



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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**Committee against Torture**

**Consideration of reports submitted by States  
parties under article 19 of the Convention**

**Initial reports of States parties due in 2004**

**Timor-Leste\*, \*\***

[Date received: 3 August 2016]

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\* The present document is being issued without formal editing.

\*\* The annexes to the present report are on file with the secretariat and are available for consultation.  
They may also be accessed from the web page of the Committee against Torture.

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## Acronyms

CAT	Convention Against Torture
CPC	Criminal Procedure Code
CPD-RDTL	Popular Council for the Defense of the Democratic Republic of Timor-Leste
C-RDTL	Constitution of the Democratic Republic Of Timor-Leste
DNDUS	National Directorate for Human Rights and Citizenship
DNSPRS	National Directorate of Correctional Services and Social Reintegration
F-FDTL	Timor-Leste Defence Force
KRM	Maubere Revolutionary Council
MoE	Ministry of Education
MoH	Ministry of Health
MoJ	Ministry of Justice
MSS	Ministry of Social Solidarity
NGO	Non-Government Organization
PC	Penal Code
PNTL	Timor-Leste National Police
PNTL (VPU)	Vulnerable Person's Unit
SED	Secretary of State for Defense
SES	Secretary of State for Security
SEJD	Secretary of State for Youth and Sport
HRAU	Human Rights Advisory Unit
UNMIT	United Nations Integrated Mission in Timor-Leste

## Part I. General information

### Introduction

#### Demographic Indicators of Timor-Leste

1. The Democratic Republic Of Timor-Leste is a new State in South-East Asia, located in the Eastern part of the Island of Timor, and also includes the enclave of Oecusse in the western part of the Island of Timor, and also the islands of Atauro to the North and Jaco to the East.

2. Measuring 14,919 km<sup>2</sup>, Timor-Leste's population of nearly 1.1 million (1.066.582)<sup>1</sup> is divided into 13 Municipalities, 65 Administrative Posts and 442 Villages. Timor-Leste's population speaks more than 31 languages,<sup>2</sup> with Tetun and Portuguese as the official languages of Timor-Leste. The Timorese follow a variety of religions: Buddhism, Confucianism, Hinduism, Islam, Catholicism and Protestantism. Although the majority of the population are Catholic, those who follow other religions live together peacefully and harmoniously.

3. After being colonized by the Portuguese for more than four centuries, Timor-Leste unilaterally declared its independence on 28 November 1975. This declaration of independence was not recognized by the United Nations and the international community. Just nine days after the declaration, the Indonesian military invaded Timor-Leste, making it the twenty-seventh province of Indonesia. This action can only be understood within the political context of the Cold War, and both countries regret it, and are deeply committed to developing friendly relations, respecting each other's sovereignty, and creating harmonious conditions between the neighboring countries in a spirit of solidarity and equality to promote peace and stability. Therefore, the conflicts of the past between the two countries will not repeat themselves in the future, which would bring further suffering to the people.

4. A UN-organized referendum to vote on self-determination was held in August 1999, and the Timorese rejected special autonomy proposed by the Indonesian Government and began the path towards the independent state of Timor-Leste. After two years of UN administration (UNTAET), Timor-Leste restored its independence as a sovereign State on May 20, 2002. After restoring its independence; Timor-Leste became a member of the UN in September 2002.

#### Political structure and State legitimacy (Organization of Powers)

5. The Democratic Republic of Timor-Leste is a State based on the Rule of Law. The Constitution of the Democratic Republic of Timor-Leste (C-RDTL) 2002 adopted a semi-presidential system, with Executive, Legislative and Judiciary powers, divided into four organs of sovereignty, the President of the Republic, the Parliament, the Government and the Courts. Based on the principle of separation of powers, these organs of sovereignty, in their reciprocal relationship and exercise of their functions, shall observe the principle of separation and interdependence of powers established in the Constitution.<sup>3</sup>

6. As set out in the C-RDTL, the President of the Republic is the Head of State and the symbol and guarantor of national independence and unity of the State and of the smooth functioning of democratic institutions. The President of the Republic is the Supreme

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<sup>1</sup> Timor-Leste demographic and Health Survey 2010, page 2 from introduction.

<sup>2</sup>The population census 2010.

<sup>3</sup> C-RDTL, Article 69.

Commander of the Defence Force.<sup>4</sup> The President of the Republic has a term of office of 5 years and the term of office may be renewed only once,<sup>5</sup> and the President of the Republic shall be elected by universal suffrage.<sup>6</sup> The President of the Republic has the competence to promulgate statutes and approve agreements and ratify international treaties and also to exercise the right of veto regarding any laws approved by the National Parliament.<sup>7</sup>

7. The National Parliament is the organ of sovereignty of the Democratic Republic of Timor-Leste that represents all Timorese citizens and is vested with legislative supervisory and political decision making powers.<sup>8</sup> The National Parliament shall be made up of a minimum of fifty-five and a maximum of sixty-five members, who are elected by universal suffrage for a term of office of five years.

8. The Government is the organ of sovereignty responsible for conducting and executing the general policy of the country and is the supreme organ of Public Administration.<sup>9</sup> The Government shall comprise the Prime Minister, the Ministers and the Secretaries of State.<sup>10</sup> The Government shall be accountable to the President of the Republic and to the National Parliament for conducting and executing the domestic and foreign policy in accordance with the Constitution and the law.<sup>11</sup> In addition, the Government also has the competence to define and implement the general policy of the country, to prepare the State Budget Plan, define and implement national domestic policies,<sup>12</sup> and it is also incumbent upon the Government to submit bills and draft resolutions to the National Parliament, to propose to the President of the Republic the declaration of war or the making of peace, the declaration of the state of siege or emergency, and propose the submission to referendum of relevant issues of national interest.<sup>13</sup>

9. The courts have the competencies to administer justice, are independent from any interference, and subject only to the Constitution and the law. Court decisions shall be binding and shall prevail over the decisions of any other authority. The Constitution provides for the establishment of a Supreme Court of Justice and other courts of law, and also specialized courts, including in the areas of Administration, Tax and Audit.

## **Legal framework for the protection of Human Rights**

### **Constitutional guarantee of the right to freedom**

10. Human value and human dignity is the fundamental principle that inspired the RDTL Constitution. The Constitution therefore guarantees the civil and political rights as well as the economic, social and cultural rights of all people. The international system of human rights is given a privileged position, which includes the United Nations Universal Declaration of Human Rights (UNDHR) from 1948 which provides the guidelines for the interpretation of the fundamental rights enshrined in the C-RDTL and national laws, that have adopted and accepted the fundamental principles in the international treaties and conventions that Timor-Leste has ratified.

<sup>4</sup> C-RDTL, Article 74.1 and 74.2.

<sup>5</sup> Ibid, Article 75.2 and 75.3.

<sup>6</sup> Ibid, Article 76.1.

<sup>7</sup> Ibid, Article 85 a) and c).

<sup>8</sup> C-RDTL, Article 92.

<sup>9</sup> C-RDTL, Article 103.

<sup>10</sup> C-RDTL, Article 104.

<sup>11</sup> C-RDTL, Article 107.

<sup>12</sup> C-RDTL, Article 115.1 and 115.2.

<sup>13</sup> C-RDTL, Article 115.2.

11. The role of international law and human rights has been important in the history of Timor-Leste, because they truly reflect Timor-Leste's thoughts on human dignity. Thus, in 2003, Timor-Leste managed to ratify seven (7) Human Rights conventions that together with the RDTL Constitution have established legal standards. Timor-Leste is party to the all core international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Convention against Racial Discrimination (ICERD), Convention on the Rights of the Child (CRC), and the Migrant Workers Convention (MWC). Timor-Leste is also a State-Party to the Rome Statute of the International Criminal Court and the two optional protocols of the Geneva Convention.

12. Timor-Leste is currently developing its policy on mainstreaming the rights of disabled persons to all sectors; these efforts are part of an integrated process with the main objective of Timor-Leste being "prepared and ready" to ratify this important convention in the near future.

13. In addition to the courts, other important institutions have been established since Timor-Leste became independent, and these institutions are part of the system that protects human rights in Timor-Leste, namely the independent institution of the Ombudsman for Human Rights and Justice, which adheres to the Paris Principles. Timor-Leste now has a National Commission for Children, which is part of the government structure, yet with technical autonomy. It is coordinated by the State Minister responsible for Social Affairs and the Ministry of Education, to guarantee the rights of children, who make up 50 percent of the population of Timor. Also, the government has a specialized institution called the Anti-Corruption Commission. Civil society is strong and plays an important role in Timor-Leste in its role of monitoring the behavior of the State in guaranteeing the protection of human rights in Timor-Leste.

#### **Process of preparing the Timor-Leste report**

14. Timor-Leste recognizes that since it ratified this Convention, Timor-Leste has been late in submitting its initial CAT report to the committee. This is because Timor-Leste has been in the process of reconstructing the State and consolidating State-building, peace building and stability. There have also been limitations in terms of human and financial resources that would facilitate the process of preparing the initial CAT report.

15. This report is the initial report that Timor-Leste is submitting based on a letter from the Chief of the CAT Committee that pointed out that Timor-Leste was late in submitting its initial report, and therefore the Committee sent a letter to Timor-Leste's permanent mission in Geneva, Reference No. PMTL/G/Amb/10/51. This was reinforced by Letter No. PMTL/G/Amb/11/41, which called on the State of Timor-Leste to submit its initial CAT report to provide information on the progress that Timor-Leste has achieved based on its obligations to implement the principles set forth in the Convention.

16. This initial report has been prepared with the full support of the United Nations Human Rights Advisory Unit (HRAU) in Timor-Leste. The preparation of this report was coordinated by a core team of eight people led by the Ministry of Justice (MoJ), which has full responsibility, but also benefited from the full support of 33 individuals comprising focal points from line ministries and the municipalities and UN agencies involved in the implementation of the Convention relating to Torture and Maltreatment in Timor-Leste. In preparing the initial CAT report, the State of Timor-Leste, via the Fifth Constitutional Government, reappointed the existing human rights focal points from line ministries and the municipalities pursuant to a Letter/Instruction from the Minister of Justice.

17. The Government, through the MoJ, which received technical assistance from the UN Human Rights Advisory Unit in Timor-Leste, provided training to the human rights focal points on how to prepare the CAT report. There was a preparation phase to properly prepare the focal points, to support their work which is linked to the entire sphere of human rights issues, with the specific aim of helping them with preparations for drafting the initial CAT report and to strengthen the National Directorate for Human Rights and Citizenship (DNDUS) within the MoJ to draft this initial CAT report.

18. After training the human rights focal points, the State, through the Government, carried out extensive public consultations with all entities, which was an important part of preparing this report. The consultations took place in 6 Municipalities, namely Viqueque, Baucau, Aileu, Ainaro, Ermera and Oecusse. The main targets of the public consultation were the community, local authorities, representatives of civil society, religious representatives, the National Police of Timor-Leste (PNTL), the Timor-Leste Defence Force (F-FDTL), health workers, teachers and representatives of the Ombudsman for Human Rights and Justice at the regional level with the aim of gathering credible data and information that could balance this report.

19. The extensive public consultations with all entities was aimed at gathering data for the needs of this report, however they did not only take place at the municipal level, but public consultations were also carried out at the national level with important targets who were considered to be core actors, namely prison guards, the PNTL, the F-FDTL, health workers, teachers, judicial actors from the Public Prosecution Service and the courts, national and international NGOs and the independent institution of the Ombudsman for Human Rights and Justice, to gather information and concrete data with examples of cases that should not have occurred relating to maltreatment that occurred within State institutions, however sometimes when there are interferences with the public order maltreatment can occur in these situations.

#### **General Legal Framework under which torture and other cruel, inhuman or degrading treatment or punishment is prohibited**

20. Constitutional, criminal and administrative provisions regarding the prohibition of torture and maltreatment. The national laws of Timor-Leste are considered to respect the international framework because these provisions are set out in the national laws of Timor-Leste, namely in Article 30.4 of the C-RDTL<sup>14</sup> and Article 167 of the Penal Code (PC)<sup>15</sup> that provide guarantees and prohibit torture and cruel, degrading or inhuman treatment.

21. International treaties dealing with torture and other cruel, inhuman or degrading treatment or punishment have been ratified by Timor-Leste and have been accepted with a promise of implementing all of the principles set out in the convention. Therefore it is the responsibility of the State to comply with these obligations when it ratified this convention. A concrete example is that Timor-Leste respects the fundamental principles that are set out in the convention, namely the national laws of Timor-Leste criminalize acts of torture and maltreatment, and also life imprisonment and death sentence are prohibited in Timor-Leste, as set out in Article 29.3 of the C-RDTL and Article 59.1 of the Criminal Procedure Code (CPC).<sup>16</sup>

22. The status of the Convention in the national laws and other legislation. Timor-Leste's national laws and other legislation recognize the status of the convention as set out in Article 9.2, 9.2 and 9.3 of the C-RDTL which states that "international law is accepted",

<sup>14</sup> C-RDTL, Article 30.4.

<sup>15</sup> PC, Article 167.

<sup>16</sup> C-RDTL, Article 29.3 and PC, Article 59.1.

meaning that the national laws of Timor-Leste apply international laws in the “Timor-Leste domestic legal order”, and adopt all principles of international law, and also other international conventions, treaties and agreements after publication in the official gazette. All rules that are contrary to international standards shall be invalid, to guarantee judicial security in Timor-Leste”.<sup>17</sup>

23. The provisions of the Convention are directly enforced by the courts and administrative authorities as the provisions of the Convention are harmonized with national laws, especially the PC, which means that when a national law is drafted and promulgated, principles of international law are always used as references, therefore the provisions of the Convention are enforced by the courts and the administrative authorities in theory and in practice.<sup>18</sup>

24. The implementation of the convention in Timor-Leste, and difficulties affecting the fulfillment of the obligations of the State-Party to the convention. The convention is being successfully implemented in Timor-Leste pursuant to the law that provides for this, and Timor-Leste is complying with the principles set out in the convention. There are still some difficulties in implementation, namely shortcomings in its implementation domestically, and sometimes there are cases that occur whereby citizens have minimal legal awareness on how to make a complaint about a case of torture or maltreatment that has occurred.

25. In addition, the State authorities have worked hard with a range of entities, such as United Nations agencies, international non-government organizations, national non-government organizations, political parties and religious groups to increase awareness about the existing laws that are in force in Timor-Leste and have provided civic education to communities in rural areas, so that communities will be brave enough to make complaints to the sovereign organs in relation to cases of maltreatment that occur.

26. As a State-Party to the CAT, the State of Timor-Leste continues to work hard to implement the convention through a range of means, and in particular there are a number of institutions that promote and protect human rights, and mechanisms have been established at the Administrative Post, Municipal and National levels. Concrete examples are the establishment of Community Police at the Village level, the presence of police posts at the Administrative Post level, the establishment of courts with jurisdiction in four municipalities including also the mobile court which is a means to bring justice closer to the people. An independent institution, the Ombudsman for Human Rights and Justice, also has a presence at the regional level which includes complaint boxes at the Administrative Post level, as well as in all municipalities across the entire territory as a means to enable the community to make a complaint against any action that violates their rights.

27. The State of Timor-Leste is already doing its utmost to overcome the situations and difficulties that it has encountered in improving these systems in order to ensure that all citizens can enjoy their full rights, including being able to access fair justice. A concrete example is that the Government, through the MoJ, Office of the Public Defender, Public Prosecution Service and the courts has started awareness raising efforts to increase and widen citizens’ knowledge about the importance of legal awareness and how they can use the existing mechanisms to access formal justice. Awareness-raising is being conducted in the municipalities, administrative posts and villages, and different media are being used, such as television, radio, newspapers and also government web pages.

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<sup>17</sup> C-RDTL, Article 9.1, 9.2 and 9.3.

<sup>18</sup> Results from an interview with the Judge Administrator of the Dili Municipal Court.



## **Part II: Information relating to each substantive article of the Convention**

28. In relation to the legislative, judicial, administrative or other measures giving effect to the provisions, Timor-Leste is implementing the provisions of the convention through the following legislative measures, namely the PC and CPC, and is also implementing judicial measures during investigative processes through the Police, the Public Prosecution Service and trials before the courts, and also administrative measures are applied through State institutions, such as the PNTL Organic Law, the F-FDTL Organic Law and the Statute on Correctional Establishments.

29. Concrete cases and situations where measures giving effect to the provisions have been enforced, including any relevant statistical data. In this report the State Of Timor-Leste will not present any concrete cases or situations about the implementation of these provisions because to date no cases of torture have occurred to provide any indications regarding implementation or application of provisions enshrined in the existing national laws and organic laws mentioned in paragraph 28. Therefore, it can be confirmed that measures will be applied to implement judicial and administrative provisions in the event that a case of torture occurs.

30. Cases or situations where the State has violated the Convention. During this period there have been no cases of torture and maltreatment reported to the Police and the Public Prosecution Service that would require investigation, however the State of Timor-Leste acknowledges that in certain situations cases of torture and maltreatment have occurred in the territory of Timor-Leste that were committed by State agents, and the State has its own mechanisms to apply sanctions and disciplinary penalties as set out in the Internal Regulations of the PNTL and F-FDTL.

31. In relation to the aforementioned situations, since Timor-Leste became a State-Party to this convention, there have been no cases of torture, therefore in this report there is no statistical data to present to the CAT committee relating to cases of torture. The State of Timor-Leste acknowledges that there have been cases of maltreatment committed by State agents, and therefore the State of Timor-Leste is endeavoring to continuously improve these circumstances so that they do not occur again in the future. There are concrete examples in this report based on monitoring carried out by the Ombudsman for Human Rights and Justice relating to 11 cases of maltreatment that occurred when Parliamentary Resolutions were being implemented in the field.

32. Also, there have been cases of maltreatment committed by State agents such as PNTL officials, when they have been operating in the community and there has been conflict over land disputes, and when students were holding a demonstration and also when journalists were providing coverage in the field, whereby sometimes the police have acted to defend the legality of public order because demonstrations have violated existing regulations and orders, and for this reason maltreatment can occur in the field.

33. There have been cases of maltreatment, but the State of Timor-Leste has endeavored to improve these circumstances, therefore State agents, especially the PNTL and F-FDTL, can carry out their duties with accountability to uphold law and order. Some concrete examples of efforts undertaken by the State are as follows: the establishment of Community Police to facilitate communication between the community and the Police, also those agents that have violated the law are dealt with in accordance with the applicable law, a concrete example is the case committed by a PNTL officer in the Atauro Administrative Post who was dealt with and received a suspension in accordance with the PNTL Organic Law and

the official exercised his right to lodge an internal administrative appeal within the Police institution and also before the courts.<sup>19</sup>

34. However, in the field there have been cases of maltreatment that were committed by State agents, but there were no formal complaints made to the PNTL Commander, and the Public Prosecution Service has not registered any cases. Concrete situations are based on data from the Municipal Courts of Dili, Baucau, Suai and Oecusse which have not registered crimes of torture or maltreatment in their investigation logbooks, but they have registered other cases of offences against physical integrity including domestic violence and other crimes involving PNTL and F-FDTL officers.<sup>20</sup>

### **Definition of Torture according to National Laws – Article 1**

35. Timor-Leste's national laws define torture for the purposes of the Convention in a way that are in full conformity with the definition set out in the Convention, and national laws define torture as "degrading or inhuman treatment, in order to obtain from another person a confession, deposition, statement or information and acts that punish"<sup>21</sup> as set out in Articles 167 and 168 of the PC.

36. With pride, the State of Timor-Leste can state that the national laws of Timor-Leste define and criminalize acts of torture and these national laws adhere to and provide definitions that comply with those in the Convention, and also provide information about criminal provisions set out in the Article 167 of the Timor-Leste PC that criminalizes acts of torture and maltreatment as crimes that carry a prison sentence of between two and eight years".<sup>22</sup>

37. The national laws of Timor-Leste, and the PC in particular clearly define torture and criminalize acts of torture, because the Convention provides references and international laws are common law and Timor-Leste has adopted international principles in its national laws, therefore national laws criminalize cases of torture based on their severity and maltreatment, even though the PC itself does not provide a separate definition for torture and maltreatment.<sup>23</sup>

### **Preventive Measures – Article 2**

38. As a State-Party to this Convention, the State of Timor-Leste is obliged to take effective measures to prevent acts of torture, concrete examples are; when the Police detain a person they fully comply with the rules that are provided for in the law as "prevention of crime shall be undertaken with due respect for human rights",<sup>24</sup> as set out in Article 147.2 of the C-RDTL. Suspects are detained in accordance with the law and when the police detain a person there are two kinds, caught committing an offence/*flagrante delitu* is when an incident occurs and the police directly witness the event and the suspect is arrested and detained for 72 hours, and then the Police will take the suspect to be presented to the Public Prosecution Service. After the suspect has been identified, normally the suspect will be

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<sup>19</sup> Results from public consultation at the national level – information provided by the PNTL Commander for the Justice Department.

<sup>20</sup> Response from the Public Prosecution Service to a questionnaire.

<sup>21</sup> PC, Articles 167 and 168.

<sup>22</sup> PC, Article 167.

<sup>23</sup> Results from an interview with the Judge Administrator of the Dili Municipal Court.

<sup>24</sup> C-RDTL, Article 147.2.

detained for 12 hours and will be released and told to go home and wait for a written notification from the Public Prosecution Service regarding the next stage of the process.

39. When the police arrest a suspect at the scene, the police have directly witnessed the event and the suspect is arrested and detained for 72 hours, and then the Police will take the suspect to be presented to the Public Prosecution Service. After the suspect has been identified, normally the suspect will be detained for 12 hours and will be released and told to go home and wait for a written notification from the Public Prosecution Service regarding the next stage of the process.

40. As a State-Party to the convention, national laws do not provide details about the prohibition of torture or maltreatment in emergency situations or states of siege that might be used as justification, but nevertheless there is compliance with the rules and standards set out in the convention such as Article 2.2, that is also set out in Article 9 of the C-RDTL that adopts international rights. A concrete example of good practice is the Law of the National Parliament No. 1/2008 which granted authority to the President of the Republic to declare a State of Siege which led to a National Parliament Resolution for a joint operation that prohibited the commission of torture and maltreatment even in emergency situations that might be used as justification.

41. National laws provide guarantees that when officials do not adhere to orders from superiors or in cases of due obedience, the agent or public servant who obeys an order not knowing that it leads to commission of a crime, acts without guilt, if the unlawfulness of the act is not evident from the circumstances surrounding it, as set out in Article 50 of the PC.<sup>25</sup>

42. When a State agent is performing his/her duty, he/she must respect and adhere to the rules prescribed in the national laws, as set out in Article 147 b) of the C-RDTL which states that “prevention of crime shall be undertaken with due respect for human rights”. On the other hand, it depends on situations and conditions that occur, for example if a suspect obeys or disobeys the PNTL, the detention must be in accordance with the existing laws or regulations. There must be prevention and due process, if officers do not provide clear information to the court, or in the field or during implementation and when following up with suspects who are powerless.

43. Everyone has the right to gain access to legal aid, or a lawyer including communicating or having contact with family who live a long way from their place of detention, including the provision of medical services even if the implementation of such is sometimes inadequate due to a lack of conditions and resources. When a suspect is detained in a police cell, he/she is allowed to be visited by his/her family who can also bring food. The police fully comply with the existing rules which mean that suspects have the right to receive legal and medical assistance. A concrete example is when the police detain a suspect in the cells, the suspect enjoys the right to receive legal aid, and the right to contact his/her family and to receive medical treatment<sup>26</sup> as set out in Article 60 of the Criminal Procedure Code.

44. The application of Parliamentary Resolution No. 5 in March 2014 was to respond to radical actions against the rule of law that were being committed by the KRM group, which were illegal because the Maubere Revolutionary Council (KRM) group committed certain acts and made a statement requesting the dissolution of the National Parliament and the reorganization of the State, and this statement “threatened the State as a sovereign nation or violated the rule of law” as set out in Article 202 of the PC. For this reason the National

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<sup>25</sup> PC, Article 50.

<sup>26</sup> CPC, Article 60.

Parliament issued a resolution that from 17.00pm no person was allowed to move around at night, which was applied in the eastern region only, pursuant to Resolution No. 5/2014. At times of emergency arrests may be carried out, but no torture or maltreatment can be committed, because the law mentions human rights.<sup>27</sup> Even so, the State Of Timor-Leste acknowledged that during the joint operation carried out by the PNTL and F-FDTL maltreatment occurred.

45. National laws provide guarantees that when officials do not adhere to orders from superiors or in cases of due obedience, the agent or public servant who obeys an order not knowing that it leads to commission of a crime, acts without guilt, if the unlawfulness of the act is not evident from the circumstances surrounding it, as set out in Article 50 of the PC. PC.<sup>28</sup>

46. With respect to law and order, if a case of torture occurs the competent institutions will provide guidance to the agents or staff. An investigation will be initiated against the suspect in accordance with the law, to find out if the acts were justified or not. The law exists, but practically speaking the law is not observed due to a lack of resources.

47. Disciplinary sanctions are loss of rank, transfer and dismissal. Even if there was an order to carry out this torture, this has undermined people's confidence in the government and everyone needs to remain calm and they must adhere to the existing regulations. Even though the State has a law, torture may not be committed to uphold the dignity of the State, and the security forces have to defend it. A proper investigation is necessary, power may not be used and the law must be adhered to.<sup>29</sup>

### **Prohibition on *Refouler* – Article 3**

48. Domestic legislation exists in Timor-Leste and provides guarantees and prohibitions on the extradition and return of a person to a State where there is a risk/danger of torture as outlined in Article 35.3 of the Timor-Leste Constitution (C-RDTL), namely "Extradition in respect of offences punishable, under the law of the requesting State, by death penalty or life imprisonment or whenever there are grounds to assume that the person to be extradited may be subjected to torture and inhuman, degrading and cruel treatment, shall not be permitted".<sup>30</sup>

49. The Timor-Leste Constitution (C-RDTL) is the primary law that guarantees and prohibits the extradition and return of a person, and states that "Extradition shall only take place following a court decision, and extradition on political grounds is prohibited, and also extradition for a crime shall not be permitted to a State where there is a risk or danger that the person may be subjected to torture or death penalty or life imprisonment",<sup>31</sup> as outlined in Article 35.1, 35.2 and 35.3. Also the C-RDTL guarantees that East Timorese nationals shall not be expelled or expatriated from the national territory as set out in Article 35.4.<sup>32</sup>

50. The authority that can determine this expulsion is the current Minister of the Interior the Minister of Defense and also the decision on the expulsion is mandatory; which includes the basis, the legal obligations of the expulsion, prohibition of re-entry into the

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<sup>27</sup> Results from public consultation from Baucau Municipality.

<sup>28</sup> PC, Article 50.

<sup>29</sup> Results of public consultation from the Municipalities.

<sup>30</sup> C-RDTL, Article 35.3.

<sup>31</sup> C-RDTL, Article 35.1, 35.2 and 35.3.

<sup>32</sup> C-RDTL, Article 35.4.

national territory with the indication of the duration of such prohibition, as outlined in Law No. 09/2003 15 October of the Immigration and Asylum Act, Article 76 a), b), c).<sup>33</sup>

51. The expulsion process follows established procedures, namely the Police carry out investigations and forward the results to the Public Prosecution Service to prepare an indictment which is presented to the courts for adjudication and a decision is made in accordance with the judicial process. The authorities with competence to make decisions on the extradition are relevant members of the Government from the PNTL, the Immigration Police and via the Ministry of Foreign Affairs which conducts diplomatic negotiations to identify the foreign citizens in question and ultimately will be based on the final decision of the courts.

52. There are processes and mechanisms to ensure that the person is identified and the case is forwarded to the competent authorities (the Police) and then transferred to the national level so it can be dealt with in accordance with existing processes regarding the treatment of foreigners. The PNTL will carry out investigations, and then will send the matter to the Public Prosecution Service and finally to the courts to issue a final decision.

#### **Criminalization of Torture – Article 4**

53. Timor-Leste legislation absolutely criminalizes torture as set out in Article 167.1, 167.2 and Article 167.3 of the PC: “Any person, who having the duty to prevent, investigate and decide on any types of offence, and to enforce the respective penalties, or to protect, guard, conduct surveillance on or monitor any persons who have been detained, based on the orders from a superior or in accordance with any competent authority, or any act consisting in inflicting severe physical or psychological suffering, acute physical or mental strain or employing chemical products, drugs and other means, whether natural or artificial, with the intent to disrupt the victim’s decision-making capacity or free expression of will, is punishable with 2 to 8 years imprisonment”.<sup>34</sup>

54. Timor-Leste’s national laws “consider torture to be a serious crime, therefore perpetrators of torture are liable to a maximum prison sentence of 20 years”,<sup>35</sup> as described in Article 117 of the PC.

55. Existing legislation on disciplinary measures to be taken against law enforcement officials who are responsible for acts of torture are as follows: F-FDTL Regulations, in Timor-Leste, torture is criminalized as an offence that carries criminal responsibility as set out in Article 167 of the PC. In regards to criminal responsibility, other applicable accessory penalties for other offences are provided for in Article 40 of the PC. The Internal Regulations of the F-FDTL consider torture to be a disciplinary offence and violation of military duties as set out in Decree-Law No. 17/2006, Regulation on Military Discipline, and administrative measures or disciplinary sanctions that are set out in Article 29 of the Regulation on Military Discipline. When there is an allegation of torture made against a member, he/she may be suspended from his service functions, according to the gravity of the case, in accordance with Article 13 of the Regulation on Military Discipline.<sup>36</sup>

56. Also, the PNTL adheres to the concept of Rule Of Law which is based on a system of rule of law, supremacy of law; equality before the law, human rights and due process of law. This shows that any behavior by a PNTL member in breach of disciplinary regulations

<sup>33</sup> Law of the National Parliament No. 09/2003 Immigration and Asylum Act, Article 76 a), b) and c).

<sup>34</sup> PC, Article 167.1, 167. 2 and 167.3.

<sup>35</sup> PC, Article 117.

<sup>36</sup> Regulation on Military Discipline.

will result in severe measures, such as administrative measures (suspension and dismissal), however a PNTL member who commits a crime still has criminal responsibility in accordance with the competence of the courts.

57. Before the court makes a decision about penal measures that consider acts of torture as serious offences, the full confession of the defendant shall be considered, and if there are no serious consequences, no judicial proceedings will be pursued based on existing procedures.

### **Jurisdiction – Article 5**

58. Since Timor-Leste became of State party to CAT there have been no cases of torture, but if in the future a case of torture does occur, the State will establish jurisdiction through existing mechanisms that are already established in domestic laws, in particular the Criminal Procedure Code and the PC. When a case of torture occurs, the State will take measures in accordance with the existing domestic laws, namely the PC and the Criminal Procedure Code which will form the basis for court proceedings, therefore any type of crime including cases of torture will be prosecuted in accordance with the national laws, and also consideration will be given to the CAT that will allow judges to make a decision based on the law and their conscience.

59. To date, Timor-Leste has had no concrete cases involving alleged offenders in relation to any torture cases, therefore, there is no information about any confirmed cases of extradition and denial because no cases of torture have occurred during the period in which Timor-Leste wrote the initial report to the CAT.

60. As a State party to the CAT, Timor-Leste has not had any concrete cases about the establishment of jurisdiction for cases involving alleged offenders who are now present in the territory of Timor-Leste, but as a State party to the CAT with a report currently being drafted, the State is unable to provide concrete examples about the how many cases of torture resulted in alleged offenders being extradited and how many were denied.

### **Detention and Investigations for the extradition process – Article 6**

61. Although Timor-Leste has not yet had any cases of extradition, Timor-Leste has legislation, namely the Criminal Procedure Code, which sets out the preliminary investigative process for perpetrators of torture. The preliminary investigative process is as follows: the Public Prosecution Service “receives claims, complaints and reports and orders the initiation of criminal proceedings, once the requirements for legitimacy have been met” and “conducts the inquiry and takes over the cases it deems advisable to conduct directly in this phase”<sup>37</sup> pursuant to Article 48.2 a) and b) of the Criminal Procedure Code. Article 57 of the Criminal Procedure Code on “Authorities with competence to conduct inquiries”, states that the Public Prosecution Service has the competence to conduct and carry out enquiries, and may grant the police or court staff competence to carry out inquiries or to perform any acts relating to an inquiry and the provisions concerning disqualifications and suspicious are applicable to police officers and court staff carrying out an inquiry, with the necessary adaptations.<sup>38</sup>

62. Even if a person has perpetrated torture, every person has the right “to be assisted by a defender, where the law determines compulsory assistance or where he or she so

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<sup>37</sup> CPC, Article 48.2 a) and b).

<sup>38</sup> CPC, Article 57.

requires”, and to be given representation during proceedings relating to his her arrest or detention, as set out in Article 60 d) and g).<sup>39</sup>

63. The extradition mechanisms require a bilateral extradition agreement between the countries whilst investigations are being carried out against suspected perpetrators of torture by the Public Prosecution Service, and restrictive measures requiring proof of identity and residence<sup>40</sup> for suspected perpetrators of torture when a case is registered with the Public Prosecution Service, and the suspect has been notified of his or her interrogation. Also in relation to extradition, the Public Prosecution Service does not have the competence to impose sanctions or to extradite perpetrators of torture, only the Court has the competence to apply other restrictive measures.<sup>41</sup>

64. Since Timor-Leste became a State-Party to the Convention, Timor-Leste has not had a concrete case relating to the extradition of perpetrators of torture. Therefore it can be said that Timor-Leste has not yet had a case of extradition and if there is a case in the future, Timor-Leste will adhere to the obligations set out in the Convention and Article 35 of the Timor-Leste Constitution on the entire process relating to extradition especially the investigative process for extradition procedures that are guaranteed in the Article 35 of the C-RDTL and will adhere to the rules set out in the convention.

65. The preliminary investigative process carried out by the Public Prosecution Service against suspected perpetrators of torture follows the same criminal process, namely to receive complaints, or reports, and then the Public Prosecution Service will conduct the inquiry, take over the cases it deems advisable to conduct directly in this phase, and “receive claims, complaints and reports and order the initiation of criminal proceedings, once the requirements for legitimacy have been met” and “conduct the inquiry and take over the cases it deems advisable to conduct directly in this phase”<sup>42</sup> pursuant to article 48.2 a) and b) of the Criminal Procedure Code.

66. Even if a person has perpetrated torture, every person has the right “to be assisted by a defender, where the law determines compulsory assistance or where he or she so requires”,<sup>43</sup> and to be given representation during proceedings relating to his her arrest or detention, as set out in Article 60 d).

67. The extradition mechanisms require a bilateral extradition agreement between the countries whilst investigations are being carried out against suspected perpetrators of torture by the Public Prosecution Service, and restrictive measures requiring proof of identity and residence for suspected perpetrators of torture when a case is registered with the Public Prosecution Service, and the suspect has been notified of his or her interrogation. Also in relation to extradition, the Public Prosecution Service does not have the competence to impose sanctions or to extradite perpetrators of torture, only the Court has the competence to apply other restrictive measures.

## **Prosecutions that are fair – Article 7**

68. The State of Timor-Leste guarantees that alleged offenders or perpetrators of torture are given fair treatment including when there are official proceedings, whereby the judge or prosecutor will always read out information or provide information to the suspect about his

<sup>39</sup> CPC, Article 48 and Article 60 d) and g).

<sup>40</sup> CPC, Article 186. 1, 186.2 and 186.3.

<sup>41</sup> Response to a questionnaire from the Public Prosecution Service.

<sup>42</sup> CPC, Article 48.2 a) and b).

<sup>43</sup> CPC, Article 60 d).

or her rights and the facts against him relating to the alleged torture that he or she has committed, therefore the prosecution of suspects always is based on the existing facts and prosecutions are fair.

69. To date there have been no concrete cases about torture where extradition has taken place. Since Timor-Leste became a State-Party to the CAT there have been no cases of torture whereby the court has issued a final penalty, because as mentioned above there have been no concrete cases that have occurred in relation to torture.

70. There has been no practical implementation of the aforementioned measures because in reality in Timor-Leste there have been no torture cases to date, therefore in this report there are no concrete examples or practical implementation of the aforementioned measures.

### **Torture as an extraditable offence – Article 8**

71. Since Timor-Leste ratified the CAT, the State of Timor-Leste has had no concrete cases of torture committed by foreigners, but as a State-Party to the CAT, the State of Timor-Leste will adhere to and use the rules that are set out in the Convention as an instrument to process cases of torture that occur.

72. As a reporting State, extradition is given consideration subject to the convention, and since Timor-Leste became a State-Party to the Convention there have been no concrete examples of torture cases where extradition has occurred, and if in the future there is a case of torture committed by a foreigner, the State of Timor-Leste will adhere to the international principles set out in the Convention, namely that the entire process will be conducted in Timor-Leste and the perpetrator will be extradited to his/her state of origin to serve the penalty decided by the court.<sup>44</sup>

73. If in the future, there is a case of torture committed by a foreigner, it will be tried in accordance with the law in Timor-Leste which does not allow for life imprisonment and death sentence as set out in Article 35 of the C-RDTL.<sup>45</sup> When a final judgment has been handed down against the perpetrator in Timor-Leste, he/she will be extradited to his/her State of origin or other state and he/she will serve the penalty that was handed down by the courts in Timor-Leste and no further proceedings will be pursued against the perpetrator.

74. Until now there is no extradition treaty with other State parties that have ratified the Convention for cases of torture, even though Timor-Leste has Law No. 15/2011 on International Penal Judicial Cooperation, and Article 29 up to Article 42 deal with the entire process relating to extradition.<sup>46</sup> However, until now Timor-Leste has no confirmed cases of extradition, because no cases of torture have occurred since Timor-Leste became a State-Party to the CAT. This law provides guarantees and the possibility to accept a request for extradition from other countries, as long as it does not violate this law and any new laws that come into force in Timor-Leste.

75. After the investigative process is complete, the Police and the Public Prosecution Service do not have the competence to make decisions to extradite perpetrators of torture, but rather the entire process will be handed over to the courts because the courts have the

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<sup>44</sup> Interview with the Judge Administrator of the Dili Municipal Court.

<sup>45</sup> C-RDTL, Article 35.

<sup>46</sup> Law on International Penal Judicial Cooperation.



competence to apply other restrictive measures and to make a final decision on the extradition of perpetrators of torture.<sup>47</sup>

### **Mutual judicial assistance – Article 9**

76. From the moment Timor-Leste ratified the CAT, Timor-Leste has had no mutual cooperation with other State parties about criminal proceedings for the crime of torture, but Timor-Leste has an internal agreement with countries who are part of the Community of Portuguese Speaking Nations (CPLP), pursuant to Parliamentary Resolution No. 15/2009 with a particular focus on prisoner exchange in general and on extradition”,<sup>48</sup> between members of the CPLP.

77. To date Timor-Leste has not accepted or requested mutual assistance from or to State Parties on mutual judicial legal aid for any criminal proceedings for cases of torture and crimes relating to attempted torture. However, if a case occurs in the future the State of Timor-Leste will provide mutual legal aid as guaranteed in Article 135.1 and Article 135.2 of the C-RDTL on “lawyers”. Legal and judicial aid is of social interest and lawyers and defenders shall be governed by this principle, the primary role of lawyers and defenders is to protect the rights and legitimate interests of its citizens.<sup>49</sup>

### **Prevention through information and education – Article 10**

78. Judicial actors are an important pillar, and before they carry out their role, the Ministry of Justice through the Judicial Training Centre provides training to judicial officers, magistrates and public defenders as part of a training plan with learning components for the level 5 Magistrates and Public Defender Training (2013-2014), to strengthen their knowledge about issues relating to torture and maltreatment, especially in relation to vulnerable groups such as children, women, the poor and the disabled with materials on the C-RDTL and fundamental rights, the rights of families and minorities, the rights of children and gender, which is facilitated by UN agencies such as UNICEF and UN Women.

79. In addition to general training facilitated by partners, there is also specific training for judicial actors about fundamental rights and concepts relating to these fundamental rights that are set out in the Constitution such as human rights, the rights of public subjects; personal rights, systematic division of rights, freedoms and economic and social guarantees/rights. The constitutional regime or system on fundamental rights, and their analysis, purpose and scope are set out in the Constitution as well as core international standards that have been approved by the Timor-Leste legal system. Also the interpretation of these fundamental rights, restrictive laws, and the means of safeguarding these fundamental rights from an international perspective is carried out through the analysis and discussion of cases before the European courts relating to human rights. Training also includes materials on special fundamental rights such as the rights of families and minorities.

80. To increase the knowledge of judicial actors, there are also specific materials that focus on the international human rights conventions, especially the Convention on the Rights of the Child and other relevant international instruments that cover awareness about

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<sup>47</sup> Response to a questionnaire from the Public Prosecution Service.

<sup>48</sup> Resolution of the National Parliament No. 15/2009.

<sup>49</sup> C-RDTL, Article 135.1 and 135.2.

the notion of the child and national and international criteria relating to the rights of the child in the administration of justice. The aim is for them to fully comprehend the concept of “the interests of the child” and its application and perceptions on the procedural position of the child in criminal proceedings and in civil law, to increase the participation of leaders and women to eliminate violence against women and children, to increase the number of women in all aspects of peace and security, to reinforce the decision making power and economic capacity of women and finally to achieve gender mainstreaming in national development planning.<sup>50</sup>

81. To increase the knowledge of PNTL officers regarding the prevention of torture, policies on the use of force and human rights, between 2004 to 2015 UN agencies such as the Human Rights and Transitional Justice Unit of UNMIT together with the Ombudsman for Human Rights and Justice provided training to 2,484 PNTL officers from a total of 3,571 officers. 40% of the female PNTL officers, from a total of 588, attended the training at the Police Training Centre. Therefore, the PNTL officers are able to conduct their tasks in accordance with the rules that have been established and in accordance with international standards; therefore to prevent torture and maltreatment from occurring in Timor-Leste, Timor-Leste has complied with its obligations as a State-Party to the CAT.

82. Also, the Ombudsman for Human Rights and Justice, which is an independent State institution that promotes and protects human rights, has facilitated training on the use of force, the prevention of torture and zero tolerance so that children may not be beaten in school or during the learning process, so this is a means to increase the knowledge of State agents, especially PNTL officers and teachers in all municipalities, so they are more knowledgeable in the field of human rights and prevention of torture.

83. There are also specific programs for medical personnel on how to conduct physical and psychological exams for asylum seekers to obtain satisfactory results before handing them over to judicial actors. For example, on an annual basis the Ministry of Health (MoH) conducts training through the National Health Institute to carry out a program on medical forensic examinations that is provided to medical personnel.<sup>51</sup>

### **Internal Laws and Rules – Article 11**

84. National laws, regulations and instructions that govern the treatment of persons who have been deprived of their liberty to prevent torture and maltreatment are the C-RDTL, PC, Internal Regulations of the Prisons, F-FDTL Regulations and PNTL Regulations.

85. Adequate measures have been established to ensure that detainees obtain legal aid and immediate medical treatment when they are injured or sick and are immediately referred to the hospital to obtain treatment from doctors, and when detainees are held in police cells or pre-trial detention they can have contact with members of their families.<sup>52</sup>

86. The aforementioned measures are not just applied to detainees who are national citizens but also for detainees from overseas or foreigners who have the same right to obtain satisfactory treatment and the State is obliged to provide them with a formal notification and to communicate with the consulate or permanent mission of the detainee, and foreign prisoners may be visited by diplomatic and consular representatives, any other national or foreign authority mandated to protect their interests, in accordance with the

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<sup>50</sup> Response to questionnaire from the Judicial Training Centre.

<sup>51</sup> Response from MoH to the a questionnaire.

<sup>52</sup> Response to a questionnaire from DNSPRS.

terms of the law and applicable international conventions as set out in Decree Law No. 14/2014, Article 69.<sup>53</sup>

87. Domestic laws reflect the Standard Minimum Rules for Treatment of Prisoners, especially the protection of prisoners' rights as set out in Decree-Law No. 14/2014, Article 15.2 a) on "the rights of detainees" during the execution of criminal proceedings, the following rights of the prisoner shall be protected, namely: "protection of his/her life, health, personal integrity and freedom of conscience, and shall not be subjected to torture, maltreatment, cruel, degrading or inhuman punishment".<sup>54</sup>

88. Independent institutions have been established to conduct monitoring in the prisons and other places of detention to monitor all forms of violence against men and women and these independent institutions are: international and national human rights organizations, the Ombudsman for Human Rights and Justice, the HAK Association, the Forum Tau Matan NGO, public defenders and lawyers.

89. The State Of Timor-Leste can proudly say that all places of detention are official places of detention belonging to the State, such as the PNTL detention cells and prisons in Becora and Gleno that are officially recognized by the State of Timor-Leste and are used in accordance with the rules set out in the law.

90. The national laws of Timor-Leste guarantee the rights of detainees to "always receive external contact", especially to receive visits, written correspondence, telephone calls, reading materials and access to other means of information and also protection for their private life and family life and the confidentiality of correspondence is protected and other private means of communication, as set out in Decree-Law No. 14/2014, Article 15. 2 j) and k).<sup>55</sup> Also article 76 on "telephone contact" states that without prejudice to the previous sub-section, prisoners may make telephone calls or receive permission to receive telephone calls regarding their personal or professional circumstances especially for urgent matters, except for restrictions imposed for the purpose of maintaining the order and security of the prison establishment.

91. The Public Prosecution Service employs a mechanism for the conduct of interrogations against suspects or defendants, whereby immediately after an interrogation the record of the interrogation is given to the defendant to be read by him/her, and if there are any mistakes, the investigator or magistrate will immediately revise or correct the record.

## **Impartial Investigations – Article 12**

92. In this article, as well as Article 16 which is also relevant, the State needs to ensure that the competent authorities proceed to a prompt and impartial investigation when there is reason to believe that an act of torture and mistreatment has been committed, and to monitor violence against men or women in prison. There are authorities that have the competence to initiate prompt and impartial criminal and disciplinary investigations when there is an allegation of torture and mistreatment because the law states that the authorities need to be impartial when they conduct investigations as set out in the Article 48.1 of the Criminal Procedure Code, which states that "The Public Prosecution Service is the holder of the criminal action and must cooperate with the court in disclosing the truth and upholding rights by complying *in every procedural intervention* with legality and

<sup>53</sup> Decree-Law No. 14/2014, Article 69.

<sup>54</sup> Decree-Law No. 14/2014, Article 69.

<sup>55</sup> Decree-Law No. 14/2014, Article 15.2 j) and k) and Article 76.

objectivity.”<sup>56</sup> Also Article 52.2 of the Criminal Procedure Code states that “It is also incumbent on the Police, to assist, upon request, judicial authorities in achieving the goal of the proceeding, particularly the Public Prosecution Service during the inquiry”.<sup>57</sup>

93. To ensure and guarantee the impartiality of the investigative process against a defendant, the judicial actors must comply with the established triangular principle of justice, meaning that during the investigative process the counsel of the defendant must be present during the entire investigative process as set out in Article 66.1 of the Criminal Procedure Code which states that “a defendant has the right to retain counsel or to have a defender appointed, whether on a discretionary basis or at request, and the competence to appoint a defender rests with the judicial authority conducting the respective procedural phase”.<sup>58</sup> Also article 68 a) and b) states that “assistance by a defender is compulsory, in the first questioning of a defendant held under arrest or detention, from the time the indictment is presented until such a time as a decision is rendered final and, particularly in lodging an appeal”.<sup>59</sup>

94. In applicable procedures, there is immediate access to a medical examination and forensic expertise, for example when there is reason to believe torture has been committed, the Public Prosecution Service will ask an expert or experts from the National Hospital or other relevant institution that has expertise on torture to conduct an examination.

95. There is an established mechanism to suspend officers suspected of committing torture and maltreatment, during the investigation of alleged torture and maltreatment, and the law prohibits officers suspected of committing torture and maltreatment to contact the victim as set out in Article 57.3 of the Criminal Procedure Code which states that “provisions concerning disqualifications and suspicions are applicable to police officers and court staff carrying out an inquiry, *with the necessary adaptations*”.<sup>60</sup>

96. With reference to the information provided in paragraph 29; since the State Of Timor-Leste became a State-Party to the convention there have been no cases of torture processed by the court that have received a final decision by the court, there has been one case of maltreatment committed by a PNTL officer at the Atauro Administrative Post 2011, that was processed by the PNTL Commander General and approved by the Secretary State of Security with a final decision to impose a “suspension” of sixty (60) days. Even though a decision was issued to suspend the officer, he still had the right to appeal to the Commander who deals with Justice Issues.

97. Disciplinary sanctions will be implemented against officers who commit these crimes and will impact on their career promotion and privileges, in that even when they are eligible they will not be promoted to the next level on behavioral grounds.

### **Right to complain and receive protection – Article 13**

98. Pursuant to this article, any individual who alleges that he/she has been subjected to torture and mistreatment has the right to complain and to receive protection. The Timor-Leste Criminal Procedure Code provides guarantees for a person who makes a complaint or is a victim in a case of torture, as set out in Article 210 d) “denunciation filed by any person

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<sup>56</sup> CPC, Article 48.1.

<sup>57</sup> CPC, Article 52.2.

<sup>58</sup> CPC, Article 66.1 and 66.2.

<sup>59</sup> CPC, Article 68 a) and b).

<sup>60</sup> CPC, Article 57.3.

who holds the right to complain in crimes of a semi-public nature”.<sup>61</sup> Also Article 214.1 states that “where a criminal proceeding depends on the lodgment of a complaint, persons have legitimacy to lodge a complaint”.<sup>62</sup>

99. Where a case of torture has occurred, there are institutions and organizations that provide support to victims to lodge a complaint when the competent authorities have not provided a proper response, namely: the Ombudsman for Human Rights and Justice, Office of the Public Defender, JSMP, ALFELA and FOKUPERS.

100. There is an established mechanism to guarantee and protect complainants and witnesses so that they are not subject to intimidation or maltreatment as set out in Law No. 2/2009 on Witness Protection which in Article 12 on “Non-disclosure of Identity” states that where the witness’s identity is to remain concealed, it is particularly incumbent of the judge presiding to the act to avoid asking any question likely to induce the witness to the indirect disclosure of his identity”.<sup>63</sup> Also, in Chapter III on “Restriction regarding the disclosure of the witness’s identification features”, Article 15.1 a) “prerequisites”, the non-disclosure of the witness’s identity may cover one or all the phases of the proceedings, in particular the witness, spouse, parents, siblings and other relatives or persons in close contact with him, face a serious danger of attempt against their lives, physical or psychological integrity, freedom or property of considerable value.<sup>64</sup>

101. Statistical data on complaints relating to torture and maltreatment, disaggregated by sex, age, type of crime and geographical location. According to available data within the PNTL, there have been no cases of torture, however there have been 166<sup>65</sup> crimes and other types of cases registered by the PNTL between 2007 and 2013, and there is no data on cases that occurred between 2002 and 2006, because during this period all cases were registered at UNPOL and PNTL don’t have access to this data.

102. An adequate system has been established to assist complainants; therefore all citizens can access the courts to seek an independent and impartial judicial remedy, and to guarantee that complainants can access the established system to bring justice closer to all people.

## **Right to Compensation – Article 14**

103. Timor-Leste has not yet had any concrete cases of torture and maltreatment that have reached the courts, therefore there are no indications that it is necessary to establish a specific law on compensation, the State Of Timor-Leste has procedures to provide compensation to victims for their recuperation and compensation that are codified in national laws and policies, namely: the Law Against Domestic Violence, Immigration Law, MSS policies on services for vulnerable people through Public Funds Transfer.

104. As a democratic country based on the rule of law, that upholds human rights principles, Timor-Leste has created a mechanism on compensation for victims to respect their dignity, however in practice information has not reached the grassroots level, therefore communities in the municipalities do not have knowledge about information relating to the laws that provide compensation to victims. In relation to compensation for victims of torture, to date the State has not produced a law to provide compensation to victims of

<sup>61</sup> CPC, Article 210d).

<sup>62</sup> CPC, Article 214.1.

<sup>63</sup> Law on Witness Protection, Article 12.

<sup>64</sup> Ibid, Article 15.1 a).

<sup>65</sup> Response from PNTL to a questionnaire.

torture, however the State has endeavored to create mechanisms and laws to respect the dignity and restore respect for victims of torture, if such cases do occur.

105. At the village level there is also a policy on Village Councils that is supported by the local authorities to provide compensation to victims of torture and maltreatment, to facilitate their reintegration with their family or community,<sup>66</sup> and also the State of Timor-Leste has compensation for victims and their families, as set out in Article 15 on “assistance to victims”, the government through the entity responsible for social solidarity, shall establish, manage and oversee the national network of support centers for victims of domestic violence, which shall be responsible for providing direct assistance, shelter and counseling to victims.<sup>67</sup>

106. The government, through the MSS, does not have a legal mandate to justify the provision of compensation to victims of torture. To date, since the State ratified the international convention against torture, the MSS has not yet provided compensation to any victims of torture domestically or from overseas. The MSS does not yet have any formal procedures to provide compensation to victims of torture with their families.

107. The MSS has continued to provide support to victims that the MSS considers to be vulnerable people that deserve to receive assistance in accordance with the role of the MSS. To ensure this, the MSS has developed a support program for vulnerable people (poor families, female victims, at risk children, former prisoners, vulnerable patients) which is referred to as the reinsertion plan for vulnerable people. Support is provided to respond to the immediate needs of the victim and his/her family. For example, the MSS facilitates support for some families that have come from other nations and are in Timor-Leste, because these families are considered to be vulnerable. For this process the MSS will discontinue its support when the competent authorities decide to agree or send them back to their country of origin.

108. The State, via the Government, has implemented various programs but there has not yet been special rehabilitation for victims of torture. Since Timor-Leste became a State-Party to the Convention there have been no cases of torture, therefore there are no specific rehabilitation programs for victims of torture. There are programs implemented by government institutions such as the MSS on counseling for victims, awareness-raising in the community about programs implemented by the Government for victims and approaches for families of victims and the victims themselves.

109. Rehabilitation programs for victims of torture do not yet exist, but the Government via the MSS has a support program for victims that have been subjected to maltreatment, through services provided by institutions such as the MSS, Shelters and the NGO PRADET, to provide assistance to victims of violence and maltreatment.

110. The Government of Timor-Leste via the MSS has specific programs to provide rehabilitation for victims such as the provision of alternative support, re-integration and referrals. These programs require relevant statistical data to support the entire process.

111. They don't yet exist, because until now the State does not have any means to protect the rights of victims of torture. However, in practice the State takes alternative measures to provide maximum support to victims, for example in 2011 the State took alternative measures to restore the dignity of suspected victims of torture who arrived in Viqueque Municipality and they were able to be reintegrated in their State.

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<sup>66</sup> Results from a Public Consultation at the Municipal Level.

<sup>67</sup> Law Against Domestic Violence, Article 15.1.

112. As a State-Party to most International Treaties, Timor-Leste has provided effective services to a total of 26 victims (25 from Burma and 1 from Indonesia) and also has provided services to victims of domestic violence and children who have been victimized due to maltreatment, and has managed to reintegrate them into their families. There is information about victims, especially female victims who are given protection in Shelters and Casa Vida by the MoH and the MSS. Often at the district level cases are not referred to the State to take measures to restore their dignity, and often it is difficult to identify victims.

113. Even though the services are not satisfactory in the field of health, there are mechanisms to ensure security when there is mistreatment including torture, and strong action is always taken to provide security to victims. The State takes measures to restore dignity and respect for the victim, such as their rights to security and protecting their health with the aim of preventing acts of torture and maltreatment. For example; the reintegration process always includes the provision of security and the community authorities are informed and the reintegration process includes mediation.

### **Evidence obtained from torture to be considered invalid – Article 15**

114. Timor-Leste has an established legal procedure to ensure that statements made as the result of torture will not be used as evidence in any proceedings and will consider such evidence invalid because it was obtained through an act of torture, as set out in Article 34.4 of the C-RDTL “Evidence is of no effect if obtained by torture, coercion, infringement of the physical or moral integrity of the individual, or wrongful interference with private life, the home, correspondence or other forms of communication”.<sup>68</sup> Also Article 110.1 of the Criminal Procedure Code states that “Proof obtained through torture or duress in general or offence against the physical or moral integrity of a person is absolutely prohibited”.<sup>69</sup>

115. Until now there have been no concrete cases where judges and prosecutors have prosecuted a matter because the judges and prosecutors have not yet received a statement whereby a victim has said that he/she was tortured to make that statement. Therefore, there is no data to include in this report in relation to the invalidity of evidence obtained through torture.

116. The legal system of Timor-Leste absolutely prohibits evidence obtained through torture, coercion or offence against the physical or moral integrity of a person, and offensive to the physical or moral integrity of a person is any proof obtained, even with the consent of the person concerned by impairing the free will or the freedom of decision through bodily harm, the employments of cruel or misleading means, impairing the ability to recall or to reason, the use of force other than that provided in the law, threatening with a legally inadmissible measure, including refusing or restricting a benefit contemplated in the law and promising a legal inadmissible advantage, as set out in Article 110.1 and 110.2 a), b), c), d) and e).<sup>70</sup> 115. According to the Timor-Leste PC a statement made by a victim or aggrieved person will be considered as evidence, but the investigative process must adhere to due process in order to properly establish who has committed a crime, and therefore impartial and independent investigations provide every opportunity to discover the truth and find out who has committed torture, however to date Timor-Leste has not yet had any concrete cases of torture and maltreatment at the investigative level that have resulted in prosecution.

<sup>68</sup> C-RDTL, Article 34.4.

<sup>69</sup> CPC, Article 110.1.

<sup>70</sup> CPC, Article 110.1 and 110.2 a), b), c), d) and e).

## **Cruel, inhuman or degrading treatment – Article 16**

117. The State Of Timor-Leste is a member of the United Nations (UN) and is a State-Party to a number of international conventions. As a State-Party that has ratified the convention and its protocols, The State of Timor-Leste is obliged to guarantee and immediately define in its policies that the State of Timor-Leste has taken a firm stance to eliminate all forms of human rights violations, as set out in the C-RDTL.

118. Public officials or others in an official capacity can take action against any act that subjects a person to intense suffering, physical or mental suffering. In the commission of an act and the provision of information to obtain information from a person, or a third party, the laws and policies that exist in Timor-Leste prohibit the commission of torture. The national laws of Timor-Leste strongly condemn and criminalize acts of torture and maltreatment, namely the Timor-Leste PC, the Law Against Domestic Violence, the PNTL Organic Law, the Law on Internal Security and the Law on Prison Services.

119. Feedback from participants at the municipal level stated that even though the State has ratified international treaties and is obliged to provide protection against these acts, in addition there are religious beliefs that strictly prohibit a person from committing maltreatment against another person. For this reason the participants made their recommendations to the State to further strengthen these principles by codifying cultural and religious beliefs to provide strong protection against inhuman or degrading acts, as part of the rule of law and democracy, in the Timor-Leste Constitution and other subsidiary law. Therefore there is a belief that the laws always prohibit cruel, inhuman or degrading treatment.<sup>71</sup>

120. The laws and policies that exist in Timor-Leste prohibit the commission of torture. The national laws of Timor-Leste strongly condemn and criminalize acts of torture and maltreatment, namely: the Timor-Leste PC, Decree-Law No. 19/2009, 8 April 2009, the Law Against Domestic Violence, Law No. 7/2010, 7 July 2010, the Organic Law of the PNTL, Decree-Law No. 9/2009, the Law on Internal Security, Law No. 4/2010, 21 April 2010, the Law on Special Careers and Statute of Prison Guard Staff, Decree-Law No. 10/2012, 29 February 2012.

121. The national laws of Timor-Leste that prohibit torture and maltreatment and inhuman treatment are the C-RDTL, the Law Against Domestic Violence, the Timor-Leste PC, Specific Regulations of the PNTL and F-FDTL and education policies on “Zero Tolerance” from the Ministry of Education (MoE).

122. The MoE has defined laws and policies as the basis for education. These laws and policies are a policy of zero tolerance for any type of violation, and mandatory schooling free of charge. Infringements occur in new State institutions, however the policy of the Fifth Constitutional Government is to always endeavor to implement policies for civil servants, through the Vision and Mission set out in policies from the Ministry of Education and the Five Year Plan of the Fifth Government Constitutional for 2012-2017 and the Strategic Development Plan for 2011-2030.<sup>72</sup>

123. The MoJ is currently working hard to draft a law on education for minors and to provide protection to children in conflict with the law to guarantee their human development through special treatment such as the provision of education and to concentrate them in educational centers. This draft law is now being approved, and is before the Council of Ministers for their appraisal before being submitted to the National

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<sup>71</sup> Results from public consultation in the Municipality to a questionnaire.

<sup>72</sup> Response to a questionnaire from the Ministry of Education.



Parliament for approval. To improve the circumstances and conditions in prisons, the Ministry of Justice has established a Prison Support Service Network, a work monitoring network comprised of representatives from civil society organizations such as: *Forum Tau-Matan*, *Haris Haburas Komunitade*, churches, Caritas Australia, representatives from independent institutions such as the Ombudsman for Human Rights and Justice and representatives from Government such as the MoJ, MoE and MSS. The aim of establishing the network is to “share information about the results of monitoring in the prisons, and also to update the progress achieved in the field of correctional services based on the results of monitoring in order to improve the conditions in prisons”.<sup>73</sup>

124. The State of Timor-Leste, through the MoJ is currently working hard to draft a law on education for minors and to provide protection to children in conflict with the law to guarantee their human development through special treatment such as the provision of education and to concentrate them in educational centers. This draft law is now being approved, and is before the Council of Ministers for their appraisal before being submitted to the National Parliament for approval.

125. Based on the results of monitoring carried out from the independent human rights institution the Ombudsman for Human Rights and Justice, there have been 11 cases of maltreatment registered, based on monitoring at the grass roots level on the implementation of parliamentary resolutions. The cases of maltreatment were committed by the joint PNTL and F-FDTL team against members of KRM and CPDRTL in Laga Administrative Post, Baucau Municipality.

126. The government, through the MoJ has established the Police Forensic and Criminal Investigations with the important role of “conducting investigations into cases of torture and maltreatment” as set out in Article 6 of the Organic Law on Criminal Investigations. In relation to criminal investigations, the Police Forensic and Criminal Investigations have the competence to investigate the following crimes: or) Torture or other forms of cruel, degrading or inhuman treatment.<sup>74</sup>

127. There are indications that maltreatment was committed during the enforcement of parliamentary resolutions, even though all resolutions do not accept torture, however in practice the reality is different (for example the Lalulai case). Pursuant to Resolution No. 5/2014 the government created a policy that provides competence to the two relevant institutions to deal with these matters. The State has taken action in accordance with the law however State agents sometimes do not uphold law and order when enforcing this action, and these acts are categorized as human rights violations, because the agents have committed maltreatment against members of the community who were the target of the joint operation.<sup>75</sup>

128. As a State-Party to the CAT, Timor-Leste continues to strive towards improving the living conditions of those in police detention centers and prisons. Detention centers and prisons have satisfactory conditions, but currently the prisons in Gleno-Ermera and Becora are not big enough to accommodate more prisoners, because the Gleno-Ermera Prison can actually accommodate only 60 prisoners, but currently there are 73 prisoners, and also the Becora Prison can only accommodate 250 prisoners, but currently there are 404 prisoners, as the number of prisoners continues to increase, and in response to this problem the Government, through the MoJ, has taken measures to establish another 3 new prisons in Covalima Municipality and has initiated a survey to build a prison in Baucau Municipality.

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<sup>73</sup> Response to a questionnaire from the DNSPRS.

<sup>74</sup> Decree-Law No. 15/14, Police Forensic and Criminal Investigations, Article 6.

<sup>75</sup> Final Report of the Ombudsman for Human Rights and Justice.

129. The prison conditions in Gleno-Ermera are that female and male prisoners are kept in the same prison, but in different blocks and cells, and also in Becora Prison juvenile prisoners (minors) are there with adult prisoners but in locations or blocks that are separated from each other. In response to this situation, the MoJ, through the DNSPRS, created a project to start building a Juvenile Centre in Tibar for young prisoners and a Mental Health Center.

130. To date, there have been cases of violence in the prisons between prisoners and disciplinary measures have depended on the acts committed, and if procedures are violated then the normal response is confinement as a disciplinary measure, and the district directors determine the duration of confinement. However, if an act is suspected to constitute a crime, then it is prosecuted in accordance with the legal procedure and a report is given to the police to conduct an investigation and to hand the matter over to the Public Prosecutions Service. One measure to reduce the cases of violence in prison has been to set up information equipment in prison, namely a Camera Closed Circuit Television (C-CCTV) with the aim of monitoring the movement of prisoners within the prison with the intention of controlling them and reducing violence between prisoners and disturbances, and also to control the prison guards when they are performing their tasks.

131. To treat the prisoners with dignity as human beings, the government has provided satisfactory conditions to respond to the needs of prisoners, namely basic hygiene services for prisoners in Becora-Dili Prison and Gleno-Ermera Prison. Assistance and treatment is given to those who are ill in prison, including common illnesses. Treatment is provided by nurses assigned by the MoH and there is a regular weekly visit from doctors. Prisoners have been diagnosed with illnesses such as Upper Respiratory Infections and mental breakdowns which are treated by mental health doctors and assistance is provided by psychological health staff from the DNSPRS, and illnesses also include tuberculosis and high blood pressure. The prisoners have access to satisfactory food, because the food given to prisoners is nutritious, and they receive three meals per day and the food is provided by contractors that the government has contracted through a competitive procurement process.

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