



**Report on Human Rights  
Developments in Timor-Leste:  
1 July 2008 to 30 June 2009**

**Rejecting Impunity:  
Accountability  
for Human Rights  
Violations  
Past and Present**

2009



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## Executive Summary

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1. Launched ten years after the popular consultation that paved the way for Timor-Leste's independence, this report focuses on one of the five thematic priorities for the Office of the High Commissioner for Human Rights (OHCHR) and the human rights component of the United Nations Integrated Mission in Timor-Leste (UNMIT), that of promoting accountability and combating impunity<sup>i</sup>. In interactions with victims and their families in all parts of Timor-Leste, the Human Rights and Transitional Justice Section (HRTJS) is invariably met with calls for justice for human rights violations committed during the Indonesian occupation (1975–1999), the 2006 crisis, the 2008 State of Siege, and for current human rights violations. While some positive steps have been taken to address past and present violations, including through legal and truth-seeking processes, much remains to be done.

2. An effective justice sector that delivers decisions in a fair and transparent manner, based on the rule of law, is central to ending impunity. In the period covered in this report, some improvements took place in the justice sector. Timorese court actors are increasingly deployed to the districts, where courts conduct regular hearings. However, further steps are needed to strengthen the system. This is particularly essential if the national justice system is to respond to complex cases of human rights violations, including cases of crimes against humanity, in an effective and credible manner.

3. There was a gradual decrease in reports of human rights violations by members of the police and military. However, UNMIT continued to receive allegations of human rights violations, including excessive use of force. As the PNTL resumes authority from UNMIT Police, it is essential that it develops into a police force based on the rule of law, in which effective mechanisms are in place to address excesses by its members. The clear

delineation of roles between the military and police is also a critical concern.

4. Important steps have been taken towards addressing human rights violations that occurred in the past, but the process remains incomplete. The Commission for Truth, Reception and Reconciliation (CAVR) and the Commission for Truth and Friendship (CTF) have both completed reports that contain recommendations which, if fully implemented, will constitute a significant step towards addressing the past, including through provision of reparations to victims and memorialisation. Efforts to bring to justice individuals who committed crimes and human rights violations in the context of the 2006 crisis, and in 1999, are also continuing, though the majority of the perpetrators have not yet faced trial.



# I. Introduction

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5. On 26 February 2009, the Security Council in its Resolution 1867 (2009) extended the mandate of UNMIT for one year<sup>ii</sup>. The resolution *inter alia* welcomed improvements in the security situation, reaffirmed the need for respect for the independence of the judiciary, and welcomed Timorese leaders' conviction on the need for justice and their determination to act against impunity. It acknowledged serious resource constraints in the judicial system, and called for strengthened legal frameworks and civilian oversight and accountability mechanisms for the PNTL and F-FDTL. It also encouraged Timorese leaders to continue efforts to establish accountability for serious crimes committed during the 2006 crisis, as recommended by the Independent Special Commission of Inquiry.

6. This report provides an update to UNMIT's second public human rights report, published in August 2008 in line with UNMIT's mandate

to "observe and report on the human rights situation"<sup>iii</sup>. It highlights achievements, as well as challenges. The report does not seek to provide an exhaustive overview, but instead focuses on the area of accountability for past and present human rights violations. In this regard, the report first provides an overview of the current situation, considering achievements, challenges and existing capacity gaps in relation to access to justice and security sector reform. It then provides specific information on accountability for human rights violations committed during the 2008 State of Siege, the 2006 Crisis and the Indonesian occupation. The report provides specific recommendations that, it is hoped, will serve as constructive guidance in Timor-Leste's efforts to come to terms with its past, in a way that makes the dignity of victims a priority, strengthens national unity and provides a foundation for sustainable and just development and peace.

## II. The current situation

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### 1. Access to justice

7. Between July 2008 and June 2009, some progress was made towards strengthening the justice system. As of 30 June 2009, there were 14 Timorese judges, 14 prosecutors and 11 public defenders assigned to Timor-Leste's four district courts, the Court of Appeal, and prosecution and public defender offices. International judicial personnel also continued to take up line functions alongside their Timorese counterparts. The presence of judicial actors in the districts increased, and district courts in Baucau, Dili, Oecusse and Suai held regular hearings. Four prosecutors were sworn in on 5 March 2009, and two judges and four public defenders were sworn in on 18 May 2009, after graduating from



the United Nations Development Programme (UNDP)-funded national Legal Training Center.

8. In spite of these encouraging developments, access to justice remained restricted. The Constitution of Timor-Leste guarantees access to courts “to all, for the defence of their legally protected rights and interests” (Section 26.1), and establishes that lack of economic means should not be an obstacle to accessing to justice (Section 26.2). However, outside of Dili, the three district courts were located far from the majority of the population, and transport costs and court fees were prohibitively expensive for many. There was low public awareness of formal justice mechanisms, including how to gain access to public defenders. In a number of cases, hearings were cancelled or delayed as a result of the absence of judicial actors, some of whom did not reside in their assigned districts. In Oecusse District, court staff sometimes had to interpret during trials as interpreters were not available.

9. The prosecution service inaugurated new offices in Covalima District in December 2008 and in Dili, Oecusse and Baucau Districts in early 2009. Two national prosecutors were assigned to, and resided in, Baucau and Suai and one national prosecutor resided in Oecusse. Despite the allocation of additional national and international human resources, the number of pending cases in the prosecution offices remained high. As of the end of June 2009, the number of criminal cases at the Prosecutors Office country-wide was 5,210 cases, a decrease of 364 cases compared to 31 December 2008<sup>iv</sup>. The majority of pending cases, 4,402 cases, were in Dili District. An overall total of 2,274 cases were dealt with during the same period. A number of factors hampered progress in prosecuting cases, including poor or incomplete police investigations, lack of resources, delays in the translation of documents and lack of effective case management. Problems in communication between prosecutors and police also led to

delays in investigations. Dr. Ana Pessoa was sworn in as the new Prosecutor General in March 2009. In a positive development, on 12 June 2009 the Office of the Prosecutor-General signed a Memorandum of Understanding with the National Hospital, to strengthen collaboration in the areas of laboratory tests and forensic investigation.

10. Legal assistance was primarily provided by the Public Defenders Office. In addition to a high caseload, it was reported that private legal work by some public defenders had a negative impact on their official duties. As of 30 June 2009, two national public defenders were residing in Baucau, and one in Covalima District. The public defender assigned to Oecusse District was reportedly only present for court hearings. The majority of the population had little understanding of the role of public defenders in providing legal assistance. One effect of the shortage of public defenders was that they did not make regular visits to Becora Prison, where a high number of pre-trial detainees are held. A law regulating private legal practice was promulgated on 30 July 2008, but did not meet international standards on the regulation and oversight of the practice of lawyers<sup>v</sup>. There was no independent national bar association. While private lawyers often faced large caseloads, initiatives by some NGOs to provide *pro bono* legal services had a positive effect in improving access to justice. For example, *Edukasaun Comunidade Matabian* (ECM) has been conducting a legal outreach programme to sub-districts in the eastern part of the country, which some community members stated increased their understanding of the formal legal system.

11. Marginalized groups, including women, children and the poor, faced additional cultural and economic challenges in accessing the formal justice system. Delays in investigations also had a disproportionate impact on vulnerable persons. In some cases, suspected perpetrators of serious crimes, including sexual assault,



remained in the community where victims lived. In one such case, investigations reportedly stalled due to delays in translating documents in the prosecutor's office, and an under-age victim of sexual assault and her family were reportedly threatened by the suspect. Cases were reported in which the alleged perpetrator remained in the community awaiting trial, and the victim had to move to a safe-house. The Human Rights Committee which interprets the International Covenant on Civil and Political Rights (ICCPR), to which Timor-Leste acceded in 2003, has stated that pre-trial detention should be "an exception and as short as possible" and must be lawful, necessary and reasonable<sup>vi</sup>. However, international standards also explicitly recognize that there are circumstances in which the authorities may detain a person pending trial, including when it is deemed necessary to prevent flight, interference with witnesses or when the suspect poses a clear and serious risk to others which cannot be contained by less restrictive measures<sup>vii</sup>. The Timor-Leste Criminal Procedure Code provides, *inter alia*, that restrictive measures may be imposed when there is "reasonable fear that the criminal activity might be pursued or that public order and peace might be disrupted as a result of the nature of the criminal offence and the circumstances surrounding it, as well as of the offender's personality"<sup>viii</sup>.

12. The lack of access to the formal system contributed to most cases being resolved through customary mechanisms that were more accessible and timely, but did not always conform to international human rights standards. The lack of a legal framework regulating customary mechanisms meant that there was no oversight of the extent to which they upheld basic fair trial as guaranteed in the ICCPR and the Constitution of Timor-Leste, including the presumption of innocence and the right to appeal<sup>ix</sup>. There was also concern that traditional mechanisms did not fully respect equality of men and women in contravention to Timor-Leste's

obligations as a States Party to the Convention on the Elimination of all forms of Discrimination against Women (CEDAW). Women victims were not always given a full voice in traditional processes, and compensation was sometimes granted to the woman's family rather than the woman herself<sup>x</sup>. Women reporting cases of domestic violence to the police were often encouraged to resolve these cases through traditional mechanisms, without international standard safeguards, including by police officers who at times participated in the mediation process<sup>xi</sup>. The Ministry of Justice, supported by the UN, launched a process of nationwide consultation to develop a legal framework linking customary justice mechanisms and the formal justice system. This was in accordance with Constitutional provisions for legislation dealing specifically with customary law (Section 2.4) and for the creation of arbitration courts and the institutionalization of non-judicial conflict resolution mechanisms (Section 123). At the end of June 2009, legislation was being drafted. It was hoped that this would facilitate Timor-Leste's ability to fulfil its treaty obligations as a State Party to the ICCPR, CEDAW and other human rights instruments, by ensuring that customary processes conform to international human rights standards.

13. Significant progress was made on the adoption of key legislation. A Penal Code came into force on 7 June 2009<sup>xii</sup>. Under the new Penal Code, defamation and crimes against honour are decriminalized, while violence against a spouse is now a public crime. On 6 July 2009, a Witness Protection Law came into force. While the adoption of such a 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. Progress was also made towards the drafting of a law against domestic violence, which presently is before the Council of Ministers, a land and property law, and a legal framework

linking customary justice mechanisms and the formal justice system, all of which will be critical components for rule of law and sustainable respect for human rights in Timor Leste.

## 2. The Security Sector

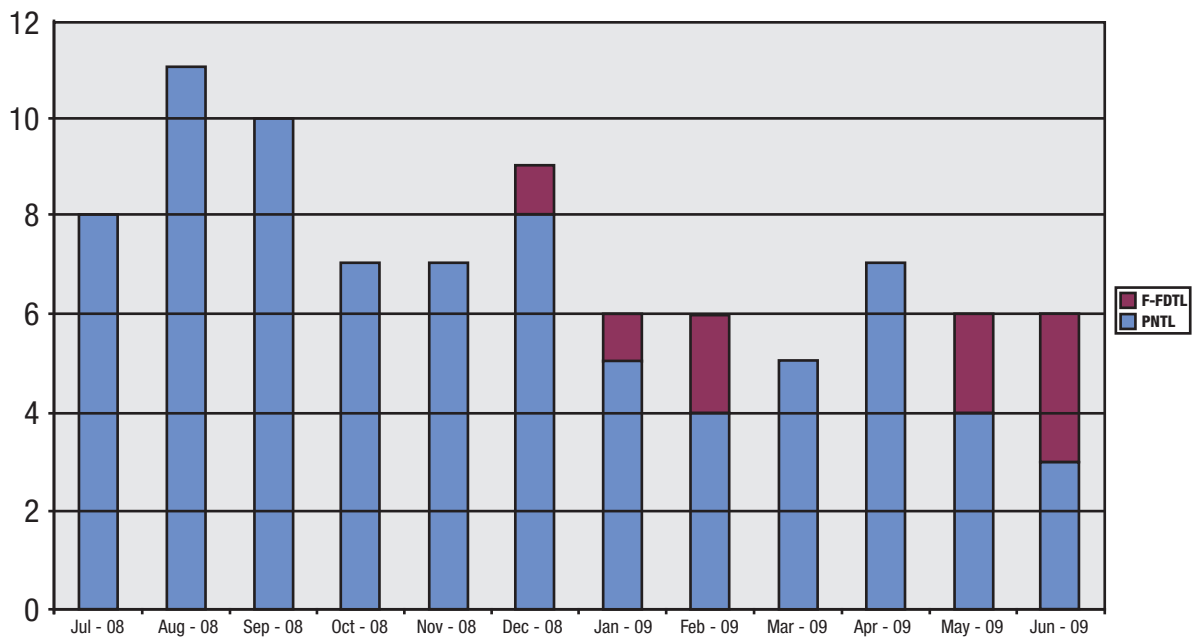
14. From 1 July 2008 to 30 June 2009, the overall security situation in Timor-Leste improved, with a decrease in reported security incidents. While UNMIT Police continued to ensure the restoration and maintenance of public security by providing support to the PNTL, including interim law enforcement, as well as training and institutional development, the PNTL moved towards increasing operational responsibility. Following joint Government and UNMIT assessments, PNTL in Lautem and Oecusse Districts assumed full operational policing responsibilities on 14 May and 30 June 2009, respectively.

15. In February 2009, the Organic Law of the Police was promulgated<sup>xiii</sup>. The stated objective of the law was to provide the PNTL with greater

operational capability and a more efficient chain of command. As a law dedicated to the police force alone it does not deal with the delineation of roles between the PNTL and F-FDTL<sup>xiv</sup>. It also did not appear to provide for an oversight body with guaranteed participation from the civilian sector, with respect to the implementation of the functions of the PNTL. The Organic Law stated that disciplinary matters are to be regulated by specific statutes<sup>xv</sup>. Presently these are regulated by the Disciplinary Regulation of the National Police of Timor-Leste 2004<sup>xvi</sup>. In Resolution 1867 (2009), the Security Council reaffirmed the need to enhance civilian oversight and accountability mechanisms of both the PNTL and F-FDTL and to delineate the role of these institutions clearly. In addition, the Organic Law of the Police did not mention the certification process although certification is mentioned in the PNTL Careers Law which requires officers to be certified in order to be eligible for promotion<sup>xvii</sup>.

16. There was a gradual decrease in the number of reported cases of human rights violations by members of the PNTL. However,

**Human Rights violations reported to the HRTJS**



from 1 July 2008 to 30 June 2009, UNMIT received allegations of 79 cases of ill-treatment or excessive use of force by PNTL Officers. In most cases, the ill-treatment or excessive force occurred as the PNTL responded to incidents. In many cases, victims did not want to file official complaints.

17. Some efforts were made to strengthen the internal PNTL accountability mechanism, i.e. the Professional Standards and Discipline Office (PSDO) at the national level<sup>xviii</sup>. Case tracking reportedly improved, and efforts were made to locate or reconstruct case files that had gone missing from the office. Between November 2008 and June 2009, the number of pending cases in the PSDO reportedly decreased from 373 to 42 cases. Of the cases in which investigations were completed, it was reported that the PSDO found almost half to be substantiated, and forwarded its findings to the appropriate authorities<sup>xix</sup>. However, there was no clear information regarding the implementation of penalties. At least 60 cases were reportedly awaiting decisions in the PNTL General Commander's office.

18. At the district level, there were serious obstacles to the effective functioning of the PSDO. PSDO officers were appointed by, and reported to, the PNTL district commander. Victims of human rights violations, including excessive use of force, sometimes experienced obstacles when attempting to report violations, including by being asked repeatedly by police officers to return at a later date, or to submit their complaint in writing. District commanders sometimes failed to take action on cases or to forward serious cases to the national authorities. A number of cases were solved by mediation, sometimes involving the PSDO officer or station commander. Documentation of offences in PNTL officers' official records was sometimes incomplete. In other cases, progress stalled after allegations were forwarded to the national PSDO. For example, in one case, a PNTL officer who abandoned his post in 2006 to join rebel

leader Alfredo Reinado's group returned to his post in February 2008, following the attacks against the President and Prime Minister. The PNTL district commander reportedly brought him to the PNTL National Headquarters, where he was interviewed. Subsequently, the District Commander and officer who abandoned his post returned to the district. The officer remains on active duty<sup>xx</sup>.

19. F-FDTL members were also reportedly responsible for human rights violations. After the end of the State of Siege, F-FDTL members withdrew to their barracks, but the distinction of roles between F-FDTL and PNTL remained blurred, with ongoing discussions on the role of the F-FDTL in internal security. For example, in early 2009, F-FDTL members were deployed to border areas in Bobonaro and Covalima Districts. The specific tasks of the F-FDTL during this deployment were unclear. In February 2009, UN Security Council Resolution 1867 (2009), reaffirmed the need for continued security sector reform in Timor-Leste, "in particular the need to delineate between the roles and responsibilities of the Falintil-Forças de Defesa de Timor-Leste (F-FDTL) and the PNTL, to strengthen legal frameworks, and to enhance civilian oversight and accountability mechanisms of both security institutions..."<sup>xxi</sup>.

20. Between 1 July 2008 and 30 June 2009, the HRTJS received reports of nine cases of violations by the F-FDTL. This constituted a decrease from the previous period, when F-FDTL members participated in internal security operations as part of the F-FDTL and PNTL Joint Command during the State of Siege<sup>xxii</sup>. However, it was of concern that as of June 2009, the number of human rights violations by F-FDTL members appeared to be increasing. On 7 May 2009, a group of F-FDTL members allegedly threatened two men on a beach near the Military Headquarters in Taci Tolu, Dili, causing them to run into the ocean. One man was allegedly severely beaten when

he returned to the shore soon afterwards. The second man was found dead on the shore the following day. The cause of his death was not known at the time of writing. An autopsy was carried out and the case was under investigation by the Prosecutor's Office. In an incident on 7 June 2009, F-FDTL members intervened to break up a fight between two martial arts groups in Maliana Market, Bobonaro District. While doing so, F-FDTL members reportedly pointed weapons at UNMIT Police and beat at least two

regard to misconduct is apparently often left to the discretion of the individual's immediate superior. It was of concern that police officers appeared to be reluctant to pursue criminal investigations involving members of the F-FDTL. For example, in June 2009, an F-FDTL member allegedly threatened and beat a residential security guard using his rifle, apparently because he believed the guard was laughing at him. The guard filed official complaints with both the F-FDTL and PNTL. In spite of this, neither the F-FDTL



civilians. Criminal investigation is ongoing. As of the end of June 2009, it was not clear whether indictments would be filed.

nor the PNTL had taken steps to interview the guard or any of the witnesses present during the incident.

21. Although the regulation on Military Discipline (Decree Law 17/2006) provided for a disciplinary process, it is not implemented in a systematic and formal manner. As a result, there was *de facto* non-formal internal accountability mechanism in place to address cases of misconduct by F-FDTL members. In practice the investigation and imposition of any sanction in

### 3. Police certification

22. In the aftermath of the 2006 crisis, UNMIT Police, pursuant to the Supplemental Policing Arrangement between the Government and UNMIT (December 2006) initiated a certification programme for the PNTL, to ensure that all officers upheld standards of integrity and



capacity. UNMIT Police statistics as of 28 June 2009 provided that 3,103 PNTL officers were registered, out of whom 2,847 were finally certified. Of the officers not finally certified, 77 cases were pending in the PSDO; 94 in the Office of the Prosecutor-General; 32 cases in both the PSDO and the Office of the Prosecutor-General; three in court; and 64 with the Timorese-led Evaluation Panel, established by the Government in August 2006<sup>xxiii</sup> to provide recommendations regarding the suitability of individual PNTL members for service<sup>xxiv</sup>. Those not yet finally certified as of the end of June 2009 included the PNTL District Commanders of Aileu, Dili and Manufahi Districts. The Evaluation Panel found that there were reasonable grounds to suspect one of these Commanders of involvement in criminal conduct and referred the case to the prosecutor's office for criminal investigation. In June 2009, the UNMIT Police Commissioner wrote a letter to the Minister of Defence and Security recommending the suspension of the Manufahi District Commander<sup>xxv</sup>. The Minister of Defence and Security responded that he should not be certified. Seventy-two PNTL officers had not registered for the certification process, some of whom reportedly remained on active duty. Twenty-one of them were facing disciplinary, integrity, or criminal issues, and two were under criminal investigation.

23. There continued to be concern regarding the effectiveness of the certification process. As of mid-July 2009, the UNMIT Police Commissioner had sent 14 files to the Minister for Defence and Security with two recommendations for dismissal for criminal convictions, eight recommendations for dismissal for not registering and four recommendations for suspension due to pending criminal investigations. In June 2009, one unregistered officer, who was facing charges of manslaughter, theft and use of firearms in connection with the 2006 crisis was dismissed by the Minister of Defence and Security, in accordance with the Supplemental

Policing Arrangement<sup>xxvi</sup>. As of the end of June 2009, the process had not resulted in any other dismissals<sup>xxvii</sup>. The Evaluation Panel met in January 2009, but as of the end of June 2009 had not met since. This meant a delay in recommendations being made with regard to uncertified officers facing human rights or integrity issues.

24. In districts where the PNTL resumed executive policing responsibility, there was particular concern that several police officers facing human rights or integrity issues remained on duty<sup>xxviii</sup>. One officer who had been certified even though he had been convicted of a violent crime remained on active duty. In the court decision, the name of the convicted PNTL officer was incorrect, and as a result he was not identified during screening. In Oecusse District, two uncertified PNTL officers who had pending cases with the Office of the Prosecutor General and one PNTL officer convicted of a criminal offence, were transferred to Dili PNTL Headquarters where PSDO files were opened. Four officers had not registered for the certification process. However, in one good example, one uncertified PNTL officer in Lautem District was suspended for 60 days on 12 May 2009, two days prior to the resumption of policing responsibility.

25. The certification and resumption process did not affect accountability for PNTL facing allegations of criminal offences or human rights allegations committed after their certification. For example, in Oecusse District, concern was raised prior to resumption regarding two PNTL officers charged with sexual abuse. In one case, the involved officer was reportedly given a written warning following a disciplinary hearing. A criminal case was reportedly closed due to lack of evidence. In the second case, the involved PNTL officer was suspended for two months without salary. The minor victim filed a criminal and a civil case. The Prosecutor closed

the criminal case due to lack of evidence, while the civil case was dismissed<sup>xxix</sup>.

#### **4. Criminal cases against PNTL officers accused of recent human rights violations**

26. While most cases of human rights violations were not adequately addressed, in a positive development at least five cases in which PNTL officers were accused of committing human rights violations reached trial in late 2008 and early 2009, and resulted in the conviction of the officers. Such efforts, if undertaken in accordance with the law and in trials that uphold international standards, could constitute an important step towards ending impunity.

27. On 8 October 2008, the Baucau District Court sentenced PNTL Intelligence Officer Luis da Silva to six years' imprisonment for the killing of CNRT member Afonso Guterres ("Kudalai") in Viqueque District on 3 June 2007 during the Parliamentary election campaign. The prosecution had asked for the maximum penalty of 15 years' imprisonment. The trial in relation to another killing that took place the same day, and in which another PNTL officer has been named a suspect, has not yet commenced.

28. On 26 January 2009, the Baucau District Court sentenced the former Baucau PNTL Sub-district Commander Fransisco Ersio Ximenes to one year's imprisonment, suspended for two years, for using coercion to obtain information from a suspect on 1 January 2008<sup>xxx</sup>. He was also ordered to pay the victim US\$ 30 and fined US\$ 20. During the trial, the Commander admitted that he beat the victim with a baton during questioning. He remained on active duty in Baucau.

29. On 10 February 2009, the Court of Appeal upheld a four year prison sentence for PNTL Officer Antonio Milik Dasi who was found guilty

of attempted manslaughter for the shooting and injuring of a civilian in Fohorem, Covalima District, on 6 April 2007. The defendant was also ordered to pay US\$ 1,000 to the victim, who became permanently disabled as a result of the shooting. The defendant reportedly remained on active duty until his arrest on 16 March 2009. As of the end of June 2009, the victim had not received compensation.

30. On 6 May 2009, the Baucau District Court sentenced former PNTL Uatulari Sub-district Commander Domingos Soares and two civilians to three years' imprisonment each for arson. The three were among a group of five men charged with arson and with committing violence against persons or property in Uatulari Sub-district, Viqueque District in August 2007<sup>xxxi</sup>. The former Viqueque PNTL District Commander, Gaspar da Costa and the Suco Chief were acquitted of all charges, while all defendants were acquitted of committing violence against persons and property. During the trial, a number of witnesses placed Gaspar da Costa at the scene, and described his involvement in house-burning. The prosecution and the two convicted defendants appealed the sentences and the appeal is pending.

31. On 17 June, the trial of two police officers who were accused of assaulting a woman while responding to an incident in Ossu Sub-district, Viqueque District in November 2008 opened in Baucau District Court. On 30 June 2009, the defendants were sentenced to two and six months suspended imprisonment respectively. The two officers remained on active duty.



### III. Accountability for human rights violations committed during the State of Siege

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32. On the evening of 11 February 2008, in response to attacks against the President and Prime Minister, the acting President declared a State of Siege to apprehend those who threatened the constitutional order and maintain public order. The situation remained calm despite genuine concerns of renewed violence<sup>xxii</sup>. However, during the State of Siege, Joint Command operations by the F-FDTL and PNTL led to an increase in reports of human rights violations. From 11 February to 22 May 2008, when the State of Siege ended in Ermera District, the HRTJS received allegations of 58 incidents of ill-treatment by F-FDTL and PNTL members. At least 15 cases were reported in which F-FDTL and PNTL members allegedly threatened civilians, including six cases involving death threats. At least 11 cases were reported in which arrests carried out by the PNTL and F-FDTL did not comply with legal procedures.

33. By the end of June 2009, no members of the security forces suspected of committing human rights violations during the State of Siege had been held accountable. A number of cases were investigated by the PNTL's National Investigation Department (NID) and forwarded to the Prosecutor-General's Office. However, as of 30 June 2009, no indictments had been filed.

34. There was particular concern about the lack of progress in bringing to justice a number of serious cases of human rights violations that occurred in Ermera District during the State of Siege. These included incidents in Estado Village on 12 March 2008 in which 17 persons were reportedly ill-treated, in Hatolia Sub-district on 11 April 2008 in which at least 11 persons were allegedly ill-treated and in Letefoho Town on 14 April 2008 in which 13 persons were reportedly ill-treated. The cases were investigated by NID

and forwarded to the Prosecutor-General's Office. At the end of June 2009, some victims stated that they had not received feedback on their cases since the end of the State of Siege. While the majority of victims stated that they wanted the perpetrators to face trial, some expressed concern about possible reprisals by members of the security forces, should such trials commence.

35. On 5 April 2008, a civilian who was allegedly threatening F-FDTL members with a machete was shot and killed by a member of the F-FDTL in Bobonaro District. The victim was reportedly mentally ill and threatening the F-FDTL officer with a machete. The NID investigated the case and forwarded it to the Prosecutor-General. By June 2009, the case had been archived.

36. Of the 44 cases that were brought to the attention of the Office of the Provedor for Human Rights and Justice (PDHJ), 40 were investigated. In the remaining cases, the complainants withdrew their complaints. The PDHJ presented its findings in a report to National Parliament on 29 June 2009. As of the end of June, the findings had not been made public.

## IV. Accountability for human rights violations committed during the 2006 crisis

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37. In late April 2006, violence erupted following the dismissal in March 2006 of about one third of the country's military, who came to be known as "the petitioners", many of whom had walked out after complaining of discrimination in the F-FDTL against soldiers from western districts of Timor-Leste<sup>xxxiii</sup>. Violence escalated in late May 2006, following the departure with arms of the late Alfredo Reinado from Military Police Headquarters and as military and police weapons proliferated, including into the hands of civilians. A number of confrontations between the F-FDTL and those who had left the army, some members of the PNTL and civilians culminated in the 25 May armed confrontation at the PNTL Headquarters in which eight unarmed PNTL officers under UN escort were killed by F-FDTL members. More than 100,000 civilians were displaced.

38. More than three years after the 2006 crisis, progress towards holding accountable those responsible for criminal acts and human rights violations remains slow and incomplete but has recently begun to progress significantly, with an increasing number of cases being investigated or awaiting trial. On the invitation of the Government of Timor-Leste, the United Nations established an Independent Special Commission of Inquiry for Timor-Leste under the auspices of the OHCHR. In its final report, submitted on 2 October 2006, the Commission estimated that 38 persons were killed, 69 suffered injuries and 150,000 were displaced in the context of the crisis<sup>xxxiv</sup>. The Commission recommended that accountability be accomplished through the national judicial system and named individuals whom it recommended for prosecution or further investigation. In addition, it was recommended that state officials involved in the events be subject to appropriate disciplinary procedures and administrative sanctions.

39. The Commission proposed the appointment, within the domestic system, of a senior international prosecutor as Deputy Prosecutor-General with a clear mandate to investigate and prosecute the cases impartially and without political interference. Where trials involve a panel, it was recommended that the panel be comprised of two international judges and one national judge, and where trials involve a single judge, that judge be an international judge. The need for witness protection was also emphasized. Finally, the Commission recommended that the Government provide reparations, with particular attention to persons who had suffered the death of a family member, significant injury or destruction of their residence.

40. The investigation into cases commenced in June 2006. As of 30 June 2009, final judgment had been rendered in two cases. In the two completed trials, a total of 16 persons were tried, seven of whom were convicted and nine of whom were acquitted. Based on monitoring, the trials that had been completed were largely fair, complied with international standards, and respected the rights of defendants<sup>xxxv</sup>. However, obstacles to enforcement of sentences remained a challenge, and led to public perceptions that some individuals are above the law.

41. In November 2007, four F-FDTL soldiers were sentenced to between 10 and 12 years imprisonment for manslaughter and attempted manslaughter in connection with the killing of eight police officers on 25 May 2006, and to pay compensation. They remained in an *ad hoc* prison on the grounds of the Military Headquarters in Taci Tolu, Dili as of the end of June 2009. They had reportedly not been dismissed from the military and continued to receive their salaries. They also had not paid

compensation to the widows of the killed police officers, who were seeking legal advice in an effort to enforce the compensation ruling.

42. With regard to the second case tried, the former Minister of Interior, Rogerio Lobato, was sentenced in March 2007 to seven and a half years imprisonment for manslaughter and illegal distribution of weapons. The sentence was upheld by the Court of Appeal in May 2007 and he was imprisoned. In August 2007, Lobato was allowed to go abroad for medical treatment. He remained abroad until President Ramos-Horta granted him a partial commutation of his sentence on 20 May 2008, and he was officially conditionally released on 3 June 2008, while he remained abroad.

43. Nineteen cases were under investigation or on trial. In an effort to address the delays in bringing cases to trial, caused among other things by limited logistical and human resources in the Office of the Prosecutor-General and the complexity of the cases, the OHCHR funded an international prosecutor to specifically investigate and prosecute the cases mentioned in the Commission report. The international prosecutor commenced work in March 2008. As of 30 June 2009, trials were underway in four cases and 15 investigations were ongoing.

44. **Vicente da Conceicao (Railos), Leandro Lobato and Mateus dos Santos Pereira (Maurakat)** face charges of manslaughter, threatening violence, unlawful deprivation of liberty, as well as the illegal use of firearms in connection with the armed confrontation in Tibar on 24 – 25 May 2006. Railos and Lobato were arrested on 3 October and 30 November 2007 respectively. They were held in pre-trial detention. From July to September 2008, Railos' pre-trial detention was suspended as he travelled to Indonesia for medical treatment. When he returned, he remained on conditional release. Leandro Lobato was conditionally released in September 2008. Both men reported

weekly to the police in Liquisa District. The trial was delayed as Maurakat, believed to be in Indonesia, had not yet been apprehended. The Judge finally ordered the separation of the cases in April 2009, and trial sessions commenced. The ongoing delays in this case have been of concern. By the end of June 2009, the trial was continuing.

45. **Twenty-eight persons** face charges of manslaughter, attempted manslaughter, rebellion, and weapons charges in relation to an armed confrontation in Fatu Ahi in May 2006. A session took place in Dili District Court on 16 October 2008, but as the international presiding judge left Timor-Leste, no sessions have taken place since that time. Five defendants are in pre-trial detention, while the others have been released under restrictive measures pending trial.

46. **Former PNTL Deputy Commander, Abilio Mesquita and three co-defendants** face charges of manslaughter, theft and use of a firearm in relation to the armed attack on the house of F-FDTL Commander Taur Matan Ruak on 24 - 25 May 2006. The retrial was scheduled to open on 8 June 2009, but was postponed until 21 September 2009 as only one of the three-member panel of judges was present. This is the third trial of the four defendants, as two previous trials have been declared null and void by the Court of Appeal. On 13 March 2008, Abilio Mesquita was acquitted of manslaughter but sentenced to three years and three months imprisonment for theft and using a firearm with intent to disrupt public order. His three co-defendants were sentenced to one year and six months' imprisonment for intent to disrupt public order. Abilio Mesquita was dismissed from the PNTL as he failed to register for certification.

47. **Ozorio Mauleki** faces charges of inciting violence that triggered an attack on the Government Palace on 28 April 2006. The

trial opened on 22 June 2009, but hearings were postponed to an undetermined date in September or October 2009, as witnesses were reportedly not present, and due to the potential need to charge the defendant under the new Timor-Leste Penal Code.

48. The Commission of Inquiry report made a number of recommendations that went beyond

placing individual criminal responsibility. The report recommended that disciplinary procedures and administrative sanctions be applied to State officials involved in the events of April and May 2006. So far, no steps have been taken in this direction. However, in a positive step towards implementation of the recommendations, more than US\$ 170,000 was paid to victims and their families.

## V. Accountability for human rights violations committed during the Indonesian occupation (1974– 1999)

49. During the Indonesian occupation of Timor-Leste (1974-1999), grave human rights violations were committed by members of the Indonesian security forces. On 30 August 1999, the population of Timor-Leste voted overwhelmingly for independence in a “popular consultation”. In the months surrounding the ballot, pro-Indonesia militia members, supported by the Indonesian security forces, committed serious human rights violations including killings, sexual violence, forced displacement and destruction of property. The

violence escalated after the announcement of the result of the ballot on 4 September 1999. An International Commission of Inquiry on Timor-Leste concluded in January 2000 that “there were patterns of gross violations of human rights and breaches of humanitarian law which varied over time and took the form of systematic and widespread intimidation, humiliation and terror, destruction of property, violence against women and displacement of people<sup>xxvii</sup>”. To date, the vast majority of perpetrators of these violations have not been brought to justice.





## **1. Individual criminal responsibility for human rights violations committed in 1999**

50. The Serious Crimes Investigation Team (SCIT) of UNMIT, which has a mandate which only covers serious crimes committed in 1999, continued investigations. This included investigations into cases not completed by the Serious Crimes Unit (SCU) which operated from 2000 to 2005. Among these cases were 486 murder cases that had not yet been investigated<sup>xxxvii</sup>. The SCIT only resumed investigations in February 2008, after the signing of an agreement between the United Nations and the Timorese authorities that granted and regulated access to the serious crimes archives. After review of files, the SCIT identified 390 pending cases. SCIT's mandate is limited to investigative tasks<sup>xxxviii</sup>.

51. As of June 2009, SCIT investigators had concluded investigations in 80 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 2009, the Prosecutor-General had not filed any indictments. The lack of experience among Timorese judicial actors in dealing with crimes against humanity and war crimes was also of concern, as the Special Panels and the Prosecution Service that dealt with serious crimes until 2005 were staffed solely by internationals, although five Timorese legal staff received training.

52. Only one of the 84 persons convicted by the Special Panels before they closed in 2005 remains in prison. Nine persons who had been convicted of Crimes Against Humanity in the Special Panels received commutations of their sentences on 20 May 2008<sup>xxxix</sup>. All nine were conditionally released by the end of 2008. Among them was militia leader Joni Marques who had originally been sentenced

to 33 years' imprisonment for the killing of nine persons, including two nuns, three priests and a journalist. His sentence was reduced to 25 years in 2004, and halved in 2008. An additional 13 people convicted by the Special Panels received Presidential Pardons by current and former presidents.

53. Three hundred and one persons indicted by the SCU remained at large, while one suspect was arrested in December 2008 and was being held in pre-trial detention<sup>xl</sup>. The vast majority of those at large are believed to be in Indonesia, and Timor-Leste has never formally requested their extradition. Meanwhile, in the separate national process in Indonesia, *ad hoc* human rights trials led to the acquittal of all 18 persons facing charges by March 2008.

54. Victims and their relatives continued to demand justice, through criminal prosecution, for crimes committed during the entire period of Indonesian occupation (1974 – 1999). Among the many crimes for which impunity persisted were cases of sexual violence. At a Second International Women for Peace Conference in March 2009, participants called on the Government to investigate and prosecute crimes committed in 1999 and during the occupation, to document atrocities against women, and to compensate victims and survivors<sup>xli</sup>. As hybrid or national processes had only delivered justice in a minority of the many crimes and human rights violations committed, calls for an international tribunal persisted among large parts of the population.

## **2. Truth and reconciliation processes: CAVR and CTF**

55. The final report of the bilateral Indonesia-Timor-Leste Commission of Truth and Friendship (CTF) was officially submitted to the Presidents of Indonesia and Timor-Leste on 15 July 2008, and the two Presidents

issued a joint statement recognizing that gross violations of human rights had occurred, expressing remorse to all those who suffered and committing themselves to implement the Commission's recommendations. This was the first official recognition by Indonesia that its State institutions had systematically violated human rights in Timor-Leste. The report made recommendations in the areas of accountability and institutional reform; joint border and security policy; promotion of conflict resolution and psychosocial services for victims; resolution of economic and asset issues, and the formation of a commission for disappeared persons. While the CTF was mandated to recommend amnesties, it did not do so.

56. The recommendations of the CTF complement and generally conform with the more detailed recommendations contained in the report of the Commission for Truth, Reception and Reconciliation (CAVR), "Chega!" ("Enough!"), which was submitted to Timor-Leste's National Parliament in November 2005. The recommendations of the "Chega!" report include issues related to institutional reform, reparations, documentation and memorialisation<sup>xliii</sup>, justice, promotion and protection of human rights as well as creating a commission for disappeared persons.

57. Both the CAVR and CTF reports document cases of sexual violence, including rape. The CAVR Report found that acts of rape, sexual torture, sexual slavery and other acts of sexual violations were widespread, documenting 853 cases of sexual violence. It also found that some women continue to be ostracized today because of their experiences, and the incidence of domestic violence in Timor-Leste is high<sup>xliiii</sup>. The report made a number of recommendations for addressing these issues, including through recognition, compensation and rehabilitation for victims, broad-based awareness raising, legal reform and availability of reproductive health care services. The report also recommended the exclusion of crimes against humanity and

war crimes that involved sexual violence from any amnesty provision, in accordance with UN Security Council Resolution 1325 on Women, Peace and Security<sup>xliiv</sup>.

58. Limited progress has been made in implementing the recommendations of the CAVR and CTF reports. The failure to table and discuss the reports in the National Parliament remains a major obstacle to implementation of the recommendations. While some efforts have been made to disseminate the findings of the reports, these have so far been insufficient although in June 2009, there were renewed efforts towards making progress in the area of dissemination.

59. The Ministry of Foreign Affairs established working groups to implement the recommendations of the CTF report, and in June 2009 a National Consensus Dialogue on truth, justice and reconciliation between Timor-Leste's leadership, political party leaders and civil society resulted in a common position in favour of reparations for victims and a follow-up institution to the CAVR and CTF. In particular, there was broad support for a programme of material reparations for victims of the gravest violations who continue to suffer the consequences of these violations and for the establishment of a "solidarity fund" referred to in the Secretary-General's Report on Justice and Reconciliation for Timor-Leste<sup>xliv</sup>. A reparations programme proposed by the CAVR report is aimed at the most vulnerable victims who continue to suffer from negative effects of the torture, sexual abuse or other violation that they experienced. OHCHR/HRTJS, along with other partners in a reparations working group, is supporting the efforts of Committee A of Parliament to draft a law on a follow-up institution to the CAVR and CTF but the exact roles and responsibilities of such an institution remains to be formally debated and agreed.

60. There are major differences between political parties and leaders on the issue of



formal justice and amnesties. The CTF report did not recommend amnesties, and the CAVR recommended that the international community take concrete steps to support the Serious Crimes process. Victims of past violations have continued to call for the perpetrators of crimes against them or their family members to face justice. Under international law, amnesties are impermissible if they prevent prosecution of

individuals who may be criminally responsible for war crimes, genocide, crimes against humanity or gross violations of human rights, including gender-specific violations. Meetings of victims groups held in the Districts throughout 2009, to prepare for a National Victims Congress to be held in September 2009, also called consistently for perpetrators of serious crimes to be brought to justice.

## **VI. Human Rights and Transitional Justice Section (HRTJS) activities to promote accountability for past and present human rights violations**

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61. The HRTJS carried out activities to promote accountability for past and present human rights violations. In terms of accountability for current violations, the HRTJS documented these and, when relevant, assisted victims in filing complaints with the authorities. While progress in most cases was slow, some cases monitored by the HRTJS reached trial. The Section also submitted information to the PNTL vetting process and participated as an observer in the Evaluation Panel. In addition, the HRTJS provided input to draft legislation including the Criminal Code, the legal framework on traditional justice, domestic violence legislation and the witness protection law, to ensure that these did not violate Timor-Leste's treaty obligations and conformed to international human rights standards.

62. In the area of transitional justice, the HRTJS, through the OHCHR, funded an international prosecutor to focus on cases recommended for investigation and prosecution in the report of the UN Independent Special Commission of Inquiry for Timor-Leste (2006). In relation to implementation of the recommendations of the CAVR and CTF reports, the HRTJS, together

with the post-CAVR Technical Secretariat, the International Centre for Transitional Justice and local NGOs, established a working group which drafted a paper on reparations and commenced discussions on the CAVR and CTF follow-up institution. In addition, outreach activities to raise awareness among the population about transitional justice related issues continued, in collaboration with SCIT. This included support for regional meetings of victims in preparation for a national congress<sup>xlvi</sup>.

## VII. Recommendations

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To the **President of the Republic**: Ensure that any pardons, commutation of sentences or amnesties conform to international human rights standards and Security Council resolutions and promote accountability for serious crimes and crimes detailed in the 2006 Independent Special Commission of Inquiry report. Continue to work with the President of Indonesia and the National Parliament of Timor-Leste to address the recommendations of the CAVR and CTF. As Chair of the Supreme Council of Defence and Security, regularly review the functioning of the PNTL and F-FDTL to ensure their respect for the constitution, human rights and the rule of law.

To the **National Parliament**: Discuss the final CAVR and CTF reports and task the Government with implementing its recommendations, including the establishment of a follow-up institution and a reparations programme. Ensure that any Law in relation to Amnesties conforms with international standards and Security Council resolutions, including Security Council Resolution 1325 on Women, Peace and Security, and does not promote impunity or undermine initiatives towards establishing accountability for serious crimes and crimes detailed in the 2006 Independent Special Commission of Inquiry report. Ensure that relevant laws provide for a clear distinction of roles and responsibilities between the F-FDTL and PNTL, in accordance with the Constitution. Regularly review the Organic Laws of the PNTL and F-FDTL to ensure that oversight mechanisms are put in place.

To the **Prime Minister**: Ensure sufficient funding for a follow-on institution to implement the recommendations of the CAVR and the CTF. Closely working with the Parliament, ensure that there is clear separation of roles and responsibilities between the F-FDTL and PNTL, in accordance with the Constitution. Put in place a framework for strengthening internal accountability mechanisms and external civilian

oversight of the security forces. Ensure that the judiciary and prosecution services are allocated sufficient resources to enable them to work effectively throughout the country. Continue to work with the Government of Indonesia to follow up the recommendations of the CAVR and CTF. Ensure that the Provedor for Human Rights and Justice has sufficient budgetary and human resources to carry out its' independent mandate and to solidify its' presence in the regions.

To the **Minister of Justice**: Sustain efforts to relocate judicial personnel to the districts, and enhance living and working conditions. Provide the district courts with adequate logistical support. Speed up translation efforts in the courts and prosecutor offices. Establish a clear regulatory framework on how the formal justice system and customary mechanisms can cooperate in a transparent and human rights abiding way. Develop a plan to socialise and facilitate the implementation of laws addressing the high rate of domestic violence and sexual assault in the country.

To the **Secretary of State for Security**: Strengthen the PSDO, and take other necessary measures of institutional reform to ensure accountability of police officers involved in human rights violations and breaches of discipline. Ensure that the Evaluation Panel meets regularly and that all officers alleged to have been involved in criminal acts and/or human rights violations are dealt with appropriately, including possible dismissal for serious cases of violations. Ensure that officers who are facing human rights or integrity issues are suspended prior to resumption of policing responsibility in districts or units. Ensure that the Vulnerable Persons Units (VPUs) within the PNTL, including those in the sub-Districts, are prioritized for logistical and human resource support and training.

To the **PNTL Commander**: Prioritize the VPU for logistical and human resource support and training and support measures to strengthen accountability for police officers involved in criminal conduct, human rights violations or breaches of discipline.

To the **Secretary of State for Defence**: Strengthen the internal disciplinary mechanism of the military. Ensure cooperation of F-FDTL members with criminal investigations by the justice/legal system and their submission to the rule of law. Strengthen the capacity and awareness of Military Police to ensure that military personnel comply with disciplinary standards at all times.

To the **General Commander of the F-FDTL**: Ensure that F-FDTL forces respect constitutional rights and the rule of law, as well as international human rights and international humanitarian law principles and standards at all times and ensure cooperation of F-FDTL members with criminal investigations by the justice system and their submission to the rule of law.

To the **Judiciary**: Ensure that trials uphold international standards for fair trial and maintain full independence.

To the **Prosecutor-General**: Implement a prosecutorial strategy that sets priorities for cases based on gravity, impact and evidence, with appropriate consideration given to the high number of cases of sexual assault and domestic violence. Investigate and prosecute human rights violations committed during the State of Siege and Emergency. Ensure criminal responsibility for crimes committed in April and May 2006, in line with the recommendations of the United Nations Independent Special Commission of Inquiry for Timor-Leste. Based on SCIT investigations, indict individuals suspected of serious crimes in 1999. Ensure that members of the F-FDTL and PNTL who

commit human rights violations are brought to justice. Enhance coordination mechanisms with police.

To the **Providor for Human Rights and Justice**: Conclude investigations into 40 cases of alleged violations received during the State of Siege and Emergency and make clear recommendations to the relevant authorities. Make relevant findings on the State of Siege public. Continue to strengthen the resources and capacity of newly established regional offices to increase accessibility for people in the Districts.

To **civil society organizations**: Enhance legal aid and victim support activities, with an emphasis on domestic violence and sexual assault, in particular in the districts. Strengthen human rights monitoring and reporting mechanisms. Continue to urge the Indonesian Government and NGOs/Civil Society to take necessary judicial steps to prosecute Indonesian nationals who committed serious human rights violations in Timor-Leste.

To the **donor community**: Continue to provide technical and other forms of assistance in the areas of security sector reform and justice in a planned and coordinated manner to maximise positive impact. Provide support to national networks of lawyers that provide *pro bono* services in the districts and to the establishment of an independent national bar association. Continue to advocate for accountability for serious crimes and 2006 COI related crimes as provided for in successive Security Council resolutions. Continue to support the post-CAVR Technical Secretariat. Provide support to a follow-up institution to implement the recommendations of the CAVR and the CTF. Continue to urge the Government of Indonesia to address the issues of serious human rights violations committed in Timor-Leste.

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<sup>i</sup> The four other human rights and transitional justice priorities are reducing violence against women and children, contributing to effective security sector reform that integrates a respect for human rights and effective civilian oversight, promoting the progressive realization of economic, social and cultural rights for all citizens without discrimination and enhancing the capacity of the national human rights institution, the Provedor/Ombudsperson for Human Rights and Justice (PDHJ) to promote and protect human rights in Timor Leste. In pursuing these objectives in partnership with Government, the UN country team, and civil society the HRTJS aims to promote respect for both rights and responsibilities, to place an emphasis on the prevention of violations, and to identify and train national actors capable of carrying on this work after UNMIT is wound down. Subsequent reports will focus on these other thematic human rights priorities.

<sup>ii</sup> United Nations Security Council, S/RES/1867 (2009), 26 February 2009.

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

<sup>iv</sup> Office of the Prosecutor General, Press Release, 7 July 2009. It should be noted that in July 2008 there were approximately 4,700 pending cases in Dili District Court.

<sup>v</sup> Law No. 11/2008 (30 July 2008) on the Legal Regime on private advocates and the training of advocates. The United Nations Basic Principles on the Role of Lawyers (1990) provides that professional associations of lawyers should be self-governing and exercise functions without external interference, and that disciplinary proceedings against lawyers shall be brought before impartial committees established by the legal profession. The law falls short of these standards.

<sup>vi</sup> Human Rights Committee, General Comment No. 8, "Right to liberty and security of persons (Art. 9), 30 June 1982.

<sup>vii</sup> ICCPR, Article 9(3); Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173, 9 December 1988, Principle 36; United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), Adopted by General Assembly resolution 45/110, 14 December 1990, Principle 6.

<sup>viii</sup> Decree Law No. 13/2005, Approving the Criminal Procedure Code, Article 183 (c).

<sup>ix</sup> International Covenant on Civil and Political Rights, Article 14.

<sup>x</sup> "Local justice and formal justice: can the two systems work together in Timor Leste?", International Women's Peace Conference Paper, Presented by Ms Flora Soriano Menezes, Legal Researcher, Women's Justice Unit, Judicial System Monitoring Programme (JSMP) available at: [http://www.alolafoundation.org/peace\\_conference\\_speeches/Traditional\\_Formal\\_Justice\\_Flora\\_JSMP.pdf](http://www.alolafoundation.org/peace_conference_speeches/Traditional_Formal_Justice_Flora_JSMP.pdf)

<sup>xi</sup> Traditional justice mechanisms in Timor-Leste are localized and practices vary throughout the country. The process usually involves traditional leaders, village chiefs, local elders and the families of perpetrators and victims. Disputes are often resolved through meetings that aim to promote reconciliation within the community and in which the victim may be entitled to financial compensation (in the form of money, woven cloth or animals). In some districts, the police facilitate informal settlements by mediating "peace-agreements" which victims and perpetrators sign, apologizing for their actions and promising to not repeat these. *Ibid.*

<sup>xii</sup> Decree Law No. 19/2009 Approving the Penal Code.

<sup>xiii</sup> Decree Law no. 9/2009 Organic Law of the National Police of Timor-Leste (PNTL).

<sup>xiv</sup> Laws on Internal and National Security, which could further address the delineation of roles between the F-FDTL and PNTL were being drafted at the time of writing.

<sup>xv</sup> *Ibid.*, Art. 42.

<sup>xvi</sup> Decree Law no. 13/2004 Disciplinary Regulation of the National Police of Timor-Leste.

<sup>xvii</sup> Related laws that were also promulgated during the reporting period include the Regime of Promotion of PNTL (Decree Law no. 16/2009) and the Salary Scheme for the PNTL (Law no. 10/2009).

<sup>xviii</sup> The Department of Justice is commonly referred to by its former name, the Professional Standards and Discipline Office (PSDO). The Organic Law of the Police (Decree Law no. 9/2009), Art. 24, 19 February 2009, provides for the Department of Justice.

<sup>xix</sup> Disciplinary competencies to judge offences, hand down penalties and grant awards rest with the appropriate officials within the line of command as outlined in the Disciplinary Regulation of the National Police of Timor-Leste (Decree Law 13/2004, Chapter 1, Art. 19). Where a superior believes that a police member deserves a punishment which exceeds his or her competencies as outlined in the law, the case is forwarded to his or her immediate superior within the framework of the chain of command (Art. 20).

<sup>xx</sup> The PNTL officer in question has not yet been certified.

<sup>xxi</sup> S/RES/1867 (2009), 26 February 2009, para. 4.

<sup>xxii</sup> From 11 February 2008 to the end of the State of Siege on 22 May 2008, the HRTJS documented 24 cases of ill-treatment in the context of joint PNTL/F-FDTL operations and 13 cases of ill-treatment by F-FDTL members. Report on human rights developments in Timor-Leste. The security sector and access to justice, 1 September 2007–30 June 2008, para. 20.

<sup>xxiii</sup> Government Resolution 3/2006, 31 August 2006.

<sup>xxiv</sup> UNMIT Police, Weekly Situation Report 26/2009, 21 June 2009 to 27 June 2009.

- <sup>xxxv</sup> Prime Minister Xanana Gusmão also serves as Minister of Defence and Security.
- <sup>xxxvi</sup> The dismissed officer who had not registered is Abilio Mesquita who is on trial in connection with the 2006 crisis. See paragraph 37.
- <sup>xxxvii</sup> The registration process for PNTL officers who had failed to register reopened for a limited period, and was and is due to close on 30 July 2009. In the meantime, no action can be taken against unregistered PNTL officers.
- <sup>xxxviii</sup> Mutually agreed criteria between the Government of Timor-Leste and UNMIT stipulates that at least 80 percent of PNTL officers must be finally certified in a given district or unit prior to resumption of policing authority.
- <sup>xxxix</sup> One of these cases was included in UNMIT's Report on human rights developments in Timor-Leste (August 2008), para. 26. UNMIT recommended that cases of such a serious nature be investigated without delay.
- <sup>xxx</sup> Article 422 of the Indonesian Criminal Code.
- <sup>xxxi</sup> Articles 187 and 170 of the Indonesian Criminal Code.
- <sup>xxxii</sup> For further information on the State of Siege, see UNMIT Report on human rights developments in Timor-Leste, The security sector and access to justice, 1 September 2007-30 June 2008, para. 13-24.
- <sup>xxxiii</sup> For detailed information on the 2006 crisis, see: Report of the UN Independent Special Commission of Inquiry for Timor-Leste, 2 October 2006.
- <sup>xxxiv</sup> Report of the UN Independent Special Commission of Inquiry for Timor-Leste, 2 October 2006, para. 100 – 101.
- <sup>xxxv</sup> As described in Section II.1 of this report, the justice system in Timor-Leste remains weak.
- <sup>xxxvi</sup> OHCHR, "Report of the International Commission on Inquiry on East Timor to the Secretary-General", 31 January 2000, A/54/726, S/2000/59.
- <sup>xxxvii</sup> Between 2000 and 2005, the SCU received reports of approximately 1,400 murders throughout Timor-Leste, and filed indictments against suspects in 572 of these cases.
- <sup>xxxviii</sup> While the SCU could file indictments directly with the Special Panels for Serious Crimes, the SCIT mandate is limited to investigation tasks. The prosecution of perpetrators is the exclusive prerogative of the Office of the Prosecutor-General of Timor-Leste. SCIT submits the collected evidence and its final recommendations to the Office of the Prosecutor-General, who then has the power to file an indictment or dismiss a case for lack of factual or legal basis.
- <sup>xxxix</sup> On 20 May 2008, the President granted pardons or partial commutation of sentence to 94 of Timor-Leste's 179 prisoners. While legal, the pardons and commutations were considered by many as undermining efforts to promote accountability and justice and combat impunity. See UNMIT Report on human rights developments in Timor-Leste, The security sector and access to justice, 1 September 2007 – 30 June 2008, para. 45-46.
- <sup>xi</sup> Two indicted persons, Ruben Tavares and Abilio Osorio, died before they could be apprehended. One person, Domingos Mau-buti is currently detained in Becora Prison, Dili and is awaiting trial.
- <sup>xii</sup> Resolution on Gender Justice to the Government of Timor-Leste, Second International Women for Peace Conference, Dili, Timor-Leste, March 2008.
- <sup>xiii</sup> "The Chega!" report refers specifically to memorialisation, which is described as including, commemoration ceremonies, dates, monuments, and other initiatives to honour and remember victims of human rights violations, development of educational materials, popular literature, music and art for remembrance, and an education programme to promote a culture of non-violent resolution of conflict. "Chega!", Chapter 11, p. 43.
- <sup>xliii</sup> "Chega!", Final Report of the Commission for Reception, Truth and Reconciliation in East Timor, November 2005. Part 11, Recommendations, paragraph 4.1.
- <sup>xliv</sup> Security Resolution 1325 (2000), S/Res/1325 2000, 31 October 2000, paragraph 11.
- <sup>xlv</sup> Report of the Secretary-General on Justice and reconciliation for Timor-Leste, 26 July 2006, S/2006/580.
- <sup>xlvi</sup> The National Victims Congress is scheduled to take place in September 2009.