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Timor-Leste

Briefing to Security Council Members on policing and security in Timor-Leste

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Under the United Nations Transitional Administration in East Timor's (UNTAET) mandate to provide security and maintain law and order throughout Timor-Leste, the rapid development of a credible, professional and impartial police service was defined as a major goal.¹ Its successor mission, the United Nations Mission of Support in East Timor (UNMISSET), is also mandated to assist in the development of the National Police of Timor-Leste (*Policia Nacional de Timor-Leste*, PNTL), for which the UN Police (UNPol) retains overall command responsibility.

The speed at which Timor-Leste's new national police service has been established is impressive - some 1,800 officers had been recruited and trained by the date of Timor-Leste's independence on 20 May 2002, and the target of 2,830 officers is expected to have been reached by June 2003. However, pressure to meet recruitment targets and allow for the simultaneous downsizing of UNPol has meant that the emphasis has tended towards quantity rather than quality.

An Amnesty International delegation visited Timor-Leste in October 2002 to assess the progress in the establishment of a national police service and the extent to which human rights standards were being integrated into its development and operations. The overarching conclusion of the delegation was that, despite significant progress and despite the clear professionalism and commitment of individual officers, the PNTL remains a fragile and underdeveloped institution which is not yet adequately prepared, equipped, or sufficiently well supported for the task of maintaining law and order in a manner which is consistent with international human rights standards.

PNTL's lack of capacity and experience has been demonstrated in practice on a number of occasions, particularly in the context of public order situations. Among the most notable recent examples are during clashes between the police and protestors in Baucau on 18 and 25 November 2002 and in disturbances in Dili on 3 and 4 December 2002. In the course of these events, three people were shot dead allegedly by the police and others suffered gun shot wounds. In Dili, where some 80 people were arrested during the disturbances, there are

¹ Report of the Secretary-General on the Situation in East Timor. S/1999/1024, 4 October 1999.

also credible reports of PNTL officers, including those from the rapid reaction force, the Special Police Unit (SPU), beating detainees.

These events and other incidents in which PNTL officers are alleged to have used excessive force or otherwise acted in an inappropriate manner, reveal deeper problems within the police and the broader criminal justice system of which it is a part. They have also contributed to a damaging loss of public confidence in the fledgling police service.

Amnesty International believes that considerable support, both financial and technical, over the next years is essential if the PNTL is to develop into an effective, democratic police service capable of upholding law and order in a manner which is consistent with international human rights standards. Long-term commitment and coordination between the UN and donors will be essential to the success of this project. It is critical that UNPol officers and others working with the PNTL are selected on the basis of their skills and experience in the areas in which they are assigned and that they have experience in the practical implementation of human rights standards in policing work.

With regard to the development of the PNTL Amnesty International believes that the following areas require particular attention.

i) Legal and procedural framework - A lack of clarity about applicable law, gaps in legislation and procedures and the existence of legislation which is inconsistent with international human rights law and standards is impacting negatively on the development of the PNTL, its operational capability and its capacity to respect and protect human rights.

The legislation under which PNTL was established, UNTAET Regulation 2001/22 on the Establishment of the East Timor Police Service, contains provisions which are not fully consistent with or do not fully reflect international human rights standards, most notably in the areas of use of force and firearms and accountability. Amnesty International recommends that the law is reviewed and amended.

There are also a number of basic, but essential procedures and guidelines for PNTL which have not yet been adopted with the result that basic standards of appropriate conduct and accountability have not been established. This has contributed to the emergence of operational inconsistencies which risk resulting in human rights violations. Standard operating procedures in arrest rights, custody procedures and detention rights are among the procedures which should be adopted as a matter of urgency.

ii) Impartiality and separation of police and the military functions - Amnesty International is concerned that the impartiality and legitimacy of the PNTL is threatened by tensions surrounding the issues of recruitment and by challenges to its authority by some public figures and by members of the Timor-Leste Defence Force (*Falintil-Forca Defesa Timor-Leste*, F-FDTL). It is also concerned that the lack of confidence in the new police service has resulted in F-FDTL being called upon to play a role in law enforcement activities for which it has neither the authority nor the training.

The role of F-FDTL in conducting arrests in Ermera District in January 2003 revealed a lack of clarity between the respective roles of the police and the military as well as serious shortcomings in the implementation of international human rights standards on the rights of detainees. Around 90 people are believed to have been arrested by the F-FDTL following the killing of five people in Atsabe Sub-district in the first week of January 2003, allegedly by pro-Indonesian militia. It is unclear on what legal authority the arrests were conducted and there is concern that most of those arrested, who included women and children, had no

connection to the killings. Detainees were transferred to the police and most were quickly released. However, 31 people were illegally detained, without detention orders and without access to lawyers or judicial review for over one week.

Amnesty International recognizes that there are genuine security concerns in Timor-Leste and that the government, with the support of UNMISSET, has a duty to protect the public. However, such threats should be responded to in a manner which is consistent with international human rights standards. Events in Ermera District and the attack on 24 February 2003 in Bobonaro district which resulted in two deaths, lends weight to the argument for drastically accelerating efforts to strengthen the capacity of the PNTL. Such efforts should focus on strengthening basic policing skills. In view of recent experiences in the misuse of force and firearms, detailed practical training which incorporates international human rights standards should be given in this area and strict systems of accountability established. Amnesty International also considers it essential that the respective roles of the PNTL and F-FDTL are clarified.

In addition there is a need to address other issues which risk impacting on the impartiality and legitimacy of the PNTL. These include the strained relations between F-FDTL and PNTL which have been manifested in a series of incidents over the past year, including physical assaults. An underlying cause appears to be the reluctance by some members of the F-FDTL to accept the authority of civilian police in matters of civilian law enforcement, including where F-FDTL members are alleged to have committed criminal acts. Challenges to the legitimacy of the PNTL have also come from some public figures, including on 4 December 2002, when there were reports that speeches were made provoking protestors and scorning PNTL.

Closely related to this is the issue of recruitment of ex-combatants, including former members of the armed opposition group, Falintil, into PNTL - an issue which has become increasingly politicised and has been behind violent protests against the PNTL, including in Baucau on 25 November 2002. Although an agreement has been reached that 100 ex-combatants will be recruited, several thousand candidates have been submitted by leaders of competing veterans groups. The process risks generating greater dissatisfaction and further threats to security.

iii) Training - Human rights standards are not fully integrated into PNTL's training, whether in the Police Academy, in Field Training or in in-service training. In some areas it is the style of training which is at fault - where human rights are taught the emphasis is on classroom theoretical training rather than scenario based training which would allow cadets to develop their practical skills and judgement making capabilities. In other areas it is simply that key human rights principles are absent from the curricula.

Amnesty International is particularly concerned that, in training the police in the use of force and firearms, the concepts of proportionality and restraint contained in the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials are absent. The organization believes inadequate training in this area contributed to the failings in the police response to incidents in Baucau and Dili in November and December 2002 respectively. Further practical training on the rights of suspects is also required and greater attention to the rights of women and children in the criminal justice system should be given. Resources should also be made available for training of PNTL officers in management and supervision roles.

Amnesty International believes that the existing training curriculum should be reviewed with a view to ensuring international standards are fully integrated into it. Emphasis

should be placed on developing scenario based training which provides recruits with experience in applying human rights standards to “real” situations.

Amnesty International noted with concern that a number of UNPol trainers appeared to have little understanding of basic human rights principles. The mixed quality of the trainers reflects poorly on the UN and its selection and deployment of UNPol. Priority should be given to selecting qualified trainers from police services where there is experience in the training and practical implementation of human rights standards.

iv) Oversight and Accountability - Amnesty International is concerned by the apparent low priority so far given to the establishment of oversight and accountability mechanisms for the PNTL and the resulting impact on all aspects of PNTL development. The absence of effective mechanisms undermines discipline among officers and is eroding public confidence in the police because complaints are not satisfactorily dealt with. It will also impact negatively on the development of the service if it is unable to address problems as they arise and learn from them.

There is currently no legal, procedural or institutional framework established to deal with complaints against PNTL officers.² A Code of Conduct, which was drafted almost one year ago, was still awaiting adoption as of mid-February 2003. There is no independent civilian oversight body for the police and, while it is possible that the planned Provedor’s Office may take on this role, Amnesty International is concerned that it will lack the capacity, expertise and powers of enforcement necessary to function as an effective police oversight mechanism. Amnesty International regards the establishment of an independent, civilian, adequately resourced oversight mechanism to be a priority. Among its functions should be to receive and investigate complaints, to investigate incidents on its own volition, to carry out research and to recommend appropriate action in respect of individual officers and police systems. It should be provided with some sanction if recommendations go unheeded.

v) The Special Police Unit (SPU) - The 180 strong SPU has a specialised role in policing public order situations in which the potential for human rights violations to be committed is particularly high. In view of its role, Amnesty International is particularly concerned by the quality of their training, particularly in relation to the use of force and firearms; a lack of clarity surrounding command and control structures; and the inadequate level of oversight and accountability of its members. These concerns are borne out by their actions in public order situations, including in Baucau and Dili in November and December 2002, where SPU officers are alleged to have used excessive force against protestors. Generally, the majority of complaints received by the UNPol Professional Standards Unit against the PNTL, particularly those involving excessive use of force or assault, relate to the SPU.

Some of Amnesty International’s concerns may be addressed through steps announced by UNMISSET after the 4 December 2002 events in Dili.³ However, the organization considers that these events reinforce the need for a more detailed assessment of the configuration and capacity of the SPU.

² Complaints against PNTL officers are currently handled internally by the UNPol Professional Standards Unit.

³ See UNMISSET Media Briefing Notes, 13 December 2002.

vi) The Administration of Justice - The justice sector remains chronically weak to the extent that the administration of justice is virtually paralysed. The implications of this situation for Timor-Leste's future security and stability are grave. Public confidence in the system is being undermined both because the system is slow, but also because it is perceived to be unfair. The situation has already contributed to serious security problems in Becora Prison in Dili and brings with it the risk of vigilante justice.

Problems in the administration of justice also threaten the development of the PNTL. As the visible face of the justice system, the police are likely to be blamed if justice is being administered in a way which is seen to be ineffective, unfair or discriminatory. This will have negative consequences for efforts towards developing a community based, consensual model of policing.

A weak or failing justice system also prevents the police from carrying out their duties effectively and increases the likelihood that human rights violations will be committed. Such violations may be inadvertent, for example a suspect may be held in police custody beyond the legal limit because of delays by the courts in processing the cases, or a suspect may be denied the right to legal representation while in police custody because public defenders are unavailable. However, there is another danger that, if the police lose confidence in the system, they may take it upon themselves to administer justice unofficially. The first is already commonplace and there are indications that the latter may also be occurring.

Amnesty International considers that there are four main areas within the justice system which should be addressed as a matter of urgency:

- Political - Clarification of the appropriate role and relationship between government officials and the judiciary which emphasizes respect for the independence of the judiciary.
- Institutional - Lack of capacity and experience among judges, prosecutors and public defenders. Clarity of their respective roles and responsibilities and of their relationship with law enforcement officials. Lack of effective management and administration systems. Inadequate facilities and support.
- Implementation - Insufficient awareness among judicial officials, and failure to implement, existing safeguards to protect human rights, including the rights of suspects and women and children in the criminal justice system.
- Legal - Incomplete legal framework to protect human rights and lack of clarity among judicial and other relevant officials about existing applicable law, including international human rights law and standards.