Leste under its national legal framework, namely the *2017 Act*. Additionally, there are currently no available or published statistics regarding the number of stateless persons or internally displaced persons residing in Timor-Leste.

II. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 2nd cycle UPR recommendations

Issue 1: Statelessness

Linked to 2nd cycle UPR recommendation no. 89.23⁴

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

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

³ Law No. 11/2017 on Immigration and Asylum, adopted on 19 May 2017, available at <https://migracao.gov.tl/pdf/Lei%2011-2017%20LIA%20com%20Indice.pdf>

⁴ Accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness (Australia)

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

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

Accession to the *1961 Convention* and the implementation of its provisions in Timor-Leste’s nationality legislation would ensure the right of every person to a nationality, thus closing the remaining gaps. In addition, accession to the *1954 Convention* would afford stateless persons guaranteed minimum rights, standards of treatment and legal status in Timor-Leste. These rights include, *inter alia*, freedom of movement, the right to education, employment, housing, and public relief. Importantly, the *1954 Convention* also guarantees stateless persons a right to identity and travel documents and to administrative assistance.

Recommendations:

UNHCR recommends that the Government of Timor-Leste:

- a) Accede to the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*;
- b) Introduce legislation establishing a statelessness determination procedure; and
- c) Collect accurate statistics on statelessness, disaggregated by age and gender, to examine the effect of statelessness on the enjoyment of rights and to identify legal and policy solutions to further prevent and reduce statelessness.

Additional protection challenges

Issue 2: Access to Asylum

Timor-Leste has a national asylum law in place but needs capacity development of its national asylum system. On 19 May 2017, the *2017 Act* was promulgated, replacing the 2003 Immigration and Asylum Act (the “2003 Act”). According to UNHCR statistical reports covering the period of 2018-2020, the Government of Timor-Leste has reportedly not registered a single asylum seeker.⁵

Under the *2017 Act*, individuals seeking asylum must request asylum within 72 hours after their arrival in Timor-Leste, whereas individuals who are resident or entitled to stay must similarly request asylum within 72 hours from when the facts serving as the basis for the asylum application become known.⁶ UNHCR has previously expressed concern over Article 92 of the *2003 Act*, which requires that asylum seekers lodge their application within 72 hours of their arrival in Timor-Leste, for creating hardships and impediments to seeking asylum.⁷ Article 100 of the *2017 Act* which governs the submission of an asylum application retains the pre-existing 72-hour deadline. The legislation would deem asylum claims

⁵ Source: <https://popdata.unhcr.org/>

⁶ This is set out in Articles 100(1) and 100(2) of the 2017 Immigration and Asylum Act.

⁷ UN High Commissioner for Refugees (UNHCR), *UNHCR Submission on Timor-Leste: UPR 26th Session*, March 2015, available at: <https://www.refworld.org/docid/5a12bd302.html>.

presented unjustifiably beyond the 72-hour deadline as inadmissible, but it does not detail the circumstances that would warrant a late asylum request beyond the 72-hour timeline.⁸ However, there may be many reasonable circumstances leading to a late asylum request. These reasonable circumstances include the possibility that asylum seekers may be fearful of the authorities because of their immigration status, that they may lack adequate language skills or resources or understanding of the asylum procedure, so as to be able to meet the deadline. Inadmissibility of such asylum requests, if made beyond the 72-hour deadline and deemed as unjustifiable, may lead to a breach the principle of non-refoulement.

The abovementioned 72-hour deadline could constitute a substantial impediment to individuals seeking asylum and lead to considerable hardship, particularly for individuals with specific protection needs like women, unaccompanied minors, elderly or sick persons. The prerequisite will further prevent the lodging of “*sur place*” claims, which is only feasible for an individual who legally resides in Timor-Leste by virtue of section 100(2) of the 2017 Act. Moreover, the 72-hour deadline can be particularly problematic in a nascent asylum system, due to the lack of understanding of and information about the asylum procedures; of proper interpretation; of measures for persons with specific needs; and of legal aid services. In addition, such a condition could severely restrict human rights enshrined in various international legal instruments and in the *2002 Constitution of the Democratic Republic of East Timor*.⁹

Of particular note, Article 2 s) of the *2017 Act* makes reference to the principle of non-refoulement enshrined in Article 33 of the *1951 Convention* and Article 3 of the *CAT* and additionally acknowledges its absolute nature with regard to the obligation of non-refoulement against torture. However, the law is unclear on the right to appeal in case of inadmissibility and only prescribes that an applicant can challenge the refusal of his/her asylum request before a member of the government. Moreover, a failed asylum seeker who has remained unlawfully in Timor-Leste does not enjoy the suspensive effect when they submit an appeal against an expulsion order.¹⁰ Considering the challenges faced by asylum seekers upon presentation of their requests including the 72-hour deadline, limited understanding and information about the asylum procedures, language barriers and lack of suspensive judicial recourses for all, potential refoulement of persons at risk of torture or ill-treatment may arise in the future. The current national asylum system in Timor-Leste cannot be said to be in line with international standards and may lead to violations of the principle of non-refoulement as well as other obligations under the *CAT* (Article 3) and the *ICCPR* (Articles 6 and 7). The scope of these Articles expands to any person who is in the territory of Timor-Leste or under its authority, regardless of his/her status as asylum seeker/refugee or lawful/unlawful.

Recommendations:

UNHCR recommends that the Government of Timor-Leste:

- a) Remove the deadline of 72 hours to apply for asylum and enhance cooperation with UNHCR in an effort to improve the fairness of asylum procedures¹¹;

⁸ Article 104 (1) d) of the 2017 Immigration and Asylum Act.

⁹ For example, the 72-hour deadline prevents the lodging of “*sur place*” claims, which may be viewed as a violation of Article 14 of the *Universal Declaration of Human Rights* providing for the right to seek asylum.

¹⁰ See Articles 85 and 86 of the 2017 Immigration and Asylum Act.

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

- b) Ensure that all individuals expressing interest to seek asylum upon arrival in Timor-Leste are given access to fair and efficient asylum procedures, relevant information, interpretation services and legal assistance; and
- c) Publicly publish accurate statistics on asylum-seekers and refugees, disaggregated by age, gender, country of origin and other relevant characteristics to demonstrate the effect of the implementation of the national asylum legislation.

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