

**Mandates of the Special Rapporteur on the right to privacy; the Special Rapporteur on violence against women, its causes and consequences and the Working Group on discrimination against women and girls**

Ref.: AL TLS 1/2021  
(Please use this reference in your reply)

17 December 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right to privacy; Special Rapporteur on violence against women, its causes and consequences and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 46/16, 41/17 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the reading of a judicial decision in a case of sexual violence against girls, expected to take place on 21 December 2021, which would expose the identities of the victims/survivors.**

According to information received:

Mr. [REDACTED], a former catholic priest, sexually abused a number of Timorese girls for years, while he was running the Topu Honis orphanage in Oecusse, Timor-Leste, from 1991 to 2012. A total of 14 victims have come forward to the authorities with their complaints, although it is believed that the number of actual victims/survivors is much higher.

In 2018, Mr. [REDACTED] was defrocked by the Catholic Church, after admitting the abuse had taken place.

In 2019, Mr. [REDACTED] was arrested, and in 2020 he was indicted.

On 23 February 2021, the trial of Mr. [REDACTED] started in the Court of Oecusse. The 14 victims were heard during the trial. The case has become largely publicized and politicized, with attempts to discredit and blame the victims/survivors based on gender stereotypes and myths about sexual violence. There have been reports of incitement of violence and death threats issued against members of civil society organizations supporting the victims/survivors.

The final decision is scheduled to be read in public, with open doors, on 21 December 2021. Although the survivors' names have been kept confidential in the proceedings until now, it is expected that they would be read with the final decision, as it is practice in the country, even in cases of sexual assault against minors. The Court of Appeal's website also makes available judgements that contain information on the identities and details of victims/survivors of sexual violence (depending on the case, details such as date of birth, nicknames, addresses, schools they attend, family details, etc).

Article 76/5 of the Criminal Procedure Code provides that in cases involving a sexual offence against a minor, proceedings should generally be closed to the

public. However, article 76/2 states that the limitation of the public character of a proceeding shall not be applicable to the reading of a sentence or a decision on appeal. This has been interpreted in the sense that the privacy of a survivor's identity is limited solely to the judgement, and not extended to the reading of the case's final decision.

We are concerned that the allegations indicate serious failings in the justice system's proceedings, which would lack a survivor-centred and a gender-sensitive approach to cases of gender-based violence, particularly sexual violence against girls. We are particularly concerned at the likelihood that the names of the victims/survivors be made public, in violation of their right to privacy under international law, particularly considering that the crimes were committed when they were children. Given the high publicity of this case, disclosing the names of the victims/survivors poses additional serious risks as this could result in further trauma and victimisation, and in leaving the victims/survivors exposed to social stigma and further discrimination. This could also cause further threats, harassment and other forms of harm towards victims/survivors, as well as to the civil society organizations supporting them. If confirmed, this would not only violate the victims' rights, but also discourage other victims/survivors of sexual violence from coming forward to the authorities to report similar crimes, further hampering Timor-Leste's ability to effectively combat gender-based violence against women by ensuring access to justice for victims and ending impunity for perpetrators. This would be in contradiction with Timor-Leste's human rights obligations under the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, and the International Covenant on Civil and Political Rights, all ratified in 2003.

In addition, we are concerned about reports of incitement to violence and death threats issued against members of the legal team supporting the victims, as well as attempts to discredit and shame civil society organizations which provided other types of support to the victims. If confirmed, these reports put increasingly under pressure organizations providing much needed support to victims of sexual violence and undermines the important role they have in ensuring that the human rights of women and girls are protected in the country.

We therefore call upon your Excellency's Government to ensure that the privacy of the victims/survivors is ensured in this and in any other cases of sexual violence against women and girls, and particularly in those involving children. We also urge your Excellency's Government to take the necessary steps in order to fully implement a survivor-centred, gender-sensitive justice system.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned information.
2. Please provide information on the rationale for disclosing survivors' names when reading final decisions, and the compatibility of this with Timor-Leste's criminal procedural legislation, as well as the country's obligations under international human rights law.
3. Please provide information on the steps taken to ensure the privacy of the victims in the reading of the judicial decision on 21 December 2021, as well as ensuring the proceedings respect the best interest of the child.
4. Please provide information as to how your Excellency's Government is ensuring the safety and security of the legal team providing support to the victims.
4. Please provide information on the measures taken to avoid revictimisation and to further promote victims' access to justice in a gender-sensitive and victim-centred manner.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

Ana Brian Nougrères  
Special Rapporteur on the right to privacy

Reem Alsalem  
Special Rapporteur on violence against women, its causes and consequences

Melissa Upreti  
Chair-Rapporteur of the Working Group on discrimination against women and girls

## **Annex**

### **Reference to international human rights law**

In connection with the above alleged facts and concerns, we would like to draw Your Excellency's attention to the Declaration on the Elimination of Violence against Women, which was adopted by the United Nations General Assembly and states that women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include, inter alia, (a) the right to life; (b) the right to equality; (c) the right to liberty and security of person; and (d) the right to equal protection under the law (Art.3). In this context, we wish to recall that the Committee on the Elimination of Discrimination against Women (CEDAW) in its General Recommendation No. 19 (1992), updated by General Recommendation No. 35 (2017) defines gender-based violence against women as impairing or nullifying the enjoyment by women of human rights and fundamental freedoms, and constitutes discrimination within the meaning of article 1 of the Convention on the Elimination of All forms of Discrimination Against Women (ratified by your Excellency's Government on 9 July 1993), whether perpetrated by a State official or a private citizen, in public or private life.

The CEDAW Committee considers that States parties are under an obligation to act with due diligence to investigate all crimes perpetrated against women and girls, to punish perpetrators and to provide adequate compensation without delay. In General Recommendation No. 35, the Committee clarifies that the due diligence obligation underpins the Convention as a whole and that States parties will be held responsible should they fail to take all appropriate measures to prevent, as well as to investigate, prosecute, punish and provide reparations for, acts or omissions by non-State actors that result in gender-based violence against women. Under the obligation of due diligence, States parties must adopt and implement diverse measures to tackle gender-based violence against women committed by non-State actors, including having laws, institutions and a system in place to address such violence and ensuring that they function effectively in practice and are supported by all State agents and bodies who diligently enforce the laws. The failure of a State party to take all appropriate measures to prevent acts of gender-based violence against women in cases in which its authorities are aware or should be aware of the risk of such violence, or the failure to investigate, to prosecute and punish perpetrators and to provide reparations to victims/survivors of such acts, provides tacit permission or encouragement to perpetrate acts of gender-based violence against women. Such failures or omissions constitute human rights violations.

The CEDAW Committee recommended in its General Recommendation No. 35 that States parties to adopt and implement effective measures to protect and assist women complainants of and witnesses to gender-based violence before, during and after legal proceedings. Finally, it recommended States parties to ensure effective access for victims to courts and tribunals and that the authorities adequately respond to all cases of gender-based violence against women, including by applying criminal law and, as appropriate, ex officio prosecution to bring alleged perpetrators to trial in a fair, impartial, timely and expeditious manner and imposing adequate penalties. The Committee also recommended that States parties implement protective measures for victims, including protecting their privacy and safety.

In its General Recommendation No. 33 (2015), the CEDAW Committee stated that, when necessary to protect women's privacy, safety and other human rights, States should ensure that, in a manner consistent with due process and fair proceedings, legal proceedings can be held privately in whole or in part or that testimony can be given remotely or using communications equipment, such that only the parties concerned are able to gain access to their content. The use of pseudonyms or other measures to protect the identities of such women during all stages of the judicial process should be permitted. States parties should guarantee the possibility of taking measures to protect the privacy and image of victims through the prohibition of image capturing and broadcasting in cases where doing so may violate the dignity, emotional condition and security of girls and women. The Committee also recommended that States protect women complainants, witnesses, defendants and prisoners from threats, harassment and other forms of harm before, during and after legal proceedings. Finally, according to the Committee, States must promote women's access to justice and highlighted that accessibility requires that all justice systems, both formal and quasi-judicial, be secure, affordable and physically accessible to women, and be adapted and appropriate to the needs of women, including those who face intersecting or compounded forms of discrimination.

Moreover, we would like to bring to your Excellency's attention Article 4 (g) of the United Nations Declaration on the Elimination of Violence against Women which notes the responsibility of States to work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services, facilities and programmes, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation.

In her report on the criminalization and prosecution of rape (A/HRC/47/26), the Special Rapporteur on violence against women recommended that States take measures to support victims and protect victims' privacy, including by avoiding contact between victim and perpetrator, enabling the victim to testify in the courtroom without being present or at least without the presence of the alleged perpetrator (notably through the use of communications technologies), providing legal assistance, providing interpreters when needed, and informing victims if a perpetrator escapes or is released.

Article 16(1) of the Convention on the Rights of the Child, to which your Excellency's Government adhered on 2003, provides that States parties must ensure that no child shall be subjected to arbitrary or unlawful interference with his or her privacy. In addition, article 3 of the same Convention stipulates that, in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Furthermore, Article 34 of the Convention of the Rights of the Child provides States parties must undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) the inducement or coercion of a child to engage in any unlawful sexual activity; (b) the exploitative use

of children in prostitution or other unlawful sexual practices; (c) the exploitative use of children in pornographic performances and materials.