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The Democratic Republic of Timor-Leste

A new police service - a new beginning

1. Introduction

*“...there is more to policing than simply men or women in uniform. There are all sorts of agencies in society, which hinder or affect the security of the individual or the quality of life... the modern view of policing around the world is that what one might call the core police service is seen almost as the convergence point in a network of arrangements which eventually gives the communities and families and individuals some responsibility - even a great deal of responsibility - for ensuring and protecting the quality of life and safety and security of the citizen”.*¹

In late 2002, Amnesty International carried out research in the Democratic Republic of Timor-Leste (Timor-Leste)² to assess the extent to which human rights standards are being integrated within the development process and operations of the new National Police of Timor-Leste (*Polícia Nacional de Timor-Leste*, PNTL).³ The detailed findings of this research are discussed in the following report. However, one overarching conclusion, which was evident at the time and has been reinforced by subsequent events, is that, despite significant progress, 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 law and standards.

Just how unprepared the PNTL is to discharge its responsibilities was demonstrated on 4 December 2002 when, forced to respond to disturbances in the capital of Dili, PNTL officers shot some 18 people, two fatally. Around 80 people

¹ Dr Maurice Hayes, a member of the former Independent Commission on Policing for Northern Ireland, in a speech given at a conference by the Committee on the Administration of Justice in Belfast, Northern Ireland, United Kingdom in October 1999.

² The name of the territory, which was formerly known as East Timor, was changed to the Democratic Republic of Timor-Leste when it became independent in May 2002. For the sake of consistency, Timor-Leste will be used throughout this document except where East Timor is used in titles of reports or other official contexts.

³ PNTL has also been known as the East Timor Police Service (ETPS) and the Timor-Leste Police Service (TLPS). PNTL is now the official name.

were arrested during the day and there are credible reports that some were beaten by PNTL officers during arrest and when in custody. Although details of the day's events remain sketchy, it is clear that command and control rapidly broke down and that, in the absence of procedures, effective training and access to non-lethal alternatives to firearms, the PNTL was unable to respond appropriately. Failures in discipline among PNTL officers were also evident.

The challenges facing the PNTL have not been isolated to their capacity to deal with public disturbances, but it is in these contexts where PNTL officers have most frequently been criticised. This has also contributed to a damaging loss of public confidence in the fledgling police service.

As confidence in the police has diminished there are signs that the public and politicians are looking towards the newly established army, the Timor-Leste Defence Force (*Falintil-Forças de Defesa de Timor-Leste*, F-FDTL) to provide internal security. In January 2003, it was the F-FDTL that carried out arrests following the killing of five people allegedly by pro-Indonesian militia in Atsabe Sub-district, Ermera District. Some 90 people, including women and children, were arrested by the F-FDTL before being transferred to the police. Most were quickly released, but 39 men and boys were illegally detained in Becora Prison, Dili, in some cases for over a week.

These incidents are only the visible signs of deeper problems in the police and the broader criminal justice system of which it is part. They highlight the fragility of the police and judicial institutions and the incomplete legislative and procedural framework in which they operate. They point to inadequate training and a lack of oversight of the PNTL. They expose a lack of understanding of the rule of law and the role of an accountable police service and independent judiciary in implementing it. They are also revealing of the extent to which the legitimacy and authority of the police is being undermined in part by their own actions, but also by challenges from some political leaders and members of the military. Above all, they point to the fact that the United Nations (UN), which has overseen the establishment of the PNTL and retains executive authority for policing in Timor-Leste, has not yet delivered on its commitment to establish "... *a credible, professional and impartial police service*".⁴

Despite the many and serious concerns there remains a window of opportunity for successful remedial action to be taken before the problems become institutionalised. Since Amnesty International's visit several important initiatives have

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

been taken. Among them was a mission to assess the PNTL which was jointly undertaken by Government of Timor-Leste, the United Nations Mission of Support in East Timor (UNMISET), the UN Development Program (UNDP) and development partner countries in November 2002. On its recommendation a Committee and Working Group on strengthening the PNTL have been established which began work in April 2003. However, with only a matter of months before authority for policing is due to be transferred from the United Nations Police (UNPol) to PNTL, and less than one year before the UN's peacekeeping operation in Timor-Leste is due to end, time is short.

Amnesty International considers that during this period particular attention is required in the following areas:

- **Legal and procedural framework** - A comprehensive legal and procedural framework for PNTL should be developed which is fully consistent with international human rights standards.
- **Organizational culture** - Human rights should be built into the organizational culture of the PNTL, including through striving to ensure that the service is representative of the community it is policing; that working conditions are non-discriminatory; and that career development and other opportunities are based on merit.
- **Impartiality** - The operational independence of the police from government should be established in law and practice. Political leaders should avoid challenging the legitimacy and authority of the police and the respective roles of the police and the military should be clarified and adhered to.
- **Training** - The existing training curriculum should be reviewed with a view to ensuring that international human rights law and standards, including on the use of force and firearms and arrest and detention procedures, are fully integrated into it and that it enables PNTL officers to develop skills in their practical implementation. Emphasis should be placed on developing scenario based training which provides recruits with experience in applying human rights standards to "real" situations.
- **Oversight and accountability** - An independent civilian police oversight mechanism should be established without delay. It should have powers to receive complaints, investigate incidents on its own volition and carry out research into issues related to policing. It should have authority to refer

complaints for prosecution where criminal actions are suspected. Mechanisms should also be established to ensure that its recommendations on other issues are acted upon.

The development of the police cannot, however, take place in isolation from the development of the broader criminal justice system. Timor-Leste is faced with a considerable challenge in this area having inherited on independence a justice system which was barely functioning and which remains chronically weak. The correctional services also suffer from under-capacity. The impact of this situation on the long-term security and stability of the country is of serious concern, as is the affect on the rights of victims and suspects. With regard to the PNTL, the weakness of the criminal justice system directly impacts on its ability to carry out its duties effectively and in accordance with international human rights standards, which in turn undermines its credibility.

Responsibility for introducing measures to resolve the many problems of the police, justice and correctional sectors rests jointly with the Timor-Leste authorities and with the UN, whose role it was to establish these institutions and, since Timor-Leste gained its independence in May 2002, to continue to provide assistance to their strengthening. The role of donors is also a critical one and their continued and coordinated support will be a determining factor in the success of these efforts. The continued support of all parties will be required beyond the end of UNMISSET's mandate in May 2004.

Because of the leading and continued role of the UN in establishing the PNTL, any critique of the PNTL's performance inevitably raises broader issues about the role and responsibilities of the UN, both in performing law enforcement functions and in its record in overseeing the establishment and development of a new national police service. The report raises a number of concerns, most of which are not unique to the UN peacekeeping mission in Timor-Leste. Amnesty International urges the UN to take note of the issues raised in the report. The organization hopes that they will be useful to the UN both in reviewing its performance in Timor-Leste and in planning for future peacekeeping operations, where establishing new or strengthening existing law enforcement institutions is to be undertaken.

2. Amnesty International's mission on policing and human rights

Amnesty International's mission to Timor-Leste on policing and human rights took place between 30 September and 16 October 2002 and was carried out by an Amnesty International researcher and an independent expert on policing and human rights. The delegation was accompanied by a member of the local human rights organization, the Rights Association or *Perkumpulan HAK* (formerly known as the Rights Foundation, *Yayasan HAK*).

Amnesty International is grateful for the high level of cooperation extended to the delegation by both the UN Police (UNPol) and the PNTL. It is particularly appreciative of the opportunity to meet with both the UNPol and PNTL Commissioners and a wide range of other officers from UNPol and PNTL as well as the freedom it was given to inspect facilities and observe training. Visits were undertaken by the delegation to Police Academy, the Rapid Intervention Unit (*Unidade Intervensauan Rapida*, RIU/UIR) in Dili, Dili District Police Headquarters and three sub-stations in Dili, as well as to district police headquarters in Aileu, Baucau and Lautem.

Meetings were held with Timor-Leste government officials, including the former Minister of Justice, Ana Pessoa.⁵ Regrettably the Minister of Internal Administration, under whose portfolio PNTL falls, was not available to meet with the delegation. Among the UN Mission of Support in East Timor (UNMISET) or other UN officials with whom the delegation met were: the Special Representative of the Secretary General (SRSG), Mr Kamlesh Sharma; the Deputy SRSG, Mr Sukehiro Hasegawa; members of the UNMISET Human Rights Unit (HRU); the UN Children's Fund (UNICEF); and the UN Development Program (UNDP).

In addition, the delegation met with members of the Timor-Leste judiciary, the General Prosecutor and the Coordinator of the public defenders service. National and international non-governmental organizations which contributed their analysis and expertise include *Perkumpulan HAK*; *Fokupers*; the Human Rights Centre in Aileu; the Judicial System Monitoring Program; and the Asia Foundation.

⁵ Ana Pessoa has since been appointed Deputy Prime Minister. The position of Justice Minister is now held by Domingos Sarmiento.

The openness with which the delegation was received and the frank and detailed discussions held have contributed to Amnesty International's ability make the following analysis of the situation. The organization is also grateful to UNMISSET for providing its comments on the draft report and hopes that this constructive dialogue can continue. A copy of which is attached in Appendix I. The comments refer specifically to: the police response to disturbances in Dili and Baucau (Section 4); the organizational culture of the PNTL, including recent steps towards institutional strengthening (Section 5); oversight and accountability (Section 6); recent initiatives towards ensuring the separation of police and military functions (Section 7); recent efforts to ensure that human rights standards are implemented in police operations, including in the use of force and firearms (Section 8); and plans to strengthen the justice system (Section 9).

3. Background: Policing in Timor-Leste – structures and responsibilities

Authority for the administration of Timor-Leste was transferred to the UN in October 1999 following a "popular consultation" in August the same year in which the majority of the population effectively voted for independence from Indonesia.⁶ Indonesia's withdrawal from the territory, after 24 years of occupation, was marked by massive violence in which around 1,300 people are estimated to have been killed. Hundreds of thousands of others were forced to flee and infrastructure was widely destroyed. The withdrawal of Indonesian personnel also created an institutional vacuum at all levels of government and administration, including in the criminal justice sector where the police and judiciary had collapsed. Facilities, including police stations, courts and prisons were destroyed or damaged.

⁶ The popular consultation resulted from the 5 May 1999 Agreements between the Governments of Indonesia and Portugal which had been negotiated under the auspices of the UN. The 5 May Agreements provided for a ballot, supervised by the UN, in which the population of East Timor were given the opportunity to choose whether or not to accept the status of special autonomy within the Republic of Indonesia. In the months leading up to the 30 August 1999 ballot pro-Indonesian militia, supported by Indonesian security forces, waged a campaign of terror against independence supporters. Nevertheless 78.5 per cent of the population voted against the proposal, and under the terms of the Agreement Indonesia was obliged to transfer authority for the territory to the UN. For further information see Amnesty International Documents: *East Timor: Seize the Moment*, (AI Index 21/49/99), June 1999; *East Timor: Violence Erodes Prospects for Stability*, (AI Index, ASA 21/91/99), August 1999; *East Timor: Demand for Justice*, (AI Index: ASA 21/19/99), October 1999; *Indonesia/East Timor: No end to the crisis for East Timorese refugees*, (AI Index: ASA 21/208/99), December 1999.

The UN Transitional Administration in East Timor (UNTAET) was established on 25 October 1999 under Security Council Resolution 1272.⁷ UNTAET was responsible for the administration of East Timor during its transition to independence. Included in these responsibilities was the maintenance of law and order throughout the territory and the creation of “...*non-discriminatory and impartial institutions, particularly those of judiciary and police, to ensure the establishment and maintenance of the rule of law and to promote and protect human rights*”.⁸

Some 1,300 international police officers (initially known as Civilian Police or Civpol and now as UN Police or UNPol) were deployed over the next months. However, the slow pace of recruitment of international police personnel meant that the international military contingent, first in the form of the International Force for East Timor (Interfet) and later the UN Peacekeeping Force (PKF) provided back-up law enforcement functions for some months.⁹

In March 2000 the Police Academy was opened and the first intake of Timorese recruits began the 12 week training course. The PNTL was formally established in August 2000 and the newly graduated officers were deployed to the field to work alongside UNPol officers.

Timor-Leste gained its independence on 20 May 2002. On independence the new government committed to ratifying core human rights treaties and, in April 2003, acceded to the International Covenant on Economic, Social and Cultural Rights (CESCR); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of a Child (CRC); and the Convention on the Elimination of All Forms of Racial Discrimination (CERD). In May 2003, the National Parliament approved Timor-Leste's accession to the International Convention Civil and Political Rights (ICCPR).

On independence, UNTAET was succeeded by the UN Mission of Support for East Timor (UNMISSET). UNMISSET's more limited mandate is focussed on the provision of assistance to core administrative structures and contributing towards the maintenance of external and internal security. In addition, it provides interim law enforcement and public security and assistance in developing the PNTL.

⁷ S/RES/1272 (1999), 25 October 1999.

⁸ Report of the Secretary-General on the Situation in East Timor, S/1999/1024, 4 October 1999.

⁹ Interfet was a Security Council mandated interim multinational force under Australian command which arrived in Timor-Leste on 20 September 1999 to restore security. Responsibility for security was transferred to the UN PKF in February 2000.

In fulfilment of its role in law enforcement and development of the PNTL, UNPol retains executive authority for the police. In the meantime, PNTL recruitment and training is continuing. It is anticipated that the planned total of 2,830 PNTL officers will have graduated from the Police Academy by June 2003. PNTL is also gradually taking over executive responsibility of various units, including for the 13 district commands. By April 2003, authority for seven out of Timor-Leste's 13 districts had been transferred to PNTL. PNTL has also assumed operational command for several specialised units, including the Police Academy and the rapid reaction force known as the Rapid Intervention Unit (*Unidade Intervensãun Rapida*, RIU/UIR).

As PNTL reaches full-strength and takes over control of policing functions, UNPol numbers have been simultaneously reduced. From the 1,250 officers at independence it was planned that UNPol numbers would be down to 100 officers by January 2004. However, following a number of security challenges, including the December 2002 disturbances in Dili and armed attacks on civilians in Ermera District and elsewhere in early 2003, the UN Secretary-General recommended a review of the downsizing schedule for both the police and military contingents of the peacekeeping mission.¹⁰ The UN Security Council, in Resolution 1473 (April 2003) endorsed this, such that there will now be 325 UNPol officers remaining by January 2004. Resolution 1473 also decided that training capacity for the PNTL should be increased, that there should be greater emphasis on human rights and rule of law elements, and that a greater UNPol monitoring and advisory presence should be maintained in Timor-Leste's 13 districts.

In the meantime, UNPol's role continues to shift from an executive to a technical advisory function, although overall command and control of both the PNTL and UNPol remains with the UN Police Commissioner. Full command of the PNTL is expected to be assumed by the PNTL Commissioner in January 2004. The UN Police Commissioner reports to the head of UNMISSET, the Special Representative of the Secretary General (SRSG).

Within the Timor-Leste government the portfolio for policing is held by the Minister of Internal Administration, currently Rogerio Lobato. The Minister is responsible for "general policy" on police. Precisely what this involves is unclear and the Ministry has no real capacity for police development.

¹⁰ Special report of the Secretary-General on the United Nations Mission of Support in East Timor. UN Doc S/2003/243, 3 March 2003.

Legally, the impartiality of the PNTL and their obligation to respect human rights is guaranteed the Constitution which was adopted in March 2002.¹¹ The Regulation on Establishment of the East Timorese Police Service (UNTAET Regulation No. 2001/22), under which the PNTL was set up, also requires that the police should apply international human rights law and standards when performing their duties and recognizes their active role in protecting human rights.¹² However, implementing regulations and procedures that would give police officers practical guidance on how to put human rights protection into practice are still lacking in many key areas (see below).

4. Policing in practice - public disturbances in Dili and Baucau

4.1 Police response to disturbances in Dili and Baucau

Dili

Timor-Leste's young national police service has come under growing pressure since independence as it has increasingly taken over the lead role from UNPol, including in policing public order situations. During November and December 2002, three people were allegedly shot dead by members of the PNTL in disturbances in the capital of Dili and in Baucau, Timor-Leste's second city. While extreme, Amnesty International is highlighting these events because they illustrate broader institutional weaknesses which must be urgently addressed.

The police response to violence in both Baucau and Dili demonstrated the weakness of chains of command and control, a lack of discipline and the fact that the PNTL are neither properly trained nor equipped to respond effectively to public disturbances in accordance with international human rights standards. During its October 2002 mission, the Amnesty International delegation found widespread recognition of these and other problems among UNPol and PNTL officers with whom

¹¹ Constitution of the Democratic Republic of Timor-Leste, Section 147.1: "*The police shall defend the democratic legality and guarantee the internal security of the citizens, and shall be strictly non-partisan*", Section 147.2 states that: "*Prevention of crime shall be undertaken with due respect for human rights*".

¹² The Regulation on Establishment of the East Timor Police Service, Section 6(h) states that the PNTL shall: "*Protect and respect human dignity and maintain and uphold the human rights of all persons*". It also requires police officers to comply with applicable domestic law and internationally recognized standards (Section 10).

it met. However, it was concerned at the time by an apparent lack of urgency in addressing them. In both the Dili and Baucau events, there has been a practical demonstration of the lethal consequences of delay.

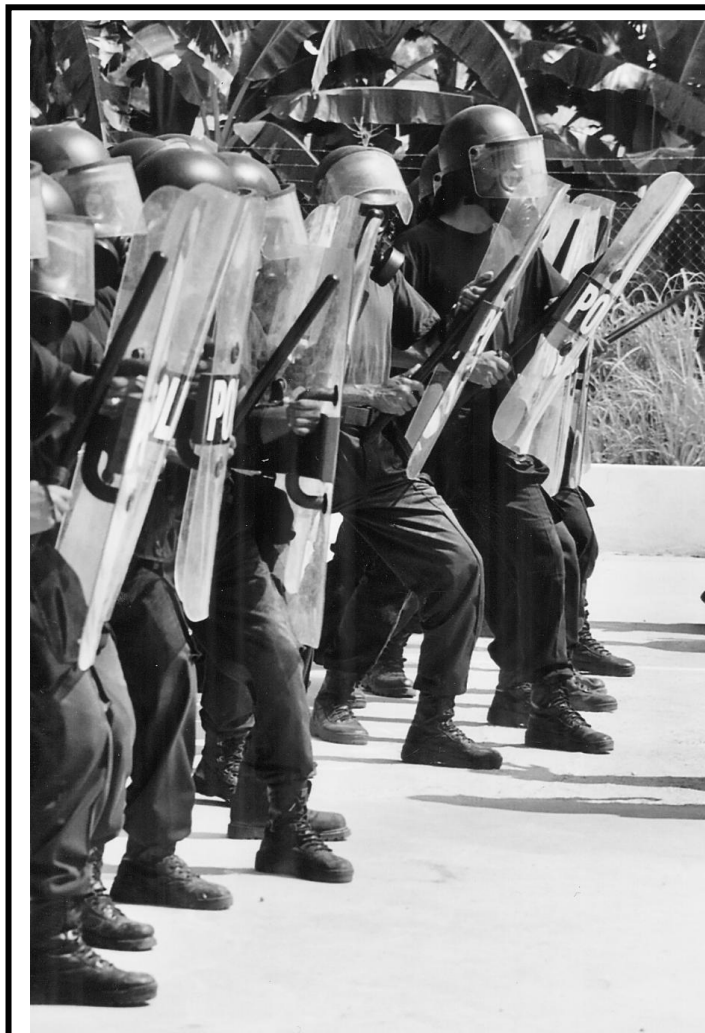
The violence in Dili was triggered by the arrest of a 20-year-old youth on 3 December 2002 in which it was alleged by witnesses that PNTL officers had used excessive force. There were protests that day by students who had been sitting exams in the school from which the youth had been arrested. Stones were reported to have been thrown at the police and two police motorcycles burnt.

The following day the level of violence escalated as students were joined by other protestors around key buildings, including the parliament, government offices and the UNPol Headquarters, all of which are in the centre of Dili. Hundreds of rounds of live ammunition were fired during the course of the day by the police. It remains unclear precisely which police units were involved in the shooting. According to reports many of the shots were fired by officers wearing the darker blue uniforms worn by members of the RIU/UIR. There are also reports of shots being fired by plain-clothed officers. It is not known if firearms were discharged by UNPol officers.

A 17 or 18-year-old secondary school student, Honorio Ximines, was shot dead allegedly by the police during a clash between police and protestors at around 9.30 or 10 am outside the University of Timor-Leste which is situated opposite the parliament building. Three other protestors were reported to have been shot and injured at the same time. A second person, Manuel da Silva, died after he was shot some hours later in the Colmera area of Dili when police officers, reported to have been RIU/UIR members, opened fire on a crowd. It is unclear from the reports received by Amnesty International whether Manuel da Silva and six others who were reported to have been injured in this incident were taking part in the protests. However, Manuel da Silva was shot in the right buttock, indicating that he was shot from behind.

Throughout the day, as protestors moved between various locations in the city, buildings were looted and burnt. Among them were the residences of the Prime Minister and that of his brother, the Dili Mosque and several foreign owned businesses. Eyewitness reports suggest that the selection of the sites where looting or arson took place was not spontaneous, but rather that the crowd was being directed on the ground by individuals seen riding ahead on motorbikes. Equally disturbing are allegations that influential political figures fanned tensions, including by making speeches provoking the crowds and scorning the PNTL.

Eyewitnesses reported seeing no visible police presence of either PNTL or UNPol for a period of several hours during the day, even around facilities and buildings, such as the Mosque, which are known to be vulnerable having been the target of protests in the past. Where PNTL officers were deployed, discipline appears to have broken down. One person told Amnesty International that he had seen a young PNTL officer at the UNMISSET Headquarters in the Government Palace, removing her uniform and concealing her police equipment in an attempt to hide her identity from protestors who had surrounded the building. The eyewitness described the PNTL officer as looking distressed and frightened.



Members of the Rapid Intervention Unit demonstrating crowd control techniques

In the late afternoon arrests began. Reports suggest that some of the arrests were carried out arbitrarily. Of the 77 people arrested during the day, the majority are not believed to have been involved in the violence. Some were innocent bystanders, including children on their way home from school. Eyewitnesses reported seeing detainees with bloody noses and black eyes, apparently as result of beatings carried out by the RIU/UIR members as they were arrested. In the highly charged atmosphere at Dili District Police Headquarters, PNTL officers were also seen hitting and punching detainees as they were taken into the facility.

Because the number of detainees exceeded the

capacity of police custody cells in Dili, they were transferred to a temporary detention facility in Tacitolo, on the outskirts of the town. The facility consisted of an open sided building with a tin roof and a dirt floor which is said to have been too stony to sleep on.

Twenty people, including 18 children and two adults were released after one day. Another 47 were released on Friday 6 December 2002 after being interviewed by public prosecutors. The interviews took place without legal representation. The remaining 10 suspects were transferred to Dili District Police Headquarters. The 10, together with 28 others who had been arrested subsequently, were brought before an investigating judge on 7 December 2002. All but nine were conditionally released. A number of people are believed to have been charged in connection with the 4 December 2002 events. Trials had not begun at the time of writing.

Baucau

Although the events in Dili attracted widespread media attention, the public order situation elsewhere in Timor-Leste had been problematic for some time, most notably in the district of Baucau and in particular in the town of Baucau itself. Both pre and post-independence there have been a series of violent disturbances in the district.¹³ The causes are various, but most have their roots in rivalries between local groups or individuals which in turn often result from historical tensions dating back to the Indonesian occupation and before. The police have often been targeted during disturbances.

A number of assaults on police officers, and succession of other challenges to their authority by members of the public, resulted in an incident on 18 November 2002 in Cailara village in Baucau Sub-district when the police attempted to take down a road block erected by villagers to collect unofficial tolls from passing vehicles. During the clash one RIU/UIR officer was struck on the head with a machete and seriously injured. His firearm was also stolen. Mateus Freitas Fraga, who is alleged to have been involved in the assault, was shot and injured by other RIU/UIR officers. Whether the police fired shots before or after the assault is contested, but up to 160 shots were reported to have been fired by the police during the incident.

¹³ For example, in March 2001 a series of violent incidents culminated in the burning of the Mosque in Baucau town. For further information on this incident see: *East Timor: Justice past, present and future*, (AI Index: ASA 57/001/2001), July 2001.

A total of nine people were arrested in connection with these events. Mateus Freitas Fraga was held under police guard in hospital for 15 days from 18 until 2 December 2002 before appearing before a judge. Another suspect arrested on the same day was held in police custody until 25 November 2002, or some 96 hours beyond the legal time limit of 72 hours before which a detainee must be presented before a judge.

On 25 November 2002, tensions spilled over again when a crowd attacked Baucau District Police Headquarters in Baucau town. The protestors attempted to break into the compound, then bombarded buildings and vehicles with rocks. During the course of the events between 180 and 300 “warning shots” are reported to have been fired by the police, mainly by members of the PNTL and RIU/UIR, although there have been reports that at least one shot was fired by a UNPol officer. Shots were also reportedly fired from the crowd. One person, Calisto Belo Soares, received a gunshot wound to his forehead from which the 27-year-old from Quelicai Sub-district, Baucau District, later died in hospital.

Ten people were arrested for offences allegedly committed in relation to the events of 25 November 2002, nine of whom appeared in court on 2 December 2002, some eight days later or 120 hours over the permissible limit of 72 hours. Amnesty International is concerned that the correct procedures for the detention of suspects both in relation to both the 18 and 25 November 2002 events were not followed and that individuals were therefore illegally detained in police custody. In addition, there are allegations that excessive force was used by police officers during arrest and that some of the detainees were ill-treated in police custody. Amnesty International cannot verify these allegations.

4.2 The Timor-Leste government and UNMISSET response to disturbances in Dili and Baucau

At a press conference on 27 November 2002 the UNPol Commissioner announced the establishment of an investigation into the events in Baucau of 18 and 25 November 2002. The investigation was to be conducted through UNPol’s National Investigation Unit, with the participation of UNMISSET’s Human Rights Unit and representatives of the PNTL. In the press conference the UNPol Commissioner gave assurances that the investigation would be as thorough and transparent as possible.

The investigation team was never convened because its resources were re-directed to investigate the events in Dili 10 days later. The investigation into the events in Baucau was taken on instead by the Baucau District Police Headquarters.

According to reports the investigation was completed in March 2003, although the results have not been made public, including whether or not the police were responsible for firing the shot that killed Calisto Belo Soares. The findings of the investigation have been reviewed by the Professional Standards Unit (PSU), the police unit responsible for carrying out internal investigations into police misconduct. The PSU did not carry out an independent investigation into the allegations and to Amnesty International's knowledge no police officer has been held accountable for their actions. Amnesty International does not regard the investigation process to have had the necessary guarantees of independence or impartiality and is concerned that allegations of police misconduct have not been properly investigated.

In the meantime, a number of separate investigations were set up into the events in Dili. A National Parliament Commission was established to investigate a specific incident on 4 December 2002 when protestors broke into the parliament building. A government Commission of Inquiry was also set up to investigate the broader events. Both submitted confidential reports to the Council of Ministers towards the end of 2002, after which the government's Commission of Inquiry was reconvened.

Under the new terms of reference, the membership of the Commission of Inquiry was extended. Its members included the Prosecutor General, the Government Advisor on Human Rights, the Inspector General and a representative from the local NGO, *Perkumpulan HAK*. In recognition of the broader issues involved, its mandate was also extended to include the police response to events in Baucau in November 2002. It reported to the Prime Minister in late February 2003 and, according to press reports, the results of both this inquiry and that of the National Parliament have been handed over to the judicial authorities to begin criminal investigations. Neither of the reports or their findings has been published.

A request for 20 UNPol officers to appear before the inquiry team was refused by UNMISSET. According to media reports the reason given by UNMISSET for turning down the request was to protect the immunity of UN officials. The Commission of Inquiry did not visit Baucau, although the November 2002 disturbances there were a part of its brief.

Simultaneous to the government inquiry, an internal inquiry was initiated by UNPol into criminal issues and allegation of police misconduct relating to the 4 December 2002 Dili events. It is believed to have been completed, but the results have also not been made public.

Amnesty International welcomes the various efforts to carry out investigations into the police response to the disturbances in Dili and Baucau, including the deaths of three people allegedly at the hands of the police. However, the organization believes that the internal UNPol investigations do not meet the required standards of independence and impartiality and is concerned that neither they nor the government's Commission of Inquiry have made public the results of their findings.

With regard to the UN, Amnesty International recognizes that it is important for UNPol to investigate the actions of the officers under its command. However, it believes that UNMISSET should conduct an inquiry that is independent from those carrying UN responsibility for policing and security in Timor-Leste. This responsibility is contained in the UN's own Basic Principles on the Use of Force and Firearms (Basic Principles) which require governments and law enforcement agencies to ensure that an effective review process is available and that the evidence is reviewed by independent administrative and prosecutorial authorities (Principle 22).

Amnesty International believes that the manner in which the investigations into events in Dili and Baucau are conducted will set the precedent for the future. An effective, thorough, independent and transparent process will set a positive example in a country where the experience under Indonesian occupation was of denial and cover-ups where allegations of human rights violations have been made. It is also essential if there is to be any prospect of establishing public confidence in the PNTL.

To this end Amnesty International sent a letter to the SRSG of UNMISSET and to Timor-Leste's Prime Minister on 11 December 2002 urging them to establish an independent, impartial inquiry into both events in Dili in December 2002 and in Baucau the previous month. It called upon them to make the findings of any such inquiry public. The Timor-Leste Government responded on 11 January 2003. In its response the government acknowledged that the PNTL was insufficiently equipped to exercise their duties properly. It pointed to the fact that investigations were being carried out, but that no evidence had yet been found that the fatal shots were fired by police officers. No response has been received from UNMISSET.

Since then, the High Commissioner for Human Rights has recommended that both UNMISSET and the Government of Timor-Leste ensure that there is a full record of the events and that those individuals whose conduct warrants it are held accountable. The High Commissioner specifically recommends that there be an independent review of the investigations into the conduct of the police, including

UNPOL, and that lessons learnt from these incidents be implemented in order to avoid their repetition.¹⁴

Recommendations

- The reports of the both the government and police investigations into the events in Dili and Baucau should be made public.
- UNMISSET should establish an investigation into the police response to disturbances in Baucau and Dili that is independent from those with responsibility for policing and security in Timor-Leste. Whereas such an independent inquiry should be held, at a minimum, and in accordance with the recommendation of the High Commissioner for Human Rights, there must be an independent assessment of all the evidence collected in the various investigations with a view to developing a comprehensive set of recommendations for a plan of action to address the shortcomings within the police which prevented them from responding effectively, and in accordance with international human rights law and standards, to the protests in Baucau and Dili. The final report and recommendations should be published in full.
- Any officers, whether PNTL or UNPol, suspected of being responsible for committing human rights violations should be brought to justice in trials which conform to international standards for fair trial.

5. The culture of policing - building human rights into the organizational culture of the PNTL

“The success of policing operations depends in the last resort not upon questions of technique or professional expertise, but upon the degree of confidence felt by society in its police”.¹⁵

¹⁴ See: Question of the Violation of Human Rights and Fundamental Freedoms In Any Part of the World: Situation of human rights in Timor-Leste: Report of the United Nations High Commissioner for Human Rights to the fifty-eight session of the Commission on Human Rights. E/CN.4/2003/37, 4 March 2003.

¹⁵ Lord Scarman in *Police and Public Order in Europe*, ed J Roach and J Thomaneck, 1985.

A basic role of a democratic police service is to protect and defend the human rights of all and to ensure equality before the law through the maintenance of the rule of law. A police service which violates human rights to deal with a particular manifestation of criminality will quickly lose its legitimacy and its effectiveness will also rapidly diminish as the public's trust is lost and their willingness to cooperate is withdrawn.

In Timor-Leste, the new police service faces considerable challenges in winning the trust and support of the general public whose experience of policing under the 24 years of Indonesian occupation was repressive and brutal. Both the police and the military were employed by the government to suppress opposition to Indonesia's occupation of the territory. Grave human rights violations were committed to achieve this end, including extrajudicial executions, "disappearances", arbitrary detentions and torture.

It is a declared aim that PNTL should break with this repressive legacy. Indeed, UNPol's development plan for the PNTL specifically states that the objective is to establish a "*professional police service that is client orientated aimed at improving accountability and effectiveness by focusing on problem solving in partnership with the community*".¹⁶

Building this partnership will require securing the consent of those being policed. Such consent is accepted by modern police services as being a prerequisite to effective policing, but achieving it depends on those being policed believing that the policing is truly impartial in that it is carried out on behalf of the whole community, rather than on behalf of particular groups within it. Studies have also found that where police organizations are unable to command respect they will feel compelled to rely more heavily on coercion.¹⁷ A police service which relies on coercive or other illegal practices will quickly lose its legitimacy and with it the consent of the community it is attempting to police.

In Timor-Leste the opportunity still exists to create new police structures with an ethos and culture in which human rights are fully protected and respected. The very newness of PNTL provides considerable scope for institutionalising best practice, but the process must also be an ongoing one in which both structures and a culture exist which allow for continual learning and development. The UN's approach of rapidly building up PNTL numbers, where the emphasis has tended towards quantity rather

¹⁶ East Timor Police Service Development Plan. Updated version, 14 July 2002.

¹⁷ *Human Rights on Duty, Principles for better policing - International lessons for Northern Ireland*, Mary O'Rawe and Dr. Linda Moore. Published by the Committee on the Administration of Justice, Belfast, Northern Ireland, 1997.

than quality, conspires against the development of a culture and ethos in which human rights are fully implemented in all policing practices. As the intensive recruitment and training phase nears an end, it is essential that the focus now shifts towards organizational development, including through assessing existing recruitment policies, reviewing both formal and in-service training and strengthening accountability.

The need for institutional development is recognized in the Report of the Joint Assessment Mission (JAM) for the Timor-Leste Police Service.¹⁸ The report notes that the two most common needs cited were training and materials. However, it also emphasised the need to focus on the development of the PNTL, particularly in areas of management and administration. The JAM also raised the need for the Government of Timor-Leste to make a number of management decisions regarding the nature of the PNTL to ensure that training and material requests are in line with the long term development strategy of the institution.

In order to begin the process of implementing its recommendations, the establishment of an institutional strengthening working group for the PNTL was recommended by JAM. To this end a PNTL Institutional Strengthening Committee, chaired by the Interior Minister, and a Working Group, chaired by the PNTL Commissioner, and whose members include representatives of UNPol, the PNTL, UNMISSET's HRU and local NGOs have been established. In accordance with the objectives set out by JAM, the Working Group, which first met in April 2003, is tasked with developing a framework or plan of action for the institutional strengthening of the PNTL, determining its requirements and identifying specific technical expertise that would be needed.

Amnesty International welcomes the establishment of the Committee and the Working Group and hopes that the analysis and recommendations contained in this report will be useful to them. It commends the efforts made so far to ensure the active participation of Timorese, including members of the PNTL and NGOs, in these bodies and notes that their meaningful involvement at all stages will greatly increase the likelihood that the action plan is sustainable and will therefore be implemented. With regard to UNPol participation, Amnesty International is aware that some of the officers involved in the Working Group are shortly due to leave the peacekeeping mission. The organization urges the UN to ensure that they are immediately replaced

¹⁸ The Joint Assessment Mission was undertaken by the Government of Timor-Leste, UNMISSET, UNDP and Development Partner Countries in November 2002. It was tasked with: assessing the handover of executive authority to the PNTL in relevant districts; assessing progress against the timetable for the development of the PNTL; assessing PNTL capacity; recommending strategies to address the PNTL's needs; and developing a PNTL capacity building programme.

with UNPol officers who are equally capable and who have the relevant skills and experience to make a valuable contribution to the development of the PNTL.

5.1 Recruitment

In common with efforts towards institution building in all sectors, the PNTL has faced difficulties because of the almost total absence of experienced personnel. Some Timorese did serve in the Police of the Republic of Indonesia (*Kepolisian Republik Indonesia*, Polri), but the majority (close to 90 per cent) of the recruits to PNTL, although keen and committed, have no previous policing experience.

The recruitment process, based on fitness, age and written and practical tests, was designed to be equitable. A process for community screening of successful candidates for past involvement in human rights violations was also established. The screening process, although regarded by UNPol to have been effective, has been criticised by local human rights monitors as being inadequate, in the main part because the community consultation was not considered sufficiently extensive and was often facilitated through the village chief (*Chef de Suco*) who, it was argued by some, might be influenced by personal interests.

Nevertheless, efforts have been made to ensure that the PNTL is representative, at least with regard to women who make up around 20 per cent of the PNTL intake. Amnesty International was encouraged by the achievement of this target which is already much higher than many police services around the world. The delegation also noted that a number of the female PNTL officers with whom it met were holding relatively senior positions in a range of different departments or occupational groups. However, it also heard complaints that, rather than mainstreaming female officers in to all parts of the police service, there exists a tendency to deploy them to the national or district Vulnerable Persons Units, which specialise in domestic violence and child abuse, regardless of their skills or suitability for this work.

Because of the high rates of domestic violence and child abuse in Timor-Leste, the role played by the Vulnerable Persons Units is of great importance. Well-trained female PNTL officers are essential to this work, but it should not be seen as an exclusively female domain. In order to sustain and make meaningful the positive efforts to recruit women and to ensure their continued development they must not be restricted only to performing duties traditionally regarded as being “women’s issues”. This represents particular challenges in the context of Timor-Leste where there are deeply entrenched patterns of discrimination against women.

In addition to ensuring representation of women, consideration must also be given to seeking the recruitment of other groups. Although Timor-Leste is a relatively homogenous society there are various ethnic and religious minority groups, including ethnic-Chinese, Muslims, and Protestants, whose representation in the PNTL could contribute towards broadening ownership of the police and building the trust necessary for the police and the community to work in tandem, allowing policing to be carried out with consent.

5.1a Recruitment of former Indonesian police officers and ex-combatants

Despite the UN's intention to ensure that recruitment to PNTL is based on merit, the process has been controversial in relation to two groups in particular - former Polri and former members of the armed opposition against Indonesian occupation. The rising tensions around these issues are now seriously threatening the credibility, effectiveness and even the impartiality of the PNTL.

In relation to former Polri, the issue is basically one of suspicion of their connection with the Indonesian police and resentment that they should benefit from jobs in the new police service. The former members of Polri were among the first recruits to PNTL, having been selected early on by UNTAET to form a police advisory group to assist UNPol officers, and were also among the first officers to pass through the Police Academy. Vetting of their past records was undertaken by the senior leadership of the former pro-independence umbrella group, the National Council for Timorese Resistance (*Conselho Nacional de Resistencia Timorense* - CNRT). Some 340 former Polri have been absorbed into the PNTL making up approximately 12 per cent of its officers. Many of the former Polri members of the PNTL are reported to have participated in the clandestine resistance movement during the Indonesian period.

Despite the vetting process, their recruitment has met with differing levels of acceptance among both the political leadership and general public. On the one hand it is argued that their experience and age (the age limit for former Polri was set higher than for recruits with no previous policing experience) is a positive factor - indeed most UNPol whom Amnesty International interviewed spoke highly of the former Polri members of the PNTL. Others, including a number of senior government officials, argue that their employment in the services of an occupying country, whose police have a notoriously bad human rights record, makes them unsuitable for a role in the PNTL. It is also thought by some that preference should be given to members of the resistance. The lack of clear or accepted policy on the issue risks undermining not

only the confidence of these officers, but also the confidence of the community in them.

The controversy surrounding the recruitment of former-combatants into the PNTL relates to the broader and complex issues of demobilisation of an armed group and the need to provide them with a meaningful role in a post-conflict setting. Over the years different demobilization strategies have been employed in different countries and are generally difficult and sensitive processes.

In the case of Timor-Leste, the UN was slow to address the issue of former combatants, leaving some 2,000 members of the armed opposition group, the East Timorese National Liberation Army (*Forças Armadas de Libertação Nacional de Timor-Leste*, Falintil) cantoned, with no role and little material support, in Aileu District for 14 months from late 1999 until February 2001. The establishment of the Timor-Leste Defence Force (*Falintil-Forças de Defesa de Timor-Leste*, F-FDTL) in February 2001 and recruitment of the first of two battalions provided employment opportunities for some 650 former Falintil members. The remainder were demobilised under a program managed by the International Organization for Migration (IOM). However, there is continued discontent among many of them and others with claims to having been veterans of the resistance, either as combatants, or in the broader civilian clandestine movement in which a large part of the population was active.

The issue has become increasingly politicised as groups of former combatants and clandestine members group around various political leaders or other influential figures, some of whom have exacerbated tensions by exploiting the situation for their own ends. Following public demands in late 2002 by the Minister of the Interior that 500 former-Falintil members be taken into the PNTL, an agreement was reached with UNPol that 100 would be accepted, although it was still required that they pass the entrance test. One hundred and fifty were recruited in March 2003, although this is unlikely to have resolved the problems because competing lists containing thousands of names had previously been submitted to UNPol making it likely that the process will simply generate greater dissatisfaction.

There are no straightforward answers to these issues. That of ex-combatants, in particular, goes far beyond their recruitment into the PNTL. However, it has come to public attention in this context because policing is one of the few sectors where opportunities for employment exist in Timor-Leste and because of the apparent ambitions of some political figures to exert their influence over the new police service. However, the issue of demobilisation and broader issues of addressing the past are national ones and need to be resolved in a comprehensive manner at a national level.

In the meantime, to safeguard the impartiality, independence and effectiveness of the PNTL, it is essential that clear and fair recruitment policies are agreed among the government, UNPol and PNTL and implemented in a transparent manner.

Recommendations

- Develop recruitment policies and practices which ensure that the PNTL is as representative as possible of the diversity in Timor-Leste society. Targets for the recruitment of women should be maintained and efforts made to attract other under-represented groups into the service. In order to ensure full representation, careful consideration must also be given to assisting individuals to join and retain positions within the PNTL who might be regarded as opponents, for example those who supported the autonomy option in the 1999 ballot or who held positions in the Indonesian administration.
- A working environment should be promoted in which such groups are not discriminated against in any way.
- Urgently agree fair and transparent policy on the recruitment of former combatants and former members of Polri into the PNTL to which all members of the government should commit and promote to the general public. The human rights records of former combatants, as with other new recruits to the PNTL, should be rigorously checked. Any decision about recruitment of former combatants to the PNTL should be taken in the context of the broader need to find a meaningful role for them in other areas of the public administration or elsewhere.

5.2 Pay and conditions

The culture of any police service is closely related to the conditions under which its officers work and the attention paid to their rights, which in turn affects the way they are regarded by the community.

Among the factors which can impact on police professionalism are levels of pay. Timor-Leste is currently almost entirely dependent on international aid and is likely to remain so for the foreseeable future. With extremely limited financial resources of its own and high levels of unemployment to contend with,¹⁹ the government has felt compelled to set salaries of public officials, including the police,

¹⁹ Unemployment in urban areas is estimated to be 70 per cent.

at levels which elsewhere would be regarded as low. A police cadet earns US\$75 a month, which rises to US\$95 per month after they graduate from the Police Academy and have completed their six months field probation. Relative to the majority of the population who have no salaries at all, the police wages may not appear unreasonable. However, current salaries barely cover the cost of living in Timor-Leste.

Low salaries for officers in police services in many countries around the world are widely acknowledged to be a primary cause of corruption. This can lead to human rights violations as police attempt to supplement meagre wages through extortion and other practices. Typical examples of human rights violations in such a context are the threat or use of force against traders or business people to extort protection money; demanding bribes from victims for investigations to be pursued or from suspects to suspend them; and arbitrary detentions to obtain payments for release. Fortunately there is currently no evidence of such practices in Timor-Leste, but the risk exists if salaries are set too low.

Low pay levels have nevertheless informed deployment decisions which also risk impacting on the impartiality of the PNTL without careful supervision and monitoring. Because PNTL salaries are insufficient to cover the cost of rented accommodation, most officers, except those in specialised units, are deployed back to the sub-districts from which they originate where they can be accommodated by their families. There are advantages to such a policy, in that officers speak local languages, of which there are at least 15 in addition to the many local dialects. Their knowledge and existing links can also be advantageous to effective community policing and intelligence gathering. However, familial and community ties can also mean that they are more susceptible to local pressures which can result in conflicts of interests arising.

There have already been isolated complaints which suggest that the impartiality of certain PNTL officers in carrying out investigations may have been compromised by their personal interests, or pressures resulting from their position within their local community. In view of the possible risk of current deployment policies to police impartiality there is a particular obligation to closely monitor the impact on police work.

Recommendations

- Salaries of police officers should be set at a level such that they are protected against economic pressures and so as to provide a reasonable standard of living and reflect the important and sometimes dangerous job carried out by the police. Salary levels should be regularly reviewed.

- Consideration could be given to seeking donor support for some police accommodation in each district at least to allow a level of flexibility in the deployment of officers with specific skills outside of their home districts or for temporary assignments.

5.3 Training

*“There are two aspects to how police should perform their functions - the technical and the behavioural. The technical aspect concerns their knowledge and skills - the extent to which police officials have the knowledge and are equipped with those skills and aptitudes, necessary to perform their various tasks effectively and efficiently. The behavioural aspect concerns their knowledge and attitudes - the extent to which police officials have the knowledge, and have developed those attitudes and preconceptions, necessary to perform their various tasks lawfully and humanly”.*²⁰

PNTL training is short and intense. It consists of 12 weeks training at the Police Academy in Dili. In theory the Police Academy training is supplemented by field training and by on-going in-service training as officers are deployed to the field to work alongside UNPol. A range of *ad hoc* courses on various aspects of human rights have also been delivered by various agencies, including by UNMISSET’s HRU, UNICEF, the Office of the High Commissioner for Human Rights (OHCHR), the International Committee of the Red Cross (ICRC) and local non-governmental organizations, including *Fokupers*, which focuses on women’s rights and the human rights organization, *Perkumpulan HAK*.

Amnesty International has not made a full assessment of the training. However, the following comments are based on its observation of training exercises both at the Academy and the Dili RIU/UIR base, as well as interviews with UNPol officers responsible for PNTL development, trainers at the Academy, Field Trainers and other training providers, including International Criminal Investigative Assistance Programme (ICITAP),²¹ UNMISSET’s HRU and UNICEF.

²⁰ Ralph Crawshaw in “Police Composition and Training” in: *The Agreement and a new beginning to policing in Northern Ireland*, published by the Committee for the Administration of Justice, Belfast, Northern Ireland, September 1999.

²¹ ICITAP is under the US Department of Justice and provides training to police forces in emerging democracies and peacekeeping operations.

It was apparent to the delegation that human rights standards are not fully integrated into PNTL training.²² In some areas it is the style of training which is at fault, in others it is simply that key human rights principles are absent from the curricula. For example, trainers at the Police Academy focused firearms training on mechanical skills of safe-handling and target practice, in the understanding - false as it turned out - that concepts of proportionality and necessity are taught during the field training. Amnesty International would argue strongly that these concepts should have been taught at each and every stage of the firearms training. However, through a combination of lack of coordination, poorly designed curricula and insufficiently skilled trainers, these essential elements were entirely missing from all parts of PNTL's training.

Where human rights are taught, the emphasis has been on class-room theoretical training rather than scenario-based training which would allow cadets to develop their practical skills and judgement making capabilities. Training exercises by PNTL cadets and RIU/UIR members observed by the Amnesty International delegation were largely drill based. While useful in developing technical skills this form of exercise would not provide cadets with experience in applying human rights standards to "real" situations and will not necessarily conform to their experience once they are in the field.

It was widely recognized among UNPol and PNTL officers that the training that had been delivered had been inadequate. Amnesty International believes that this reflects poorly on the UN's approach to police training which, although carried out in many countries throughout the world, continues to be *ad hoc* and of inconsistent quality. In Timor-Leste, where the UN designed and implemented the initial training program (responsibility for which has now been taken over by PNTL), an opportunity has been missed to develop a model for human rights training of the police which could have been applied in future peacekeeping operations elsewhere.

On a more positive note, at the time of Amnesty International's visit a draft for a five year training plan was being prepared by UNPol for which bilateral donor support was to be sought. Amnesty International regards this long-term, coordinated approach to provide training support to the PNTL as essential and hopes that the following observations prove useful in its finalisation and implementation.

²² Relevant international laws and standards include: the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the UN Code of Conduct for Law Enforcement Officials; the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; the UN Standard Minimum Rules for the Treatment of Prisoners; the Convention on the Rights of the Child; and the Convention on the Elimination of All Forms of Discrimination against Women.

5.3a Training in laws, regulations and procedures

“The pick and mix approach to law is badly impacting on the PNTL - they often don’t have the legal basis to resolve a problem and it has made the development of a curriculum almost impossible”.²³

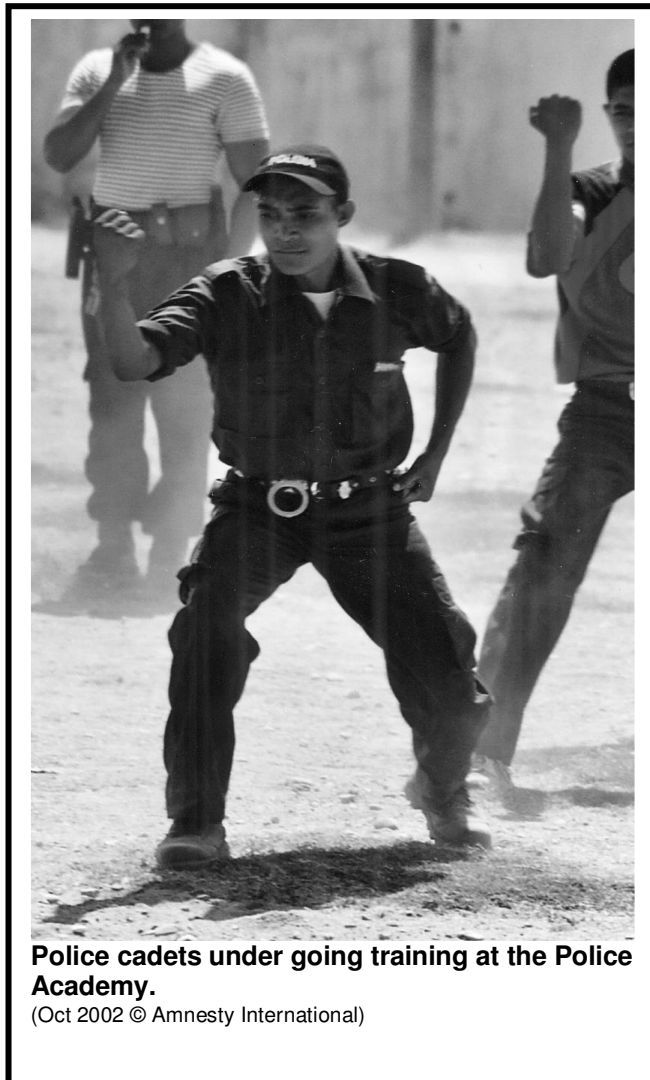
The quality and value of training received by PNTL has been undermined by a lack of clarity about applicable laws, gaps in legislation and procedures, and the existence of legislation which is inconsistent with international human rights law and standards. This situation impacts negatively on the development of the PNTL, its operational capability and its capacity to respect and protect human rights. In terms of training it means that much is reduced to the theoretical level because there are often no agreed rules or procedures specific to PNTL.

The statutory framework for the PNTL lies within the Constitution and the UNTAET Regulation on the Establishment of the East Timor Police Service (UNTAET Regulation 2001/22). References to the police in the Constitution are limited to three paragraphs which require the police: to defend the democratic legality and guarantee the internal security of the citizens of Timor-Leste in a strictly non-partisan manner and to undertake crime prevention with due respect for human rights (Section 147 (1) & (2) respectively). Section 147(3) requires that the rules and regulations governing the police will be determined by law.

The Regulation on the Establishment of the East Timor Police Service deals with recruitment, structure and with general duties and competencies. It does not, however, provide detailed policy and procedures.

UNPol has been slow in developing such policy and procedures. Where they have been drafted, UNMISSET and relevant Timor-Leste government departments have been slow to approve them. For example, the Code of Conduct for the PNTL was only adopted in early March 2003, nearly a year after it was drafted. Without this code officers could not be trained in the specific rules and regulations regarding the professional standards to which they are subject. Similarly, the policy on the use of force was introduced only in January 2003. Policy or standard operating procedures in other key areas of investigations, arrest rights, custody procedures and detention rights, were in the process of being drafted and were due to be completed in February 2003.

²³ Deputy Commissioner, PNTL Development Officer, during an interview with Amnesty International in October 2002.



Police cadets under going training at the Police Academy.

(Oct 2002 © Amnesty International)

In other areas, legislation or procedure which does exist is not always fully consistent with international law and standards. One notable example is the UNTAET Regulation on the Establishment of the East Timor Police Service. Although drafted by UNTAET officials, it contains provisions which do not fully meet with international standards, including on the use of force and firearms, reporting requirements and police accountability (See Section 8.1a on Law and Procedures for the use of force and firearms for further details).

Amnesty International has been consistently surprised that legislation and procedures drafted by UN officials in Timor-Leste have not always conformed to the international standards set by the UN. UNTAET Regulation 2001/22 is not the only example of this. For example, the organization has also raised concerns in the past about a number of provisions in the Transitional Rules of Criminal

Procedure (Transitional Rules) (UNTAET Regulation 2000/30 and amending Regulation 2001/25) relating to inadequate judicial oversight of detentions and the potential for unlimited periods of pre-trial detention in certain cases.²⁴

²⁴ Amnesty International has expressed concern about the time period of 72 hours for which a suspect may be held in police custody before being brought before a judge (see Section 9.2, Judicial oversight of detentions). It has also raised concerns about a provision in the Transitional Rules which provide scope for an unlimited period of pre-trial detention in certain cases. For more details see AI report: *East Timor: Justice past, present and future*, (AI Index: ASA 57/001/2001), July 2001.

In Amnesty International's view, this points to a need for the UN to increase the level of human rights expertise in its peacekeeping operations, including in legal affairs units. It would also be of benefit in future peacekeeping missions if all legislation and procedures drafted or worked on in the context of peacekeeping missions were centrally collected so that they could be used as a reference. Consideration should also be given to the development of model legislation and procedures in key areas.

In addition to problems with some provisions contained in UNTAET Regulations, some legislation inherited from Indonesia, including the Criminal Code, contains provisions which are not consistent with human rights standards and which could lead to human rights violations.²⁵

Confusion over and gaps in applicable law and procedure has created great difficulties for the development of the policing sector. As far as training is concerned it means that trainers are faced with an impossible task of trying to teach an incomplete and inadequate body of law and procedures. In the meantime, training has been based on a mixture of national law, UNPol procedures and different national models in which the UN trainers have experience.

Recently there have been efforts to rectify this situation. Amnesty International was informed in a letter from the Deputy UN Police Commissioner in February 2003 of a project by the UNPol Strategic Planning Unit to reorganize the legal and procedural framework to ensure it is standardised and centralised. The Deputy Commissioner explained that the framework would be distributed in hard copy to all the districts and would be available on an internet site. The project was scheduled to have been completed by the end of February 2003. With specific regard to procedures for detention, the Deputy Commissioner assured Amnesty International that they would be consistent with the Standards contained within the UN Standard Minimum Rules for the Treatment of Prisoners.

Amnesty International welcomes this initiative and urges the Timor-Leste authorities to support it by setting up a project to collate the full body of applicable law in Timor-Leste and to review all laws, regulations and procedures to ensure consistency with international human rights standards.

²⁵ According to UNTAET Regulation 1/1999, applicable laws in Timor-Leste are those that applied prior to the 25 October 1999 (effectively Indonesian laws), in as far as they do not conflict with international standards and until they have been replaced by UNTAET Regulations or subsequent legislation passed by democratically established institutions.

5.3b Field and in-service training

Neither the field training nor the in-service training adequately compensates for the shortcomings in the Police Academy based training. The Field Training Unit is responsible for delivering training in two specific areas: use of force (firearms, batons and Oleoresin Capsicum spray, also known as OC or pepper spray) and driving skills. On force, as in the Police Academy, the focus is predominately on mechanical skills of weapons handling and accuracy or target practice. Some scenario training was being introduced, but only at the end of 2002 after the majority of the PNTL officers had already passed through the training and most of them had already been certified to carry firearms.

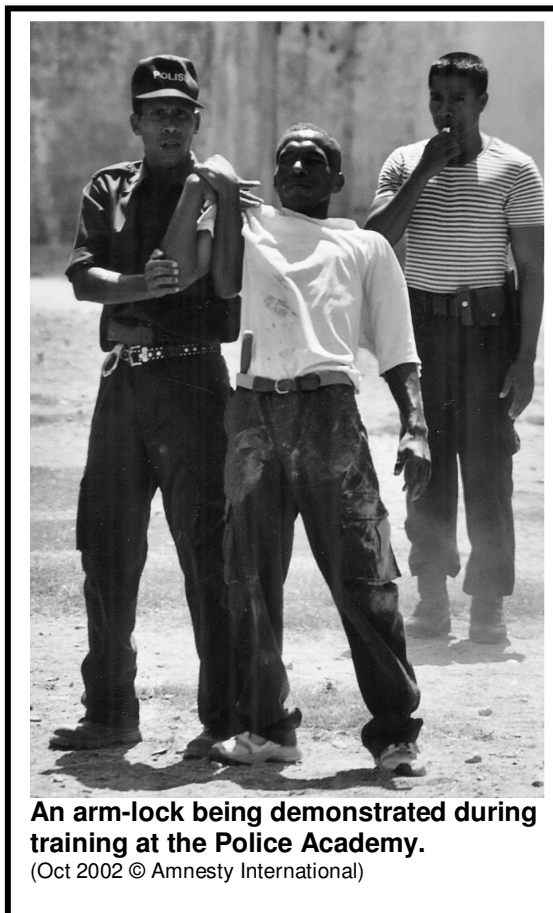
It was generally acknowledged that field training had not been implemented as planned and was not providing the additional, more advanced training that was intended. Amnesty International understands that some efforts may have been made to improve this situation and the Field Training Unit is involved in developing training programs on the newly drafted standard operating procedures, including that on force and firearms. The importance of such training can not be underestimated and full support for such efforts must be given.

Given the weaknesses in the formal training, in-service training also takes on a heightened importance. There are some positive examples of in-service training. For example at Dili District Police Headquarters a program of scenario based training for its officers was being piloted in October 2002. Amnesty International welcomes this development, but is concerned that it is taking place so late in the day and that it has been left to an individual UNPol Commander to initiate.

Elsewhere there has been considerable variation in how in-service training is delivered, or indeed on whether it is delivered at all. Pre-independence, it was not uncommon to hear the complaint that PNTL were being used as drivers or in other support roles while it was UNPol who, in practice, were carrying out policing duties. The situation is exacerbated by communication problems resulting from the chronic shortage of interpreters for UNPol.

Post-independence, greater efforts have been made to give PNTL leading roles, including by giving them command of stations for several days a week to build up skills and confidence for eventual full transfer of authority. However, the variations in the knowledge, skills and motivation of individual UNPol officers and absence of effective central control and oversight of the process inevitably impacts on the quality of the in-service training.

5.3c Training in management and supervision



Almost without exception PNTL officers to whom Amnesty International spoke identified the need for training in management and supervision skills. This is becoming all the more pressing as the PNTL take over operational responsibility for various units, including district commands.

As of October 2002 there had been little formalised management training for PNTL. In some instances officers have been selected for appointment to posts where there is potential for on-the-job management training and development. A few have attended training courses abroad, including in Malaysia and Japan. However, the reality is that most officers have no more than two or three years policing experience and few are ready to take on management and supervisory roles without considerable and sustained support.

One UNPol Field Trainer pointed out the very practical implications of the current lack of management skills when he expressed concern that existing RIU/UIR commanders would not know how or when to deploy a firearms team. He advised that a basic tactical course should be introduced and from the participants, team leaders could be selected to work with technical advisors.

5.3d Training the trainers

The Amnesty International delegation noted with concern that a number of the UNPol trainers appeared to have little understanding of basic human rights principles. In

particular, there was a limited understanding of the concepts of proportionality and necessity which are essential to training in the use of force and firearms. A number of trainers to whom the delegation spoke were unable to answer questions about how these concepts were incorporated into the training.

In addition to training PNTL officers, the same UNPol officers were training trainers from within PNTL and are thereby in all likelihood building faults into the system. Again the mixed quality of the trainers reflects poorly on the UN and its selection and deployment of UN Police.

Recommendations

- A comprehensive review of all existing curriculum materials should be undertaken to ensure that human rights are integrated across the curriculum and are reflected in the regime of the Police Academy.
- Training in human rights should be practical and reflect the reality of policing in the field. To this end scenario based training should be developed, including in procedures for arrest techniques, detention procedures and the use of force and firearms to develop skills in assessing proportionality and necessity. Such training should be compulsory for both new recruits and existing PNTL officers, including for members of the RIU/UIR.
- Training on the rights of women and children in the criminal justice system should be fully integrated into the formal police training.
- The delivery of training by individuals and organizations outside of the police should be continued and built upon to ensure that training is delivered by a variety of people so that the diversity of the community to be served is modelled in the training process. For example, there must be both male and female trainers and representatives from ethnic, religious or other minorities.
- Training must not be restricted to new recruits, but must continue throughout the careers of police officers and training programs should be developed for this purpose,
- Resources should be provided for a research and development unit within the Police Academy to facilitate the speedy implementation of new legislation and procedures within the curriculum. Given that much development of legislation

is required in the coming years, provision should be made to providing remedial training for existing officers as new legislation and procedures are adopted and existing law reviewed. Resources will need to be earmarked for curriculum development at the Police Academy and for releasing officers from their duties to attend such training.

- Police training facilities should have reliable and continuing access to skilled trainers. This should include high-quality training of trainers at national, regional or international level.
- Monitoring and evaluation of training programs should be introduced. The criteria for evaluating the success of training programs, including the evaluation of trainees' understanding of and commitment to human rights standards, should be established at the start of the training to ensure that lessons are learnt from previous training and that those lessons are incorporated into future training initiatives.
- All training and reform initiatives should be linked to the creation of effective accountability mechanisms.

6. Oversight and accountability

Effective accountability structures are essential to any police service. They provide oversight mechanisms to ensure that police powers are not abused; they enable society to influence and monitor police policy; they create the environment and capacity within a police service to recognize problems and to self-correct and change itself; and they enhance public confidence in the police.

The importance of oversight and accountability was explicitly recognized by the UN Secretary-General who, in his 4 October 1999 report on the situation in East Timor, highlighted the need to ensure that the development of indigenous structures for security “...conform to the standards of civilian oversight, democratic accountability and international human rights standards”.²⁶

There is no single model for systems of accountability, but to be effective there must be structures which ensure that the police generally, as well as individual

²⁶ Report of the Secretary-General on the Situation in East Timor. S/1999/1024, 4 October 1999.

police officers, are both legally and democratically accountable to the whole of society. The legal framework should be defined by domestic law and regulations and be informed by principles contained in international standards which define good practice. It should also require the state to conduct investigations where there are allegations of wrongdoing.²⁷ Democratic accountability can take many forms, but should provide society with a role in choosing the type of police service it wants, ensure that the police provide the agreed type and quality of service and ensure redress when it does not.

Without effective accountability systems, impunity is likely which in turn risks leading to the abuse of police powers and the erosion of efforts towards developing a community based model of consensual policing. Despite the obvious importance of oversight there is currently no independent institutional mechanism to perform this function.

Amnesty International regards the lack of priority given to the establishment of accountability systems for the PNTL as a significant failing of planning and prioritisation by the UN which has major repercussions for all aspects of the PNTL's development. The impact is compounded by the patchy example that has been set in holding UNPol officers accountable for their actions - a common problem in UN peacekeeping missions elsewhere in the world.

6.1 The UN's example

In its July 2001 report, *East Timor: Justice past, present and future*, Amnesty International reminded UNTAET that its actions and those of its personnel would lay the foundations for future law enforcement and the process of justice in East Timor. The organization argued that, as such, it should uphold the highest standards. Unfortunately, these standards have not always been met in the area of accountability.

²⁷ For example, Article 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment requires that states must entrench in domestic law the right of victims to lodge complaints of torture or ill-treatment. The UN Principles on the Effective Prevention and Investigation of Extra-Legal Arbitrary and Summary Executions requires that killings resulting from excessive or illegal use of force by public officials should be made punishable as a criminal offence and, when they occur, governments are required to institute thorough, prompt and impartial investigations.

The absence of adequate accountability structures for UN staff is not unique to the peacekeeping mission in Timor-Leste and has caused concern elsewhere.²⁸ Under UNTAET there was an initiative to establish an Ombudsperson's Office through which complaints against UNTAET officials, including the military and police components, could have been received and investigated. However, it came to nothing because, although a regulation to establish the office was drafted and an appointment made, the office never functioned.

In the absence of such a mechanism complaints against UNTAET officials were dealt with inconsistently and often unsatisfactorily. In a number of more serious cases where there were allegations of criminal misconduct, UNTAET did, to its credit, lift the immunity of the officials involved. It is unclear if any of these cases resulted in trials.

Complaints against UNPol are currently dealt with internally by the UNPol Professional Standards Unit (PSU) which has been the subject of criticism among other things for its lack of transparency and slowness to respond to and act on allegations of misconduct. The perceived lack of commitment by the UN in Timor-Leste to ensuring that its own personnel are fully accountable has set a poor example which is reinforced by the low priority given to developing an effective oversight mechanism for the PNTL.

6.2 The legal and institutional framework for PNTL accountability

Under Timor-Leste's Constitution fundamental rights, including the right to life, the right to personal freedom, security and integrity and the right to be free from torture and other cruel, inhuman or degrading treatment, are recognized thereby formalizing the responsibility of the state to protect these rights and guarantee the rule of law. It follows therefore that the state is responsible for investigating violations of such rights should they occur.

²⁸ For example in Kosovo where the Ombudsperson for Kosovo criticised the blanket lack of accountability afforded by the UN Mission in Kosovo (UNMIK) to the Kosovo Force (KFOR) and UNMIK and their personnel which paved the way for impunity of the state. See Ombudsperson Institution in Kosovo, *Special Report No.1 on the Compatibility with Recognized International Standards of UNMIK Regulation No. 2000/47 on the Status, Privileges and Immunities for KFOR and UNMIK and Their Personnel in Kosovo (18 August 2000) and on The Implementation of the Above Regulation.*

Unlike some constitutions, for example the 1993 interim South African Constitution,²⁹ the Constitution of the Democratic Republic of Timor-Leste does not contain specific references to police accountability, although it does make provision for an Ombudsperson whose role it is to examine and seek remedy for complaints against public bodies. Although not specified, it can be assumed that “public bodies” might include the police.

The Ombudsperson’s Office has not been established. However, there are plans to establish a Provedor’s Office (*Provedor de Direitos Humanos e Justica*), a law for which has been drafted and was scheduled to be sent to the Council of Ministers and Parliament for consideration in March 2003. The legislation had not been adopted at the time of writing, although it is expected that a Provedor will be appointed by June 2003. As it is currently conceived its role will include receiving and investigating complaints of human rights violations, maladministration or corruption by the government, the administration and other public entities or private entities fulfilling public functions. It will be empowered to initiate its own inquiries into individual cases or broader human rights issues.

It is currently intended that the Provedor will have oversight of the police and there has been some discussion of appointing a Deputy Provedor specifically for this role. Amnesty International welcomes the plans for a Provedor’s office. However, while it recognizes the severe resource and capacity constraints in Timor-Leste and that the government may therefore wish to avoid creating a multiplicity of different agencies, the organization is concerned about the capacity of the Provedor’s office to effectively carry out a police oversight role in addition to the many other important functions it will be performing. The organization also notes that, while the Provedor can make recommendations, it has no powers to enforce them. In view of the limited capacity and powers of the Provedor’s Office, Amnesty International believes that consideration should be given to establishing a separate civilian police oversight mechanism.

The Regulation on the Establishment of the East Timor Police Service (UNTAET Regulation No 2001/22) makes no reference to an independent police oversight mechanism. Rather, on the contrary the regulation establishes the potential for a high level of police impunity under a provision (Section 6.2) which states that; “No police officer shall be liable, either criminally or civilly, for any act of

²⁹ For example, in the 1993 South African interim Constitution there was provision for Community Police Forums, whose role included promoting the accountability of the service, and an Independent Complaints Directorate. The interim Constitution was replaced in 1996 with a new constitution in which provisions on police accountability are less explicit.

commission or omission, if the matter or thing was done in good faith for the purpose of executing any provisions of any law". In a qualification to the section it is noted that: "*Such privilege shall not extend to acts of commission or omission arising out of intentional wrongful conduct or gross negligence*". While an apparent recognition of the risk of broad impunity, this vaguely worded qualification is nevertheless likely to result in disputes about what constitutes "*intentional wrongful conduct*" as opposed to an act done "*in good faith*". An independent expert, with some 20 years experience with a European police service, noted that "*if left to the police, I doubt they would ever concede such a point*".

In its general provisions, Regulation No. 2001/22 does authorise the issuing of a directive prescribing the procedure for discipline. The PNTL Code of Conduct was finally approved by the Minister of Internal Administration in early March 2003. Its slow progress from drafting to adoption (almost one year) is indicative of low priority given to the issue of police accountability successively by UNTAET, UNMISSET, UNPol and the Timor-Leste authorities.

6.3 Accountability in practice

In the absence of any other mechanism, complaints against PNTL officers have been handled by the UNPol Professional Standards Unit (PSU), an internal police mechanism which does not report publicly on its findings or recommendations and which the vast majority of the public are not aware exists. Until the adoption of the PNTL Code of Conduct the UNPol Disciplinary Code and Procedure was applied to PNTL, supplemented in some cases by the PNTL draft Code of Conduct. While providing an interim solution, this arrangement was a less than perfect one. Among the shortcomings were the sanctions for misconduct provided for under the UNPol Disciplinary Code, the most serious of which are repatriation followed by recommendation for the removal of UN privileges, neither of which is relevant to local police officers.

According to the PSU, the majority of complaints against PNTL officers are for assault or excessive use of force in public order or arrest situations. Seventeen cases of assault or excessive use of force by PNTL were investigated by PSU in 2002, compared to five the previous year. While some increase in complaints against PNTL might be expected as they take over front-line policing duties from UNPol, the fact that assault, or excessive use of force, constitute the majority of complaints once again points to failure at the training stage.

It was unclear to the Amnesty International delegation whether the cases processed by PSU are fully representative of the range or actual number and type of complaints against PNTL, or indeed UNPol officers, since some cases appear to be resolved informally while others are not addressed at all.

UNPol officers, including those assigned to PSU, were aware of some of the shortcomings of the existing procedures. There was recognition, for example, that the process is not sufficiently transparent in that there is no formal process to inform the public of the work of the unit and complainants of the progress or outcome of a particular case. With regard to complaints against PNTL specifically, it was acknowledged with some concern that the PSU lacked the legal and regulatory framework to satisfactorily resolve all complaints, although this will have been at least partially resolved with the adoption of the PNTL Code of Conduct. It was also noted that the level of discretion given to the PNTL Commissioner as to whether or not to apply sanctions to an officer against whom a complaint has been substantiated has resulted in sanctions being inconsistently applied.

Among human rights monitors and the general public there is criticism of the lack of public awareness about how or where to lodge complaints; that not all allegations of human rights violations or other forms of misconduct result in investigations; the length of time taken to resolve some complaints; inadequacies in investigation procedures; the lack of public access to information on the progress or outcome of cases; and an apparent tendency towards mediation, or informal resolution, of complaints even where allegations are of a serious nature and should have been treated as criminal offences and relevant criminal procedures followed.

Concerns expressed by both UNPol officers and others were confirmed by a number of examples which came to Amnesty International's attention. In one case, which was reported in a local newspaper, three people are alleged to have been beaten by RIU/UIR officers in the Audian area of Dili on 8 August 2002.³⁰ Inquiries by local human rights monitors indicated that a fight had taken place in a nearby hotel, but that the three people beaten had not been involved in the incident. According to one unsubstantiated report at least two UNPol officers were present when the assaults took place. In response to Amnesty International's inquiries an officer with the PSU said they were not aware of the case.

In another case, the rape of a child by a PNTL officer which was alleged to have taken place in early 2002 has still not been satisfactorily resolved over one year

³⁰ “Tiga warga Audian dianiaya polisi”, *Timor Post*, 9 August 2002.

later. The victim was a 15 year-old school girl who was allegedly raped on two occasions in January and March 2002 by the police officer. Although the victim was threatened by the police officer not to tell anyone, her family reported the crime to UNPol and PNTL at the local police station where UNPol were still in command. An investigation was initially undertaken locally and then by PSU which recommended that the officer in question should be dismissed. The recommendation was not implemented. Instead, the officer received a verbal warning and was transferred to another district. The PSU later reopened its investigation, but has since closed it again. A criminal investigation by the Prosecutor General's Office was also closed reportedly for lack of evidence.

In the meantime, a process of informal resolution was undertaken by the families of the suspect and the victim. Compensation, including a financial payment of US\$500 and a buffalo, was paid to the family of the victim by the suspect following a mediation process often described as a "traditional" or *adat* process.

Amnesty International has previously raised concern about the use of alternative or non-judicial mechanisms in Timor-Leste in connection with the development of the criminal justice system. The organization believes that, within clearly defined limits, non-judicial mechanisms may have a place in Timor-Leste. However, existing systems, of which there are many local variations, often do not meet with international human rights standards. The right to a fair trial and the rights to be free from discrimination and from torture and cruel, inhuman or degrading treatment can be put at risk where informal mechanisms are used without safeguards.

Amnesty International is also aware of cases where victims, particularly those from more vulnerable groups, such as women or children, have been coerced into accepting a "traditional" process and resolution even where they have explicitly expressed a desire to pursue a criminal prosecution. In the specific case of the alleged rape of the child by a PNTL officer, there were indications that the family felt under pressure to drop the charges against the police officer in return for the settlement.³¹

Recommendations

- The Regulation on the Establishment of the East Timor Police Service should be amended so that provisions that could facilitate police impunity are removed and provisions which require officers to report any misconduct by

³¹ See Amnesty International Report: *East Timor: Justice past, present and future*, (AI Index: ASA 57/001/2001), July 2001.

colleagues are added. Legal provision for the establishment of an independent police oversight mechanism should also be added.

- An effective and credible independent civilian police oversight mechanism must be introduced. Whatever model is adopted it must be:
 - Institutionally completely independent of government, political influence, and of the police;
 - able to receive complaints and to investigate incidents on its own volition, even in the absence of a complaint;
 - accessible and effective, both in dealing with members of the public, and police officers who may be the subject of a false complaint;
 - have the power to recommend appropriate action in respect of individual officers and police systems and be provided with some sanction if recommendations go unheeded;
 - have capacity to carry out research with a view to being pro-active, and tracking trends beyond individual incidents;
 - have sufficient budget to underpin the principle of independence.
- Information about the forms of redress available and about the outcomes of investigations into police behaviour should be publicly disseminated throughout the country. Complainants should be kept informed of the progress of investigations.
- *All* allegations of human rights violations or misconduct by police officers must be immediately investigated through the formal channels of the independent oversight mechanism or internal police mechanisms, depending on the nature of the complaint. Disciplinary or other action must be taken where allegations prove to be founded. In cases of serious human rights violations, these should be treated as criminal offences and the relevant criminal procedure followed.
- Under no circumstances should alternative, unofficial justice mechanisms be used to resolve cases where there are allegations of human rights violations against members of the police.

7. Separation of police and military functions

Constitutionally the responsibility for providing internal and external security in Timor-Leste is clearly separated between the police and the military. Under Section 147(1) of the Constitution, the PNTL are charged with guaranteeing the internal security of the citizens, while the Timor-Leste Defence Force (*Falintil-Forças de Defesa de Timor-Leste*, F-FDTL) is responsible for guaranteeing “*national independence, territorial integrity and the freedom and the security of the population against any aggression or external threat*”(Section 147(3)).

The Transitional Rules do not specify, but nevertheless imply, that powers of arrest lie exclusively with the police and indeed, the law applying to the defence force does not grant F-FDTL these powers. However, these lines were crossed in the course military operations in Ermera District in January 2003 during which some 90 people were arrested by F-FDTL. The detainees were transferred to the custody of the police and, in some case, detained illegally for over a week in Becora Prison in Dili. All safeguards which should protect against arbitrary detention appear to have failed and a whole series of other legal and procedural weaknesses were exposed in the process.

The arrests were prompted by the killing of five people in Atsabe Sub-district, Ermera District in the first week of January 2003 by an armed group which it has been alleged by some were former members of pro-Indonesian militia.³² Although it remains unclear whether militia were responsible for the attack, their continued presence in refugee camps in West Timor, Indonesia is the source of some insecurity particularly among communities living around the border area.

UN Peacekeeping Forces (PKF) are stationed in the border area to guard against the potential threat of militia. However, following the killings responsibility for defence in Ermera and the neighbouring district of Bobonaro was transferred to the F-FDTL which, it was argued had a greater understanding of local terrain and people. The arrangement was initially for a period of two weeks from 6 to 17 January 2003, but was extended on several occasions.

³² The area where the killings took place is close to the border of West Timor to where many militia members fled in 1999 and are still living in refugee camps. Indonesia has never effectively acted on UN Security Council demands to disarm and disband the militia which is still considered to present a security threat, albeit considerably diminished from 1999, to Timor-Leste.

The agreement does not specify that F-FDTL has power of arrest. However, within the space of a week around 90 people are believed to have been arrested by F-FDTL in the Hatolia, Atsabe and Letefoho Sub-districts of Ermera. Those detained appear mainly to have been members of Colimau 2000, a quasi-religious sect which is alleged to be armed and has been accused of having links to former militia and of carrying out acts of intimidation, threats and extortion. It is unclear if the group had any connection to the murders in Atsabe. A number of others, who seem to have had no connection with Colimau 2000, including several children, one as young as two years old, were also detained. There were no warrants for any of the arrests.

It appears that all detainees were handed over to PNTL, but in some cases not for some hours after arrest. For example, a group of 39 people who were reported to have been arrested in Leomaea Kraik in Hatolia Sub-district in the morning of the 9 January 2003 were transferred to the police in the evening of the same day. Amnesty International is not aware what happened to them in the intervening period.

On 10 January 2003, the 39 detainees were delivered by the police to Becora Prison in Dili where they were accepted although none had detention orders. In fact, detention orders were not issued until the following day. Even then they were issued not by an investigating judge whose role it is to issue warrants, but by a prosecutor who had no authority to do so. The “detention orders” issued on 11 January 2003 were valid for 72 hours to 13 January 2003. They were not renewed after they expired and, although eight of the 39, including seven children, were released on 14 January 2003, the remaining 31 people were held in custody for another three days. These 31 individuals did not appear before a judge until late on 16 January 2003, eight days, or over 168 hours, after they were initially arrested by F-FDTL.

Although the fact that they were illegally detained was beyond dispute, and although the prosecutor recommended all 31 be released, the investigating judge, whose primary role it is to protect the rights of suspects, suspended the hearing to the following day apparently because he needed more time to consider his decision. On 17 January 2002, two separate review hearings took place. In the first, a group of 15 men were unconditionally released on the recommendation of the prosecutor and the agreement of the investigating judge who concluded that they had been illegally detained and were entitled to compensation. The prosecutor for the second group however, recommended their continued detention. In this case the investigating judge ordered the unconditional release of 13. Three others were conditionally released although it is unclear on what charges.

This sequence of procedural failures was compounded by the poor conditions in which the detainees were held in Becora Prison where at one point there were 39 people in two cells designed for four or five people at most. Toilet facilities were said to be inadequate and drinking water was not provided. As is commonly the case in Timor-Leste, the detainees had no legal representation until the day of the review hearing on 16 January 2003.

The reaction by both the Timor-Leste authorities and UNMISSET has been alarming. UNMISSET has publicly remained almost silent on the human rights aspects of the events except in a press statement on 17 January 2003. The statement noted that people, identified as militias by the local population, were apprehended by F-FDTL and that “... *these persons are being dealt with in accordance with the prevailing laws of Timor-Leste*”, although this was patently not the case. The UNPol Commander did send a letter to the Commander of the Armed Forces, Brigadier General Tuar Matan Ruak in which concerns about F-FDTL’s compliance with human rights and the rule of law. The letter generated strong criticism from the Timor-Leste authorities and a campaign of attacks in the media which have continued until this day.

On the side of the Timor-Leste government there appears to be a degree of genuine confusion surrounding correct procedures. However, the confusion is combined with a more worrying anti-human rights rhetoric. The Prime Minister, members of parliament and the Commander of F-FDTL, were among those who defended F-FDTL’s actions and criticised human rights groups for raising their concerns. Particular criticism was levelled at a local human rights group after it issued a public statement which raised concerns about F-FDTL’s actions and the treatment of suspects.³³

These events reflect not only the fragility of the existing procedures in that they can so easily be ignored or subverted, but also a worrying level of misunderstanding about, and in some cases plain disregard for, human rights among military, police, judicial and government officials and some UNMISSET personnel.

Amnesty International recognizes that there are genuine security concerns in Timor-Leste and that both the government and UNMISSET have a responsibility to protect the country’s citizens. The challenge of responding effectively to such threats in a manner which is consistent with international human rights standards is

³³ See Judicial System Monitoring Programme (JSMP) media statement: “JSMP concerned about illegal detentions in East Timor”, 16 January 2003.

considerable, particularly in a country where law enforcement capabilities are not yet fully developed. The organization believes the events in Ermera District, and another alleged attack by militia on a bus in Bobonaro District on 24 February 2003 which resulted in two deaths, lends weight to the argument for drastically accelerating efforts to strengthen the capacity of PNTL, including in the areas of intelligence gathering and investigations.

In addition to highlighting security concerns and a lack of capacity to respond effectively, events in Ermera also expose tensions between F-FDTL and PNTL and an apparent confusion of their respective roles and areas of authority. Brigadier General Tuar Matan Ruak has publicly stated that the military should avoid involvement in internal security matters. However, the strained relations between the two institutions have been manifested in a series of incidents, including physical fights or assaults, over the past year. An underlying theme of these incidents appears to be reluctance by some members of the F-FDTL to accept the authority of civilian police in matters of civilian law enforcement. Amnesty International is concerned that resistance to PNTL authority by members of F-FDTL has contributed to the undermining of PNTL's authority in the eyes of the general public.

Recommendations

- Clarify in law and practice the division of roles between the PNTL and the F-FDTL and ensure that there are explicit guarantees in law that only the police have the authority to carry out arrests and detentions. In exceptional circumstances, such as an attack by militia or other armed group, a protocol should be developed to provide an appropriate structure for the F-FDTL to provide back-up for the PNTL. Where it is essential that the F-FDTL carries out an arrest, it should follow law enforcement procedures that respect international human rights standards and transfer suspects to police custody as soon as possible. Such actions should only be used as a last resort.
- All members of F-FDTL who are suspected of committing human rights violations are subject to the jurisdiction of the civilian courts, and such violations should be investigated by the PNTL.

8. Integrating human rights into police operations

Even under less pressured situations than those experienced in Baucau and Dili in November and December 2002 respectively, and in Ermera in January 2003, the risk of human rights violations taking place is amongst the highest where force and firearms are used and during arrest and detention. Both are governed by international human rights standards which should be incorporated into relevant legislation and procedures. Such standards should also be reflected in training for law enforcement and other relevant officials.

The legislative framework inherited by the government of the newly independent Timor-Leste is not complete and in many respects unequal to the task of ensuring the security of Timorese citizens and protecting their human rights. Where there is no relevant legislation or standard procedure the tendency has been to fall back on what is familiar. In the case of PNTL that is procedures from Indonesia where the record on human rights is abysmal. In the case of UNPol, which has had at various times representatives from some 40 or 50 different nations, it is procedures and practices applied in their own countries. The result is inevitably inconsistency and confusion.

Senior UNPol officers recognized the situation and expressed frustration that the UN had not learnt lessons from other peacekeeping operations where effective policing was undermined because the basic legal and institutional structures were not in place. One officer who had also served with the UN in Bosnia summed it up when he noted that *“we are reinventing the wheel – we need models, which while taking account of local conditions and cultures, can be applied in all missions...systems that we developed in 2000 in Bosnia we are now developing again in East Timor.”*

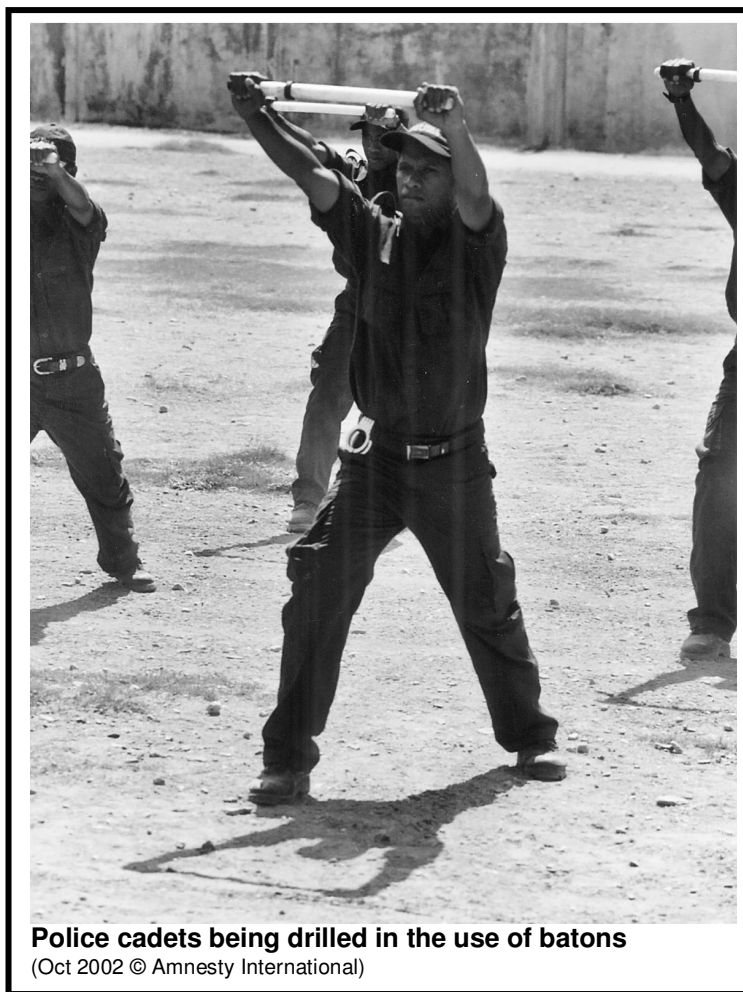
The incomplete legal and procedural framework impacts on and is compounded by the limited and largely theoretical training received by PNTL in international human rights standards. When combined with inadequate oversight and accountability, inexperience and the mixed and often inconsistent example set by UNPol, PNTL are operating at a considerable disadvantage. In such a situation human rights violations, whether inadvertent or not, are almost inevitable.

Amnesty International identified a range of concerns about the way in which this situation is impacting on the two areas of use of force and firearms and arrest and detention.

8.1 The use of force and firearms

Guidelines for the proper use of force and firearms by law enforcement officials are contained in the UN Basic Principles on the Use of Force and Firearms by Law

Enforcement Officials (Basic Principles). The guidelines cover a range of issues, including when force or firearms may be used; the exercise of restraint and proportionality; issuing and storage of firearms and ammunition; policing of unlawful assemblies; policing persons in custody or detention; recruitment and training; and reporting and review procedures.



Police cadets being drilled in the use of batons
(Oct 2002 © Amnesty International)

It was clear to the Amnesty International delegation that these guidelines had not been institutionalised within PNTL training or practice. The killings and injuries caused by police Dili and Baucau were tragic illustrations of the danger of a situation where a

police service which is armed, but not adequately trained or supported, is faced with violent protestors. However, it is not the equipment *per se* which is of concern to Amnesty International in Timor-Leste, but that the overarching principles on the use of force and firearms are not institutionally embedded into PNTL training and practice

irrespective of whether the force employed involves security equipment or unarmed defensive techniques (often referred to as open hand skills).

Amnesty International believes that particular attention should be paid to the following:

8.1a Law and procedures on the use of force and firearms

The scope of the general and special provisions under the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles) are not yet adequately reflected in law or procedures.

Under the Basic Principles the intentional use of firearms is prohibited except when strictly unavoidable in order to protect life - that is, in the self-defence or defence of others against whom there is an imminent threat of death or serious injury (Principle 9). The use of restraint and proportionality is emphasised (Principles 4, 5(a) and 5(b)). It is also explicitly stated that if firearms are to be used a clear warning must be given (Principle 10).

The Regulation on the Establishment of the East Timor Police Service makes no reference to either restraint or warnings. It goes some way to addressing the issue of proportionality with the provision that the level of force used should be “proportional to the threat and as absolutely necessary under the circumstances” (Section 9.3). However, the requirement in the Basic Principles that force or firearms is used only as a last resort where other means remain ineffective or without any promise of achieving the intended result (Principle 4) is replaced with the provision that “*lethal force should only be used when other non-lethal means would be clearly inappropriate in the given circumstances*” which does not make it explicit that other non-lethal means should have been exhausted before lethal force is employed.

In cases where force or firearms are used, the Basic Principles lay out clear guidelines on the steps that should be taken to report and review such an incident (Principles 22, 23, 24, 25 & 26). Among the requirements under these principles is the need for effective reporting and review procedures for all incidents of use of force and firearms; access to an independent process, including a judicial process for persons affected by the use of force and firearms; and responsibility of superior officers in cases where they knew or should have known that officers under their command were resorting to unlawful use of force and firearms and did not take all measures to prevent or report such use. UNTAET Regulation No. 2001/22 entirely omits these principles.

The new use of force policy introduced earlier this year goes some way to address some, but not all of these requirements and also addresses some of the shortcomings in Regulation No. 2001/22. In particular, the concepts of proportionality, legality and necessity are emphasised, although it will be necessary to operationalise these through effective training. Amnesty International was concerned to learn that by late April 2003, PNTL officers in some districts were still unaware that the new policy existed and had not undergone training in it.

With regard to warnings, the new policy prohibits the use of warning shots, but does not provide for a standard warning for situations where lethal-force is to be employed (see Section 8.1b, Warnings). There is no reference to the storage and issuing of firearms - it is assumed that a separate policy is to be drafted to cover this area (see Section 8.1d, Regulating the control, storage and issuing of firearms). Moreover, while it does include reporting obligations, the requirements remain theoretical in the absence of an independent oversight mechanism (see Section 8.1e, Reporting).

Recommendations

- The Regulation on the Establishment of the East Timorese Police Service (UNTAET Regulation No. 2001/22) should be amended so that it fully reflects international standards relating to the use of force and firearms.
- All PNTL officers should immediately be made aware of, and undergo practical training in, the new policy on the use of force and firearms.

8.1b Warnings

Detailed guidelines on the issuing of warnings, including a common wording when firearms are to be used are among the standard operating procedures essential to any police service that has armed officers. Principle 10 of the Basic Principles requires that clear warnings are issued and that sufficient time given for the warning to be observed.

Under the new policy on the use of force, officers are obliged to give a verbal or visual warning before resorting to the use of force. Beyond this, no further guidance is given, for example on what words should be used by officers if they intend to use lethal force.

The new policy does forbid the use of warning shots. Amnesty International welcomes this development, but is surprised that warning shots should have been introduced by the UN in the first place. Their use was initially authorised under UNPol's rules of engagement and, in the absence of any other policy or procedures, they became incorporated into PNTL's training and practice. Amnesty International is further concerned that, although warning shots are now forbidden, their use has been reported on several occasions.

At the time of its visit in October 2002, the Amnesty International delegation strongly recommended that the use of warning shots should be discontinued because of the risk of random injury. Their use was also not without its critics within UNPol. One UN firearms trainer explained his discomfort at the contradiction inherent in teaching on the one hand that warning shots are dangerous and on the other hand that they can be used to command attention.

Amnesty International is concerned that the authorised use of warning shots may have contributed to the deaths and injuries during the disturbances in Dili and Baucau in November and December 2002. Moreover, the high number of shots fired during the Baucau incidents on 18 and 25 November (160 and up to 300 rounds respectively) suggest that they were not being used merely, or even, to attract attention, but rather as a form of crowd control to scare protestors into dispersing. These and other examples of "warning shots" being employed exposed institutional weakness with regard to the ability of the PNTL to respond to public order incidents with proportionate and necessary force.

Recommendations

- The UN should review its policy on the use of warning shots so that their use is discontinued in any peacekeeping operation.
- Standardised warnings for the use of lethal force should be developed as a matter of urgency and incorporated into standard operating procedures. All PNTL officers should be urgently retrained in the new procedures.

8.1c Restraint and threat assessment

The exercise of restraint in the use of force and firearms and the requirement to act in proportion to the seriousness of the offence and the legitimate objective to be achieved is contained in the Basic Principles (Principle 5(a)). Non-violent means should be applied and force or firearms only resorted to if non-violent means prove

ineffective (Principle 4) and firearms only made use of when there is a direct threat to life (Principle 9).

Although training in the use of force and firearms forms a significant part of the training time for PNTL recruits the concepts of restraint and proportionality feature only in a very limited fashion. Of the total 528 hours of training received by cadets at the Police Academy, 84 hours are dedicated to the use of firearms. In addition, 40 hours of Academy based training are dedicated to what is termed “officer survival” and involves training in the use of batons, Oleoresin Capsicum (OC or pepper spray), unarmed defensive techniques (or open hand skills) and public order control. Supplementary training in the use of firearms and other security equipment is delivered by the Field Training Unit.

It was apparent from Amnesty International’s observation of training and interviews with UNPol and PNTL officers that members of the PNTL may have a relatively high level of technical competency in the use of force and firearms, but are not equipped with the tactical skills that would ensure that they are able to assess threats, in particular a threat to life; exercise restraint; and, where force is necessary, apply the appropriate level. One UNPol trainer acknowledged that the capability among PNTL officers of assessing a threat to life does not exist. In his words: *“Right now they have a very basic level of training - they can pretty much carry a gun without killing themselves or someone else accidentally”*.

The decision to equip a police service with firearms, or other security equipment, brings with it a responsibility to train officers in how it should be used in a manner which is consistent with international human rights law and standards - above all in ensuring that the right to life is protected at all times.

Recommendations

- An immediate review of existing training on the use of force and firearms in public order policing should be undertaken so that it incorporates, in a practical way, concepts of proportionality, legality and necessity.
- All serving PNTL officers should urgently undergo remedial training in the practical implementation of human rights standards when using force and firearms.

8.1d Regulating the control, storage and issuing of firearms.

Some effort had been made towards ensuring secure storage of firearms and ammunition and their issuing recorded in each of the seven police facilities visited by the Amnesty International delegation. Nevertheless, in order to fully comply with international standards and to guarantee full control and accountability of weapons and ammunition additional steps are required.

The importance of effective regulation and control of firearms cannot be underestimated. Effective accountability depends on rigorous documenting of to whom and when guns and ammunition are issued. Secure storage is also essential to prevent the risk of firearms being stolen. It is not uncommon in conditions of violence for police armouries to become targets. For example, in the June 2000 coup against the government in the Solomon Islands the main antagonists, the Malaita Eagle Force, used police weapons, uniforms and equipment stolen during a raid on a police armoury on the island of Malaita in January the same year.³⁴

Amnesty International noted that in Timor-Leste, although firearms were stored in safes in all of the facilities visited, the safes were not bolted to the floor or walls and could therefore be removed with little difficulty. The armouries themselves were not secure or defensible. Bars on windows, where they existed, were weak and neither doors nor windows were reinforced.

Records for issuing and returning weapons varied between different police facilities. In some cases information was not adequately recorded. For example in one station the records for the number of rounds issued differed by ten rounds from the amount which was issued in reality. In another ammunition was checked out, but its return was not recorded. The failure to record such data fully and accurately undermines accountability and, in the event that a weapon is discharged, inadvertently or otherwise, would hamper any investigation process.

Indications of inadequate control of firearms are also visible in a number of incidents where it appears that firearms have been carried by off-duty police officers. In one incident on 1 June 2002 an off-duty PNTL officer fired a shot into the air after being surrounded by a crowd reportedly angered because he had struck two youths during a dispute in Dili. In another case in 2002, a PNTL officer from Manatuto Sub-district fired a number of shots in the air at his home apparently as a result of stress.

³⁴ See Amnesty International Report: *Solomon Islands: A Forgotten Conflict*, (AI Index: ASA 43/05/00), September 2000.

Amnesty International is concerned by the lack of consideration given by the UN to the security and resource implications of having a fully armed police service in a country such as Timor-Leste which has little in the way of its own resources. Control and security of firearms is among the most basic considerations when equipping a police service with firearms, but one which first UNTAET and now UNMISSET has not addressed beyond providing safes. It is also troubling that little thought has been given to the long term resource implications involved in providing 24 hour security cover to armouries, particularly in more remote areas where eventually need and budgetary constraints may dictate that police stations may not be manned around the clock. Moreover, it is unclear whether consideration has been given to the high cost of ongoing training which is necessary for armed officers to be both effective and safe.

Recommendations

- Standard Operating Procedures for regulating the control, storage and issuing of firearms should be adopted and all PNTL officers should receive training in the new procedures.
- Storage of firearms should be improved to ensure that weapons are fully secure when not in use.
- Systems for recording the issuing of firearms and ammunition should be standardised and regularly audited.
- The PNTL Code of Conduct and discipline procedures should reflect the safe use of weapons and should forbid and make a dismissible discipline offence the misuse of firearms, including carrying firearms when not authorised.

8.1e Reporting

Reporting and review procedures for incidents where force or firearms are used by law enforcement officials are required by the Basic Principles. Under the Principles governments and law enforcement agencies are obliged to ensure that an effective review process is available and that independent administrative or prosecutorial authorities can exercise jurisdiction where necessary (Principle 22).

Until early 2003, with the introduction of the new policy on the use of force and the Code of Conduct, there was no procedure specifically for the PNTL governing

the reporting of incidents where force was used or where firearms were discharged. Instead UNPol procedures were used and complaints forwarded to the Professional Standards Unit (PSU) for investigation.

It was unclear to Amnesty International whether there was consistency in the reporting and investigation of such incidents. With specific regard to the process for reporting discharges of weapons, the Amnesty International delegation received contradictory messages. A clear intention was expressed among senior UNPol officers that all discharges, whether intentional or negligent, should be reported to and investigated by the PSU. This appeared to be being enforced by the small number of UNPol District Commanders to whom the delegation spoke. However, officers in the PSU also acknowledged that in reality this was not always the case.

According to the new policy on use of force, officers are required to submit a report to their supervisor when firearms, OC Spray, batons or handcuffs are used in response to a “deadly force assault” or “active aggression”. The District Commander is authorised to review the report and take “appropriate action”. Copies of reports are also sent to the PSU which is responsible for monitoring them and initiating actions “as appropriate”. In cases where death and injury result from the use of force or firearms, it is the responsibility of the PNTL Commissioner to ensure that a detailed report is promptly sent to the “competent authorities”.

Amnesty International welcomes these new reporting provisions, but is concerned that, until a civilian oversight body is established, the process will remain an internal one and cannot therefore be considered independent or impartial. Once an oversight mechanism has been established, all incidence of use of force or firearms should be subject to its scrutiny and not only those resulting in injuries or deaths.

Recommendations

- All incidence of use of weapons or firearms, whether intentional or not and whether or not they result in injury, should be recorded by the PSU or equivalent PNTL unit and should be subject to external scrutiny by a civilian oversight body.
- All allegations of misuse of force or firearms should be investigated promptly, thoroughly, impartially and independently, in accordance with international standards for such investigations. Where the alleged offence amounts to a criminal act, individual officers should be brought to justice in processes which meet with international standards for fair trial.

- Ongoing analysis of incidents of use of force and firearms should take place to ensure that international human rights standards are being adhered to and, if they are not, to identify why and on the basis of the findings to implement any necessary reform.

8.1f First aid

The provision of first aid at the earliest opportunity to any person injured as a result of the use of force or firearms by law enforcement officials is required under the Basic Principles. This principle is recognized in Regulation No. 22/2001 on the Establishment of the East Timor Police Service,³⁵ but in reality PNTL officers are not equipped to provide such assistance because they have not been issued with the equipment necessary to administer first aid effectively. Of particular concern is the absence of personal issue wound dressings. Outside of Dili, where the nearest medical assistance may be many hours drive away there is a high risk that victims of gun shot wounds, which could include PNTL officers themselves, could die of loss of blood before they reach help.

Recommendations

- Ensure that all officers are trained and equipped to provide assistance and medical aid to any person injured as a result of police use of force or firearms in accordance with Principle 5(c) of the Basic Principles.

8.1g Selection of security equipment and differentiation of force

The Basic Principles require that police officers are equipped with self-defensive equipment, such as shields and bullet proof vests, to decrease the need to use weapons of any kind (Principle 2). Amnesty International noted that the PNTL, including the RIU/UIR, does not have stab proof vests. Given the particularly high threat of injury from sharp edged weapons in Timor-Leste the lack of adequate protective clothing places officers at unacceptable risk and may cause them to resort to firearms prematurely.

³⁵ Section 9.4(a) states that where during the use of force by a police officer injury or death is caused police officers have a duty to ensure that “assistance and medical aid are rendered to any injured person as soon as possible”.

In addition to self-defence equipment, the Basic Principles also encourage governments and law enforcement agencies to develop non-lethal incapacitating weapons, in order to decrease the risk of death or injury. The standards require that these should be “carefully evaluated” and that “the use of such weapons should be carefully controlled” (Principles 2 and 3 of the Basic Principles).

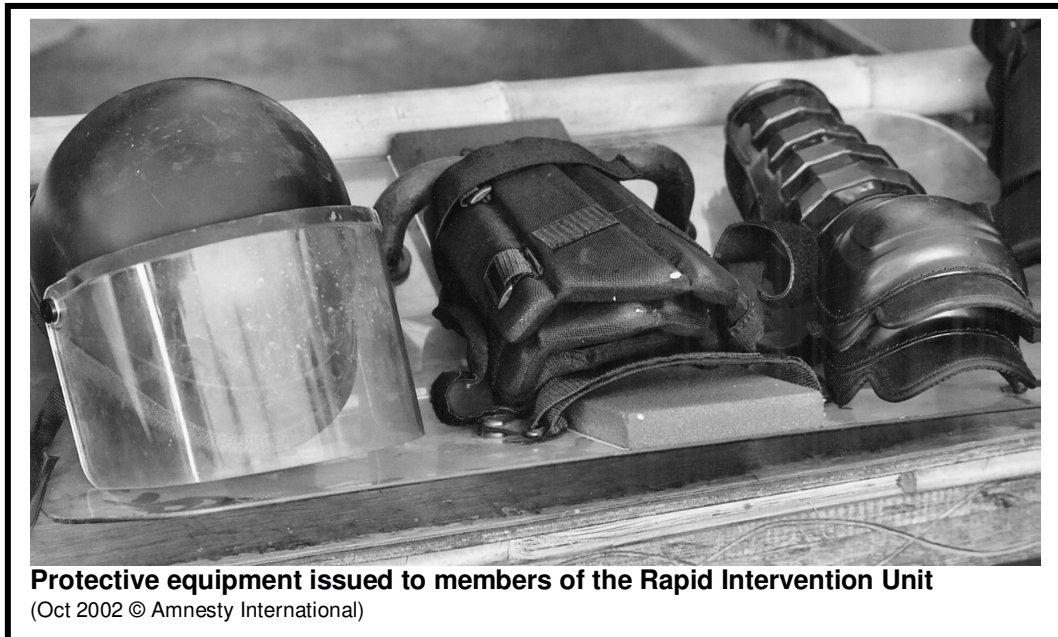
Other than firearms, the range of equipment currently issued to the PNTL (OC spray and batons), are close-quarters weapons, which are ineffective in certain situations such as major public disturbances, or against sharp edged weapons, which, in the context of Timor-Leste where machetes are widely carried, pose a particular threat to police officers. In any case, as one UNPol officer pointed out, in reality not all PNTL officers carry OC spray or batons because they have not been issued with holsters to hold them.

Already a pattern of over-reliance on firearms is beginning to emerge which can be attributed, in large part, to inadequate training in tactical risk assessment, but may also be a product of the lack of an effective alternative. While equipment cannot be a substitute for effective training and the use of any equipment should be subject to strict guidelines and limitations on use as well as clear monitoring procedures, Amnesty International believes that further consideration should be given to providing PNTL with a greater range of equipment often referred to as “less-than-lethal” that could obviate the need for use of live ammunition.

In selecting security equipment consideration should be given and expert advice sought on their human rights implications. While Amnesty International acknowledges that in certain situations, the use of some less-than-lethal weapons may be necessary to preserve order, it also has concerns about certain types of equipment. For example, the organization opposes unreservedly the use of electro-shock stun belts and calls for the suspension of the manufacture, use, promotion and transfer of all other electro-shock weapons, such as stun guns, stun shields and tasers, pending the outcome of a rigorous, independent and impartial inquiry into the use and effect of such equipment.

With regard to equipment with which the PNTL has already been issued, Amnesty International has particular concerns about the potential health risks of OC Spray. Although it is promoted as a safer and more effective alternative to chemical mace or impact weapons there are mounting concerns about its health risks. Some studies have found that it is harmful to people with respiratory problems. It has also been applied in some situations in the world in a deliberately cruel manner to suspects

who are already restrained.³⁶ Amnesty International believes that an independent review of the use of OC spray is required and that police services which authorize its use should introduce strict guidelines and limitations on its use, with clear monitoring procedures.



Recommendations

- A review of equipment at the disposal of PNTL should be undertaken to ensure that they are able to undertake policing in accordance with international principles on the use of force and firearms. All officers should be issued with the necessary protective equipment.
- Strict guidelines and limitations on the use of all security equipment should be introduced, including in relation to OC spray where there are specific concerns relating to the risk it may pose to health. The use of any security equipment should be subject to strict monitoring procedures.

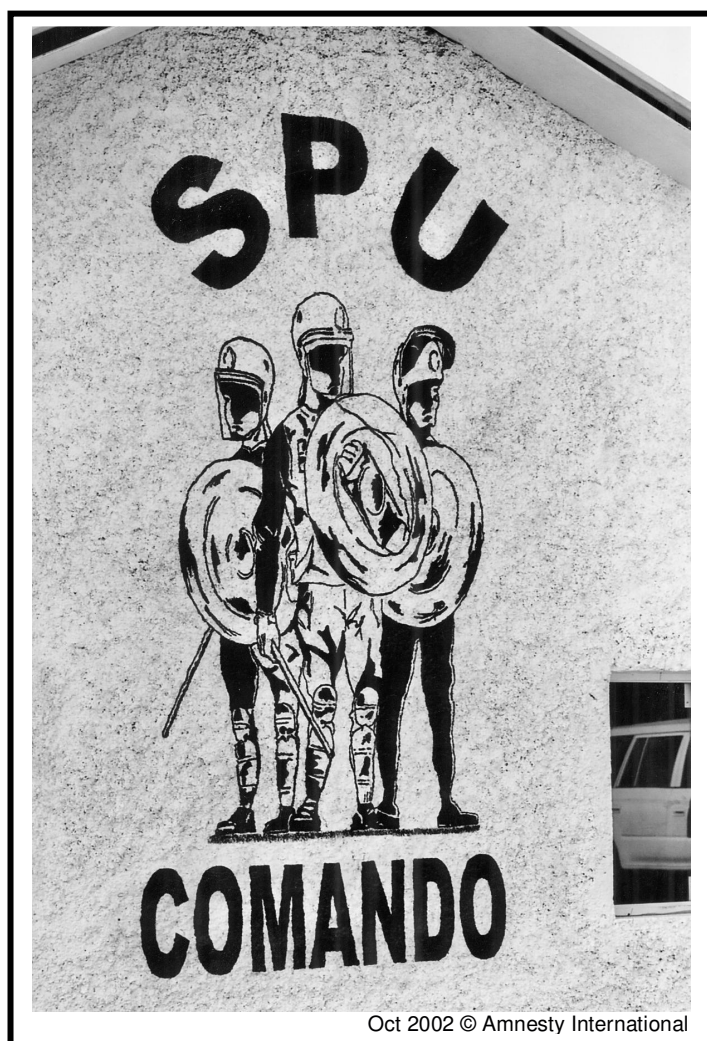
³⁶ For example, Amnesty International has raised cases with the relevant authorities in the USA of individuals being sprayed with pepper spray, in one case in the nose and mouth, while they are handcuffed or otherwise restrained.

8.2 The Rapid Intervention Unit (*Unidade Intervensaun Rapida*, RIU/UIR)

All of the comments relating to the use of force and firearms apply to the PNTL generally, but most particularly to the RIU/UIR (formerly known as the Special Police Unit, SPU) , because of its specialised role in policing public order situations in which the potential for human rights violations is particularly high. In view of this role, Amnesty International is particularly concerned by the quality of training for the RIU/UIR, the lack of clarity of command and control structures, and the inadequate level of oversight and accountability of its members. Some of these concerns may be addressed through the steps announced by UNMISSET after the 4 December 2002 events in Dili (see below) and by more recent plans to take RIU/UIR off-line for 12 months training. However, the organization considers these events reinforce the need for a more detailed assessment of the configuration and capacity of the RIU/UIR.

Almost without exception the UNPol officers to whom Amnesty International spoke expressed serious concerns about RIU/UIR. Among the concerns were doubts whether the potential threats to public order in Timor-Leste warrant a full-time dedicated unit; the significant cost involved in, and long-term sustainability of, maintaining and equipping the unit when the overall budget for PNTL is limited and currently does not even cover the purchasing of basic, but essential equipment such as pocket notebooks for the regular officers; their isolation from communities and from their fellow PNTL officers; and their elite and macho image. Similar concerns were reflected in conversations with human rights defenders and members of the general public some of whom equated RIU/UIR with the paramilitary wing of the Indonesian police, the Police Mobile Brigade (Brimob) which gained notoriety through its appalling human rights record in Timor-Leste and elsewhere - some already jokingly referring to RIU/UIR as “Timor-Leste’s Brimob”.

The RIU/UIR has taken over the role performed during the UNTAET period by a Jordanian police unit in Baucau and the Portuguese Republican National Guard (*Guarda Nacional Republicana*, GNR) in Dili. It is largely outside of core PNTL structures and, for the main part, its members do not engage in regular policing duties. It is divided into two units, 120 officers in Dili and 60 in Baucau. Each unit is accommodated in its own barracks. It also has its own uniform and symbols - the emblem is a shield with an inverted sword, the type of military style image that more progressive police services around the world now tend to avoid.



RIU/UIR officers are selected from regular PNTL officers who have graduated from the police college. Physical fitness is the main criteria for selection, although there are also routine questions to test to mental capabilities. A range of specialised training is provided to RIU/UIR, including in advanced crowd control.

The criticism of the basic training applied in force and firearms also applies to the advanced training received by the RIU/UIR in that concepts of proportionality, legality, accountability and necessity are not well integrated into the training so their ability to assess threats and respond appropriately is lacking.

Both the Dili and Baucau units have a commander from within their own ranks who is supported by UNPol technical advisors. In theory operational command for the both units rests with the respective Dili or Baucau District Commanders, who are in both cases UNPol officers. Deployment outside of the district in which they are based, however, requires the authorization of the Police Commissioner. In reality, Amnesty International found there to be some confusion in the chain of command, including the extent of the responsibilities of the Baucau and Dili District Commanders over RIU/UIR.

As in the case of PNTL generally, oversight and accountability for RIU/UIR is not adequate. An internal experiential debriefing model has been developed which is meant to be applied after each deployment and is intended to identify weaknesses or needs, including training, policy and procedure, supervision and character failures. Given their mixed record it appears that the findings of the debriefings are not adequately incorporated into training or practice.



The majority of complaints against PNTL, particularly those involving excessive use of force or assault, relate to the RIU/UIR. The RIU/UIR was singled out for particular criticism for its response to the disturbances in Baucau and Dili in November and December 2002. In particular there is concern at the use of lethal force by RIU/UIR members against protestors which resulted in deaths and injuries and their alleged beating of detainees as they carried out arrests in Dili on 4 December 2002.

As with PNTL generally there is inconsistency in the way in which complaints against RIU/UIR are dealt with. Some have been investigated by the PSU and in some

case disciplinary action taken. In other cases informal resolutions have been agreed (see Section 6, Oversight and accountability).

In belated recognition of the problems which led to the inappropriate police response to the disturbances, UNMISSET announced on 13 December 2002 a series of steps intended to improve the capacity and professionalism of the new police service. A number of these steps are directed specifically at the RIU/UIR, including tightening its supervision; greater integration of IU/UIR members into the regular police service through rotating officers through the RIU/UIR for two year periods; and a greater emphasis on training for RIU/UIR in a range of different areas including adherence to the principle of the use of force and proportionality.³⁷ If fully implemented these actions could go some way to addressing areas of weakness and underdevelopment within the RIU/UIR.

In the meantime, by way of a short term measure, there are arrangements to include within UNMISSET an international rapid response unit to respond to civil disturbances and other emergencies. The Government of Timor-Leste is also planning to form a rapid deployment service which would number up to 500 officers. They will be stationed in the districts of Covalima, Bobonaro, Ermera, Viqueque and Baucau - namely the districts which have experienced higher levels of public problems or attacks by armed-groups. It is not clear whether the rapid deployment service will be recruited from existing officers, nor is it clear whether they will be integrated into the district PNTL commands or be standing as is the case with the two existing RIU/UIR units.

While recognizing the need for the state to protect itself against threats to internal security, Amnesty International questions whether a full-time rapid response unit is the only or best solution to the problem, particularly in a situation where resources are so limited. In view of the many problems with the existing two RIU/UIR units, Amnesty International believes that before more capacity is added careful consideration should be given, including to the implications for the development of community based policing and the considerable funding that will be required in order to sustain them. The organization notes that other police services have found that integrating officers with public order policing skills within regular units allows for a more effective response to disturbances. Integration of the RIU/UIR into the regular police may also help to counter the growing public perception of the RIU/UIR as an Indonesian-style, repressive police unit.

³⁷ UNMISSET Media Briefing Note, Dili, 13 December 2002.

Recommendations

- Pending a review of the capacity and configuration of the RIU/UIR, all members of the unit should undergo immediate, thorough and practical retraining in the use of force and firearms in which the focus is on the concepts of proportionality, legality, accountability and necessity.
- Command structures for the RIU/UIR should be clarified
- Each RIU/UIR deployment should be subjected to detailed monitoring and review. RIU/UIR officers should be subject to the same oversight and accountability procedures as regular PNTL officers such that all allegations of human rights violations or misconduct are immediately, thoroughly, impartially and independently investigated and disciplinary or judicial proceedings followed where there is evidence of criminal misconduct.

8.3 Arrest and detention procedures

As is the case with the use of force and firearms, the incomplete legal and regulatory framework to govern arrest and detention procedures, combined with insufficient training, and lack of oversight is leading to the emergence of bad practices and inconsistencies which show signs of becoming institutionalised.

8.3a Informing suspects of their rights

“Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively with information on and an explanation of his rights and how to avail himself of such rights”. Principle 13 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

The rights about which arresting officers in Timor-Leste must inform a suspect of are laid out in the Transitional Rules of Criminal Procedure (Transitional Rules). Immediately upon arrest, a suspect must be informed by the arresting police officers of the reason for his or her arrest and of any charges against him or her. They must also be informed of the following seven rights:

- the right to remain silent and not to admit guilt, and that silence will not be interpreted as an admission;
- the right to contact a relative or close friend and be visited by such person;
- the right to contact a legal representative and communicate with him or her confidentially;
- the right that a legal representative will be appointed if the suspect is unable to pay for a lawyer;
- the right to be brought before an Investigating Judge within 72 hours of arrest;
- the right to be questioned in the presence of a legal representative, unless the right is waived; and
- if the suspect is a foreign national, the right to contact diplomatic or consular officials of his or her country.

Many police services around the world have found that rights are poorly explained by arresting officers, often because they are acting under pressure. In consequence some police services have adopted a standard form of wording. In Timor-Leste this has not been done. Amnesty International believes that standardising the wording used for informing suspects of their rights on arrest and detention could greatly assist PNTL officers, particularly given that most officers are still relatively inexperienced. An *aide memoire* in the form of a laminated card for PNTL officers which contains the above list of rights as well as specific rights relating to children has been produced jointly by UNMISSET's Human Rights Unit (HRU) and UNICEF. The cards are a welcome initiative and Amnesty International noted that at least in police stations in Dili they had been enlarged and stuck on the wall in reception areas. However, at the time of Amnesty International's mission they had yet to be distributed to all districts and all officers.

However, informing a suspect of his or her rights goes beyond a simple communication of facts. It is also necessary to ensure that these rights are explained in a way which can be fully understood and that, if a suspect chooses to exercise these rights, this is respected. Among the legacies of the repression experienced under Indonesian occupation, is a relatively low level of awareness, or understanding, of rights among the general population. In such a situation, particular care must be given to explaining the reason for these rights and how they can be exercised. Custody officers should reconfirm the reason for arrest when a suspect is brought into police custody and should check that they have understood their rights.

Written records should reflect the process of suspects being informed of their rights and their responses. Forms do exist for this purpose, but Amnesty International was informed by several lawyers and others working on behalf of detainees that in

some cases forms to record data on the suspect were substituted by forms intended to be used for witnesses which do not contain the relevant questions on the rights of suspects. The delegation was also informed of a case in which the police recorded the requests of a suspect, who was a minor, for legal representation and to remain silent, but then disregarded the requests and proceeded to question the suspect. The boy was accused, and subsequently charged, with committing crimes against humanity, although the charge was later amended to murder. He has since been sentenced to one year in prison.

Recommendations

- All PNTL officers should be trained in a standard set of words to ensure that the rights of a suspect or detainee are explained in a manner which is understood.
- All officers should be provided with the HRU/UNICEF laminated card which lists arrest and custody rights of which they must inform suspects and detainees.
- Effective procedures should be introduced and capacity of relevant judicial and legal officials enhanced to ensure that suspects or detainees can avail themselves of their rights.
- Particular attention should be given to training PNTL officers in the rights of juveniles and their responsibility as officers to uphold these rights.

8.3b Records

Principle 12 of the Body of Principles requires that, on the detention of an individual, the following data should be recorded:

- The reasons for the arrest;
- The time of the arrest and the taking of the arrested person to a place of custody as well as that of their first appearance before a judicial or other authority;
- The identity of the law enforcement officials concerned;
- Precise information concerning the place of custody.

To this should be added:

- The date and time that the individual was brought into custody;
- Their medical condition;
- Each visit by detention officers, lawyers, doctors and family or friends;
- Exercise periods;
- Time and date of transfer to detention facility or release.

Records containing all of this data should be maintained at each location where there are custody facilities. At the time of Amnesty International's mission in October 2002 - some three years after the UN had taken over responsibility for law and order functions - there were no standardised custody records. The Amnesty International delegation raised its concerns about this issue in a meeting on 3 October 2002 with the Special Representative of the Secretary General (SRSG), the Police Commissioner and the Deputy Head of the Human Rights Unit (HRU) and received a commitment that UNPol would standardise custody forms and establish a project, jointly with the HRU, to audit the implementation and data gathered.

The organization was pleased to learn that the commitment to standardize records has been implemented and that the HRU has plans to carry out an audit. However, the failure to introduce such records to each police custody facility from day one is perhaps the most glaring example of the inconsistencies resulting from the lack of standardisation of procedures under UNPol. It also highlights the variable quality and experience of UNPol officers and the impact this has on the development of the local police service.

Until the introduction of standardised forms in early 2003, each police station was left to develop its own model which varied depending on the nationality, ability and motivation of the UNPol officers deployed there. Previously, it was the case that most district police headquarters had some form of custody record, although Amnesty International was informed that most of the sub-stations did not. This was confirmed at least in the case of Comoro Sub-station in Dili where no records were kept although a cell was still in use. In other stations, records were maintained but lacked vital information such as the date on which the suspect arrived. In another case data was recorded inconsistently because the number of columns, which are ruled by hand, varied on each page. For example, a column for the date and time of release existed on one page but did not on the next. Of particular concern were a number of custody record books where pages had been torn out or entries crossed out or otherwise obscured.

The purpose of arrest and custody records is to contribute to the protection of detainees against human rights violations, including arbitrary detention, torture or ill-treatment, through ensuring transparency and accountability. It also protects the police against false allegations of arbitrary detention or other violations of rights and is vital for investigations in the event of a death in custody. The ability to draw analysis from such data, for example on average custody times, or frequency of visits by public defenders to suspects in police custody, could also be of benefit to the authorities in their efforts to improve and strengthen the criminal justice system. Without the scrupulous recording of data none of the above is possible.

Recommendation

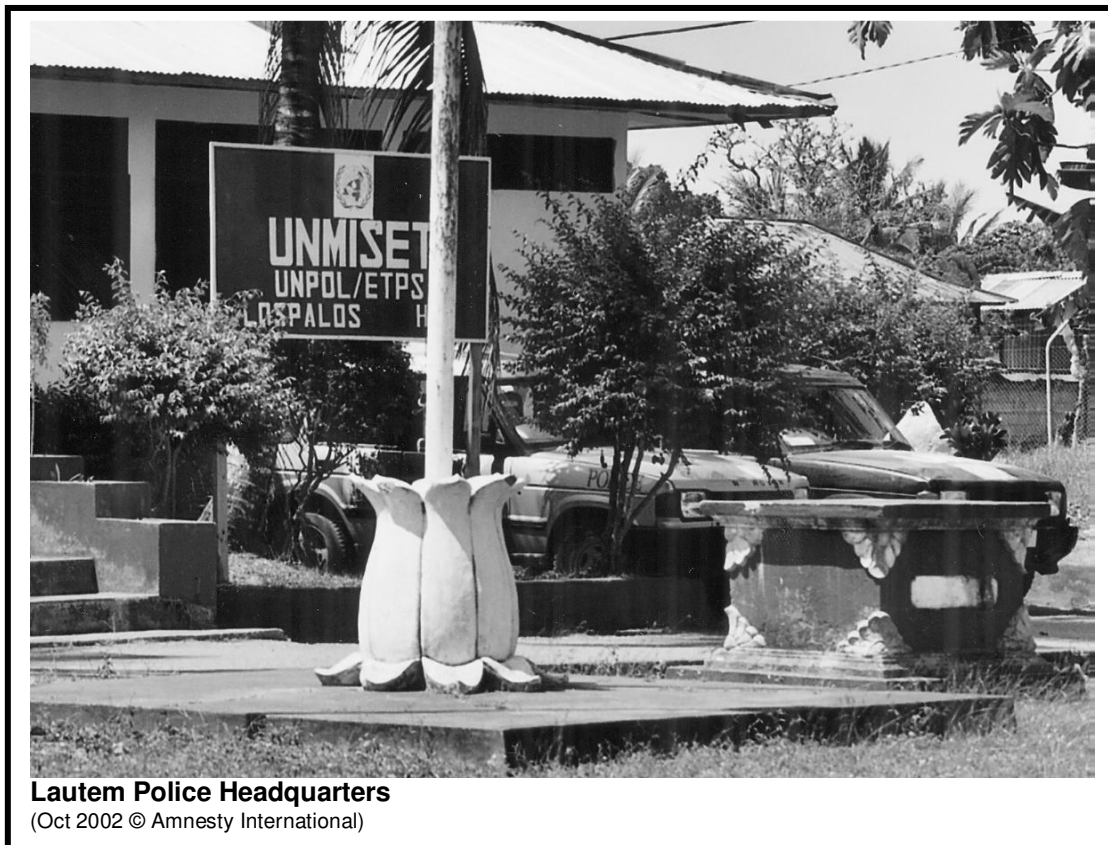
- All officers should be trained to record data in the standardised custody records the effective implementation of which should be kept under continual review.

8.3c Custody facilities

PNTL has inherited a variety of facilities. Police stations, like much of the infrastructure, were destroyed during the Indonesian withdrawal from Timor-Leste in September 1999. The result is that the police often occupy non-dedicated buildings, such as post offices and other public buildings. In some cases an effort had clearly been made to maintain a clean and professional-looking environment. In others standards were lower and reflected poorly on the image of the new police service. Custody facilities were equally variable.

Of the six police custody facilities visited by Amnesty International, cells were basic and in some cases fell below the standards required in the UN Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules). In the sub-station for Aileu Sub-district, for example, the single cell is the safe room of the town post office which has been converted into a police station. Generally, the PNTL was maintaining a high standard of cleanliness and hygiene in the station, including the cell which was, however, fundamentally unsuitable because of its smallness, lack of external light and solid steel, air tight door which, although not in use, had not been removed.

In Lautem District Police Headquarters, where the original Indonesian police facility is still in use, cells are adequate in that there are light, ventilation and basic toilet facilities, but they were dirty, no bedding was available and the water supply was irregular. In Cormoro Sub-station in Dili, the cell was small, dark and dirty and toilet and washing facilities inadequate. According to UNPol officers at Cormoro Sub-station, suspects are detained there for relatively short periods of time and only for initial “interrogations” and while paper work is being completed. They are then



transferred to Dili District Police Headquarters where there are better and bigger custody facilities. Given the close proximity of Comoro Sub-station to Dili Police Headquarters (approximately a 15 minute drive), there seemed little need for custody facilities in this and possibly other sub-stations in Dili.



Notwithstanding its criticisms, Amnesty International welcomes the open access given to the delegation to inspect police facilities, including custody cells, as a mark of transparency and accountability. The organization urges that this level of openness is maintained, including for international human rights and humanitarian organizations, UN human rights personnel and national non-governmental organizations. Unhindered access to facilities by independent human rights organizations and other relevant bodies can significantly contribute to the prevention of human rights violations such as torture and other cruel, inhuman and degrading treatment or punishment and can also help safeguard the police against false allegations of human rights violations. It also provides a framework for cooperation between the authorities, independent experts, civil society groups and others to work together towards ensuring that international standards are met.

The Special Rapporteur on Torture has emphasised that the assumption should be one of open access to all places of deprivation of liberty. He has noted that: *“Regular inspection of places of detention, especially when carried out as part of*

periodic visits, constitutes one of the most effective preventative measures against torture". The Rapporteur has recommended that: "*Independent non-governmental organizations should be authorized to have full access to all places of detention, including police lock-ups, pre-trial detention, security service premises, administrative detention areas and prisons, with a view to monitoring the treatment of persons and their conditions of detention*". The Special Rapporteur on Torture also recommends the establishment of official bodies, composed of members of the judiciary, law enforcement officials, defence lawyers, physicians, independent experts and representatives of civil society, to carry out inspections of custody facilities.³⁸

A possible model for cooperation between the police and national human rights organizations already exists in Aileu District where the Human Rights Centre, a coalition of several local non-governmental organizations (NGOs), undertakes visits to detainees in police custody in Aileu Sub-station. The arrangement is, as yet, an informal one and more training and support is required for the members of the Human Rights Centre to ensure that the effectiveness of their visits is maximised. It is nevertheless an important and positive initiative which could be repeated elsewhere in the country.

The possibility of establishing an official civilian oversight body should also be seriously considered. Models could be drawn from other post-conflict or transitional societies where criminal justice systems are being built or significantly reformed and advice or assistance sought from organizations such as Penal Reform International or others specialising in such issues. Given that an oversight mechanism for penal institutions is already provided for under the Regulation on the Establishment of a Prison Service in East Timor (UNTAET Regulation No. 2001/23), and in view of limited resources and capacity in Timor-Leste, it may be more cost-effective and efficient to extend the mandate of this mechanism to include monitoring of police custody facilities in addition to prisons. Either way, monitoring mechanisms for both police custody facilities and prisons should be set up as a matter of priority.

Recommendations

- An inspection of existing police custody facilities should be undertaken by experts to assess their consistency with standards contained in the UN Standard Minimum Rules for the Treatment of Prisoners. Where they fall short of these standards, necessary steps should immediately be taken to improve them.

³⁸ Report to the General Assembly, UN Doc A/56/156, July 2001. Para 39, Recommendations.

- An official inspection body or bodies, composed of members of the judiciary, law enforcement officials, defence lawyers, physicians, and independent experts should be established to carry out regular inspections of all places of detention, including police custody facilities and prisons. This body should have access to all places of detention and premises where detainees may be held and be able to select the places they wish to visit. The duration of visits should not be restricted and the visiting mechanism should be able to interview detainees in confidence, without witnesses.

9. The administration of justice and the impact on policing

The establishment of the justice sector was among the tasks with which the UN Security Council mandated UNTAET. While acutely aware of the scale of the task and that such a project could never have been completed in two years, Amnesty International was critical of UNTAET's slow progress in this area. In July 2001 it wrote that "... *law and order is now barely being maintained, justice is not being administered effectively and the human rights of the East Timorese people cannot be guaranteed*".³⁹ It urged UNTAET to take urgent measures to improve the administration of justice. Unfortunately, only limited progress was made in the intervening period and as a result the government of the newly independent Timor-Leste inherited a criminal justice system which was barely functioning. Not surprisingly, given the new administration's lack of capacity and experience, deterioration in some areas has been evident since independence and by October 2002, when Amnesty International was carrying out its research, the justice system was virtually paralysed.

The implications of this situation for Timor-Leste's future security and stability cannot be underestimated. Public confidence in the system is being undermined both because the system is slow, but also because there is a growing perception that it is not fair. The situation has already contributed to serious security problems in Becora Prison in Dili where there were several violent protests by detainees and prisoners during 2002 which resulted in injuries to both prisoner and police officers. Among the grievances which sparked the protests was the long periods

³⁹ *East Timor: Justice past, present and future*, (AI Index ASA 57/001/2001), July 2001.

which many detainees had spent in custody without trial.⁴⁰ A failing justice system also brings the risk of vigilante justice.

There are also considerable dangers to the development of the PNTL of a failing justice system. The police are, to all intents and purposes, the front line or visible face of the justice sector. When the latter is seen to be failing or acting in a discriminatory or unfair manner, it is the police who are likely to be blamed by the general population with inevitable consequences for efforts towards developing a community based consensual model of policing. A common complaint already being heard from both UNPol and PNTL officers is the way in which unpopular decisions by prosecutors or investigating judges to detain or release a suspect, or where the police were forced to release a suspect because no judge is available, impacts on the credibility of the police in the communities they are meant to be serving.

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. In Timor-Leste, the painfully slow pace at which justice is administered in the courts is compromising the ability of the police to carry out arrests, detentions and investigations effectively and in accordance with international human rights standards. In some cases violations may be inadvertent, for example a suspect may be held in police custody beyond the 72 hour limit because of delays by the courts in processing cases. But there is a greater danger that, if the police lose confidence in the system, they may take it upon themselves to administer justice unofficially. The first is already common place and there are indications that the latter may also be occurring.

The fact that there are problems in the justice sector is widely recognized, although there are differing views among judicial, government and UN officials about the nature of and responsibility for the problems.

While Amnesty International did not undertake a detailed review of all aspects of the justice sector during its September/October 2002 mission, it did conduct research on a number of issues which have a direct bearing on the ability of the police to carry out their work and the way in which on the rights of both victims and suspects are protected within the system. Because of the limited scope of the research, the

⁴⁰ A large percentage of the prison population are held on remand. For example, as of the last week of March 2003, 67 per cent or 160 out of 237 people held in Becora prison had not been brought to trial. Eighteen of them had been in detention for more than nine months. In Gleno prison in Ermera District, 41 out of 63 people (65 per cent) were on remand. Many of the pre-trial detainees are held on expired detention warrants.

issues raised below are not exhaustive, although many of the broader issues raised in its report, *East Timor: Justice past, present and future* published in July 2001, remain relevant today.

9.1 The right to legal representation

“A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.

If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay”. (The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 17(1&2)).

Visits by lawyers to suspects in police custody in Timor-Leste are rare. In none of the four districts outside of Dili visited by the Amnesty International delegation had either PNTL or UNPol officers seen a public defender for many months, if at all. Anecdotal evidence suggests that this is the pattern throughout the country.

According to both UNPol and PNTL officers interviewed by the delegation the vast majority of suspects waive their right to legal representation apparently in accordance with Section 6.2(f) of the Transitional Rules. Amnesty International has previously raised its concern that legal representation can be waived without further safeguards to ensure that suspects are fully aware of why legal assistance is important in safeguarding their rights.⁴¹ Fears that suspects are not choosing to exercise this right because they do not understand the value of legal representation were confirmed in conversations with PNTL officers who agreed that this is probably the case.

At the same time there is little incentive for police officers to ensure that suspects fully understand the choice they are making because, except for those who can afford to pay for a lawyer, the possibility of effective legal representation is currently not a reality. Always the least well resourced and supported sectors within the broader justice system, the public defenders still number just nine people for the whole country (Six in Dili, and one each in Baucau, Suai and Oecussi).

⁴¹ See Amnesty International report: *East Timor: Justice past, present and future*, (AI Index ASA 57/001/2001), July 2001.

The scarcity of public defenders means that their caseloads are untenable. Amnesty International was informed by the Coordinator of the public defenders that, at the end of September 2002, the six public defenders in Dili had 772 open cases between them. The one public defender in Baucau was said to have 500 active cases. Unreasonably heavy caseloads are, however, compounded by lack of training, experience and support. This has contributed to poor working practices, including poor case management, a seeming lack of awareness of their duties and a general sense of de-motivation.

For the police this situation means that, in the event that a suspect does request a lawyer, there is little hope of either being able to locate or indeed of persuading one to travel to the custody facility to meet with a client. The dilemma was starkly illustrated in an interview with a PNTL officer at the Lautem District Police Headquarters in Los Palos. The officer clearly had a good understanding of the rights of suspects, including their right to a lawyer. However, she also admitted that she would not know what to do if a suspect chose to exercise the right to legal representation given that there are no lawyers within easy reach of the district and that the single public defender based in Baucau (approximately two hours by road in the dry season) is often unavailable.

In some areas officers had taken their own initiative to try and overcome these constraints. For example, one PNTL officer who had previously been stationed in Liquica District, explained that the village head or other respected adults were on occasions asked to attend a police interview with a suspect, but such practices do not appear to be common.

The lack of capacity among the public defenders is not a new problem, but little was done until recently to overcome it. There are recent plans by the Ministry of Justice to recruit around 40 individuals and provide them with basic paralegal training to enable them to provide legal assistance to communities and assist them to liaise with existing public defenders. This initiative is welcome and will hopefully contribute towards preventing the problem of lack of legal assistance from becoming further entrenched such that it becomes accepted as the norm both by PNTL officers and the general public. However, the addition of paralegals does not diminish the need for strengthening the capacity of the public defenders, including through training and by increasing their numbers.

Recommendations

- Provide additional support to the existing public defenders, including in the establishment of procedures to create greater responsiveness to their clients needs and systems for effective, sustainable case management.
- Existing public defenders should be provided with ongoing, practical training, preferably in the form of on-the-job training such as mentor support. Efforts should be made simultaneously to identify suitable candidates for recruitment to the public defenders office.
- Urgent consideration should be given to the implementation of the existing regulation on the establishment of a legal aid service (UNTAET Regulation No. 2001/24) to ensure that suspects who are unable to afford legal representation have access to free legal advice from lawyers who are fully independent from the Ministry of Justice.
- In addition to the recruitment of paralegals, consideration could be given to the establishment of a system of recognized “responsible adults” to accompany children in police custody.

9.2 Judicial oversight of detentions

“Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release...” (ICCPR Article 9.3).

“Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority”. (Principle 4, Body of Principles).

Under the Transitional Rules (Section 6.2(e)), suspects may be held in police custody for up to 72 hours before being brought before a judge. Amnesty International has raised its concern on previous occasions that this unduly long period is inconsistent with international human rights standards which require that a hearing takes place

promptly after detention.⁴² Although the standards themselves do not specify the time period, the UN Human Rights Committee has questioned whether detention for 48 hours without being brought before a judge is not unreasonably long.⁴³

PNTL officers to whom Amnesty International spoke appeared to be aware that, wherever possible, suspects should be brought before a judge before the 72 hour limit, but nevertheless it is often violated. One UNPol District Commander admitted that it was a struggle to make PNTL officers realise it was obligatory.

Because of the absence of adequate custody records (see Section 8.3d) it was not possible to establish a comprehensive pattern of police custody times in the four districts visited by Amnesty International. However, at Dili District Police Headquarters, where records were more complete, an analysis of custody records for an 18 day period in late September and early October 2002 showed that eight people, or just over nine percent of those detained during this period, had been held beyond the 72 hour limit, in some cases by several days.

Outside of Dili, where communication can be difficult and where there are no courts or, where there are, judges and prosecutors are frequently not available, the length of time that suspects spend in police custody before being brought before a judge is often longer. Indeed, Amnesty International is aware of one recent case in which two suspects arrested in Gariwai, Baucau District in February 2003 in connection with the burning of a school and a wave of thefts in the area, spent 11 days in police custody and four others eight days before being brought before a judge.

⁴² See: *East Timor: Justice past, present and future* (AI Index: ASA 57/001/2001, July 2001).

⁴³ Report of the Human Rights Committee Vol I, (A/45/40), 1990, para 333, Federal Republic of Germany.



The reasons for delays in bringing suspects before a judge are various and in some cases may involve genuine communication and logistical problems, including because long distances must be travelled from police stations in some districts, often on poor roads, to one of the four district courts. However, these problems have been hugely exacerbated because the district courts are only partially functioning, or are often not functioning at all. The absence of duty-rosters and extended periods of leave without replacement means that prosecutors and investigating judges are frequently not available. The problem is particularly acute at weekends and during public holidays when cover is often not provided. The situation has been further compounded because of frequent compulsory training courses for judicial officials – for example, the courts were at a virtual standstill from mid-September to mid-November 2002 because of such trainings.

The immediate impact of this situation on the police is that they are forced to release suspects or hold them for unnecessarily long periods, sometimes illegally, until the relevant officials are available. Recently, there have been occasions when the absence of officials at Suai District Court, which has barely functioned since it was its

opening was announced in September 2002, has forced the police to release suspects conditionally, although they have no legal authority to do so.

The situation was already so acute by mid-2002, that UNPol Headquarters felt compelled to issue a directive to all District Police Commanders outlining exceptions to the 72 hour rule. The exceptions referred to were in cases where the interests of public safety would not be served by releasing the prisoner and where every effort had been made to bring the person before a prosecutor and the prosecutor was not available or where an arrest had been carried out on a Friday evening or over the weekend and the prosecutor had advised the police to bring the accused to them on Monday. The directive was intended to be temporary and it is unclear if it remains in force today.

Amnesty International fully appreciates the difficulties facing the police and is aware that the problem cannot be resolved by the police alone, but is concerned by the precedent being set by creating exceptions to a rule which is already inconsistent with international standards. It is all the more worrying given that a substantial part of PNTL's training is through practice alongside UNPol in the field. The example being set on this issue is one for which PNTL is likely to be heavily criticised in the future.

On a more positive note, the custody records at Dili District Police Headquarters also showed that 73 per cent of suspects were actually released within 48 hours. In Dili at least therefore, it appears that the police might be in a position to begin implementing a reduction in the period which a suspect can legally be held in police custody from 72 to 48 hours if the law was to be amended.⁴⁴

The need for such an amendment was acknowledged by the then Minister of Justice, Ana Pessoa, in a meeting with an Amnesty International representative on 7 October 2002. To this end the Minister informed Amnesty International that a directive had already been drafted to amend a number of the provisions in the Transitional Rules, including replacing 72 hours with 48 hours. To Amnesty International's knowledge the directive has not yet been approved by the Council of Ministers.

⁴⁴ Since writing the report Amnesty International has learnt that a directive has been issued by the Dili District Police Commander reducing the period that the period a suspect may be held in police custody within Dili District from 72 to 48 hours.



Entrance to Dili Regional Police Headquarters
(Oct 2002 © Amnesty International)

Notwithstanding the importance of amending the Transitional Rules to bring them into line with international human rights standards, reducing the period in police custody would require a number of challenges to be overcome before the police could be assured of applying it consistently. In Lautem District, for example, the UNPol Commander explained that the remoteness of the district, combined with poor communications and distance from a court, makes the 72 hour limit difficult to adhere to. While she commended the government's plans to reduce the 72 hour limit, she pointed out that it would not resolve the problems on their own and could actually exacerbate problems for the police who would be seen to be failing more often if they could not comply.

Recommendations

- Amend the Transitional Rules of Criminal Procedure so that they are consistent with international human rights standards, including by reducing the period before which a detainee must be presented before a judge from 72 hours to a level compatible with international human rights law.
- In parallel with amending the law, procedures should be established to assist the police, prosecutors and judges to apply the reduced custody period in practice, including *inter alia*, an after hours duty roster for prosecutors and judges; and ensuring there is cover for prosecutors and judges who are in training, on leave or otherwise unable to carry out their duties.

9.3 Punitive detention and lack of evidence

It is apparent from available custody records and anecdotal evidence that a significant number of suspects are released directly from police custody, often after one or more days in detention, without charge and apparently without having come before a prosecutor or judge. Amnesty International is concerned that this pattern may indicate that police custody is being used in a punitive manner where there is no genuine case against the detainee. The risk that police custody could be used as a form of unofficial punishment is heightened if the problems with the administration of justice are not speedily resolved.

This phenomenon may also be linked to the reportedly growing numbers of cases where individuals are held by the police beyond the 72 hours for the purpose of investigation. Others who are held for extended periods, often many months, in pre-trial detention have been released conditionally and their case closed, having never been charged. It is possible that such detentions may also have a punitive element, but they may also occur because there are no clearly articulated or well understood guidelines for thresholds of evidence. Without objective criteria for assessing whether there are reasonable grounds for arrest and detention it becomes a matter of individual judgement for police and judicial officials as to whether or not a suspect can be detained.

A number of cases came to Amnesty International's attention which point to serious weaknesses in investigation processes and which illustrate the failures of safeguards intended to protect against arbitrary detention. In one case a 19-year-old youth was arrested in relation to a fight which broke out in Dili on 29 October 2001. He had been detained for one month and his detention was due to be renewed for

another 30 days before UNMISSET's HRU intervened on his behalf. After inquiries it became apparent that he had not been involved in the fight, but had been watching it from some distance. His alleged involvement only arose only because he was seen running away from the scene when the police arrived. The prosecution admitted as much and agreed to recommend that the investigating judge release him. The judge, after initially refusing to agree to the release, eventually ordered that he be released conditionally for a period of three months even though he had committed no crime. To Amnesty International's knowledge the case is now closed.

In another case, a woman from Oecussi was detained for thirty days in April 2002. The woman, far from being the suspect was in fact the victim in this case. It is unclear how the original mistake occurred, but even when the prosecutor realised the error and recommended her release, the investigating judge was reluctant to do so. It was only on the intervention of the Prosecutor General that she was eventually released. This already appalling situation was compounded by the fact that, because there are no detention facilities on the enclave of Oecussi, the woman was held first in Becora Prison in Dili and then in Gleno Prison, Ermera District. At the time there was no transport from Oecussi to the main territory of Timor-Leste making visits by family members impossible and no special provisions were made even though she had a two-month-old baby from whom she was separated.

Unfortunately, this is not the only case in which the identity of the victim and suspect has been confused. Amnesty International has recently learnt of another case where a 15-year-old boy was detained for one day in police custody, in connection with the arson and thefts in Gariwai (see section 9.2 on judicial oversight of detentions) although he too was the witness and not a suspect in the particular case. The boy was detained on 26 February 2003 in relation to an arson attack on a school. He was released on 27 February 2003 following the intervention of the Division of Social Services and UNMISSET's HRU.

There are also cases where individuals are detained in police custody under orders which have no validity in law. Under the Transitional Rules, the procedures for issuing arrest and detention warrants are clearly defined as are the division of responsibilities between the relevant officials. In summary, a prosecutor must make a request to an investigating judge for a warrant. However, authority for actually issuing that warrant, whether for arrest, detention, search, seizure of goods or other purposes, lies solely with the latter.⁴⁵

⁴⁵ Only in cases where a suspect is found in the act of committing a crime; there is an immediate likelihood that a suspect will flee or destroy, falsify or taint evidence, or endanger public safety or the integrity of victims or witnesses; or where the police are in hot pursuit of a suspect immediately after a

Although the law is unambiguous on this point, cases have arisen where suspects have been held on the basis of orders issued by a prosecutor or, where an investigating judge has ignored a request by a prosecutor to release an individual and ordered his or her continued detention despite there being no evidence against them. In both situations the officials have acted beyond their authority and in contravention of Timor-Leste's own laws.

Among the examples of the former is the arrest of 10 people in Quelicai Sub-district, Baucau District on 18 January 2002. Three of the ten were released and the remaining seven were presented to a prosecutor by the police on 21 January 2002, just within the 72 hour limit. Rather than seeking a detention order from the investigating judge, the prosecutor took it upon himself to extend their detention for a further three days. At the end of the three days, or 72 hours over the permissible period an individual may be held in police custody and six days after they had originally been arrested, the same prosecutor ordered their release on the grounds that there was no evidence against them.

In other cases, some of which have already been described in this report, the investigating judge has taken it upon him or herself to ignore the recommendation of a prosecutor that a suspect be released because there is no case to answer.

Amnesty International is concerned that a worrying lack of understanding of respective roles and a lack of rigour among police, judicial and prosecutorial officials, is resulting in individuals being arbitrarily detained. It is also concerned that this situation may result in victims of crime being denied their right to justice and to prompt redress in accordance with the UN Principles of Justice for Victims of Crime and Abuse of Power. This may be particularly, although not exclusively, the case in relation to cases of alleged rape or other forms of sexual violence where capacity for investigation, including medical examinations and other forms of forensic investigation, is limited.

Recommendations

- Ongoing monitoring of police custody patterns should take place with a view to identifying problems as they arise and taking measures to rectify them.

crime has been committed, may the police arrest an individual without a warrant (Section 19A, UNTAET Regulation No. 2001/25).

- Additional, practical training on “scene of crime management”, the gathering, analysis and preservation of evidence and other aspects of the investigation of alleged crimes, including techniques of interviewing and taking statements from suspects and witness should be provided. Training should be designed to develop the capacity of PNTL officers to build a case in an efficient manner that avoids reliance upon coercion.
- Training should be provided on interviewing complainants reporting human rights abuses, particularly where allegations of rape and domestic violence are involved. This training should be linked to initiatives intended to raise the standard of medico-legal examination of victims.

9.4 Children in detention

Existing safeguards under the Transitional Rules to protect the rights of children in the justice system are not being applied, and international standards relating to juvenile justice are routinely contravened.

Despite the existence of a provision under the Transitional Rules which requires that “[a] *minor shall not be detained or imprisoned unless as a measure of last resort and for the shortest appropriate period of time*” (Section 45.3), children have been detained for extended periods of time. Some of those detained have been accused of minor, non-violent crimes where alternatives would have been more suitable and where the best interests of the child could be better served as required by the Convention on the Rights of the Child.⁴⁶

It was not clear to Amnesty International where initial decisions to arrest or detain a child were taken - whether by the police, prosecutor or judge - but it was clear from the cases brought to the organization’s attention, that at every stage basic standards which should protect children were overlooked. Concerns included, that children are arrested and detained at all for minor offences such as shoplifting or theft when other measures would clearly be more appropriate; that no special steps are taken to ensure that legal representation is available to children in either police custody or pre-trial detention; that some children are spending prolonged periods in

⁴⁶ Article 40.4 of the Convention on the Rights of a Child states that: “A *variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner which is appropriate to their wellbeing and proportionate both to their circumstances and the offence.*”

pre-trial detention, in some cases without judicial supervision and in others illegally after detention orders have expired; and that detention conditions do not conform to UN minimum standards, including because they are not fully segregated from adult prisoners.⁴⁷

In one recent example, a 15-year-old boy, who was alleged to have stolen a box of soft drinks and some other grocery items, was held in police custody for six days in Ermera District in April 2003. Although he had been detained three days in excess of the 72 hour limit, he had not been brought before a judge. He was eventually released after the government's Social Services Division intervened in the case.

In other cases, children have been held for extended periods - in some cases many months and in at least one case over one year - in prison awaiting trial. In one case a 16-year-old boy was held for more than one year without judicial supervision before eventually being brought to trial connection with a road accident in which one person died. In November 2002 he was convicted and sentenced to one year and 27 days' imprisonment - the exact period already spent in pre-trial detention.

The situation for children in the criminal justice system in Timor-Leste reflects the more general problems of lack of capacity, experience, training and oversight. However, international standards do require that particular attention is paid to ensuring that children alleged or found to have infringed penal law should be treated with particular care, to protect their sense of dignity and worth and promote their rehabilitation and reintegration into society. In Timor-Leste, efforts to prioritise the children, including ensuring that their cases are handled expeditiously, are minimal. In the long run, it will be necessary to develop a separate system for juvenile justice. Immediately, however, the rigorous implementation of existing safeguards could result in a significant improvement in the situation.

Recommendations

- Ensure long-term training of police, judicial and other relevant officials, in the rights of suspects and the rights of children in the criminal justice system. The training should emphasise the practical implementation of international human rights standards and the various roles and responsibilities of the various

⁴⁷ The Convention on the Rights of a Child (Article 37(c)) and the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) (Rule 13.4) require that children are separated from adults.

officials. In order to minimize disruption and to provide practical support the emphasis should be on on-the-job training wherever possible. The development of a long-term training plan is recommended to avoid gaps or duplication and to encourage coordination and effective use of funds and other resources from donors.

- Undertake measures to develop an effective, enforceable system of alternative restrictive measures to reduce the over-reliance on pre-trial detention.
- Give consideration to developing ways, whenever appropriate and desirable, of dealing with children suspected of infringing the law without resorting to judicial proceedings, proving that human rights and legal safeguards are fully respected.
- Urgently review the cases of all individuals in pre-trial detention to assess the legality and the appropriateness of their detention. Priority should be given those under the age of 18 years.

10. Conclusion

The UN's record in Timor-Leste has been widely hailed as a success, at least within UN circles. In its statement during the UN Security Council meeting on Timor-Leste on 14 November 2002, the representative for the United States of America (USA) noted that while more needs to be accomplished, "...overall Timor-Leste is a great success story". These sentiments were echoed by other Security Council members. Amnesty International also acknowledges that considerable progress has been made in Timor-Leste during the last three years through the efforts of the UN and the Timor-Leste authorities, and indeed the people of Timor-Leste. However, to conclude that it is a success may be premature when the durability of the achievements so far, and by extension of the security Timorese people, is threatened because of the fragility of core institutions, including that of the PNTL and the broader criminal justice system.

This threat was recognized by the UN Secretary-General in his Special Report on the United Nations Mission of Support in East Timor of 3 March 2003, in which he noted that the sharp increase in the frequency and magnitude of security related incidents demonstrated both the scope of the problems likely to emerge in Timor-Leste and also the inadequacy of the means to address them. As a result, downsizing plans for the military and policing components of UNMISSET have been rescheduled.

Amnesty International welcomes this decision. It also welcomes the emphasis which the Secretary-General and the Security Council through Resolution 1473 of 4 April 2003 place on the provision of extra training to PNTL and greater emphasis on human rights, as recognition that an improvement in the situation does not only require an increase in UNPol numbers to support the PNTL, but careful attention to the quality of that support and the need for urgent attention to be paid to human rights in the process of institutional strengthening.

Amnesty International believes that a considerable amount can be achieved over the next year through the coordinated efforts of UNPol, the PNTL, the Timor-Leste government, UNMISSET and the donors. However, considerable support, both financial and technical, for the PNTL will also be required from the UN beyond the end of UNMISSET's mandate in May 2004 if it is to fulfil its commitment to establish a credible, professional and effective police service. The support of other countries, specifically those with experience of training and implementing international human rights standards in policing, will also be essential. The organization believes that, if this support is forthcoming, the Timor-Leste authorities can fulfil their responsibility for ensuring that vision for PNTL of an independent, professional police service, which works in partnership with the community and which protects and respects human rights, can be realised.

Appendix I

UNMISSET Comments on the report

“Timor-Leste: A new police service – a new beginning”

It is noted that Amnesty International’s research mission to Timor-Leste took place in October 2002. In line with UNMISSET’s mandate under Security Council Resolution 1410 “to provide interim law enforcement and public security and to assist in the development of.. the East Timor Police Service” UNMISSET has continued to place significant emphasis on supporting the Government in the development of the PNTL. Accordingly, a number of concerns raised in the draft report have been addressed and several recommendations contained therein already implemented.

Policing in Practice – public disturbances in Dili and Baucau

The unfortunate incidents that took place in Dili and Baucau in 2002 did indeed illustrate shortcomings in the development of the PNTL capacities. The United Nations acted swiftly to address the situation with the Secretary-General recommending a review of the downsizing of police and military components of the mission. This was reflected in Security Council Resolution 1473 (April 2003) which also called for greater training capacity for the PNTL.

The draft report calls for a review of the incidents in 20002. UNMISSET confirms that a comprehensive and rigorous review has been undertaken and required improvements are being effected in a continuous, incremental and planned manner.

Unexpected delays have resulted in the final police report to the competent authorities due to lack of forensic and ballistic testing facilities in Timor-Leste. Once the report is finalized, due and proper consideration will be given to appropriately releasing its findings. Notwithstanding the delay in the report, several measures have already been instituted following these events, including the introduction of a new Code of Conduct and Use of Force Policy.

The culture of policing – building human rights into the organizational culture of the PNTL

This section of the draft report considers, in particular, recruitment and training needs of the PNTL officers in a range of areas. Again, significant forward movement in these vital areas has occurred since Amnesty International's research mission in October 2002.

The draft report correctly notes that the report of the Joint Assessment Mission for the PNTL (JAM) was released in November 2002. A PNTL Institution Strengthening Committee (ISC) was established, upon recommendation by JAM. The composition of the ISC is in fact broader than as set out in AI's draft report. The ISC includes representatives of two non-governmental organizations, as well as representatives from the Ministry of Justice and Ministry of Planning and Finance. UNMISSET's Human Rights Unit (HRU) acts as advisor to the ISC.

In April 2003, the Government, in conjunction with UNMISSET, UNDP and development partners conducted a two day Capacity Building Workshop for PNTL, with high level participation including the President and Prime Minister of the Democratic Republic of Timor-Leste. In line with the JAM recommendations, participants of the workshop considered, inter alia, the following topics:

- Policy Formulation, Legislation and Planning
- Police Management, Administration and Finance
- Police Human Resource Management and Development
- Police Training and Equipment Requirements

Detailed recommendations were made at the conclusion of the workshop, many of which reflect recommendations contained in AI's draft report, including on the implementation of performance standards, human resource policies, training on criminal law and procedure, human rights and the development of a police manual. Following from the workshop, the ISC has adopted a twelve month plan of action, setting out various activities, to address the institutional challenges identified in the JAM report. UNMISSET is pleased to advise that many of the recommendations made in section 5 of AI's draft report are accommodated within the plan of action.

In addition to the action plan, AI's draft report may wish to note that diversity principles are being explicitly incorporated into the PNTL recruitment procedures and UNMISSET confirms that 22% of PNTL officers are women. Further, a review by UNPOL's Training Advisor of the training conducted by the PNTL Police Academy

has recently been undertaken. Following this review, the Field Training Program is being updated to enable regular testing of recruits using practical on the job experience, under supervision, in addition to problem based scenarios, role play and discussion groups.

Finally, on 2-3 June 2003, a two days needs assessment workshop for PNTL special units was convened. Again, the workshop was conducted by the Government with the support of UNMISSET, UNDP and development partners. It is discussed further below.

Oversight and accountability

UNMISSET regrets the inclusion in section 6.1 of the draft report (“The UN’s Example”) and considers that it detracts from the substantive quality of the draft report. The basis on which the draft report concludes that there is a “perceived lack of commitment by the UN in Timor-Leste to ensuring its own personnel are fully accountable” is unclear. UNMISSET rejects that this is the case. Further, the reference in a footnote to a report in Kosovo does little to advance the discussion of the development of the PNTL in Timor-Leste.

The draft report also incorrectly states that the development of an effective oversight mechanism is a low priority. On the contrary, UNMISSET considers this to be of prime importance and I have made several public statements on the need for appropriate safeguards and accountability mechanism.

The Capacity Building Workshop in April 2003 also specifically recommended the establishment of an external oversight mechanism. This indeed is an objective outlined in the ISC’s plan of action. It is hoped that a police oversight mechanism will be established within the next six months.

It is understood that the legislation development in relation to the PNTL and the establishment of the Provedor’s Office (Provedor de Direitos Humanos e Justica) is at an advanced stage.

Separation of police and military functions

The relationship between the PNTL and F-FDTL is indeed a sensitive issue and UNMISSET, like the authorities in Timor-Leste, supports the need for an explicitly delineation between their respective roles in law. UNMISSET has consistently

reiterated the need for PNTL and FDTL to act in accordance with international human rights standards.

It is noted that members of the government and the Commander of F-FDTL, Brigadier General Taur Matan Ruak, have also publicly stated that no role for F-FDTL is envisaged in the internal security in Timor-Leste. It is suggested the draft report might be amended to reflect these positions.

A session at the April 2003 Capacity Building Workshop was devoted to the relationship between the military and the police. Moreover, both this workshop and the subsequent needs assessment of special units of PNTL workshop in June 2003 were attended by Brigadier General Taur Matan Ruak.

Integrating Human Rights into Police Operations

UNMISSET recognizes the requirement for regular and ongoing human rights training as an integral component of the development of the PNTL and its officers. Training in human rights has been the primary consideration of all efforts deployed by UNMISSET aimed at capacity building and institutional development of the PNTL.

Human rights, and specifically children's rights, training has been incorporated into all training modules for recruits and on-going training of officers. UNMISSET's HRU has designated an officer specifically to deal with law enforcement and security issues and who will continue to work closely with UNPOL's Training Advisor.

Following the incidents in December 2002 and January 2003, a review of the use of force policy was undertaken and a new Use of Force policy developed and instituted in January 2003. UNMISSET's HRU played a part in the development of the policy which is based upon, and explicitly refers to, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials as well as the UN Code of Conduct for Law Enforcement Officials. The new Policy has been translated in Bahasa and Tetum and distributed to all officers. A training module, incorporating scenario-based elements, is being devised to assist in the implementation of the policy. It is suggested that section 8.1 of the draft report be amended to reflect these changed circumstances.

The draft report raises a number of issues in relation to special units of the PNTL in section 8.2 of the draft report. As noted above, on 2-3 June 2003, a workshop chaired by the Prime Minister and involving the government, UNMISSET,

UNDP and development partner representatives examined precisely the matters set out in section 8.2 of the draft report. The sessions at the workshop included:

- Vision of internal security: expectations, needs and safeguards
- The proper function of the Special Units and requirements for response capability and accountability; and
- Co-ordination among Special Units: Command and Control.

Presentations were made by several national police contingents represented in Timor-Leste on the role and functions of special units in their respective States.

Further, it is noted that since December 2002, re-training of the Rapid Intervention Units has been undertaken including in the area of crowd control, human rights and arrest and detention procedures. A “train the trainer” programme has been developed and is currently being implemented.

The administration of justice and the impact on policing

UNMISSET recognizes that the administration of justice and policing are inextricably linked. UNMISSET, with other UN agencies in Timor-Leste, has accelerated efforts to support the government in its efforts to strengthen the capacity in this section, in conjunction with UNMISSET’s continued support of law enforcement agencies.

The draft report states that the government of Timor-Leste “inherited a criminal justice system which was barely functioning”. Whilst conceding the functional difficulties in the system, it is suggested that significant advances were in fact made during UNTAET’s mandate, which are not adequately acknowledged in the draft report. During UNTAET’s mandate, a period of two years, the institutional framework of the justice sector was established including the creation of a court system, the appointment of judicial officers, public prosecutors, public defenders and a prison service.

UNMISSET accepts that considerable further development of the justice sector is required. It will remain a key priority in the remaining period of UNMISSET’s mandate.

In October and November 2002, and in February 2003, UNMISSET and UNDP fielded two missions, at the government’s request, to assess the judicial and prison systems. These missions identified several institutional, procedural and capacity

building challenges, some of which are reflected in AI's draft report. Consequently, UNDP in conjunction with each of the institutions within the justice sector, is currently working to develop a three to five year support project aimed at addressing both the long term and immediate needs of the sector. A Council of Coordination involving all stakeholders has also been established by the relevant authorities in Timor-Leste, supported by UNDP/UNMISSET.

On 5 and 6 June 2003, a consultation meeting of the Council brought together government, UNMISSET, UNDP, development partners and those working directly in the sector (including judges, prosecutors, defenders, representatives of civil society). It is hoped that the results of these consultations will produce tangible improvements in the nascent legal and judicial systems in Timor-Leste.

Clearly the engagement of the international community in this vital sector beyond UNMISSET's mandate will be vital.

Appendix II

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials⁴⁸

Whereas the work of law enforcement officials is a social service of great importance and there is, therefore, a need to maintain and, whenever necessary, to improve the working conditions and status of these officials,

Whereas a threat to the life and safety of law enforcement officials must be seen as a threat to the stability of society as a whole,

Whereas law enforcement officials have a vital role in the protection of the right to life, liberty and security of the person, as guaranteed in the Universal Declaration of Human Rights and reaffirmed in the International Covenant on Civil and Political Rights,

Whereas the Standard Minimum Rules for the Treatment of Prisoners provide for the circumstances in which prison officials may use force in the course of their duties,

Whereas article 3 of the Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty,

Whereas the preparatory meeting for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Varenna, Italy, agreed on elements to be considered in the course of further work on restraints on the use of force and firearms by law enforcement officials,

Whereas the Seventh Congress, in its resolution 14, inter alia, emphasizes that the use of force and firearms by law enforcement officials should be commensurate with due respect for human rights,

Whereas the Economic and Social Council, in its resolution 1986/10, section IX, of 21 May 1986, invited Member States to pay particular attention in the implementation of the Code to the use of force and firearms by law enforcement officials, and the

⁴⁸ Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

General Assembly, in its resolution 41/149 of 4 December 1986, *inter alia*, welcomed this recommendation made by the Council,

Whereas it is appropriate that, with due regard to their personal safety, consideration be given to the role of law enforcement officials in relation to the administration of justice, to the protection of the right to life, liberty and security of the person, to their responsibility to maintain public safety and social peace and to the importance of their qualifications, training and conduct,

The basic principles set forth below, which have been formulated to assist Member States in their task of ensuring and promoting the proper role of law enforcement officials, should be taken into account and respected by Governments within the framework of their national legislation and practice, and be brought to the attention of law enforcement officials as well as other persons, such as judges, prosecutors, lawyers, members of the executive branch and the legislature, and the public.

General provisions

1. Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. In developing such rules and regulations, Governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review.
2. Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.
3. The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.
4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use

force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

- (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
- (b) Minimize damage and injury, and respect and preserve human life;
- (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;
- (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.

6. Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22.

7. Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.

8. Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.

Special provisions

9. Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

10. In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.

11. Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:

- (a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;
- (b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;
- (c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;
- (d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;
- (e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;
- (f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

Policing unlawful assemblies

12. As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.

13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.

14. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.

Policing persons in custody or detention

15. Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.

16. Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9.

17. The preceding principles are without prejudice to the rights, duties and responsibilities of prison officials, as set out in the Standard Minimum Rules for the Treatment of Prisoners, particularly rules 33, 34 and 54.

Qualifications, training and counselling

18. Governments and law enforcement agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. Their continued fitness to perform these functions should be subject to periodic review.

19. Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use.

20. In the training of law enforcement officials, Governments and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms. Law enforcement agencies should review their training programmes and operational procedures in the light of particular incidents.

21. Governments and law enforcement agencies shall make stress counselling available to law enforcement officials who are involved in situations where force and firearms are used.

Reporting and review procedures

22. Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11 (f). For incidents reported pursuant to these principles, Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.

23. Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process. In the event of the death of such persons, this provision shall apply to their dependants accordingly.

24. Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use.

25. Governments and law enforcement agencies shall ensure that no criminal or disciplinary sanction is imposed on law enforcement officials who, in compliance with the Code of Conduct for Law Enforcement Officials and these basic principles, refuse to carry out an order to use force and firearms, or who report such use by other officials.

26. Obedience to superior orders shall be no defence if law enforcement officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. In any case, responsibility also rests on the superiors who gave the unlawful orders.

Note:

* In accordance with the commentary to article 1 of the Code of Conduct for Law Enforcement Officials, the term "law enforcement officials" includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention. In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services.

Appendix III: Acronyms and Abbreviations

CNRT	National Council for Timorese Resistance (<i>Conselho Nacional de Resistencia Timorense</i>)
Falintil	East Timorese National Liberation Army (<i>Forças Armadas de Libertação Nacional de Timor-Leste</i>)
F-FDTL	Timor-Leste Defence Force (<i>Falintil-Forças de Defesa de Tmor-Leste</i>)
GNR	[Portuguese] Republican National Guard (<i>Guarda Nacional Republicana</i>)
HRU	[UNMISSET] Human Rights Unit
ICITAP	International Criminal Investigative Assistance Programme
ICRC	International Committee of the Red Cross
Interfet	International Force for East Timor
JAM	Joint Assessment Mission [for the Timor-Leste Police Service]
OHCHR	Office of the High Commissioner for Human Rights
PNTL	National Police of Timor Leste (<i>Policia Nacional de Timor-Leste</i>)
Polri	Police of the Republic of Indonesia (<i>Kepolisian Republik Indonesia</i>)
PSU	Professional Standards Unit
RIU	Rapid Intervention Unit
SRSG	Special Representative of the Secretary-General
UNICEF	United Nations Children's Fund
UNDP	United Nations Development Program
UNMISSET	United Nations Mission of Support in East Timor
UN PKF	United Nations Peacekeeping Force
UNPol	United Nations Police
UNTAET	United Nations Transitional Administration in East Timor