

Report on Human Rights

Facing the Future:

**Periodic Report on Human Rights
Developments in Timor-Leste:
1 July 2009 - 30 June 2010**



Right to Left: A victim, a visitor to the CAVR Chega! exhibit and a VPU officer contemplate the present, past and future of human rights in Timor-Leste.
» UNMIT Photo/Martine Perret

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Table of Contents

	Executive Summary	3
I.	Introduction	6
II.	The security sector	7
	1. Institutional strengthening	7
	2. Overview of alleged human rights violations committed by PNTL and F-FDTL	8
	3. Alleged human rights violations by PNTL officers involving firearms	9
	4. Alleged human rights violations during special operations in Bobonaro and Covalima Districts	10
	5. Alleged human rights violations by F-FDTL members	11
	6. Accountability for PNTL officers	13
	7. Evaluation Panel and PNTL certification	15
III.	Formal and non-formal justice mechanisms	17
	1. Judicial system development	17
	2. Traditional justice	21
IV.	Transitional justice	24
	1. Accountability for crimes committed in 2006	24
	2. Accountability for crimes committed during and prior to 1999	26
V.	Recommendations	29

Executive Summary

Overview

1. Based on the authority granted by United Nations Security Council Resolution 1912, the United Nations Integrated Mission in Timor-Leste (UNMIT) continues to support Timor-Leste in its efforts to strengthen the security and justice sectors. This report updates UNMIT's second and third human rights reports by reviewing significant human rights developments in these areas that occurred from 1 July 2009 to 30 June 2010.

2. Between July 2009 and June 2010, the political and security environment in Timor-Leste remained relatively calm. The resumption of primary responsibility for the conduct of police operations by the Timor-Leste National Police Force (*Policia Nacional Timor-Leste, PNTL*) progressed steadily, with four districts and three units handed over during the period and three additional districts pending handover.¹ The country held suco (village) elections in October 2009 with few incidents, and citizens registered to vote in the next elections. The Government continued to implement its IDP reintegration strategy. In August 2009, the last tented camp, Metinaro IDP Camp, closed,² followed by the closure of transitional shelters by the end of February 2010.³ In terms of institutional development, the national Anti-Corruption Commission (*Komisaun Anti Korrupsaun, KAK*) and the National Commission on the Rights of the Child (*Komisaun Nasional Direitu ba Labarik, KNDL*) were established. These developments indicate increasing stability as the peace-building process in Timor-Leste continues.

3. Ongoing peace and stability created an opportunity to address persistent problems with accountability in the security sector, the judiciary and in the nexus between formal and informal justice mechanisms which have been highlighted in UNMIT's previous human rights reports. As democracy is consolidated and institutions develop, attention can also be turned towards creating a more inclusive environment for the exercise of human rights by all people in Timor-Leste. This report records progress achieved during the past year, but also documents continuing human rights problems, including violations by members of the security forces, the efforts to address past violations, as well as the difficulties experienced by many victims who still struggle to have access to courts and satisfactory remedies. As the relative of a man fatally shot by police in Ossu in Viqueque District explained,

"The People are hungry for Justice, and we feel that only the common people have to obey the law, while the leaders remain above the law. The law should not be a mere show to the world that Timor has law and democracy, but should function to defend its role so that everybody can have access to justice in their lives."⁴

¹ Districts handed over during the reporting period were Manatuto (July 2009), Viqueque (December 2009), Ainaro (April 2010) and Baucau (April 2010). Units handed over were the Police Training Centre (September 2009) and the PNTL Marine Unit and Police Intelligence Service (December 2009). Lautem and Oecusse Districts were handed over prior to the reporting period. Aileu, Ermera and Liquica Districts had been approved, and were pending handover as of 30 June 2010.

² "Minister of Social Solidarity Announces Closure of Quarantina and Tasi Tolu Transitional Shelters," Ministry of Social Solidarity Press Release, 11 September 2009.

³ "Secretary of State for Social Assistance and Natural Disasters Announces the Wrapping-up of the Hamutuk Hari'i Uma Program," Ministry of Social Solidarity Press Release, 16 February 2010.

⁴ See para. 27 for further details.

Key Findings

4. Development of the legal framework on security strengthened the military and police institutions. Progress was also made towards improving accountability for PNTL officers, such as enhancing the PNTL's internal disciplinary mechanism, the Department of Justice (*Departamento de Justiça*). However, HRTJS continued to receive regular reports of ill-treatment and excessive use of force by members of PNTL and Timor-Leste Defence Forces (*Falintil–Forças de Defesa de Timor-Leste*, F-FDTL). Of particular concern was the failure of some PNTL officers to adhere to regulations and basic human rights standards in relation to use of force and firearms. In spite of improvements at the national level, district level disciplinary mechanisms remained weak. Roles and responsibilities of PNTL and F-FDTL were at times blurred, at least at the operational level.

5. Progress was made in strengthening justice mechanisms, including training programmes for judicial actors, increasing the numbers of judicial personnel, raising standards of justice facilities in rural areas, the implementation of the new penal code and the passage of legislation relating to witness protection and domestic violence. However, significant reforms and the completion of the legal framework are still required to raise the quality and access to the formal justice system. Due to the formal justice system's limitations and cultural practices, the use of traditional justice mechanisms remains prevalent, which at times violate human rights, particularly those of women and children.

6. Steps were taken towards achieving accountability for crimes committed during the 2006 Crisis. All cases recommended for prosecution in the Commission of Inquiry (Col) report have been taken up for investigation. In total five trials were completed, including three in the past year, and two trials were underway. However, a limited number of cases have been brought to trial and the proceedings have been consistently delayed. Additionally, a number of acquittals were attributed to lack of evidence, which may indicate weaknesses in the investigation process or reflect the decisions made about which individuals to prosecute.

7. Accountability for gross human rights violations committed during and prior to 1999 remains a challenge. One person was convicted for serious crimes committed in 1999, but another defendant was released to Indonesia without going through a judicial process. SCIT continued investigations into crimes committed in 1999 but the Prosecutor-General has not filed any indictments in those cases. As in previous years, there was no judicial response to human rights violations committed prior to 1999. Parliament's Committee A proposed a set of draft laws that would create a national reparations program, but this legislation is still pending. International human rights standards establish the right to reparations, as well as an effective remedy, for all victims of gross human rights violations but in Timor-Leste, these rights have yet to be enjoyed by all of the people who suffered these violations.

Priority Recommendations

8. This report urges the security forces to expedite investigations as soon as complaints are received and strictly enforce internal disciplinary measures according to transparent and standard policies as well as pursue judicial accountability mechanisms when security forces commit crimes. It suggests the immediate implementation of more stringent policies in relation to firearms that are regularly monitored at the national and district-level police stations and comply with international human rights standards.

9. The Ministry of Justice is encouraged to continue the implementation of the recommendations of the ICNA report, in particular the recommendations made for equal access to justice. Budgeting sufficient resources for the implementation of the legislated witness protection mechanisms and the domestic violence law should also be a high priority. The report notes sufficient resources and political will need to be ensured by this ministry to support accountability mechanisms, including but not limited to the prosecution of 2006 cases and those recommended by SCIT.

10. Parliament is recommended to prioritize the completion of the legal framework, especially the adoption of legislation that may protect and promote the rights of women, children and people in rural areas. The report further advocates for the creation of a national reparations program for victims of gross human rights violations from 1974 to 1999.

11. Civil society and the donor community are advised to enhance the effectiveness of training and support to the security forces and seek ways to provide civilian oversight, while facilitating consultations and supporting legislative initiatives, including the draft legislation on reparations.

12. Finally, the report calls on the President and the Government to explore possible ways with Indonesia to enhance accountability, in addition to peace and reconciliation, in Timor-Leste in the future. The report also suggests the implementation of mechanisms to ensure that the pardons process complements efforts to establish the rule of law and consistently meets international guidelines.

I. Introduction

13. On 26 February 2010, United Nations Security Council Resolution 1912 extended the mandate of the United Nations Integrated Mission in Timor-Leste (UNMIT) for another year.⁵ In line with previous Security Council resolutions on UNMIT, strengthening the security sector and the justice sector were emphasized. In regard to the justice sector, this included the need to continue prosecution of cases recommended by the United Nations Special Commission of Inquiry (CoI) report of 2006 and a positive acknowledgment of the parliamentary resolution of 14 December which committed Parliament to develop mechanisms for implementation of the Commission of Reception, Truth and Reconciliation (CAVR) and the Commission of Truth and Friendship (CTF) recommendations. This report updates UNMIT's second and third human rights reports by reviewing significant human rights developments in these areas that occurred from 1 July 2009 to 30 June 2010.

14. The principle of equality underlies every area of human rights theory and practice, including accountability. In the ongoing assessment of developments in the security and judicial sectors in Timor-Leste, this report begins to draw more attention to human rights issues that particularly affect marginalized groups, such as women and children, and their ability to access justice on an equal basis.

15. This report seeks to recognize some of the most important contributions made by political leaders, the Government, Parliament, civil society, the international community and individuals towards ensuring the principles of accountability and equality are upheld. At the same time, it identifies key obstacles to the fulfilment of human rights and makes recommendations to suggest constructive approaches for improvement.

16. Analysis is based on data collected by UNMIT's Human Rights and Transitional Justice Section (HRTJS) in its regular monitoring, interviews with government officials, experts and victims, and media review. Along with the body of international human rights and humanitarian law, this report takes as an important standard of evaluation the Constitution of Timor-Leste which states, "All citizens are equal before the law, shall exercise the same rights and shall be subject to the same duties."⁶

17. In addition to documenting these reports of alleged human rights violations, HRTJS assisted victims in filing complaints with the relevant authorities; provided information to the police vetting and screening process and participated as an observer in the evaluation panel; submitted inputs to draft legislation and through the Office of the High Commissioner for Human Rights (OHCHR) funded technical experts to assist in the prosecution of 2006 cases and the drafting of legislation for a national reparations program. HRTJS also conducted regular outreach activities to raise awareness about human rights issues and supported the national human rights institution and civil society through capacity building programs.

⁵ United Nations Security Council Resolution S/RES/1912 (2010), 26 February 2010.

⁶ Constitution of the Republic of Timor-Leste (2002), Section 16 (1).

II. The security sector

18. The legal framework on security developed further during the past year and strengthened the military and police institutions. However, HRTJS continued to receive reports of ill-treatment and excessive use of force by members of PNTL and Timor-Leste Defence Forces (*Falintil-Forças de Defesa de Timor-Leste*, F-FDTL). Of particular concern was the failure of some PNTL officers to adhere to regulations and basic human rights standards in relation to use of force and firearms. In spite of improvements at the national level, district level disciplinary mechanisms remained weak. At the end of the reporting period, there were also serious concerns about the future of the vetting process. Several reports of F-FDTL acting outside their jurisdiction indicated that the roles and responsibilities of the PNTL and F-FDTL were at times blurred, at least at the operational level.



PNTL conduct community policing in Bidau Santana, Dili
» UNMIT Photo/Martine Perret

1. Institutional strengthening

19. In April 2010, the National Security Law, the Law on National Defence and the Internal Security Law⁷ were promulgated, establishing a broad legal framework for the security sector. These laws began to address a number of areas raised in UN Security Council Resolution 1912(2010) which reaffirmed the importance of security sector reform, delineation of roles between PNTL and F-FDTL, strengthening of legal frameworks and enhancing civilian oversight and accountability mechanisms.⁸

⁷ Law on National Security, Law No. 2/2010 (21 April 2010); Law on National Defence, Law No. 3/2010 (21 April 2010); Law on Internal Security, Law No. 4/2010, 21 April 2010.

⁸ United Nations Security Council Resolution S/RES/1912 (2010), 26 February 2010.

All three laws explicitly stated the need to comply with human rights.⁹ However, concerns remained about the lack of delineation between the roles of F-FDTL and PNTL.

20. Furthermore, the laws provided for civilian oversight by Parliament but the modality needed further clarification and no reference was made to the role of civil society in this regard. An amendment was proposed in Parliament to strike a provision stating that the organization, discipline, training and status of the staff of PNTL would closely follow the military, which was seen by some as an indication of militarization of the PNTL. The amendment was defeated.¹⁰ The full effect of the security laws is unclear because the Civil Protection Law and further required subsidiary laws have not been enacted yet.

21. In another measure to strengthen the institution, PNTL implemented a promotions process during the first half of 2010.¹¹ On 27 March 2010, around two-thirds of PNTL officers were promoted as part of this process which was generally perceived as transparent and merit-based. Subsequently, on 8 July 2010, PNTL announced 56 appointments to leadership positions. Only three women were among the appointees to these positions, including the first female District Commander.¹²

22. Many of these appointments indicated a lack of compliance with the provisions of the promotions regime.¹³ Some officers who were the subject of pending complaint processes before the PNTL Department of Justice and were either uncertified or performed poorly on the examination received appointments. Some of these appointments were reportedly on an interim basis and it is uncertain whether they will remain in these positions after the completion of the complaint and certification processes.

2. Overview of alleged human rights violations committed by PNTL and F-FDTL

23. From 1 July 2009 to 30 June 2010, HRTJS received reports of 87 cases of ill-treatment and excessive use of force by PNTL officers and 11 cases by F-FDTL members. The majority of cases were reported in Dili. The number of cases reported constituted a small increase compared to the previous year.¹⁴ Resumption of executive policing power by PNTL from UNMIT Police in four districts did not appear to have a noticeable impact on the number of cases reported to HRTJS. In most cases reported to HRTJS, members of the security forces were not held accountable for their actions during the reporting period. Interviews with victims revealed perceptions that members of the security forces who committed violations were above the law. A number of victims interviewed during the reporting period declined to file official complaints, citing lack of confidence that their complaints would be taken seriously by PNTL, fear of repercussion, and a preference for resolving the case through informal mechanisms.

⁹ Law on National Security, Art. 4.4; Law on National Defence, Art. 3.3; Law on Internal Security, Preamble and Art. 1.

¹⁰ Law on National Security, Art. 9.3 states that "With regard to its organisation, discipline, training and the status of its staff, the security forces will follow closely the military."

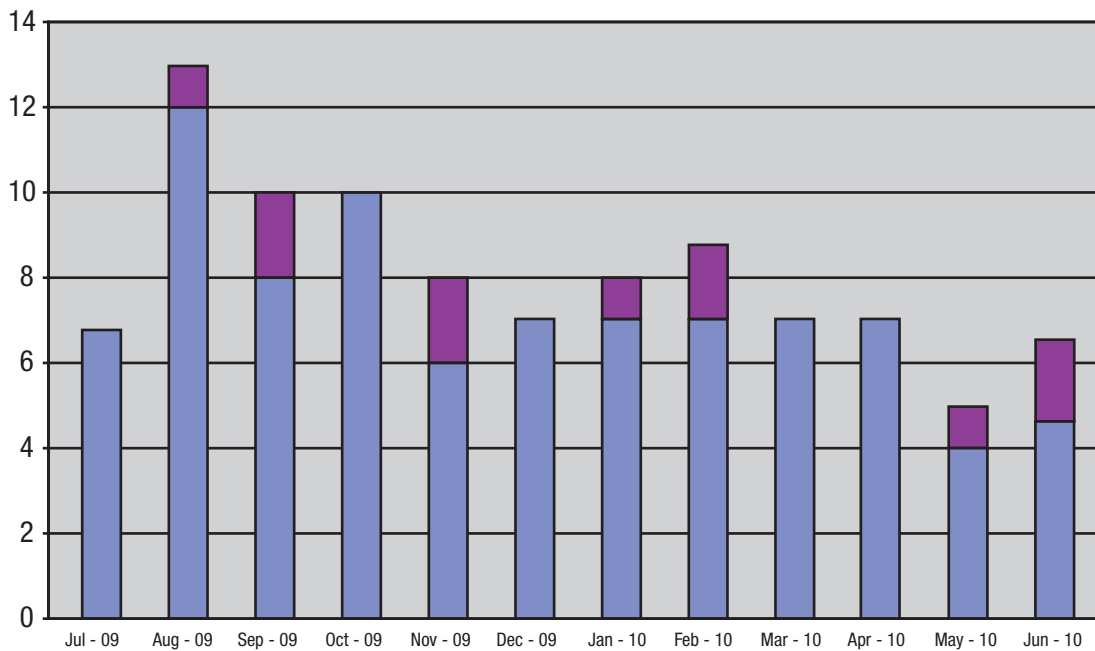
¹¹ As provided for in the Promotions System of the National Police of Timor-Leste (PNTL), Decree Law No. 16/2009 (18 March 2009).

¹² Natercia Soares Martins was appointed Liquiça District Commander.

¹³ Regime of Promotions of the Policia Nacional de Timor-Leste, Decree Law No. 16/2009 (18 March 2009).

¹⁴ From 1 July 2008 to 30 June 2009, 79 cases of ill-treatment and excessive use of force by the PNTL and nine cases of ill-treatment and excessive use of force by F-FDTL were reported.

Cases of ill-treatment and excessive force reported to HRTJS



3. Alleged human rights violations by PNTL involving firearms

24. A number of cases allegedly involving PNTL officers discharging firearms occurred during the reporting period. As a result of these incidents, one man was fatally shot, while three men sustained gunshot injuries. HRTJS received reports of 15 other incidents in which PNTL officers threatened or beat civilians using firearms. Following the highly publicized fatal shooting of a man in Dili in December 2009 (see below), reports of human rights violations to HRTJS involving firearms decreased, although this decrease can not be directly correlated to changes in policy or disciplinary measures. While steps were taken to investigate alleged cases of PNTL shootings, progress in bringing those responsible to justice was slow.

25. On 28 December 2009, Valdir Lebre Correia was fatally wounded and another man injured when a PNTL officer reportedly fired an unauthorized shot while responding to fighting between two unarmed groups of civilians at a Christmas party at the Delta Nova building in Dili. Correia died later in the hospital. The PNTL General Commander suspended the PNTL officer suspected of the shooting and began a disciplinary process. On 4 January 2010, the suspect was arrested and a judge released him one day later under restrictive measures. However, as of the end of June 2010, no indictment had been filed.

26. On 2 November 2009, a PNTL officer in Bobonaro District allegedly shot one man in his abdomen. The incident reportedly occurred when warning shots were fired as police responded to fighting between two groups. A criminal investigation was undertaken, though no indictment had been filed by the end of June 2010. PNTL reportedly placed the officer under preventive suspension for three months in response to the allegations, but he had returned to duty at the time of writing.¹⁵ On 22 November 2009, a PNTL officer in Dili reportedly shot a youth (aged 17) in his arm. As of the end of

¹⁵ On 13 July 2010, the PNTL officer was given a disciplinary punishment of 15 days suspension by the PNTL Department of Justice.

June 2010, no indictment had been filed in the case though the suspect was reportedly suspended from duty.

27. In relation to cases from past years, as of June 2010, no one had been held accountable for the fatal shooting of Domingos Monteiro and injuring of a 17-year-old youth in Ossu, Viqueque District on 3 June 2007, allegedly by PNTL officers from Baucau District. The case was not assigned to a prosecutor for more than two years, apparently due to staff shortages. A prosecutor was reportedly assigned in mid-2009. In October 2009, he stated that he had decided to close the case. The family of the deceased were formally notified of the decision to dismiss the case in May 2010 in a letter which clarified that the grounds for dismissal were insufficient evidence and failure to identify a suspect. The family of the victim requested that the case be re-opened, as provided for under Article 235.4 of the Criminal Procedure Code.

4. Special operations in Bobonaro and Covalima Districts

28. In early 2010, PNTL commenced operations in Bobonaro and Covalima Districts. While ostensibly initiated as operations against “ninjas”¹⁶ who were rumoured to have committed serious crimes, the operations reportedly mainly targeted members of the political movement Popular Council for the Defence of the Democratic Republic of Timor-Leste (CPD-RDTL).¹⁷ Although some CPD-RDTL members were accused of involvement in petty crime, including extortion, their link to alleged ninja activities was never clarified. While the need for sizeable operations was questionable, a number of people reportedly expressed satisfaction at the possibility of increased police presence in remote areas. F-FDTL was also deployed, reportedly to provide back-up, but there were no reports of their participation in operations.

29. The Provedoria for Human Rights and Justice (PDHJ), national human rights NGO Asosiasaun HAK and HRTJS expressed concern about reports of human rights violations during the operations.¹⁸ Cases of ill-treatment and excessive use of force by PNTL members were reported. Six alleged CPD-RDTL members (one female) were reportedly detained in Fatumean Sub-district, Covalima District. The five male detainees were reportedly beaten by PNTL officers, including members of PNTL’s Border Patrol Unit (BPU), at the BPU Compound. They were allowed to leave and told to report back the following morning, at which time they were allegedly taken to Zumalai PNTL station where they were questioned and held overnight before being released. Separately, the CPD-RDTL Coordinator of Tilomar Sub-district, Covalima District, was arrested twice, in January and February, allegedly without a warrant. During his detention in February, he was reportedly beaten by PNTL officers in Covalima PNTL Headquarters. A high number of arrests were reported, many of which did not appear to conform to procedures outlined in the Timor-Leste Criminal Procedure Code. There were numerous reports that CPD-RDTL members were intimidated and asked to resign from the organization in breach of human rights guarantees related to freedom of association and expression, provided for in the Constitution of Timor-Leste and the International Covenant on Civil and Political Rights

¹⁶ “Ninjas” is a term dating from the Indonesian occupation when it was used in East Timor and throughout Indonesia to describe unknown assailants who were implicated in killings sanctioned by the Suharto regime. It remains in use in Timor-Leste to talk about unidentified, mysterious groups of people involved in serious cases of local criminal activity.

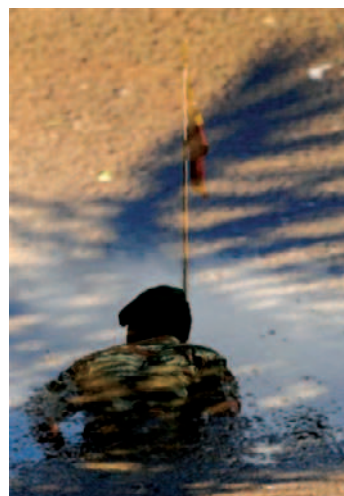
¹⁷ *Conselhu Popular Defeza-Republika Demokratika Timor Leste* (CPD-RDTL), formed in 1999, is a country-wide political movement which states it is disaffected with the current political system, and promotes the adoption of what they claim as the 1975 Constitution and other symbols of independence from this era. Members of local group, *Bua Malus* (Betel Nut), were also targeted.

¹⁸ “Human Rights Situation in Covalima and Bobonaro,” Asosiasaun HAK, 16 February 2010; “*Relatoriu resultado monitorizasaun operasaun issu Ninja 2010*,” PDHJ, 2 July 2010.

(ICCPR).¹⁹ UNPOL exercised executive policing authority in these districts during these operations but nevertheless were unable to prevent alleged PNTL violations.

5. Alleged human rights violations by F-FDTL members

30. Between 1 July 2009 and 30 June 2010, HRTJS received reports of 11 cases of ill-treatment or excessive use of force by F-FDTL members. In addition to ill-treatment and excessive use of force, these cases included allegations of F-FDTL making unlawful arrests and detentions and generally acting outside of their jurisdiction. In two cases, civilian victims were reportedly brought to and briefly detained at the military headquarters in Dili where they were allegedly beaten before being released. On 18 May 2010, F-FDTL members in Wainiki, Baucau, reportedly unlawfully detained and ill-treated two civilian men who they subsequently drove to Baucau PNTL Headquarters. They handed the two victims to PNTL and demanded that they be detained on the suspicion that they had earlier in the day thrown a machete towards a member of F-FDTL. Because the detention took place a considerable amount of time after the alleged incident, it was not clear if the two men who were detained were actually involved. At the PNTL Station, witnesses reported the presence of approximately 20 uniformed and armed F-FDTL members as well as others who were not uniformed. Outside the PNTL station, one F-FDTL member reportedly punched one of the victims in the face. F-FDTL members reportedly also entered the station. The overwhelming presence and powers exerted by the F-FDTL members in this incident suggests a blurring of the distinct jurisdictions of the military and police.



Integrating human rights protection and gender equality within the F-FDTL is part of the 2010 National Priorities.
» UNMIT Photo/Bernardino Soares

31. In a positive development, there were indications of greater awareness of the need to implement a mechanism to address cases of serious violations within F-FDTL, as provided for in the Code of Military Discipline.²⁰ The institutionalization of a military discipline system for F-FDTL that integrates human rights protection and gender equality was a stated objective of the 2010 National Priorities.²¹ An international legal advisor was hired to take steps to implement this mechanism. At least one case of ill-treatment by a member of F-FDTL led to a permanent dismissal (see box). In June 2010, F-FDTL immediately began investigations into reports of a soldier ill-treating a man in Hera, and the Minister of Defence made a public statement that soldiers have no right to arbitrarily beat people and such acts violate military regulations.²²

32. However, progress was limited in the criminal cases filed against F-FDTL members in previous years. These cases include one incident in which one man was beaten and another found dead after reportedly being chased into the water by F-FDTL members in May 2009 and a case in which a member of F-FDTL allegedly threatened civilians with a grenade in Manatuto Market, Manatuto District, in 2008. Both cases remained under investigation as of 30 June 2010.

¹⁹ International Covenant on Civil and Political Rights (1966), Art. 19 and 22. Constitution of the Republic of Timor-Leste (2002), Art. 40 and Art. 43.1. Timor-Leste acceded to the ICCPR in 2003.

²⁰ Decree Law 17/2006, Code of Military Discipline (8 November 2006).

²¹ 2010 National Priorities, National Priority 7, Security and Public Safety. Government of Timor-Leste, 2010.

²² "Membru Naval Baku Joven Ida: SED Kontaktu Ona PM Halo Investigasaun," Timor Post 23 June 2010. and "F-FDTL Baku Juventude: Julio Konsidera Kontra Regulamentu Forsa Forsa," Diario Nacional, 23 June 2010.

III-treatment and sexual harassment of a woman by an F-FDTL member

On 26 September 2009, an off-duty F-FDTL officer in civilian clothes severely beat a civilian woman and an off-duty United States military serviceman who tried to protect the woman. The incident occurred at a bar in Dili when the soldier reportedly groped the woman and she declined his offer to dance. The woman was hospitalized and the US serviceman was evacuated abroad for medical treatment.

Ten to 15 other uniformed F-FDTL soldiers at the scene failed to intervene, but the precise nature of their further involvement remains unclear. Although the man accused was off-duty, the victim and witnesses at the scene readily identified him as a soldier. PNTL officers were called to the scene and helped the victim get medical treatment, but they reportedly arrived late and made no arrests.

Two days after the incident, the female victim addressed a complaint directly to Parliament. The victim received public acknowledgment and support from the Women's Caucus of Parliament and civil society, including the local NGOs, Fokupers, JSMP and Asosiasaun HAK. Parliamentary Committee B, which is responsible for Defence and Security, responded by calling on the PNTL to open a criminal investigation and recommending the F-FDTL as an institution take responsibility. Media featured the case prominently but commentary about the case often failed to recognize the gendered nature of the violence, and stigmatized the female victim by suggesting that she was at fault for not following traditional morals that discourage women from working, dancing and going to bars.

On 1 October 2009, the F-FDTL Chief of Staff, Colonel Lere Anan Timur, announced on national television (TVTL) that the suspect had been detained by military police and an internal investigation was underway. The investigation reportedly revealed that the soldier who attacked the woman had previously been involved in at least two other serious altercations, including an assault against a military police commander and an attack against a PNTL member at another bar. On 23 December 2009, F-FDTL held a formal ceremony and dismissed the soldier on the grounds that he had violated the code of military discipline.

While this dismissal by F-FDTL could be a positive sign, the degree to which human rights principles of accountability and equality were fulfilled in this case are questionable. There was no mechanism to ascertain whether the rights of the accused were protected since the military's investigation was not transparent, and the grounds on which the soldier was dismissed remain vague and uncorrelated to his violation of human rights, the Timor-Leste Criminal Code and the national Code of Military Discipline. The criminal case remains open but an indictment has yet to be filed, in spite of numerous witnesses and physical evidence. PNTL has not publically explained the reasons why officers failed to make any arrests.

The pursuit of a judicial process would allow the participation of the victim, create the opportunity for the court to make a ruling regarding her compensation, procedurally guarantee the rights of the accused and create a public record of the facts of the case. The failure to indict the principle suspect and investigate the actions of the other F-FDTL members who were present in a timely manner may lead to perceptions that F-FDTL members are above the law.

6. Accountability for PNTL officers

33. Some steps were taken to improve accountability for PNTL officers who committed human rights violations. The PNTL Disciplinary Regulations were increasingly applied in accordance with the law.²³ However, many reported cases were not adequately addressed, and only a few cases in which police officers were accused of human rights violations were tried in the courts. Six PNTL officers were dismissed upon recommendation of the Timorese-led Evaluation Panel.

34. Progress was achieved in strengthening the PNTL's internal disciplinary mechanism, the Department of Justice (*Departamento de Justiça*). PNTL and UN Police implemented procedures that increased compliance with the Disciplinary Regulations. For example, templates were created to document steps taken at every stage of the complaint process and the database was upgraded. District level officers were required to report cases to the national level, though not all districts did so. Unlike in the past, it was observed that cases were opened based on reports received, including media reports, and not only when a victim personally filed a complaint. Procedures to ensure enforcement of penalties were strengthened. Department of Justice officers received training on issues of relevance to their work.

35. These improvements were reflected in the statistics provided by the Department of Justice. Between 1 January and 30 June 2010, 291 disciplinary cases involving PNTL were initiated.²⁴ The highest number of offences in any one month, 92 cases, was reported in January 2010, and was attributed by the department to an increase in oversight and reporting by superiors of weapons-related offences by officers, which followed the fatal shooting of a man in Dili.²⁵ HRTJS observations indicate that this oversight could have had a tangible effect in terms of a decrease in the number of human rights violations involving firearms reported to HRTJS in early 2010, but can not be absolutely correlated to a decrease in the number of actual violations.

36. Of the cases closed in the first half of 2010, 94 were found to be substantiated, while 54 were found to be unsubstantiated.²⁶ Of the 94 substantiated cases, the most common disciplinary sanction imposed was a written reprimand (43), though the more serious penalties of suspension for between 20 and 120 days (26 cases) or between 121 and 240 days (1 case) were also imposed.²⁷ Verbal warnings were used in 11 cases and fines in 12 cases. As of the end of June 2010, four cases in which the Department of Justice had recommended the dismissal of an officer were pending decision by the Superior Police Council or the Minister of Defence and Security.²⁸

²³ Disciplinary Regulation of the National Police of Timor-Leste, Decree Law No. 13/2004, (16 June 2004).

²⁴ This includes cases which do not constitute human rights violations, such as tardiness or unjustified absenteeism. Between 1 January and 30 June 2009, 92 cases were initiated; between 1 July and 31 December 2009, that number increased to 109.

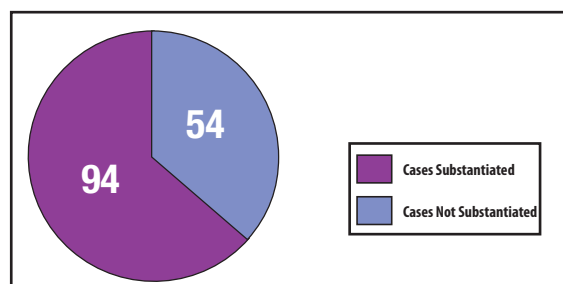
²⁵ See para. 25.

²⁶ In 2009, 130 cases were closed after being substantiated, while 199 cases were found to be unsubstantiated.

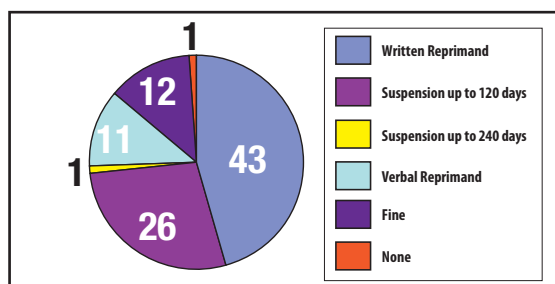
²⁷ These penalties are outlined in the Disciplinary Regulation of the National Police of Timor-Leste, Decree Law No. 13/2004 (16 June 2004), Article 26.1 a-g.

²⁸ The Disciplinary Regulation, Art. 110.2.d states that the Superior Police Council shall issue opinions on proposals for the application of penalties of compulsory retirement or dismissal.

Outcomes of investigations by PNTL Department of Justice January – June 2010



Use of disciplinary methods by PNTL Department of Justice January – June 2010



37. In addition to improving access to justice for victims, the increased adherence to the regulations also constituted an important safeguard for police officers accused of committing violations. PNTL officers reportedly received official notification of allegations against them, and were provided an opportunity to defend themselves, including by employing a lawyer. This was an improvement in terms of ensuring the right to presumption of innocence, to defend oneself against allegations, and due process.

38. In spite of such improvements, HRTJS noted a number of obstacles to effectively addressing cases of human rights violations through the internal disciplinary system. These included reluctance of some PNTL officers to investigate complaints, lack of awareness and trust of formal complaint mechanisms among the population, as well as shortcomings in the Disciplinary Regulations.

39. PNTL Department of Justice sections at the district level remained weak, with few cases initiated. HRTJS obtained information which indicated that some PNTL officers failed to register complaints they received. For example, in January 2010 PNTL officers reportedly ill-treated and threatened ten victims in Uatulari Sub-district, Viqueque District. The victims reported the case to the media. The Viqueque PNTL District Commander subsequently held a consultation with community leaders in the Sub-district, during which the community leaders signed a letter saying the allegations of ill-treatment were false. PNTL officers did not interview the alleged victims, and stated that no official complaint could be initiated unless the victims personally report to PNTL District Headquarters. An investigation was initiated following intervention from the national level. The case remained under investigation as of 30 June 2010.

40. HRTJS documented several cases in which alleged violations were resolved informally without following proper procedures. On 24 February 2010, a PNTL officer in Bobonaro District reportedly beat a man on his head and kicked his genitals after stopping him for a minor traffic infraction. The victim filed a complaint with the PNTL Department of Justice at the district level. However, in early March the victim and PNTL officer signed a letter, in which the victim agreed not to pursue the case further, while the alleged perpetrator agreed not to repeat his action and to face justice if he did so. A district Department of Justice PNTL officer acted as a witness. The PNTL officer was reportedly given a verbal reprimand and ordered by his superior to work without days off for one month, which is an informal punishment not provided for in the disciplinary regulations.

41. In numerous cases victims declined to file official complaints. The most frequently cited reasons were a lack of understanding of how to file complaints, fear of retribution, a preference for resolving cases through informal mechanisms, and victims not considering the case to be “serious.” The fact that victims were not informed of the outcome of their complaints, even in cases when officers were disciplined, may have led to misperceptions among the public that no steps were taken to address violations. While the Disciplinary Regulations mechanism’s main purpose is to ensure the integrity of PNTL, and as such does not require police to inform witnesses of the outcomes, it is likely that greater transparency in this regard would lead to improved perceptions of police accountability.

42. During the reporting period several cases of violations by PNTL officers were tried in the courts. On 23 February 2010, the Baucau District Court sentenced a PNTL officer to six months’ imprisonment suspended for one year, after finding him guilty of simple assault.²⁹ The PNTL officer was found to have assaulted a 19-year-old student on 7 July 2009. The officer, who remained on active duty in Baucau, was acquitted of the charge of threatening the victim. On 25 March 2010, the same PNTL officer allegedly beat a detainee until he lost consciousness, and in June 2010 he allegedly threatened a human rights defender from a local NGO who had investigated the case. He was transferred to Dili District in June 2010, where he reportedly remained on duty. In a separate case, on 8 February 2010, the Baucau District Court acquitted the Viqueque PNTL District Commander of charges of abuse of power in connection with allegations that he beat a man in Viqueque PNTL District Headquarters on 25 June 2009. The Judge based his decision on statements of three PNTL officers who testified in favor of the defence.

7. Evaluation Panel and PNTL certification

43. On 27 October 2009, the Evaluation Panel, established by the Government after the 2006 crisis to provide recommendations regarding the suitability of individual PNTL officers for service, recommended the dismissal of six PNTL officers, including one PNTL district commander.³⁰ These constituted the first recommendations for dismissal by the Evaluation Panel. The recommendations for dismissal were based on previous criminal convictions of the six PNTL officers. In December, the Prime Minister acting in his capacity as Minister of Defence and Security, dismissed all six officers.³¹ Two of the six dismissed officers appealed their dismissals in court, but there was no decision in their cases to date. The dismissals represented an important step towards ensuring that PNTL officers who had committed crimes prior to the vetting process would not be certified and therefore could not be a member of PNTL when it resumed policing authority. The requirement of a court conviction also appeared to uphold standards of presumption of innocence.

44. As of 30 June 2010, according to UNMIT statistics 3,149 officers were registered, of whom 2,922 were finally certified. Of the cases pending disciplinary or criminal investigation, 47 cases were pending in the PNTL Department of Justice, 52 in the Office of the Prosecutor-General, 22 cases in both the Department of Justice and the Office of the Prosecutor-General and 100 with

²⁹ Timor-Leste Penal Code Article 145.1 carries up to three years’ imprisonment. The PNTL officer was acquitted of threatening the victim, Article 157 of the Timor-Leste Penal Code.

³⁰ Following the 2006 Crisis, the certification process was initiated by a Council of Minister’s resolution on 31 August 2006 and further codified in the Supplemental Policing Agreement between the Government and UNMIT and a subsidiary Council of Minister’s resolution in 2007.

³¹ A seventh PNTL Officer, Abilio Mesquita, was dismissed for failure to register. At the time of his dismissal he was facing charges in connection with the 2006 crisis. See also para. 71 below.

the Evaluation Panel. Those not yet finally certified as of the end of June 2010 included the PNTL District Commanders of Dili, Ermera and Manufahi Districts. Eleven officers had not registered for the certification process, and it was expected that they would be terminated.

45. The mandate of the Evaluation Panel was not renewed when it expired on 31 December 2009. As of the end of June 2010, there were indications that the certification process would continue under the mandate of the Secretary of State for Security, based on the Disciplinary Regulations. While the form this would take remained unclear at the time of writing, there was concern that the statute of limitations provided for in the Disciplinary Regulations would severely impact the process.³²

³² The Disciplinary Regulations provide that liability lapses “where no proceeding is initiated within three months after the authority vested with disciplinary competence becomes acquainted with the fault” (Art. 52.3) and that the right to take disciplinary action lapses three years after the date the offence has been committed, except where disciplinary offences constitute criminal offences, in which case criminal law deadlines shall be applied (Art. 52.1 and 52.2).

III. Formal and non-formal justice mechanisms

46. The perception of equality in the administration of justice, by both formal and non-formal mechanisms, is crucial to fostering accountability and maintaining the rule of law. During the year some progress was made in strengthening justice mechanisms, particularly through efforts to expand access to justice and raise standards in rural areas. Yet, expressions of discontent with the perceived inequity in the justice system persisted. One participant in a human rights training during June 2010 remarked, “For it to be honest, the Constitution of Timor-Leste should say there is one queue or process for the big important people, and another for the small ordinary people. At least then it would be transparent.”³³

1. Judicial system development

47. On 14 October 2009, the findings of the Independent Comprehensive Needs Assessment (ICNA) of the justice system of Timor-Leste were released, in response to UN Security Council Resolution 1867 (2009) and with the collaboration of the Government of Timor-Leste. The purpose of the assessment was to evaluate accomplishments and challenges facing the justice system, with a view to identifying accomplishments and areas for improvement. The report made 144 recommendations in 13 different areas of the justice sector, including strengthening the capacity of courts and judges; supporting law enforcement, prosecutors and police; providing equality of arms by strengthening the resources of public defenders and lawyers; improving prison services; enhancing coordination within the justice system; protecting judicial independence; promoting professional responsibility and confronting impunity.



Timorese judges preside over the 11th February trial.
» UNMIT Photo/Martine Perret

48. To ensure equal access to justice, the ICNA report made a number of recommendations that included the need to develop and support the use of legal Tetum and the recruitment of women into the judiciary. The report also recommended prioritizing the passage of the draft domestic violence law, a new land law, anti-trafficking legislation and laws related to children’s rights in order to enhance equality in the justice sector.

49. On 17 June 2010, the Minister of Justice of Timor-Leste launched the Strategic Plan for the Justice Sector 2011-2030 (JSSP). The ICNA report’s recommendations were incorporated into this plan.

50. Throughout the year progress was made in strengthening the justice infrastructure and its resources. As of June 2010, there were 17 Timorese judges, 16 Timorese prosecutors and 16 Timorese public defenders assigned to Timor-Leste’s four district courts, the Court of Appeal and prosecution and public defender offices. Capacity increased by three new staff in each category from

³³ Comment from Participant in the “Legal Systems Monitoring Training” sponsored by UNMIT’s HRTJS, 3-11 June 2010.

the previous year. However, as of 30 June 2010, six of the national judges were inactive as they were attending training abroad. The justice system continued to rely heavily on supplemental international staff, including seven international judges, six prosecutors and four public defenders.

51. Training programs continued to strengthen the capacity of national judicial actors and law students. In addition to training programmes at all levels of the judiciary and for law students on civil and criminal law, the national Legal Training Center (LTC) began offering legal Tetum classes for magistrates, public defenders and their personnel and court clerks. Prison personnel also received training in security awareness, international standards for the treatment of prisoners and emergency response techniques. The Prosecutor-General's Office continued an internal training program it initiated in 2009 in which a committee identified relevant topics, such as specific articles in the Criminal Code, for study and debate by the prosecutors and staff. Such efforts were important because during the reporting period judicial actors began to apply the Timor-Leste Criminal Code which had come into force on 7 June 2009.

52. Some efforts were made to improve judicial facilities in the districts. For example, in 2010 public defenders' offices in Baucau, Covalima and Oecusse Districts received new computers, air-conditioners, fax machines and technological equipment. Oecusse's court facilities installed internet connections and electronically linked the offices of the courts, Prosecutor-General, Public Defender's Office, Registry and Notary to improve the communications within the district and with the national offices. In accordance with the National Priorities, infrastructure projects began such as the provision of new housing for prosecutors and rent provisions for judges working in the districts. New prison lighting systems were installed in Becora Prison, and the reconstruction of Gleno Prison's water system began.³⁴ On the other hand, resources and equipment to conduct investigations, particularly in the districts, were still lacking and reportedly impacting the quality and speed of investigations and prosecutions. Overall, the majority of human resources and training programs remained in Dili.

53. Between July 2009 and March 2010, significant resources were devoted to the trial of 28 defendants accused of attacks against the President and Prime Minister on 11 February 2008 (see box below). The trial generally conformed to human rights standards and upheld the rights of the defendants, though it exposed some weaknesses in the judiciary that are not unique to this case, such as inadequate translation. The trial also reflected the continued reliance on international personnel in the judiciary, since both the prosecutor and defense counsel were international. However, overall the ability of the judiciary to conduct such a politically sensitive and complex trial is a positive indication of the increasing maturity of the system.³⁵

³⁴ UNDP Justice System Programme Update, "Strengthening the Justice System in Timor-Leste," March 2010.

³⁵ On 27 August 2010, the 23 prisoners convicted in connection with the attack on the President and Prime Minister on 11 February 2008, were released from Becora prison pursuant to a judicial notification received earlier that day. The sentences of the 23 individuals were commuted on 20 August by Presidential Decree.

Trial of defendants accused of attacks against the President and Prime Minister on 11 February 2008

On 13 July 2009, the trial of 28 defendants (one female) accused of attacks against the President and Prime Minister on 11 February 2008 began. On 3 March 2010, the Dili District Court issued guilty verdicts against 24 of the 28 defendants. On 14 June, the Court of Appeal upheld the sentences.

Ten defendants involved in the attack at the Presidential Compound were each sentenced to 16 years' imprisonment. Thirteen of the 17 defendants charged for their role in the attack against the Prime Minister's convoy were each sentenced to nine years and four months' imprisonment. Gastão Salsinha, the leader of the group that attacked the Prime Minister, was also found guilty of one charge of conspiracy and was sentenced to 10 years and eight months' imprisonment. Four defendants were acquitted of all charges, including the female defendant, Angelita Pires. The trial generally complied with international standards. Nonetheless, some areas of concern were observed.

Monitoring at the time of the arrests of the accused in 2008 and allegations made by the defence that were discussed in the final decision indicate that at least two of the defendants may have been detained for more than two weeks before being brought before the judge in violation of the Criminal Procedure Code.

With regards to equality of arms, during the trial there were allegations by the defence that the chain of custody rules for the ballistics testing that became the basis of the prosecution's forensic evidence were not properly followed, and not all the weapons that were allegedly used in the attack were submitted for testing. The defence counsel also claimed that evidence requested pursuant to discovery requirements was not always forthcoming from the prosecution. When the defence lawyer for the majority of the accused failed to appear in court for two consecutive days at the beginning of the trial, concerns about the quality of defence were also raised. However, the judge responded quickly and appointed new counsel for the defendants.

The quality of interpretation during some of the proceedings also affected the fairness of the trials when, for example, interpreters provided a general summary of the testimony rather than simultaneous word-by-word interpretation and lacked specialized legal vocabulary. The court was highly dependent on one quality interpreter who on a notable number of occasions interpreted for an entire day without substitution.

54. Significant progress was made on the adoption and implementation of key legislation. On 6 July 2009, a Witness Protection Law came into force.³⁶ While the adoption of this law was positive, it contained serious shortcomings. Among concerns raised by UNMIT was the definition of “witness” in the law, which does not explicitly include victims or other justice collaborators who may be at risk even though technically, the complainant or victim is a witness. A significant obstacle to implementing the law is the absence of the Special Security Programme Committee, which was mandated in the legislation to manage the administration of the national witness protection programme.³⁷ As of June 2010, the committee had not been functionally established.

55. On 3 May 2010, the Parliament passed the Law Against Domestic Violence with 31 votes in favor and 3 abstentions (see box below). No one voted against the law. On 21 June 2010, the President promulgated the law without changes, but he also sent a memorandum to Parliament that expressed a number of concerns with the law, including the nation’s economic capacity to implement the full scope of the law and the need to review the law to allow for more “consensus-based” solutions in the fight against domestic violence. Other concerns expressed by the public included the potential for the emergency maintenance provisions to generate social jealousy against the victim within communities with high levels of poverty, and the provisions could also be misunderstood by the perpetrators as a relief of their responsibility to provide for their family. Community level socialization will be crucial to addressing these concerns.

56. On 25 December 2009, in accordance with his constitutional powers and in consultation with the Government, the President granted pardons and commutation of sentences to prisoners convicted of a range of crimes including sexual violence, murder and crimes committed in 2006. Although the guidelines were published and included humanitarian grounds, good behavior and efforts towards social reinsertion, the guidelines did not seem to correlate directly to the list of persons granted pardons, and the gravity of their offenses. In particular, the swift commutation of Railos’ sentence for crimes committed in 2006, led to the perception that F-FDTL members avoided justice.³⁸

57. In June 2010, local NGO JSMP sponsored a workshop to discuss the practice of pardons and the Office of the President began to establish a proposed working group with ministries, prison officials and UNMIT representatives to discuss guidelines and make recommendations to the President’s Office on pardons and commutations.

³⁶ Protection of Witnesses, Law No. 2/2009, (6 May 2009).

³⁷ Article 22.

³⁸ See para. 69.

2. Traditional justice mechanisms



The use of traditional justice mechanisms to resolve conflicts is prevalent in Timor-Leste.
» UNMIT Photo/Martine Perret

58. The limitations of the formal justice system described above and the lengthy time required for the legal process, as well as cultural traditions, are factors that affect the prevalence of Timorese using traditional justice mechanisms to resolve conflicts and, at times, violate human rights. In particular, cases in which women and children were victims were often dealt with through traditional mechanisms. Women and children victims were often not granted adequate participation in these processes. Consequently, these victims did not have an opportunity to directly protest or consent to decisions or agreements made on their behalf by family members or other representatives. Without their full participation, at times remedies and compensation agreements could be exchanged on a collective basis that distributed no direct benefit to victims to help them recover from the consequences of a perpetrator's actions. In a number of cases, outcomes of the traditional justice processes appeared to favor the perpetrators, or fail to take into account the gravity of the offence. The preference for referring these cases to traditional mechanisms may discriminate on the basis of gender and age. While traditional justice mechanisms can be a useful supplement to the formal justice system to deal with minor disputes at the community level, they should not impinge on human rights guarantees, including the principles of equality before the law, the right to an effective remedy and gender equality.³⁹

59. An area of particular concern was the use of traditional justice mechanisms to solve cases of gender-based violence, especially domestic violence. In 2009, 679 cases of gender-based violence were reported to the police throughout the calendar year, and of these cases 462 were categorized

³⁹ See Human Rights Committee General Comment No. 32, para. 24 for further explanation of international human rights standards relating to traditional or religious justice mechanisms.

as domestic violence.⁴⁰ Since June 2009, when the Timorese Penal Code came into force, cases of domestic violence must be resolved in the formal justice system as a public crime. In a positive development, there appeared to be increasing awareness among PNTL officers that domestic violence cases, in theory, should not be referred to traditional mechanisms. PNTL Vulnerable Persons' Units (VPU) with expertise in addressing gender-based violence cases operated in all districts, though often with limited resources.

60. In spite of this, monitoring indicated that a significant proportion of domestic violence cases were resolved through traditional mechanisms at the local level. Police officers throughout the country invariably expressed knowledge of this practice. Some PNTL VPU offices kept files with information about cases that had been "resolved" through traditional mechanisms. In some districts, it appeared that there had been no change in how domestic violence cases were handled following the enactment of the new Penal Code in 2009. In one district, a PNTL officer explained that if a victim brings a signed peace agreement from a traditional proceeding to the police station within three days of filing the complaint, they would not forward the case for judicial action, but would file the agreement for their records. HRTJS data indicated that the percentage of cases referred to the formal legal system was higher in districts where regional courts exist, while traditional mechanisms were more frequently used in more remote areas.

61. In order for the new laws relevant to domestic violence to be implemented, significant socialization, training and monitoring will need to occur both within the justice sector and within communities in general. Higher reporting rates in districts with courts suggest that when people have access to a judicial mechanism in close proximity they are more likely to utilize the formal justice system. In this regard, measures to provide mobile legal units and strengthen regional court systems may enhance the right to an effective remedy, even where traditional mechanisms continue to be used. The similar effect of the presence of VPU officers on reporting, and referrals directly to the prosecution service, indicates that increased allotment of resources to this unit at the sub-district level is likely to improve compliance with the domestic violence legislation so that groups at higher risk of insecurity receive more equitable protection and access to justice.

62. Crimes in which the victims were children also continue to be handled by traditional justice mechanisms rather than within the formal justice system. For example, in one case involving alleged physical abuse by a teacher, the prosecutor's office in Oecusse District closed the case, reportedly after receiving a copy of a peace agreement. The students involved in the case had no participation in the traditional process, and were simply called to sign a paper after village and school leaders and parents deliberated. The teacher continues to teach at the school, and reportedly received a "verbal warning" from the Ministry of Education.

⁴⁰ Gender-Based Violence: Investigations Training Manual, UNFPA TLPDP and PNTL, April 2010 p. 15 (based on statistics collected by National VPU). Between January and June 2010, National VPU received reports of 180 gender-based violence crimes.

The Law Against Domestic Violence

The adoption of the Law Against Domestic Violence (Law No. 7/2010) on 3 May 2010, was a significant human rights achievement. The law supplements the provisions in the Timorese Criminal Code which came into force in June 2009 that make domestic violence a public crime and provisions in the Law on Community Authorities (Decree Law No. 5/2004) that require village chiefs (chefe do sucos) to promote awareness of and prevent domestic violence. The State is obliged to investigate and prosecute crimes of domestic violence whether or not the victim files a complaint.

The law defines domestic violence broadly to include physical, mental, economic and sexual mistreatment. It provides protection to family members, including spouses and ex-spouses, ascendants/descendants and domestic workers.

Under the law, victims of domestic violence will be eligible to receive rehabilitative services, including shelter access, legal representation, medical and psychological assistance, and emergency maintenance provisions. Police officers are obligated to investigate domestic violence cases, refer victims to legal and medical services and keep them informed of the status of their cases. They must file a report with the Office of the Public Prosecutor within five days of receiving information about the case.

The law requires the Government to develop a system of services for victims, create a National Action Plan against Domestic Violence, provide training and public awareness programs and incorporate information about domestic violence in school curriculum.

Although the law is comprehensive, several gaps exist. Originally the law required the prioritization of domestic violence by the national prosecution service. Subsequent to the parliamentary debates, this provision was removed reportedly because of concerns that the judiciary lacks the resources to respond to the increased volume of cases the law is likely to generate. Proponents of this expediency provision argue it is imperative to ensure gendered crimes are pursued on an equal basis with other offences. Economic aspects of domestic violence, such as thefts and property damage, and acts of threat and coercion that are included in the scope of the definition of domestic violence are not linked to specific provisions in the Criminal Procedure Code. Finally, the passage of legislation can not ensure the enforcement of the law, particularly when other key pieces of the legal framework, such as the law on traditional justice mechanisms, are not yet in force.

IV. Transitional justice

1. Accountability for crimes committed in 2006

63. From April to May 2006, internal violence based on both historical and political divides and dissatisfaction within the ranks of the security sector broke out in Timor-Leste and involved F-FDTL, former members of F-FDTL known as petitioners, some members of the PNTL, and at later stages, groups of civilians. At least 37 people were killed and approximately 150,000 civilians were displaced during the first months of violence.⁴¹

64. Some progress was made in achieving accountability for crimes committed during the 2006 Crisis. As of 30 June 2010, in total five trials were completed, including three in the past year. Two trials were underway and 13 cases remained under investigation. In the five completed trials, a total of ten defendants were convicted and 15 acquitted. Two cases were closed.⁴² All cases recommended for prosecution in the Commission of Inquiry (Col) report have been taken up for investigation.⁴³

65. However, the overall number of cases brought to trial is still limited, and the proceedings have been consistently delayed. Additionally, a number of acquittals were attributed to lack of evidence,⁴⁴ which may indicate weaknesses in the investigation process or reflect the decisions made about which individuals to prosecute. In some cases witnesses and victims seemed unwilling to provide clear testimony against the alleged perpetrators.

66. Some efforts have been made to grant witness protection which may assist in addressing this problem. In January 2010, a key witness in the trial against Alberto da Costa (Abeto Osu) and Frederico Florindo (Oan Kiak) was the first person to be granted witness protection during trials of 2006 cases and under the new Witness Protection Law.⁴⁵ However, on 10 March 2010, Prosecutor General, Ana Pessoa, reportedly told national radio that the failure to adequately implement this law remains a factor in preventing the processing of 2006 cases. She reportedly stated that many people were afraid to testify, which affects the quality of evidence and viability of cases.

67. The limited financial and human resources of the Office of the Prosecutor General continued to affect the ability to prosecute these cases in an efficient manner. To help alleviate this problem, OHCHR funded an international prosecutor who focused on the cases recommended for prosecution and investigation by the Commission of Inquiry (Col). The Office of the Prosecutor General maintains the problems are related to the investigators assigned to Col cases. However, given the high number of non-Col cases, prioritization of 2006 cases remained a challenge.

⁴¹ Report of the United Nations Independent Special Commission of Inquiry for Timor-Leste, Geneva, 2 October 2006, para. 42.

⁴² The cases were closed pursuant to Criminal Procedure Code, Art. 235.

⁴³ The Col report made recommendations based on an analysis of the key events in April and May 2006 and does not include investigation into all cases or the full time period of the violence that occurred in 2006.

⁴⁴ For example in the trial of defendants accused of the attack against General Taur Matan Ruak residence on 24 May 2006 (Case against Abilio Mesquita et al, 334/PDD/2007).

⁴⁵ See para. 54.

68. The first person convicted of crimes committed in 2006, Rogerio Lobato, returned to Timor-Leste after he completed the majority of his sentence in Malaysia where he reportedly received medical treatment. Lobato was among a group of prisoners who received a Presidential commutation in 2008 on humanitarian grounds which shortened the length of his sentence.

69. After multiple delays in the trial proceedings, on 9 October 2009 the Dili District Court sentenced Vicente da Conceição (Railos) to two years and eight months' imprisonment and Leandro Lobato to one year and six months' imprisonment in relation to an armed confrontation in Tibar on 24 to 25 May 2006. Both defendants were found guilty of the illegal possession of firearms in the disruption of public order, and Railos was further found guilty of assault. The defendants were acquitted of homicide, threatening open violence and unlawful deprivation of liberty and the case was not appealed. The court failed to issue a writ to carry out the arrest and incarceration in a timely fashion. On 22 December 2009, Railos began to serve his sentence, three days before he received a Presidential commutation that reduced his sentence by one year. Both defendants were released in early January based on the commutations.⁴⁶ However, Railos would have been eligible for release in late January 2010 regardless because of the credit he received for time served in pre-trial detention.

70. After a delay of more than one year, on 3 May 2010, the trial began against 28 persons charged with manslaughter, attempted manslaughter, rebellion and weapons charges in relation to an armed confrontation in Fatu Ahi in May 2006. The defendants include both PNTL and F-FDTL officers who were allegedly part of rebel leader, Alfredo Reinado's, group. The trial was continuing as of 30 June 2010.

71. On 18 June 2010, the Dili District Court rendered its decision in the re-trial of former Liquica District PNTL Commander Abilio Mesquita (Mausoco), and three others, arising out of the assault on F-FDTL General Commander Taur Matan Ruak's residence on 24 to 25 May 2006. This was the third trial relating to the same events, after the Court of Appeal ordered the repetition of the trial in two instances due to mistakes in the composition of the bench and other procedural errors. The court acquitted the four defendants due to lack of evidence.

72. On 8 June 2010, the trial against Ozório Leki, former spokesman of "Colimau 2000," resumed. The defendant was charged with inciting violence in relation to a lawful protest at *Palacio do Governo* held by F-FDTL petitioners on 28 April 2006 which erupted into violence and resulted in two civilian deaths, four people critically injured by firearms and two other people seriously injured. By the end of June 2010, the trial was in progress.

73. Three of the four F-FDTL soldiers who were convicted in November 2007 of homicide, in connection with the shooting of eight PNTL officers on 25 May 2006, remained in an *ad hoc* prison on the grounds of the military headquarters and by the end of the reporting period they had not paid compensation to the widows of the police officers as ordered by the court.⁴⁷ On 25 December 2009,

⁴⁶ He was released under parole in accordance with Art. 331 of the Criminal Procedure Code after serving half his sentence, which counted the time he served in pre-trial detention.

⁴⁷ On 20 August 2010, President José Ramos Horta commuted the sentences of these F-FDTL soldiers. Their sentences were reduced completely and the soldiers were released immediately. The widows reportedly received compensation in the amounts ordered by the Court from a source affiliated with F-FDTL during the month of August.

one of the four men convicted, Armindo da Silva, was granted a Presidential pardon on humanitarian grounds based on his age and good behavior, and the sentences of the others were reduced.⁴⁸

74. On 11 August 2009, the trial of Alberto da Costa (Abeto Osu) and Frederico Florindo (Oan Kiak) commenced. On 15 February 2010, the two defendants were found guilty of participating jointly in a criminal enterprise to commit violence against persons and property and the illegal use of firearms, ammunition and explosives.⁴⁹ Oan Kiak was sentenced to eight years' imprisonment and Abeto Osu to six years' and six months' imprisonment. On 6 May 2010, the Court of Appeal overturned the decision of the Dili District Court and acquitted the defendants after determining that the prosecution failed to prove the intent required for the crimes that were charged.

75. On 25 November 2009, a prosecutor from Dili District's office decided to close the case against F-FDTL Commander Major-General Taur Matan Ruak, former Minister for Defence Roque Rodrigues, Brigadier General Lere Anan, and Colonels Laek and Mau Buti and informed the Prosecutor-General, reportedly because there was not sufficient evidence that they committed crimes. The Col Report had recommended that these individuals be prosecuted for illegal weapons transfer.⁵⁰

76. Inside the courtroom during these trials, there were challenges to adjudicating the cases efficiently. In the trial of Oan Kiak and Abeto Osu it took several months for one of the defendants to appear in court for the trial. In the trial of Abilio Mesquita and three others, three F-FDTL soldiers did not wish to comply with subpoenas and testify in court because they had previously given testimony in the same case. High profile, political leaders testified before the court, including Roque Rodrigues who served as Minister of Defence in 2006, and Jorge da Conceicao Teme who is the Secretary of State for Oecusse. Media reported that Teme was the first acting government official to waive his privileges and testify in court about the 2006 cases. However, the failure of several parliamentarians to attend court when first summoned or to send a legal representative to inform the court of their absence reportedly was an obstacle to the efficiency of the proceedings. Although these parliamentarians agreed to testify in writing after approval from Parliament,⁵¹ according to statements made by civil society, their absence from the courtroom leave the public impression that they are not willing to fully cooperate with the court⁵² and they may appear above the law.

2. Accountability for human rights violations during and prior to 1999

77. On 30 August 2009, Timor-Leste celebrated the ten-year anniversary of the Popular Consultation that secured the nation's independence from Indonesia. A number of events were held to honor the memories of the victims of human rights abuses committed during the period around the ballot, when pro-autonomy militia members, supported by the Indonesian security forces committed serious human rights violations amounting to crimes against humanity. From 2 to 4 September, the first National Victims' Congress was held in Dili. On the first day of the Congress, participants called for the establishment of an international criminal tribunal.

⁴⁸ See also para. 56.

⁴⁹ Indonesian Criminal Code (KUHP) Art. 170; UNTAET Regulation No. 5/2001, Sect. 4.7; KUHP Art. 406 and 412.

⁵⁰ Report of the United Nations Independent Special Commission of Inquiry for Timor-Leste, Geneva, 2 October 2006, para. 134.

⁵¹ Parliamentary approval must take place according to Law No. 5/2004, Chapter 2, Article 16 (1) and the Rules of Procedure of the National Parliament, Section 10 (2).

⁵² Statement by representative of JSMP, Roberto Pacheco, on Televisaun Timor-Leste (TVTL), 9 June 2010.

78. Overshadowing these events was the handover of a former militia leader, Maternus Bere, to the Indonesian authorities on 30 August 2009. Bere was indicted in 2003 for crimes against humanity, including torture, enforced disappearance, extermination, deportation and persecution, and was among the persons accused of participating in the Suai Church massacre on 6 September 1999.⁵³ He was detained in August when he crossed into Timor-Leste from West Timor, Indonesia, where he had been residing since 1999. Community members in Suai, Covalima District, reported his presence to police who arrested him. He was held in Becora Prison, but released to the Indonesian embassy in Dili, where he spent two months before his transfer to Indonesia on or about 30 October 2009. He was subsequently released. Bere's release became a lightning rod for public debate about impunity. While political leaders stated that the release was necessary in the best interest of relations between Timor-Leste and Indonesia, leading opposition politicians, as well as international and national NGOs questioned the legality of the release.⁵⁴ On 12 October 2009, Parliament debated a motion for a vote of no confidence that hinged on the issue of the legality of Bere's release. The motion was defeated, with the various parties voting strictly within their blocs, but it indicated the level of controversy around the issue. On 22 June 2010, the Minister of Justice was notified that she was a suspect in a case filed in relation to the release of Bere.

79. Victims in Suai expressed deep discontent at Bere's release. One victim stated in a meeting, "If he [Maternus Bere] comes again, he will die. There is no justice in the courts in Timor-Leste." The UN maintains that there can be no amnesty or impunity for those accused of serious crimes such as war crimes, crimes against humanity, genocide and gross violations of human rights.

80. On 26 March 2010, Domingos Noronha (Mau Buti) was sentenced for serious crimes committed in 1999. Noronha had been held in preventive detention since his arrest in December 2008. The Court of Appeal upheld the sentence by the lower court, despite the prosecutors appeal to raise it. Noronha's case is one of two to be tried for human rights violations committed in 1999 since the United Nations completed the hybrid tribunal process in 2005. As his case demonstrates, trials for crimes committed in 1999 are continuing within the Timorese national courts on an *ad hoc* basis.

81. The Serious Crimes Investigation Team (SCIT) of UNMIT continued investigations. As of the end of June 2010, SCIT investigators had concluded investigations in 150 cases. In a number of cases, the findings were handed to the Prosecutor-General of Timor-Leste who is authorized to determine whether there is sufficient evidence to prosecute. By the end of June 2010, no indictments were filed.

82. As of the end of June 2010, 303 of the 391 individuals accused of serious crimes in relation to 1999 remained at large. The majority of these suspects are believed to be in Indonesia. Only one of the 85 persons convicted for serious crimes remained in jail.⁵⁵ No one had been indicted for serious crimes, including war crimes and crimes against humanity, that occurred in Timor-Leste prior to 1999.

⁵³ The indictment alleges that Bere was among the militia members and TNI (Indonesian military) who participated in the killing of between 27 and 200 persons, including three priests, in the massacre.

⁵⁴ *Partido Unidade Nacional* (PUN), "Friendship gone too far", 7 September 2009; *Frente Revolucionaria Do Timor-Leste Independente* (Fretilin), "Walk out of Timor-Leste parliament for human rights victims", 7 September 2009.

⁵⁵ See para. 80.

83. In June 2010, Parliamentary Committee A, responsible for justice issues, submitted a legislative initiative to the President of Parliament that would create a follow-up institution to the two previous truth commissions, the CAVR and the CTF, and a national program of reparations for victims of human rights violations from 1974 to 1999. Programs to create memorials, provide counseling services, scholarships, and preserve the truth commissions' archives are proposed in the draft legislation. As part of the proposed reparations program, the follow-up institution is also charged with the responsibility of creating a database of information about missing persons, which could become the basis to implement the recommendations for a future Missing Persons Commission. Public consultation on the legislation began in July 2010. Parliament's initiative is a promising step towards promoting and fulfilling the right to reparations. Special provisions are included for consultation and implementation to ensure rural populations and women will have access to these reparations.

84. Victims who have not received benefits from other national programs, such as the veteran's program and victims of the 2006 crisis, are targeted by the proposed reparations program but there has been significant debate among parliamentarians about who should be included in the definition of "victim." The draft legislation currently defines a category of victims who will all be eligible to receive symbolic and some collective forms of reparations. It also creates a special category of vulnerable victims who are defined broadly as persons who still suffer daily from the impacts of the human rights violations. Certain categories of vulnerable victims which are further defined in the draft law could be eligible to receive individualized reparations.

85. Some victims have expressed dissatisfaction that internally displaced persons (IDPs) and petitioners from 2006 and resistance veterans have already received monetary payments from the State, while victims of human rights abuses committed during the Indonesian occupation have not. Although reparations can occur in multiple forms that are not limited to financial compensation, the lack of a formal reparations program for victims of gross human rights violations committed from 1974 to 1999 appears to contribute to victims' feelings that they are being subjected to inequity and injustice. International human rights standards establish the right to reparations, as well as an effective remedy, for all victims of gross human rights violations.⁵⁶ In Timor-Leste, these rights have yet to be enjoyed by all of the people who suffered these violations.

⁵⁶ Reparations as a right has been established in international customary law and are supported by the Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of Human Rights and Humanitarian Law, adopted by the UN General Assembly Resolution 60/147, 16 December 2005.

Recommendations

To the President and the Government: Explore possible ways with Indonesia to enhance accountability, in addition to peace and reconciliation, in Timor-Leste in the future. Implement mechanisms to ensure that the pardons process complements efforts to establish the rule of law and consistently meets international guidelines.

To Parliament: Prioritize the completion of the legal framework, especially the adoption of legislation that may protect and promote the rights of women, children and people in rural areas. To handle current cases and prepare for the outcomes of KAK's work, complete the legal framework to robustly prosecute corruption cases. Provide broad-based consultation mechanisms on legislation that are equally accessible to rural participants, people with disabilities and women. Establish a national reparations program for victims of gross human rights violations committed from 1974 to 1999. Ensure that victims qualify for the program based on their suffering of a human rights violation and have equal access to reparatory services, including information, regardless of their political affiliation in the present or past, gender, race, language or location within Timor-Leste.

To the Ministry of Justice: Continue to implement the recommendations of the ICNA report, in particular the recommendations made for equal access to justice. Budget sufficient resources for the implementation of the legislated witness protection mechanisms, including the creation of a functioning Special Security Programme Committee, and review witness protection practices within one year to identify areas for improvement in accordance with international human rights standards. Develop legal Tetum. Recruit more translators that demonstrate professional competency in court translation and interpreting, while providing supplemental training and performance evaluation mechanisms for translators already working in the judiciary. Provide administrative and logistical support to facilitate prosecutor and court responses to the results of monitoring and investigations submitted by the Provedoria for Human Rights (PDHJ) and the Anti-Corruption Commission (KAK). Provide expert training and resources for the investigation and prosecution of corruption cases by the legal system's actors. Supply sufficient resources and political will to support accountability mechanisms, including but not limited to the prosecution of 2006 cases and those recommended by SCIT. Ensure the independent response of the judiciary if indictees are apprehended in Timor-Leste or abroad.

To PNTL: Expedite investigations as soon as complaints are received and strictly enforce internal disciplinary measures according to transparent and standard policies. Implement policies related to firearms that are regularly monitored at the national and district-level police stations which comply with international human rights standards, including the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms. Immediately investigate whenever a firearm is unaccounted for or discharged, even in the exercise of official duties, and strictly enforce disciplinary measures against personnel who misuse any weapon, especially firearms. Strengthen and actively monitor PNTL accountability mechanisms, particularly in districts outside of Dili. Correlate certifications and promotions to the standardized testing and evaluation systems which reward merit and the demonstrated ability to abide by international human rights standards. Discourage the movement of personnel as a stand-alone or primary disciplinary method.

Improve the timeliness and quality of complaint reporting mechanisms, particularly from districts to PNTL headquarters. Increase funding and personnel assigned to the PNTL Vulnerable Persons' Unit and increase access to investigation equipment, particularly in the districts. Train all police personnel on the new domestic violence legislation and criminal code, budget for their implementation and review adherence to their provisions at the national and district level on a periodic basis.

To F-FDTL: If military members commit violations, ensure sufficient resources and political will to fully implement Decree Law No. 17/2006, Code of Military Discipline, in accordance with Timor-Leste's National Priorities plan as well as pursue complementary judicial accountability mechanisms where relevant. Ensure that members of the military alleged to have committed common crimes are subjected to the application of the criminal code and criminal procedure where their rights to due process and presumption of innocence shall be guaranteed.

To PNTL and F-FDTL: Monitor and take steps to ensure women are recruited and promoted on an equal basis with men, and consider whether additional measures need to be taken to increase the number of women in leadership positions. Provide training, ethical incentives and sufficient professional development mechanisms to ensure the sustained placement of competent, impartial and respected personnel in the positions which administer and evaluate security sector accountability mechanisms. Ensure that any person wishing to submit a complaint against a law enforcement official or military member is not obstructed in any way, and receives clear, detailed reasons for the outcomes of the case, along with information on appeals mechanisms and alternatives for recourse.

To civil society and the donor community: Enhance the effectiveness of training and support to the security forces and the justice sector. Seek ways to provide civilian oversight, while facilitating consultations and supporting legislative initiatives, including the draft legislation on reparations.

July 2009 - June 2010