Report on human rights developments in Timor-Leste

The security sector and access to justice
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Dignity and justice for all of us

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Executive Summary

1. On 11 February 2008, the armed group led by fugitive Alfredo Reinado, the former Military Police Commander of the armed forces of Timor-Leste (F-FDTL), carried out separate attacks against the President and Prime Minister of Timor-Leste resulting in the nearly fatal injury of the President and the death of Reinado. The attacks constituted one of the gravest challenges to the constitutional order since the independence of this young nation. The responsible role played by the Government and other actors immediately after the attacks helped avoid a breakdown of law and order. It demonstrated the increasing ability of national actors to respond to security challenges in a rational manner.

2. Nevertheless, the increasing number of reports of ill-treatment and other human rights violations, such as excessive use of force and intimidation, against civilians during operations by the Timor-Leste security forces in the aftermath of the attacks was of concern. The Commander of the F-FDTL, who had been mandated by a Council of Ministers resolution to create a Joint Command integrating members of the F-FDTL and national police of Timor-Leste (PNTL) for security operations conducted during the state of siege declared following the attacks, appeared before Parliament on 24 April 2008 where he explained that 28 complaints of human rights violations against civilians by the Joint Command had been received, 14 soldiers had been reprimanded and that serious allegations would be referred to the Prosecutor General's Office for investigation. However, as of the end of June 2008, members of the security forces who are allegedly responsible for these violations had not yet been brought to justice.

3. The cooperation of the F-FDTL and PNTL, and the successful efforts to apprehend those wanted in connection with the attacks without resorting to use of force, were positive developments. At the end of June 2008, there were indications that the increased role of the F-FDTL in internal security may continue, including in providing security to internally displaced persons (IDPs) who have returned to their homes, and to address violence involving martial arts groups. Any role outside the legal remit of the F-FDTL blurs the functions and reporting lines between the police and the military forces and, therefore, is a cause for serious concern.

4. In relation to the justice system, some progress was made. An increasing number of Timorese judicial personnel worked as judges, prosecutors and public defenders, and their presence in the districts increased. However, further steps are needed to strengthen the system, including the functioning of district offices. In spite of an increase in human resources, the backlog of cases continued to grow to an estimated 4,700 criminal cases. Gender-based violence remained a major human rights concern. Cases were frequently resolved through traditional dispute resolution mechanisms which were not always victim-centered and which were not regulated by a legal framework. While some progress was made towards holding accountable those responsible for criminal acts during the 2006 crisis, despite the assistance of the Office of the High Commissioner for Human Rights (OHCHR) funded international prosecutor, limited logistical and human resources in the Prosecutor-General's Office hampered progress. Meanwhile, the Parliament had not yet discussed the final report of the Commission for Truth, Reception and Reconciliation (CAVR) which it received in November 2005.

5. While much remains to be done, the response to the 11 February events indicates that Timor-Leste is making progress toward achieving full institutional stability. Nevertheless, the events served as a reminder of the fragility of the situation and the challenge of building a culture of democratic governance and adherence to the rule of law in a young, developing country. The ultimate aim of the country's leaders and the Timorese people of establishing a peaceful and prosperous country demands further progress, in particular in strengthening the capacity of Government and State institutions including in the security sector as well as respect for human rights and the rule of law.

I. Introduction

6. On 25 February 2008, the UN Security Council in its resolution 1802 (2008) extended the mandate of the United Nations Integrated Mission in Timor-Leste (UNMIT) for one year. In addition to condemning the 11 February 2008 attacks against President José Ramos-Horta and Prime Minister Kay Rala Xanana Gusmão and calling on the authorities to bring those responsible to justice, the resolution emphasized, *inter alia*, the need for sustained support of the international community to Timor-Leste to develop and strengthen its institutions and further build capacities in the justice sector; and reaffirmed the importance of ongoing efforts to reach accountability and justice, as well as implementation of the recommendations of the 2006 report of the United Nations Special Independent Commission of Inquiry (CoI). The resolution also called upon the Government of Timor-Leste, assisted by UNMIT, to continue working on a comprehensive review of the future role and needs of the security sector.

7. This report provides an update to UNMIT's first public human rights report, published in November 2007 in line with UNMIT's mandate to "observe and report on the human rights situation".[1] The report aims to highlight the human rights achievements in Timor-Leste from 1 September 2007 to 30 June 2008, and to point out existing challenges and shortcomings. It does not seek to provide an exhaustive overview,[2] but instead focuses on two priority areas in which further progress is needed: the security sector and access to justice. The report also briefly reviews progress made towards achieving the recommendations of UNMIT's previous human rights report. The final chapter of the report provides a summary of recommendations to both public institutions and civil society.

II. The Security Sector

8. In late 2007 and early 2008, the overall security situation in Timor-Leste improved, in particular in Dili, with a decrease in reported security incidents, including stone throwing and public disturbances. While UNMIT police continued to ensure the restoration and maintenance of public security by providing support to the PNTL, including interim law enforcement, as well as to assist with further training, institutional development and strengthening of PNTL officers, the PNTL moved towards increasing operational responsibility as demonstrated by the formation of the PNTL Task Force in December 2007 and the transfer of operational responsibility from UNMIT police to the PNTL for three police posts in Dili. Following the 11 February 2008 attacks, the acting President declared a state of siege, and an F-FDTL and PNTL Joint Command was established to conduct security operations during the state of siege, including apprehending individuals suspected of involvement in the attacks.

9. During operations by the PNTL Task Force and the Joint Command, UNMIT noted with concern an increase in the number of allegations of human rights violations, in particular of ill-treatment, including cases of severe beatings of detainees who required hospitalization for their injuries, death threats and intimidation. By the end of June, the Office of the Provedor for Human Rights and Justice (PDHJ) had opened investigations into 44 cases; however those responsible for such violations had not been held accountable. While the 11 February attacks certainly demanded a robust response, this should be effectively addressed in conformity with legal procedures and human rights standards.

1. Allegations of human rights violations by the PNTL Task Force

10. In December 2007, a PNTL Task Force consisting of 100 police officers was established in Dili. It was received positively by many members of the public as a potentially effective way of addressing security incidents, in particular public disturbances. In mid-January 2008, UNMIT police recorded a 70% decrease in security incidents during the previous month.[3] While it is not possible to prove a causal link, it is clear that the Task Force quickly became a strong and visible presence, and in this sense may have acted as a deterrent for individuals considering participating in criminal activities.

11. Monitoring of the PNTL Task Force revealed an increase in alleged cases of excessive use of force and ill-treatment during arrest, unlawful searches of houses and abusive behavior. From its inception until 11 February 2008, UNMIT's Human Rights and Transitional Justice Section (HRTJS) documented eight cases of ill-treatment

during arrest. Additional cases were reported after 11 February, when Task Force members operated as part of the Joint Command. In some cases, victims described being kicked, punched or beaten during arrest. The ill-treatment sometimes continued after the suspects were lying on the ground or had been taken inside a police vehicle. In one case, nine students from a high school in Dili were allegedly slapped, kicked and beaten with police batons during arrest. Two students, aged 23 and 16 years old, reportedly required hospital treatment. The students were released the same day, after identification. Incidents of Task Force members entering homes without presenting arrest warrants, search warrants or getting the authorization of the house owner, as required by law, were also documented. Task Force members forced individuals to do push-ups in public, apparently as a form of instantaneous punishment and public humiliation for minor infractions.

12. In an effort to enhance professionalism of Task Force members, including respect for the rule of law and human rights, UNMIT police organized an intensive three-week training course, which included training on applicable national law, and one day of human rights training. The first group of 30 Task Force members completed the programme in February 2008. Following the 11 February attacks, training for Task Force members was suspended, as they were taking part in operations. The training resumed in May, and by the end of June 2008, all Task Force members had completed the training. However, the HRTJS recommended that further human rights and other training be provided. It was also recommended that UNMIT police assign UNMIT Police officers to monitor and provide advice to each Task Force platoon, including by accompanying them during patrols.

2. Declaration of the state of siege

13. On the evening of 11 February 2008, in response to the morning attacks against the President and Prime Minister, the acting President of Timor-Leste declared a 48-hour state of siege pursuant to a proposal from the Government and following authorization by the Parliament, in accordance with constitutional provisions. The state of siege limited the right of freedom of movement by imposing a curfew from 8 pm to 6 am, and suspended the right of freedom to assemble and demonstrate. On 13 and 23 February 2008, the state of siege was extended for 10 and 30 days respectively. During these extensions, curfew hours were reduced to between 10 pm and 6 am, while the right of freedom to assemble and demonstrate remained suspended. Additionally, the F-FDTL and PNTL were granted the power to search homes at night with judicial warrants. On 23 March 2008, the state of siege was again extended in seven western districts, where those suspected of involvement in the 11 February

attacks were alleged to be hiding. At the same time, the status was downgraded to a state of emergency in five districts with night-time curfews being further reduced, while one district returned to normalcy.[4] On 23 April, the state of siege was extended only in Ermera District, while all other districts returned to normalcy.[5] There was no further extension of the state of siege when it expired on 22 May 2008.

14. The objectives of the state of siege were to apprehend those who threatened the constitutional order, and to maintain public order and avoid an eruption of violence. The situation remained calm despite genuine concerns that immediately after the attacks and in the days that ensued, supporters of the late Alfredo Reinado, or others seeking to take revenge against Reinado's supporters, might resort to violence. In spite of the end of the state of siege on 22 May, and therefore the end of the legal basis of joint operations, the Joint Command continued to operate. On 4 June, the Council of Ministers formally revoked the Resolution that had created the Joint Command, and on 19 June, a ceremony was held to mark its official closure.

15. The International Covenant on Civil and Political Rights (ICCPR), which has been ratified by Timor-Leste, establishes that certain rights may be limited or suspended during a public emergency "…which

threatens the life of the nation…".[6] However, some fundamental rights may never be derogated.[7] The Human Rights Committee which oversees the ICCPR's implementation has further clarified that any derogation must be "limited to the extent strictly required by the exigencies of the situation" in terms of duration, geographical coverage and material scope.[8] The prohibition against derogating fundamental rights, and the limitation of derogations to what is strictly necessary to restore normalcy is also established in the Constitution of Timor-Leste and in the Law on the Regulation of the State of Siege and Emergency adopted by Parliament on 22 February 2008.[9]

16. The 11 February attacks constituted a serious threat requiring immediate and effective action to prevent a breakdown in law and order. Although the security situation had been improving in the months prior to the attacks, State institutions remained weak. Longstanding problems that were at the centre of the 2006 crisis had not been fully resolved and continued to play a role in events leading to the attacks. The rights that were suspended under the state of siege were all derogable and as such, their suspension did not contravene Timor-Leste's national and international legal obligations. However, the full suspension of the right to assemble and demonstrate during the state of emergency contravened the Law on the Regulation of the State of Siege and Emergency, which only permits a partial suspension of rights during a state of emergency.[10]

17. During operations to apprehend the suspects of the 11 February attacks, the Joint Command refrained from using force. The emphasis was on exerting psychological pressure, calling for surrenders and establishing Joint Command bases. The Government and security forces appeared keen to produce results without resorting to violence, not only for human rights reasons, but also to avoid discontent among the population that might trigger conflict in the longer term. Indeed, the eventual surrender of Reinado associate Gastão Salsinha and 11 members of his armed group on 29 April 2008 occurred without the Joint Command having to resort to violence.

18. As the immediate threat of a breakdown of law and order decreased and the situation normalized, some actors questioned the necessity of extending the state of siege, with Fretilin parliamentarians abstaining from voting on the extension of the state of siege starting 23 March 2008. Proponents of the extension of the state of siege argued that it was necessary because the armed group wanted in connection with the 11 February 2008 attacks had not yet been apprehended. Nevertheless, in particular following Gastão Salsinha's surrender, it was increasingly questionable whether the continued suspension of the right of freedom to assemble and demonstrate, or the right of freedom of movement and inviolability of the home were indeed limited to the extent strictly required by the exigencies of the situation, as outlined by the Human Rights Committee.

3. Allegations of human rights violations during the state of siege

19. As F-FDTL-PTNL Joint Command operations commenced, there was an increase in the number of alleged cases of ill-treatment of civilians by both forces. Allegations of pointing firearms and threats to kill individuals, failure to comply with legal procedures when carrying out arrests and home searches, and abuse of authority were also reported. From mid-March 2008, the number of allegations of human rights violations, in particular in Dili, decreased. However, there was serious concern about reports of human rights violations by Joint Command members in Ermera and Bobonaro Districts.

20. From the start of the state of siege on 11 February to the end of the state of siege on 22 May 2008, UNMIT's Human Rights and Transitional Justice Section received allegations of 58 incidents of ill-treatment by members of the F-FDTL and PNTL. A total of 21 of these incidents were allegedly committed by PNTL members (13 by Task Force members and eight by regular PNTL); 24 cases of ill-treatment allegedly took place in the context of joint PNTL/F-FDTL operations, while members of the F-FDTL reportedly ill-treated individuals in 13 cases. It is of concern that in five cases, ill-treatment was allegedly inflicted during detention at police stations, where use of force was clearly unnecessary. On 5 April 2008, a civilian allegedly threatening F-FDTL members with a machete was shot and killed by a member of F-FDTL in Bobonaro District. The National Investigation Division (NID) investigated the case and forwarded it to the Office of the Prosecutor-General. The F-FDTL reportedly paid funeral expenses for the victim. At least 15 cases were reported in which F-FDTL and PNTL members allegedly threatened civilians, including six cases involving death threats. The HRTJS received reports of instances in which members of the public were ordered to do push-ups on the side of the road as a sanction for minor offences. In some cases, individuals were reportedly kicked or beaten while doing push-ups.

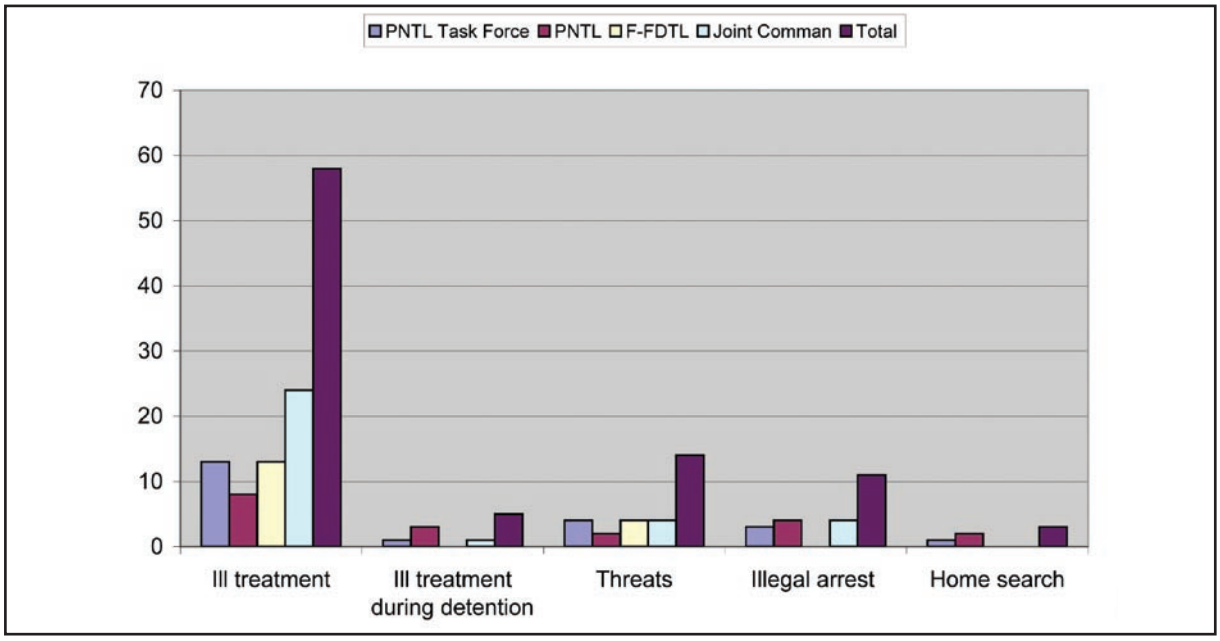
21. At least 11 cases were reported in which arrests carried out by the PNTL or jointly by the PNTL and F-FDTL did not comply with legal procedures. PNTL officers often failed to clarify the reason for detaining persons. The Joint Command Rules of Engagement (RoE) allowed for arrests by the F-FDTL, both of 'hostile forces' and civilians in certain cases.[11] According to the RoE, persons arrested should be handed over to the PNTL. It is of concern that at least in three cases, the F-FDTL removed petitioners

while they were being escorted by the police or in police custody.[12] On 27 February 2008, F-FDTL members forcibly took custody of a petitioner being escorted by UNMIT Police, after pointing their guns at UNMIT police and ignoring advice that this was improper handling of the suspect.

22. In at least three cases members of the PNTL allegedly conducted unlawful house searches, without warrants or written consent by the person concerned as required by law. In accordance with the law extending the state of siege, from 23 February 2008 onwards the security forces were authorized to search houses at night, provided that they obtained judicial warrants. The RoE also provided that the F-FDTL could conduct searches of private homes where there were "strong indications that a criminal offence has been committed".[13] The legal basis for such powers is questionable.

23. HRTJS maintained particular concern about allegations of human rights violations by Joint Command members in Ermera District. Of particular concern were incidents in Estado Village on 12 March 2008 in which 17 persons were reportedly ill-treated, in Hatolia Sub-district on 11 April 2008 in which at least 11 persons were ill-treated, and in Letefoho Town on 14 April 2008 in which 13 persons were reportedly ill-treated, two of whom required hospital treatment. The regional dimensions of this incident were of concern. Joint Command members reportedly accused the victims of supporting Gastão Salsinha and his group and of being involved in crisis-related violence against Easterners in 2006. The victims stated that they believed the majority of the F-FDTL members to be from the East. Numerous reports were received that Joint Command members warned victims not to report violations. In one case, a man who was reportedly beaten was told that, "if you give information to human rights we kill you". Restrictions of movement beyond what was legally provided for in the declaration of the state of siege were also reported. Villagers in several locations stated that they were told not to leave their villages or their houses after 4 pm. This impacted negatively on economic activities including firewood collection, farming activities, and going to the market. It appeared that such restrictions were also imposed in some areas neighbouring Ermera District, where no state of siege was in effect.

24. From the commencement of the state of siege, a range of actors contributed to monitoring and reporting on the human rights situation. The Office of the Provedoria for Human Rights and Justice (PDHJ) played an important role in coordinating monitoring efforts with civil society, including by sending teams to Ermera District. The PDHJ issued a press release on 12 February 2008, encouraging members of the public to report human rights violations to the Provedor's Office, and presented two reports to the National Parliament.[14] By the end of June, the Provedor's Office had opened investigations into 44 alleged cases of human rights violations. On a number of occasions, alleged violations were raised directly in Parliament and by the Prime Minister. On 11 February 2008, the Prime Minister delivered a public statement in which he stated that "[a]ny action the state must take to protect citizens will not violate people's human rights or freedom". On 20 March 2008, during a renewal of the state of siege, the Prime Minister stated in Parliament that he had raised allegations of human rights violations with the Joint Command. UNMIT also raised concerns with relevant authorities. Collective efforts by governmental



and non-governmental actors played an important role in highlighting human rights concerns.

4. Accountability for violations by members of the F-FDTL and PNTL

25. Increased monitoring and reporting of human rights violations was not matched by effective action to hold to account members of the security forces suspected of involvement in past and present human rights violations. Investigations by the regular internal PNTL accountability mechanism, the Professional Ethics Office (PEO), were hampered by limited resources and insufficient investigative expertise.[15] Although the F-FDTL Military Discipline Regulations provided for a disciplinary process, there was *de facto* no formal accountability mechanism in place to address cases of misconduct by F-FDTL members.[16]

26. Although PEO officers were assigned to the districts, they faced obstacles when investigating their colleagues and superiors. In some cases, PNTL District Commanders failed to forward allegations from the PEO officer in their district to the national PEO. In other cases, progress stalled after allegations were forwarded to the national PEO. On some occasions, PNTL officers suspected of having committed serious crimes remained on active duty. For example, one PNTL officer who was accused of forcing a minor to have sexual relations with him was moved from a local PNTL office to another police station after the case was reported to the district PEO in February 2008. As of June 2008, the case had reportedly not been forwarded to the national PEO. The acting District PNTL Commander stated in July that the alleged perpetrator had been suspended without pay for two months, but had since returned to active duty. Meanwhile, a case had reportedly been filed in the Prosecutor General's Office in April 2008. While upholding the right to presumption of innocence, cases of such serious nature should be investigated without delay, and criminal proceedings be initiated if the allegations are substantiated.

27. On 3 April 2008, the PNTL issued "Guidelines and a call for rigorous attention".[17] The Guidelines were issued in response to complaints of human rights violations by members of the PNTL raised by the PDHJ, human rights institutions and the international community during the state of siege. The Guidelines emphasize that PNTL officers should uphold the rule of law, and state that, "[n]o authorization is given to any member of PNTL and there is no excuse for him or her to hit or threaten a citizen".[18] The Guidelines further clarify that lack of compliance will be considered the responsibility of PNTL Unit and District Commanders, and that the PNTL General Commander designate will take measures against those who do not comply. At the Prime Minister's request, UNMIT distributed 6,000 pocketbooks on human rights standards for law enforcement officials to the PNTL.

28. While the PNTL has a formal and functioning disciplinary mechanism, there is no equivalent within the F-FDTL. The Regulation on Military Discipline (Decree Law 17/2006) provides a basis for a disciplinary process, but it is not implemented in a systematic and formal manner. In practice, the investigation and imposition of any sanction in regard to misconduct is left to the discretion of the officer's immediate superior. Most F-FDTL members have very limited, if any, knowledge of the Regulation. They also receive minimal guidance and support, due in particular to the lack of F-FDTL legal advisors. Presently, there is only one legal officer assigned to the Ministry of Defence and none in the F-FDTL.

29. In a positive development, Timorese leaders stated publicly on several occasions that members of the security forces involved in human rights violations during the state of siege would be held accountable. The Rules of Engagement for the Joint Command forces expressly stipulated that any suspicion that a serious crime has been committed should be communicated to the Command.[19] On 24 April 2008, the Commander of the F-FDTL, Taur Matan Ruak, stated in Parliament that there were 28 complaints about human rights violations. In late April 2008, in response to allegations of human rights violations in Ermera, one F-FDTL captain was reportedly withdrawn from the field, while 14 F-FDTL members operating under the Joint Command were reportedly verbally reprimanded. The National Investigation Department (NID) referred a number of cases, including alleged human rights violations in Ermera District and the shooting of a man in Bobonaro District, to the Prosecutor-General's Office for investigation. In another positive development, some initiatives to provide training to the security forces have been undertaken.[20]

5. Police certification

30. In the aftermath of the 2006 crisis, UNMIT police, pursuant to the Policing Arrangement between the Government and UNMIT (signed in December 2006), initiated a certification programme for PNTL, to ensure that all officers uphold standards of integrity and capacity. UNMIT police statistics as of the end of June 2008, provided that 3,114 PNTL officers had registered, of whom 599 had been awarded or were recommended for final certification. Close to all of the remaining 2,500 officers had completed the provisional certification course and were undergoing mentoring by UNMIT police.

31. The Timorese-led PNTL Evaluation Panel,[21] established by the Government in August 2006 to provide recommendations regarding the suitability of individual PNTL members for service with the PNTL was revived in

early 2008. The Panel is multidisciplinary and includes both Timorese and international members. It submits its recommendations to the Secretary of State for Security, who is vested with the authority to dismiss PNTL members from the police service. By the end of June 2008, the Panel was in the final stages of reviewing PNTL officers based in Dili District. While no officer had been found unsuitable for service, the Panel identified around 50 cases for further deliberations because of possible integrity concerns. At that time, the Panel had yet to consider most of the PNTL officers working outside of Dili District.

32. During the reporting period, there was some concern about the effectiveness of the certification process, including the PNTL Evaluation Board, a Timorese-led body. As of the end of June 2008, the process had not resulted in any dismissals based on past human rights violations or criminal conduct, despite a large number of recommendations to do so from UNMIT police. Additionally, some Timorese Government officials and PNTL members expressed frustration with the pace of the certification process, including the mentoring component, as a precondition for final certification. The procedures and the criteria for certification were not well communicated to stakeholders. In addition, the Government had not yet adopted legislation to ensure a process that is effective in removing unsuitable officers from the service with due respect for their human rights.[22]

III. Access to Justice

1. The court system

33. Between September 2007 and June 2008, some progress was made towards strengthening the court system, but further improvement was needed in a number of areas. In a positive development, 10 probationary Timorese judicial personnel graduated from the United Nations Development Programme (UNDP) funded Legal Training Centre in March 2008. However, the permanent deployment of judicial personnel to the districts proceeded slowly, and there was a need for further rehabilitation of courts and offices. The backlog of cases continued to increase.

34. By the end of June 2008, 13 Timorese judges, 13 national prosecutors and 11 national public defenders were assigned to Timor-Leste's four district courts, the Court of Appeal, and prosecution and public defender offices. The limited capacity of Timorese judicial personnel meant that the system continued to rely on international judicial personnel. From September 2007 to June 2008, five international judges, three international prosecutors and four international public defenders were working in the Timorese justice sector.

35. Limited improvement was made during the reporting period in the presence of judges, prosecutors

and public defenders in the districts. The most notable changes took place in Baucau District, where a panel of judges consisting of one international and two national judges was present five days a week An international judge and an international court clerk moved to Baucau in September 2007 and January 2008 respectively. However, the international judge left in April 2008, and had not been replaced by the end of June. On 20 June, the trial in Baucau District Court of a PNTL officer accused of the fatal shooting of a man during a CNRT rally in Viqueque town in 2007 was delayed because only two of the three members of the panel of judges were present. The suspect had been brought from Dili where he was in pre-trial detention. Deployment to other districts stalled during the reporting period. The only Timorese court official permanently based in the districts was the judge in Suai District. Obstacles to permanent deployment included lack of adequate accommodation and security.[23] In June, following an assessment by UNMIT police, steps were taken to improve the security of the Baucau national judge while staying in Baucau during weekdays.

36. National prosecutors visited their assigned regions irregularly and usually for court hearings only. While the international prosecutor for Baucau increased his presence during the reporting period, he often came unaccompanied by his national counterpart. There has been no international prosecutor for Suai and Oecusse Districts since August 2007. Lack of provisions for security meant that all prosecution files were kept in the Office of the Prosecutor General in Dili. Public Defenders also did not have a permanent presence in the districts. In addition to a generally high case-load, it was reported that private legal work by some public defenders had a negative impact on their official duties. One international public defender covered all districts outside Dili. The lack of public defenders meant that private *pro-bono* lawyers sometimes handled an unmanagable number of cases, making it difficult for them to handle these in a professional manner.[24] In the coming months, the strengthening of the Public Defenders' Office should be a priority for the authorities and those supporting the justice sector in Timor-Leste.

37. Some progress was made in the rehabilitation of court buildings and offices of judges, prosecutors and public defenders in Dili and Oecusse Districts. However, elsewhere, further rehabilitation was needed. The poor condition of the Baucau District Court building, which was partially burnt during unrest in August 2007, was of particular concern. Offices of judges, prosecutors and public defenders in the districts lacked electricity as well as effective means of communication, including telephone lines and internet access. Steps were being taken to address this, with priority given to making the Baucau District Court fully functional.

38. Despite the allocation of additional national and international human resources, the backlog in the prosecution offices continued to increase. The backlog of cases for prosecution in the Dili District prosecution office increased from 2,413 cases in July 2007 to an estimated 4,700 cases in July 2008.[25] Although the complexity of prosecution of a number of serious incidents added to the workload of prosecutors, this constituted a significant increase.[26] Delays in the translation of documents continued to hamper progress in many cases. Problems in communication between prosecutors and the police also led to delays in investigations. The commencement of weekly meetings between prosecutors, UNMIT police and PNTL in Dili and Baucau was a positive step towards improving communication, and should be replicated in other regions.

39. Court hearings in the districts were often cancelled due to the non-appearance of victims, defendants or witnesses. Many victims did not appear in court because notifications did not reach them. UNDP has planned an initiative to strengthen the court-based administration system of notifications to address this. There were also only limited provisions for district courts to pay for transport or other costs incurred by witnesses and defendants from remote areas. Reimbursement procedures were reportedly inefficient and time-consuming. The lack of a witness and victim protection law may also have discouraged the appearance of victims in court.

40. Some progress was achieved in giving more attention to civil cases, with the Dili District Court slightly reducing its backlog of such cases in 2007. However, compared to criminal cases, the number of civil cases solved remained minimal. One reason for this was the lack of a legislative framework to handle the many cases related to land tenure and ownership. In addition, the applicable Indonesian Civil Code had not yet been translated into Portuguese. This impeded its use by international court actors, who all came from Portuguese speaking countries. It is expected that the enactment of the new Timor-Leste draft Civil Code planned for 2008 will significantly facilitate the hearing of civil cases.

2. Gender-based violence

41. Gender-based violence (GBV) remained a major human rights concern. Timor-Leste's Government took some positive steps, including the approval in March 2008 by the Council of Ministers of the Organic Law

of the Secretary of State for the Promotion of Equality. However, key legislation that would help address legal gaps and establish clear procedural guidelines for dealing with GBV crimes, in particular the Domestic Violence Law and Criminal Code, had not been adopted by the end of June 2008.

42. Within the PNTL, the Vulnerable Person's Unit (VPU) is responsible for receiving and investigating allegations of GBV. In 2007, at least 482 GBV cases were reported to VPU offices in Timor-Leste's 13 districts. Investigations into these cases – including in serious cases such as rape – were often delayed as VPU offices lacked resources and institutional support.[27] Gathering of evidence in relation to GBV cases was a key problem. The PNTL did not have procedures for gathering evidence, and supporting medical examinations were not available. In addition, victims were rarely willing to testify in court, and witness statements were often not available, given the nature of the crime. Only one quarter of the cases (117) reported to the police in 2007 were forwarded to the Office of the Prosecutor-General for further investigation and prosecution.[28] The remaining cases were either withdrawn by victims, often following mediation by VPU officers, or resolved through traditional mechanisms. This is of great concern in view of the fact that some categories of GBV crimes are public crimes under the applicable Indonesian Penal Code.[29]

43. The Office of the Prosecutor-General received 101 cases of GBV crimes between September 2007 and March 2008.[30] This constitutes an increase compared to previous periods. Ninety-six of these cases were from Baucau and Dili Districts, while only a few cases were forwarded from other jurisdictions. As of April 2008, the Office of the Prosecutor-General had filed indictments in 12 of the 101 cases. District courts were also increasingly active in relation to GBV cases, although no statistics were available on the number of cases of GBV that were heard. The Timorese NGO Judicial System Monitoring Programme (JSMP) carried out monitoring of such trials.[31]

44. The majority of GBV cases were resolved through traditional dispute resolution mechanisms, usually in the form of family meetings. During interviews, victims and community leaders stated that concerns about the impact on the family, financial considerations and the slow progress of the official judicial system were main factors leading to a preference for informal mechanisms. There was concern that traditional dispute resolution mechanisms were not always victim-centered. Even though victims were given the chance to provide information, it was not clear to what extent this was taken into consideration in the final decision. Compensation, when paid, was received by the victim's family rather than the victim. The lack of a legal framework regulating traditional mechanisms meant that there was no oversight of the extent to which they upheld basic fair trial guarantees, including the presumption of innocence, the right to appeal and enforcement of decisions. For example, in one case a rape victim was awarded financial compensation by a traditional mechanism, but when the perpetrator - a relative - refused to pay, this was not enforced. In view of this, it is essential that the authorities, in

consultation with civil society and traditional leaders, decide on the role and standards of traditional justice mechanisms and their relation to the formal justice system.

3. The 20 May 2008 Presidential Pardons

45. In a Presidential Decree issued on 20 May 2008, 94 of Timor-Leste's 179 prisoners received a pardon or partial commutation of sentence. The Decree specified that release was to be granted at the decision of the court of competent jurisdiction based on independent evaluation of the circumstances relevant to each case.

46. As of 30 June 2008, 20 persons had been conditionally or unconditionally released as a result of the pardons. Former Minister of Interior, Rogério Lobato, who was sentenced to seven and a half years imprisonment for his role in the 2006 crisis, was among those whose sentence was commuted. Nine inmates serving sentences for crimes against humanity committed in 1999 also received commutations of their sentences. Four were released in June, while four others will be technically eligible for conditional release by the end of October 2008. Also among those conditionally released were individuals convicted of murder, assault and sexual offences. There was concern that Articles 331 and 332 of the Criminal Procedure Code of Timor-Leste was not fully applied in the decisions to grant parole. Article 332.1 specifies that "[t]he granting of parole depends on the convicted person's good behaviour in prison and strong capacity and willingness to readapt himself or herself to society…". No assessment of the detainees' ability to reintegrate was apparently made in the case of either Rogério Lobato or the four men convicted of crimes against humanity. In addition, while pardons and commutations of sentences are permitted under national and international law, the HRTJS believes that they must be granted only in a manner that enhances the efforts to promote accountability and justice and to combat impunity, in line with relevant United Nations Security Council resolutions.

4. Transitional justice

Crimes Committed in 2006

47. Progress was made towards holding accountable those responsible for criminal acts during the 2006 crisis, with two trials completed, two in process and 11 cases under investigation. Based on HRTJS monitoring, trials were largely fair, complied with international standards, and respected the rights of defendants. Nevertheless, investigation and prosecution was hampered by limited logistical and human resources in the Office of the Prosecutor General. The added workload resulting from investigation and prosecution of suspects in relation to the 11 February attacks also may have hindered the prosecutorial capacity to proceed with cases. The OHCHR funded international prosecutor specifically tasked to handle cases recommended by the CoI for prosecution arrived in March 2008.

48. **Four F-FDTL members** were found guilty by the Dili District Court on 29 November 2007, of manslaughter and attempted manslaughter, in connection with the killing of eight PNTL officers on 25 May 2006. They were sentenced to prison terms ranging from 10 to 12 years, and to pay compensation to the victims or their families. On 15 January 2008, the Court of Appeal declared their appeal inadmissible because it was submitted late. On 11 February 2008, one of the convicted soldiers was reportedly seen uniformed and armed in the vicinity of President Ramos-Horta's residence. On 2 March 2008, the four were detained in an *ad hoc* military prison in Taci Tolu, Dili, apparently established by an accord signed by the Ministry of Justice and Secretary of State for Defense and provided for in a Decree on the creation of a high security cell belonging to Becora prison.[32] However, UNMIT monitoring indicated that the four were not properly incarcerated. UNMIT also learnt that the four continued to receive their salaries from the military. Given that the trial was conducted by a civilian panel of judges, using the civilian criminal law and in a civilian court, the decision to detain those convicted in an *ad hoc* military prison is questionable and gives the impression that those convicted are not subject to the rule of law.

49. **Former PNTL Deputy Commander, Abilio Mesquita**, and three co-defendants were acquitted of manslaughter by the Dili District Court on 13 March 2008, in relation to the armed attack on the house of F-FDTL Commander Matan Ruak on 24-25 May 2006. Mesquita was convicted of theft and of using a firearm with intent to disrupt public order and sentenced to three years and three months imprisonment.[33] His three co-defendants were each sentenced to one year and six months imprisonment, for intent to disrupt public order. All four were released pending the final verdict of the Court of Appeal.[34] One of the defendants and the Office of the Prosecutor-General appealed the verdict. The trial took place after a previous conviction in the Dili District Court was declared null and void by the Court of Appeal in September 2007, on grounds that the panel of judges had not been constituted in accordance with applicable laws and regulations.

50. **Former Minister of Interior, Rogério Lobato**, who was serving a prison sentence of seven and a half

years for manslaughter and the illegal distribution of weapons, left Timor-Leste in August 2007 to undergo medical treatment in Malaysia. The Standard Minimum Rules for the Treatment of Prisoners (adopted in 1955) provide that sick prisoners who require specialist treatment be taken to specialist institutions. However, the Standard Minimum Rules also recognize "the great variety of legal, social, economic and geographical conditions of the world" and emphasize that the rules must be applied impartially.[35] Similar treatment should therefore be given to other prisoners who may be in a similar situation of requiring medical treatment abroad. On 14 April 2008, the Judge stated that he had notified Lobato that his treatment in Malaysia was no longer justifiable on medical grounds and that he had to return to Timor-Leste within 10 days of receiving the notification. On 20 May 2008, President Ramos-Horta granted a partial commutation of Lobato's sentence, and he was officially conditionally released on 3 June. He had not returned to Timor-Leste by the end of June 2008.

51. In the aftermath of the 11 February attacks, **nine members of Reinado's group**, who were among a group of 17 persons facing charges of manslaughter, attempted manslaughter, rebellion and weapons charges in relation to an armed confrontation in Fatu Ahi in May 2006, surrendered or were apprehended by the authorities. Upon judicial review, seven of the defendants were released under minimal restrictive measures. Amaro da Costa ("Susar"), a key member of Reinado's group, who was also wanted in connection with the 11 February attacks, was remanded in pretrial detention and held in a house in Dili. The trial of those accused of involvement in the Fatu Ahi resumed on 7 May 2008 in the Dili District Court of Appeal. The trial was postponed to 11 June due to the fact that three of the defendants had received late notification, and therefore did not have the required opportunity to submit a rebuttal. The trial was subsequently adjourned until 8 August 2008.

52. **Vicente da Conceicao (Railos) and Leandro Lobato**, wanted in connection with the armed confrontation on 24-25 May 2006, were arrested on 3 October and 30 November 2007, respectively. Both men faced charges of manslaughter. They remained in pretrial detention at the end of June 2008.

53. Progress was made in implementing a reparations programme. In November 2007, the Government announced that civilians who sustained serious injuries, and families of civilians who were killed as a result of violence that occurred between 1 October 2006 and 30 August 2007, were entitled to assistance. This constituted an extension of a programme that provided financial assistance to civilian victims of violence that took place between April and September 2006. By May 2008, 384 persons had benefited from the programme. The Government stated that it had allocated US $ 200,000 for the scheme. The Government also provided funding to the NGO Alola Foundation to continue its programme to support families of F-FDTL, PNTL and civilians who were killed in 2006.

Crimes committed between 1974 and 1999

54. On 12 February 2008, UNMIT and the Prosecutor-General signed a Memorandum of Understanding providing for UNMIT's Serious Crimes Investigation Team (SCIT) to support the Office of the Prosecutor-General in conducting investigations into crimes committed in 1999 and drafting indictments, by giving UNMIT access to the former Serious Crimes Unit database. This enables the SCIT to continue investigations that have been pending since the closure of the Serious Crimes Unit in November 2004, including 186 murder cases for which there are no indictments yet, and 486 murder cases that have not yet been investigated. SCIT submitted its first monthly report to the Prosecutor General in April 2008. As of 30 June, investigations had been initiated in Aileu, Ainaro, Baucau, Bobonaro, Dili, Ermera, Lautem, Liquisa, and Viqueque Districts, and 20 investigations had been completed. The completion of investigations into human rights violations that occurred in 1999 would constitute an important step towards possible future prosecutions, and would help establish the facts about the events of 1999.

55. The final report of the bilateral Indonesia-Timor-Leste Commission of Truth and Friendship (CTF) was officially submitted to the Presidents of Indonesia and Timor-Leste on 15 July 2008 (after the period covered by this report) and the two Presidents issued a joint statement recognizing that gross violations of human rights had occurred, expressing remorse to all those who suffered, and commiting themselves to faithful implementation of the Commission's recommendations. The CTF was criticized by human rights observers for prioritizing relations between Indonesia and Timor-Leste over truth and justice; CTF hearings in Dili in September 2007 were boycotted by some NGOs, who instead conducted an alternative hearing that emphasized the need for justice. While concerns remained about the CTF's terms of reference, which allowed for recommending amnesty for serious crimes such as war crimes and crimes against humanity, no amnesties were in the end recommended. On 15 July 2008, the Secretary-General publicly welcomed the commitments to follow up action and encouraged

the Governments of Indonesia and Timor-Leste to take concrete steps to ensure full accountability, to end impunity and to provide reparations to victims in accordance with international human rights standards and principles and in line with the recommendations of the Commission of Experts and the Secretary-General's report on Justice and Reconciliation for Timor-Leste (S/2006/580).

56. The two-year delay of Timor-Leste's National Parliament in discussing the final report of the Commission for Truth, Reception and Reconciliation (CAVR), which it received in November 2005, was a matter of increasing concern. The "Chega!" ("Enough!") report constitutes an important historical record and contains detailed recommendations, including the establishment of a reparations programme for victims of human rights violations that occurred between 1974 and 1999. On 5 June, Committee A of the National Parliament unanimously approved a resolution recommending that the Chega! Report of the CAVR be tabled in the next plenary session of Parliament for consideration and debate.

57. In March 2008, the HRTJS and the International Center for Transitional Justice (ICTJ) organized a consultation on the establishment of such a reparations programme, attended by representatives of relevant ministries, Members of Parliament, NGOs, the Church and United Nations agencies. There was broad support for a limited programme of material reparations for victims of the gravest violations who continue to suffer the consequences in their daily lives. The need for symbolic reparations for victims, more generally, was also highlighted. The donor community should continue to support the post-CAVR Technical Secretariat, which is tasked with disseminating the CAVR final report and maintaining the CAVR archives and memorial site.

IV. Update on implementation of recommendations in UNMIT's previous report

58. UNMIT's Report on human rights developments in Timor-Leste (August 2006 - August 2007) contained a number of recommendations. Below, a brief update is provided on progress made in relation to the recommendations in areas not covered elsewhere in this report.

59. **The President of the Republic**: In November 2007, the Council of Ministers approved a draft Law on Legislative Authorization in penal matters *(Proposta de Lei de Autorização Legislativa em material penal)* which, if approved by Parliament, will empower the Government to draft a Penal Code and submit it directly to the President for promulgation. Should this transpire, there was concern that a code of such importance would not be subject to parliamentary scrutiny and broad consultation before coming into force.

60. **The National Parliament** had not debated or adopted laws on land and property rights, witness protection and domestic violence. The Law on the Status and Profession of Private Lawyers is in the process of being adopted. USAID began the implementation of a five-year project to support the Government on property rights, including by assisting in the drafting of land and property laws and implementing regulations and institutional mechanisms. Parliament allocated funding to the Post-CAVR Secretariat to continue its activities.

61. **The Government** adopted a national recovery strategy *Hamutuk Hari'i Futuru* (Together Building the Future) in December 2007, aimed at addressing the IDP situation. By the end of June 2008, 11 IDP camps had been closed, while 36 camps remained open. As of the end of July 2008, 3,340 families had received assistance to return to their homes. The Office of the Human Rights Advisor to the Prime Minister had not been reinstated, and though appointed, Human Rights Focal Point Officers appeared not to be active.

62. In the area of **human rights treaty reporting**, some progress was achieved. In January 2008, the Committee on the Rights of the Child concluded its review of Timor-Leste's initial report on the Convention on the Rights of the Child (CRC). Local NGOs, with the support of international NGOs, began socialization of the recommendations. In January 2008, the Council of Ministers approved the Government's initial report on the implementation of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). The Government had not yet initiated the drafting of a report on the International Covenant on Economic, Social and Cultural Rights (ICESCR).

63. The **Ministry of Justice** was in the process of drafting Legislation on Juvenile Justice, with support from UNICEF. No specific facilities for juveniles or detainees who suffered from mental health problems were established. Guidelines on how formal justice and traditional mechanisms can cooperate in a human rights abiding way had not been developed. UNMIT established a working group on this issue in June 2008.

64. The **Ministry of Social Solidarity** cut food rations to IDPs in half from January 2008. Vulnerability criteria are being designed in preparation for the phasing out of food distribution in the camps and instead focus on the most food-vulnerable in the entire population. There was concern that social safety nets addressing the needs of the most vulnerable groups within the camps had not yet been established. Further, the Labor Code had also not yet been forwarded to the Council of Ministers.

65. The **Office of the Provedor for Human Rights and Justice** played a key role in human rights monitoring and reporting during the state of siege and as such strengthened its role as a relevant national human rights mechanism. Cooperation with NGOs increased, but further steps would be welcome. The opening of regional offices was postponed due to budget constraints. On 30 June the Provedor's Office issued its Annual Report. The revival of its IDP team in June 2008 was also a welcome development. In June, a joint session was held with the HRTJS to strengthen cooperation.

66. **Civil society organizations** had not yet signed and enacted the NGO Forum Code of Conduct for NGOs. Legal aid and victim support activities, particularly in the districts, and the Human Rights Monitoring Network (RMDH) required further strengthening. In addition, NGOs continued to enter cases into the Human Rights Violations Database, with a total of 323 cases entered since 2005.

V. Summary of recommendations

*To the **President of the Republic:** Promulgate, after its review by the National Parliament or the Government, the new Penal Code.*

*To the **National Parliament**: Debate and adopt a new penal code, a new civil code, as well as legislation on witness protection, domestic violence and the vetting process. Discuss the final CAVR report and task the Government with implementing its recommendations, including the establishment of a reparations programme.*

*To the **Government**: Provide the Office of the Provedor for Human Rights and Justice with sufficient funding to strengthen and expand its activities. Continue financial and logistical funding to support the Post-CAVR Secretariat. Ensure the proper incarceration of the four convicted F-FDTL members in a normal civil detention centre. Ensure that there is a clear separation of roles between the F-FDTL and PNTL, as provided for in the Constitution, as well as strengthened internal accountability and external oversight mechanisms. Allow for parliamentary scrutiny and broad consultations of the draft Penal Code. Ensure that the SCIT is allocated a sufficient number of interpreters and investigators to enable it to work effectively throughout the country.*

*To the **Ministry of Justice**: Permanently relocate judicial personnel to the districts and enhance staff security, as well as adequate living and working conditions. Improve the notification system and provide district courts with adequate budgets. Speed up translation efforts in the courts and prosecutor offices. Establish guidelines on how formal justice and traditional mechanisms can cooperate in a transparent and human rights abiding way.*

*To the **Secretariat of State for Security**: Strengthen the PEO, and take other necessary measures of institutional reform to ensure accountability of police officers involved in human rights violations and breaches of discipline. Strengthen the PNTL Vulnerable Persons Units, in particular in the districts, including by providing specific training on applicable law. Ensure early completion of the work of the Evaluation Panel, and the removal from the police service of all officers alleged to have been involved in criminal acts and/or human rights violations.*

*To the **Secretariat of State for Defense**: Strengthen the internal disciplinary mechanism of the military. Ensure cooperation of F-FDTL members with criminal investigations by the judicial system, and their submission to the rule of law.*

*To the **Judiciary**: Ensure that the Criminal Procedure Code of Timor-Leste is fully applied in any decisions to grant parole, and that pardons do not undermine accountability.*

*To the **Office of the Prosecutor-General**: Adopt a prosecutorial strategy that prioritizes cases based on gravity, impact and evidence. Investigate and prosecute human rights violations committed during the state of siege and emergency. Ensure criminal responsibility for crimes committed in April-May 2006, in line with the recommendations of the United Nations Independent Special Commission of Inquiry for Timor-Leste. Ensure that members of the F-FDTL and PNTL who commit human rights violations are brought to justice. Increase cooperation with police.*

*To the **Office of the Provedor for Human Rights and Justice (PDHJ)**: Open regional PDHJ offices as soon as the capacities of PDHJ staff and the allocated PDHJ budget permit. Strengthen cooperation arrangements with human rights monitoring NGOs.*

*To civil **society organizations**: Enhance legal aid and victim support activities, in particular in the districts. Strengthen human rights monitoring and reporting mechanisms, including by increasing use of the joint Human Rights Violations Database. Adopt a Code of Conduct for national NGOs.*

*To the **donor community**: Continue to provide technical and other forms of assistance and cooperation, in particular in the areas of security sector reform and justice. Continue to support the post-CAVR Technical Secretariat.*

Notes

[1] UN Security Council resolution 1704 (2006)/para. 4(g), 25 August 2006. In accordance with this mandate, the Human Rights and Transitional Justice Section (HRTJS) of UNMIT is engaged in capacity-building programmes, while its human rights officers monitor and report on the human rights situation in the country. The Section is furthermore engaged in supporting security sector review process and the screening process of the national police, in promoting transitional justice for crimes committed between 1974 and 1999 and in 2006, and in strengthening civil society organizations including in the area of economic, social and cultural rights. The Chief of HRTJS reports to the Special Representative of the Secretary-General for Timor-Leste, as well as to the United Nations High Commissioner for Human Rights. This report is issued by UNMIT and has been drafted primarily by the HRTJS.

[2] For a broader overview of political, social and security developments in Timor-Leste, see "Report of the Secretary-General on the United Nations Integrated Mission in Timor-Leste (for the period from 21 August 2007 to 7 January 2008", S/2008/26, 17 January 2008.

[3] HRTJS interview with UNMIT Police Dili District Commander, 18 January 2008.

[4] Presidential Decree no. 45/2008, 22 February 2008. A state of siege continued in Aileu, Ermera, Bobonaro, Covalima, Ainaro, Liquica and Manufahi Districts. A state of emergency was in force in Dili, Baucau, Lautem, Manatuto and Viqueque District, while Oecusse District and Atauro sub-district were exempt.

[5] Bill no. 7/2008 Authorizing the President of the Republic to renew the declaration of state of siege in Ermera District, 22 April 2008.

[6] ICCPR, Art. 4.1. When derogating from the ICCPR, states parties are obliged to inform other states parties about the derogation. On 15 February 2008, the acting President wrote a letter to the United Nations Secretary-General. It was not clear at the time of writing whether this letter was accepted as notification.

[7] According to the ICCPR, Article 4, these non-derogable rights are the right to life, physical integrity, non-retroactivity of the criminal law, recognition as a person before the law, freedom of thought, conscience and religion, the right not to be subjected to torture, slavery or servitude, the right not to be subjected to cruel, inhuman or degrading treatment or punishment, and non-discrimination.

[8] General Comment No. 29, State of Emergency (Article 4), CCPR/C/21/Rev.1/Add.11, 31 August 2001, paragraph 4.

[9] Constitution of the Democratic Republic of Timor-Leste, Section 25; Law 3/2008 on the Regulation of the State of Siege and Emergency, 22 February 2008, Article 2.

[10] Bill no. 3/II/1a/2008 on the Regulation of the State of Siege and Emergency, 19 February 2008, Art. 10.2.

[11] *Rules of Engagement for the operational forces under the Joint Command,* 21 February 2008, Rules 9 – 15.

[12] In January 2006, 159 soldiers sent a petition to President Xanana Gusmão, complaining of discrimination against soldiers from the western part of Timor-Leste in the F-FDTL. After receiving only minimum response, the soldiers left the barracks. Subsequently more soldiers joined them, and in March 2006, F-FDTL Commander Taur Matan Ruak dismissed 594 soldiers who became known as the "petitioners". Salsinha was the spokesperson of the petitioners. In early 2008, the Government invited the petitioners to a retreat in Dili, in an attempt to find a solution to their situation. On 11 June, the Council of Ministers adopted a decree law regulating the return of the Petitioners to civilian life, and the government stated that it was to pay compensation to the group. By the end of June, most petitioners had left the retreat.

[13] *Rules of Engagement for the operational forces under the Joint Command,* 21 February 2008, Rule 28.

[14] "Declaration of the Office of the Provedor for Human Rights and Justice on the Declaration of the State of Siege", 12 February 2008. The first report of the PDHJ was submitted on 26 February. Issues highlighted included the lack of awareness of the people, and the lack of clarity from government in relation to the state of siege; abuse of police power; lack of understanding of the Criminal Procedure Code by the police, and the need for the police and military to respect human rights when conducting operations. On 19 March, the Provedor's Office submitted its second report on the human rights situation during the state of siege to Parliament. The report, covering the period 12 February to 19 March found that around 40 percent of the 72 persons detained for violating the curfew alleged that they had been ill-treated by police during arrest. The report also documented three cases of unlawful arrest. While no arrests were made in relation to restrictions on the right to assembly and to demonstrate, the report noted that the suspension of the right to freedom of movement within prescribed hours impeded some socio-cultural practices and observances.

[15] The Portuguese original version of the Organic Law of PNTL (Decree Law No. 8/2004) refers to the "Gabinete de Ethica e Deontologia Professional" (GEDP). The English translation refers to the "Professional Ethics Office" (PEO). However, UNMIT Police has named the office the "Professional Standards and Discipline Office" (PSDO).

[16] *Regulamento Disciplina Militar, Decree Law* 2006/17, 30 October 2006.

[17] PNTL General Commander-designate, "Guidelines and a call for rigorous attention", Police number GAB.1/180/4/2008, 3 April 2008.

[18] Ibid. p.4.

[19] Rules of Engagement for the Joint Command Forces, Rule 30.

[20] The Australian Government is fostering greater professionalism, by providing training to the F-FDTL through its Defence Cooperation Program. A similar

initiative, the Timor Leste Police Development Program, is also in place to assist the PNTL.

[21] Government Resolution No. 13/2007 of 11 December 2007, (that amended Government Resolution No. 3/2006 of 31 August 2006 that established the PNTL Evaluation Commission). Art. 7 provides that the Evaluation Panel is to determine "whether any given PNTL member should resume his or her work or be suspended and submitted to a disciplinary or criminal proceeding."

[22] An expert mission on policing found that the certification process was "…relatively unsystematic, did not have a clear certification strategy that outlined targeted numbers over a defined period of time and did not prioritize the certification of commanding officers". The expert mission also found that the process lacked a defined certification policy. Report of the expert mission to Timor-Leste on policing, 17 to 27 March 2008. S/2008/329, 16 May 2008.

[23] While the official residences of court actors in Baucau and Suai districts were uninhabitable, the UNDP rented houses to accommodate court actors.

[24] Six associated private *pro-bono* lawyers in Baucau were attending more than 400 criminal and civil cases in March 2008, including cases dating back to 2004. One lawyer alone was handling more than 200 criminal cases at one time. The lawyers are currently receiving an average of 25 to 30 new cases per month.

[25] UNDP, "Strengthening the Justice System in Timor-Leste. Annual Progress Report 2007", February 2008; and Procuradoria Distrital de Dili: Mapa Estatistico, February 2008. According to the Office of the Prosecutor-General in Dili, as of January 2008, the Prosecutor Offices in Baucau, Oecusse and Suai had a backlog of 800, 256 and 126 cases respectively. This did not include 463 pending case files for Suai that went missing during the 2006 crisis and 520 cases that are currently in progress.

[26] Among the complex cases were cases recommended for prosecution in the report of the UN Special Independent Commission of Inquiry (2006), the investigations into election-related violence in July and August 2007, and investigations into the 11 February 2008 attacks.

[27] This included lack of technical resources such as computers, vehicles and communication facilities as well as access to medical professionals. "The Vulnerable Persons Unit in Timor-Leste: An Independent Assessment of its Role and Function", Technical Papers Series, UNICEF Timor-Leste. Chris Styles-Power, Carolyn Hamilton and Erica Hall, University of Essex, UK, March 2008, p. 15.

[28] The 117 cases forwarded to the Office of the Prosecutor-General in 2007, constituted 4.3% of the inquiries opened by the Prosecutor that year (2,721 inquiries). Comparative data from other developing countries indicate that the proportion of inquiries into GBV in Timor-Leste is low. See for example a 2005 study by the World Health Organization: http://www.unifem.org/gender_issues/violence_against_women/gacts_figures.php?page=2

[29] The Indonesian Penal Code (IPC), which remains the applicable law for GBV cases, specifies that domestic violence is a public crime, meaning that once brought to the attention of the authorities, the authorities are obliged to investigate a case, regardless of the victim's wishes. The IPC contains a number of gaps in its definitions of GBV crimes.

[30] Due to the difficulty in obtaining accurate data about GBV, paragraphs 42 and 43 refer to different time periods.

[31] For further information on trials of GBVcases, see JSMP Press Release "Cases of domestic violence processed by the formal justice system at the start of 2008", 8 February 2008, and "Analysis of decisions in cases involving female victims: January 2006 – June 2007", December 2007.

[32] Decree 1/2007, 14 May 2007.

[33] Article 365.2 of the Indonesian Penal Code and UNTAET Regulation 5/2001, Article 4.7, which states that, "[a]ny person who without lawful authority imports into East Timor any firearm, ammunition or explosive with the intent to disrupt public order, or who uses any firearm, ammunition or explosive in the disruption of public order is guilty of a criminal offence and shall be punished by a fine not to exceed fifty thousand U.S. dollars (USD 50,000) or a term of imprisonment not to exceed twenty years, or both".

[34] The Judge referred to Criminal Procedure Code Art. 197, which states that "If requested or at his or her own discretion, the judge may override pre-trial detention and determine that the defendant be released where it is established that pre-trial detention has been imposed in cases and conditions other than those provided in the law or where the circumstances that led to pre-trial detention have ceased to exist".

[35] Standard Minimum Rules for the Treatment of Prisoners (1955). Approved by the Economic and Social Council in its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

Acronyms and Abbreviations

CAVR	Commission for Truth, Reception and Reconciliation
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CNRT	Congresso Nacional da Reconstrução de Timor
COI	Commission of Inquiry
CRC	Convention on the Rights of the Child
CTF	Commission of Truth and Friendship
F-FDTL	Falintil-Forças Armadas de Defesa de Timor-Leste
GBV	Gender-based violence
HRTJS	UNMIT Human Rights and Transitional Justice Section
ICCPR	International Covenant on Civli and :Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICTJ	International Center for Transitional Justice
IDPs	Internally displaced persons
JSMP	Judicial System Monitoring Programme
NGO	Non-governmental organization
NID	National Investigation Division
OHCHR	Office of the High Commissioner for Human Rights
PDHJ	Provedor for Human Rights and Justice
PEO	Professional Ethcs Office
PNTL	Polícia Nacional de Timor-Leste
RMDH	Human Rights Monitoring Network
RoE	Joint Command Rules of Engagement
SCIT	UNMIT Serious Crimes Investigation Team
UNDP	United Nations Development Programme
UNMIT	United Nations Integrated Mission in Timor-Leste
USAID	United States Agency for International Development
VPU	Vulnerable Person's Unit