

Timor-Leste's initial report to the Committee Against  
Torture

Joint civil society submission on behalf of the Timor-  
Leste NGO Coalition on CAT

October 2017

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Submission by the Timor-Leste Civil Society Coalition on CAT

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## **1. Process**

This Joint Submission was prepared by 15 national NGOs working on human rights. A coalition of civil society organisation was formed on 22 February 2017.

Participating NGOs met 5 times between February and August 2017 where they decided on key focus areas deemed of interest to the Committee Against Torture. In addition to existing data, NGOs gathered updated information through individual follow-up meetings with key participating civil society organisations and relevant State actors, and analyzed those data. During a drafting workshop on 5 September 2017 the thematic areas were further discussed, and recommendations for each thematic area were formulated.

The civil society organisation AJAR (see profile below) coordinated the drafting process. Technical and financial support for the coalition was provided by the UN Human Rights Adviser's Unit and The Asia Foundation.

### **AJAR**

Asia Justice and Rights (AJAR) is a non-profit organization based in Jakarta, Indonesia, working to strengthen accountability and respect for human rights in the Asia Pacific region. AJAR focuses its work on countries attempting to build a stable democratic base following prolonged conflict, dictatorships and authoritarian regimes. AJAR was set up in Timor-Leste in 2012. It engages members of parliament and senior government officials to implement the recommendations of two truth commissions, empower victim's organizations, educate the Timorese public on the legacy of the past and advocate for the protection of human rights. [www.asia-ajar.com](http://www.asia-ajar.com)

List of participating NGOs:

1. Asia Justice and Rights (AJAR)
2. Asosiasaun Hukum Dan Keadilan (HAK)
3. Asosiasaun Chega ba Ita (ACbit)
4. Asosiasaun Halibur Defisiénsia Matan Timor-Leste (AHDMTL)
5. Asosiasaun Defisiénsia Timor-Leste (ADTL)
6. Asisténsia Legál Feto no Labarik (ALFeLa)
7. Alliance for an International Tribunal (ANTI)
8. Belun
9. Coalition for Diversity and Action (CODIVA)
10. FOKUPERS
11. Fundasaun Mahein
12. Psychosocial Recovery and Development in East Timor (PRADET)
13. Ra'es Hadomi Timor Oan (RHTO)
14. Rede Defensór Direitus Umanus (RDDU)
15. Judicial System Monitoring Programme (JSMP)

## 2. Narrow definition of torture in national law

The Constitution of the Democratic Republic of Timor-Leste (RDTL) prohibits torture and cruel, inhuman or degrading treatment (Constitution, Article 30.4). The Constitution and a more specific law on the regime for state of siege and state of emergency affirm that the prohibition of torture and ill-treatment cannot be derogated (Constitution, Article 25.5 and RDTL Law No3/2008, Article 2 (g)).<sup>1</sup>

However, the definition of the criminal offence of torture in national criminal law (RDTL Penal Code, Article 167) does not fully meet the standards set by the Convention Against Torture.

The Penal Code doesn't provide for a separate definition of torture and ill-treatment, as the State has acknowledged in their report to the Committee Against Torture.<sup>2</sup> This may result in a specific purpose and high threshold of intensity of suffering – distinguishing elements under IHRL to qualify an act as torture – to be required in national law for both torture and ill-treatment. Furthermore, while national law does reiterate several of the specific purpose grounds of the Convention Against Torture (coercing a confession or obtaining information, punishment and intimidation), discrimination is absent from the torture definition in national law.

However, the area where national law most significantly falls short of international law is the definition of a perpetrator. While the Convention Against Torture prohibits torture by 'a public official or other person acting in an official capacity', national law defines a perpetrator of torture as 'any person who, having the duty to prevent, investigate and decide on any types of offence, and to enforce the respective penalties, or to protect, guard, conduct surveillance on or monitor any persons who have been detained or arrested'. This may result in excluding officials such as teachers in public schools or medical professionals.

National law reiterates the general obligation on public officials to report crime, by requiring superiors to report acts of torture or ill-treatment by subordinates as soon as they become aware of it. Failure to do so is in itself a crime (Penal Code Article 169). This provision to a certain extent covers the obligation under the Convention Against Torture not to condone such acts. However national law could be strengthened by more clearly articulating the obligation to prevent and intervene to halt torture/ill-treatment when it occurs, not just report facts afterwards.

National law prohibits evidence obtained through torture, coercion, offences against physical or moral integrity of the individual, or wrongful interference with private life, the home or other forms of communication (Constitution Article 34.4 and RDTL Criminal Procedure Code Article 110). Note that any use of force beyond the limits of the law is considered an offence against physical or moral integrity of a person and leads to excluding evidence in court. Therefore, it appears that the prohibition of evidence under duress is the only area where RDTL law may offer a stronger protection than under the Convention Against Torture where the obligation not to invoke any statement resulting from torture in proceedings.<sup>3</sup>

A specialized police force, Scientific and Criminal Investigation Police (PSIC) under the oversight of the Justice Ministry, whereas other criminal investigation police falls under the Interior Ministry, is tasked with investigating acts of torture and ill-treatment.<sup>4</sup> It is unclear how the PSIC and other criminal police work together. In practice it appears torture or ill-treatment allegations in Timor Leste are more likely to be investigated by 'ordinary' criminal investigation police, as they often emerge during trials when defendants

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<sup>1</sup> Torture is also an aggravating circumstance of the crime of murder (Penal Code, Article 139 (a)). In addition, torture is criminalized in national law as a crime against humanity and as a war crime (Penal Code, Articles 124-125).]

<sup>2</sup> Committee Against Torture, Initial Report Timor-Leste, 23 August 2016, CAT/C/TLS/1, para. 37

<sup>3</sup> Article 16 CAT stipulates obligations in article 10 to 13 of CAT shall apply to ill-treatment. Therefore the prohibition on evidence obtained through torture (Article 15 CAT) does not apply to ill-treatment.

<sup>4</sup> Decree-Law No15/2014 Organics of Scientific and Criminal Investigation Police, Article 6.1(e)

allege excessive use of force by security forces during arrest, search or detention, or investigated by the internal accountability mechanisms of such forces.

**Recommendation:** Government (Ministry of Justice) to prepare legal amendments to RDTL Penal Code - Parliament to approve and President to promulgate - to bring national law in line with international standards prohibiting torture and ill-treatment. In particular, the criminalisation of the torture ought to be broadened to also cover professions such as medical professionals and teachers. Draft internal regulations for PSIC to ban the use of torture and maltreatment, as well as protocols for victims to report such acts.

RDTL Penal Code-English version	CAT
<p><b>Article 167</b>  <b>Torture or other cruel, degrading or inhuman treatment</b>                      1. Any person who, having the duty to prevent, investigate and decide on any types of offence, and to enforce the respective penalties, or to protect, guard, conduct surveillance on or monitor any persons who have been detained or arrested and commits torture or cruel, degrading or inhumane treatment, in order to                      a) obtain from that person or from another person a confession, deposition, statement or information;                      b) punish that person for an act actually or allegedly committed by the same or another;                      c) intimidate that person or another person is punishable with 2 to 8 years imprisonment.                      2. The penalty provided for in the preceding paragraph shall also be imposed to any person who, on his or her own initiative, orders from a superior or in accordance with any authority competent to perform the duties described in the previous subarticle, commits any of the acts described therein while de facto assuming performance of these duties.                      3. Torture or cruel, degrading or inhumane treatment means any act consisting in inflicting severe physical or psychological suffering, acute physical or mental strain or employing chemical products, drugs and other means, whether natural or artificial, with the intent to disrupt the victim's decision-making capacity or free expression of will.</p>	<p><b>Article 1</b>                      1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.                      2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.</p> <p><b>Article 16</b>                      1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.                      2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.</p>

### 3. Persons in detention

#### Prisons

Civil society organizations such as HAK association, PRADET and JSMP have a constructive working relationship with prison authorities through a prison network convened by the Ministry of Justice (which meets monthly) and generally have good access to the prisons.

Timor-Leste currently has civilian prisons in three locations: The largest prison is located in the capital Dili and holds only male prisoners; a prison in Gleno within Ermera municipality holds both male and female prisoners (separate blocks); and a new prison in Suai in Covalima municipality holds (only male) prisoners. Military accused of a criminal offence are held in a military prison (currently in practice cells at the Headquarters of the Military Police near Mercado Lama) and transferred to a civilian prison if they are dismissed.<sup>5</sup> NGOs are not permitted to visit prisoners held in a military prison.

#### Overcrowding

Becora has capacity for 250 prisoners, Gleno for 60 prisoners and Suai for 70 prisoners.<sup>6</sup> While the government relieved some pressure from Becora and Gleno prisons by inaugurating the Suai prison in March 2017, Becora and Gleno prisons remain severely overcrowded. 65 prisoners have been transferred to Suai pending further recruitment of additional prison guards. Based on civil society monitoring in July 2017, Becora prison held 549 prisoners, Gleno 96 and Suai 25. When civil society reviewed the muster list in September 2017, it appeared Government has justly prioritised transferring prisoners from western municipalities (Manufahi, Ainaro, Maliana, Covalima) to the Suai prison to facilitate easier access to their family. In the absence of a prison in the east, prisoners of that part of the country however remain disadvantaged as their family need to travel longer distances to visit them in Becora or Gleno prisons.

Overcrowding has significant consequences on the ability of prison services to fulfil their duty of care for prisoners: Prisoners receive far less individual attention, have less access to rehabilitation services, and sleeping arrangements risk falling below international and national standards that require due regard being paid to minimum floor space, and allocation of a mattress to each prisoner.<sup>7</sup> For example, in Becora, prisoners lack floor space with, depending on the size of the cell, between two and ten prisoners sleeping in each cell, and some prisoners share mattresses.<sup>8</sup>

**Recommendation:** Government (Ministry of Justice, National Directorate of Prison Services and Social Reintegration) to finalize its survey<sup>9</sup> for construction of a prison in the eastern part of Timor-Leste (Baucau); Council of Ministers to allocate necessary resources in the State Budget (to be approved by Parliament).

#### Solitary confinement

Civil society received consistent information from prisoners on a standard practice to isolate all newly arrived (including pre-trial detainees) prisoners.<sup>10</sup> In Becora, prisoners stay in this semi-dark cell for two

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<sup>5</sup> Note that Timor-Leste currently has not yet established military courts that will have jurisdiction over military offences such as desertion (Constitution, Article 130). However, civilian courts have jurisdictions over military who commit civilian/non-military offences such as murder, manslaughter and simple (common) or serious offence against physical integrity (Vasconcelos, Pedro Carlos Bacelar, *Constituição Anotada da República Democrática de Timor-Leste*, p.411). Military arrested for ordinary crimes are to be held in a military detention facility under the joint oversight of Ministries responsible for Justice and Defence (Government Decree No 02/2008, Article 2). If the F-FDTL member is dismissed at the conclusion of a disciplinary process that takes into account a criminal conviction, the convicted person will be transferred to a civilian prison.

<sup>6</sup> Capacity as stated in the RDTL State report: Committee Against Torture, Initial Report Timor-Leste, 23 August 2016, CAT/C/TLS/1, para. 128; and as per information given through regular communication of prison authorities and civil society organizations.

<sup>7</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), E/CN.15/2015/L.6/Rev.1, 21 May 2015, Rule 13 and RDTL Decree-Law No 14/2014 on Penal Execution, Articles 34 and 37.6.

<sup>8</sup> Civil society monitoring and NHRI report: Provedoria Direitus Humanus no Justisa, *Relatório kona-ba Monitorizasaun Prizaun iha Timor-Leste*, September 2016, pp.42-43.

<sup>9</sup> As indicated in the RDTL State report: Committee Against Torture, Initial Report Timor-Leste, 23 August 2016, CAT/C/TLS/1, para. 128

nights and three days, while in Gleno it is a week - six nights and seven days. Prisoners are not provided with a mattress or a change of clothes, but they do receive three meals a day and sufficient water. During this time, prisoners reportedly experience some rough treatment, including being subjected to physical violence that includes slaps and kicks to the chest and head.

The isolation and rough physical treatment upon arrival are likely a ritual used to show the prisoners that they no longer have the freedoms and authority they had in their normal lives. This practice seems at odds with the general behaviour of the prison staff, which is one of respect and kindness towards prisoners.

The above practices fall short of international and national standards. The Mandela Rules prohibit punishment by placing prisoners in a dark cell, and only allows solitary confinement in exceptional cases as a last resort, for as short a time as possible and subject to independent review.<sup>11</sup> The physical violence against prisoners lacks a legal basis and therefore doesn't comply with the requirements of national prison and use of force rules.<sup>12</sup>

It also appears that safeguards in national law against prolonged solitary confinement may fall short of international standards: The UN Human Rights Committee noted prolonged solitary confinement may amount to torture or ill-treatment.<sup>13</sup> The Mandela Rules prohibit prolonged solitary confinement (in excess of over 15 consecutive days).<sup>14</sup> The national Law on Penal Execution – informally dubbed as the prison reform law – allows for isolation solitary confinement if approved by the National Director of Prison Services and after verification of legality by a prosecutor.<sup>15</sup>

**Recommendation:** Government (Ministry of Justice, National Directorate of Prison Services and Social Reintegration) to issue clear instructions to Prison Directors to stop the entry ritual of solitary confinement in a dark cell and related excessive use of force.

### Collective punishment

Civil society has received reports of practices of collective punishment, prohibited in international and national law.<sup>16</sup> For example after an adult prisoner escape in November 2013, or on other occasions when the guards found that one of the adults was using a prohibited mobile phone, everyone in the prison, including the juveniles, was locked in their cell for one week in Becora prison. In the beginning of 2017, prison authorities in Gleno addressed the intermingling between women and men by locking women in their cell all day. The latter was not only collective punishment for excesses by some individuals, but also discriminates by only punishing women.

**Recommendation:** Government (Ministry of Justice, National Directorate of Prison Services and Social Reintegration) to issue clear instructions to Prison Directors to cease applying measures that equate to collective punishment, and through inspections exercise regular and rigorous oversight of prison practices.

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<sup>10</sup> In 2015, 47 out of 50 prisoners confirmed they had been subjected to this practice. Civil society findings are confirmed in a published NHRI report on the results of their monitoring of prisons in Timor-Leste – based on interviews with 111 prisoners: *Providoria Direitus Humanus no Justisa, Relatóriu kona-ba Monitorizasaun Prizaun iha Timor-Leste*, September 2016, pp. 38-39. The cell where new arrivals are kept is not entirely dark (there is a light in the corridor in between the cell rows, but not in the cell itself). Also, the cells are not entirely isolated as prisoners are able to communicate with each other through the grids of the cell doors.

<sup>11</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), E/CN.15/2015/L.6/Rev.1, 21 May 2015, Rule 43.1 (c) and Rule 45.

<sup>12</sup> RDTL Decree-Law No 14/2014 on Penal Execution, Article 90 and Decree-Law No 43/2011 on the Legal Regime for the Use of Force, Articles 2, 4 and 11-12.

<sup>13</sup> UN Human Rights Committee, General Comment No. 20, para. 6

<sup>14</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), E/CN.15/2015/L.6/Rev.1, 21 May 2015, Rule 43.1 (b) and Rule 44.

<sup>15</sup> RDTL Decree-Law No 14/2014 on Penal Execution, Article 89.5

<sup>16</sup> Mandela Rule 43.1 (e) and RDTL Decree-Law No 14/2014 on Penal Execution, Article 94.6.

### Juveniles in need of a separate detention facility

Juveniles in Timor-Leste are classified to be between the ages of 16 and 21.<sup>17</sup> In July 2017, 34 juveniles were held in Becora prison and in September 2017, 37 juveniles were held. The main issue for the juveniles is that they are currently in the same facility with adult prisoners. Whilst they sleep in a separate block, in practice it appears that, for example during the distribution of the food or with sporting and other social activities, juvenile prisoners are in close proximity and communication with adult prisoners. The juveniles interviewed conveyed that they sometimes felt uncomfortable, as the adults “tease” them, “bother” them or “make trouble” when they are trying to play soccer. They want to focus on their education, and would feel “more free and safe” to move around the prison if they were not worried about being disturbed by the older prisoners.<sup>18</sup>

While Government has committed to building a detention facility for juveniles in Tibar, it is unclear how far planning or design has advanced since the then Minister of Justice announced it in 2014.<sup>19</sup> The supporting legal framework remains incomplete: A draft Law on a Special (penal) Regime for youth between 16 and 21 years of age is still pending Parliamentary approval. The drafting of this law has not been transparent and NGOs have yet to be shown the latest draft of this law in a public consultation process by the government.<sup>20</sup>

Imprisonment of juveniles is not always used as a last resort, and has the potential to have negative consequences for juveniles beyond their imprisonment as illustrated in the case study below. Non-custodial measures such as community orders are rarely applied.

#### Case Study on juvenile in prison

In 2015, a juvenile had been in pre-trial detention for one month. He was accused of breaking eight windows at school, after getting angry with a teacher. His parents immediately paid for the windows to be fixed, and any damage involved in their sons’ actions. Despite this reparation, and the fact that he has not yet been convicted in court, the principle of his school decided he would not be allowed to return. The principle made him and his family sign a declaration that stated he is no longer welcome at the school.

Notably, as a pre-trial detainee, the juvenile cannot participate in classes in prison, which distresses him greatly. Being in his final year of secondary school, he really wants to complete his education and go to university. However, he feels like this is no longer a possibility, and seems very withdrawn and depressed in his current environment. He expressed feeling disappointed and upset with himself, and that he had lost his future.

**Recommendation:** The Government (Ministry of Justice and Council of Ministers) to finalize and adopt the draft Law on a Special (penal) Regime for youth between 16 and 21 years of age. Parliament to conduct meaningful consultation with civil society on the draft law. Parliament to approve and President to promulgate. Government (Ministry of Justice) to accelerate planning for juvenile detention facility; Council of Ministers to allocate necessary resources in the State Budget (to be approved by Parliament).

### Women in prison

Similar to juveniles, civil society believes that the main issue surrounding the imprisonment of women in Gleno, is that they are currently in the same facility as male prisoners. Whilst they sleep in separate blocks, it appears that there are many instances of interaction. On Sundays, both the men and women prisoners attend mass simultaneously; while, during family visiting hours in the designated meeting area, both men

<sup>17</sup> RDTL Penal Code, Article 20(2) and Decree-Law No 14/2014 on Penal Execution, Article 12.

<sup>18</sup> Civil society interviews with juvenile prisoners in 2015

<sup>19</sup> RDTL State report: Committee Against Torture, Initial Report Timor-Leste, 23 August 2016, CAT/C/TLS/1, para. 129 states the Ministry has ‘created a project to start building a Juvenile Centre in Tibar’ but doesn’t offer detail on how far planning has progressed. The National Action Plan for Children in Timor-Leste (2016-2020) - published through Government Resolution No 27/2017 on 24 May 2017 - says the Ministry has planned (strategy for 2017-2019) a ‘rehabilitation centre to provide residential support for children in conflict with law as the last resort and for short period of time possible and with separate programs for boys and girls that promote a successful reintegration’.

<sup>20</sup> See also, Concluding Observations Committee on the Rights of the Child CRC/C/TLS/CO/2-3 para.62 (a)



and women prisoners meet with their visitors at the same time. Civil society has witnessed a number of occasions where the men and women were spending their free time in the yard intermingling. This places women at risk of sexual harassment by male prisoners.

Whilst the number of incarcerated women is particularly low – in July 2017, 19 women were held at Gleno prison - ultimately a separate facility for women prisoners is required. Many women in the criminal justice system have extensive histories of sexual and physical abuse, and being hugely outnumbered by male prisoners can lend itself to them not feeling protected and safe. As well as increasing feelings of safety for the women, establishing a separate facility gives prison authorities the opportunity to implement gender-responsive programs and services. A separate facility would give prison authorities the chance to introduce vocational training specific to women, that will cultivate their skills and improve women's economic and social conditions by developing their capacity to be self-sufficient. This is particularly important due to the fact that many of the women prisoners advised civil society that their husbands have left them during their time of imprisonment. Therefore, they now have sole responsibility of their dependent children. At present the bulk of vocational training programs are facilitated by civil society.

#### Case Study on breastfeeding woman with infant in prison

JSMP interviewed one woman who was in pre-trial detention with a 5-month-old baby. She was forced to give birth in the local hospital, after being placed in Gleno Prison when she was eight months pregnant.

Whilst legally a child can be kept in prison with their mother up until the age of three, prisons must ensure that they have appropriate facilities to accommodate this and that this is in the best interest of the child. Further, the environment provided within the prison, for such children's upbringing must, must be as close as possible to that for a child outside of prison. JSMP found that Gleno does not have adequate facilities in which to house a child. Firstly, the baby must sleep on the same thin mattress as the mother, which can become very cold during the night. The baby is also in need of bigger clothes, as she is growing out of the ones initially supplied by the Ministry of Social Solidarity.

Secondly, the mother and baby must sleep in the same cell with four other women, which resulted in the baby being disturbed and constantly waking up. Conversely, the other women get frustrated with the baby crying and do not wish to sleep in the same cell. Due to these feelings of frustration, the mother is forced to keep her baby as silent as possible so as to not further anger her fellow cellmates.

Lastly, the mother is currently receiving the same amount of food as the other women prisoners. As she is breastfeeding, she often has feelings of hunger, particularly when she is breastfeeding during the night as dinner is served at 4pm. Women breastfeeding need appropriate nourishment.

**Recommendation:** Government (Ministry of Justice) to consider establishment of a modest sized separate detention facility offering appropriate services for women.

#### Mental health care in prison

Civil society is aware of one prisoner currently held at Becora with suspected mental health problems. He has been in detention for about one year and a half and is awaiting transfer to an appropriate treatment facility, pending approval by Timor-Leste's sole psychiatrist. The Special Rapporteur on Torture has emphasized that the denial or lack of reasonable accommodations for persons with disabilities may create detention and living conditions that amount to ill-treatment and torture.<sup>21</sup>

(See relevant recommendation under the section on persons with disabilities.)

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<sup>21</sup> Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN General Assembly A/63/175, 28 July 2008, para.54

### Police custody

The NHRI in 2016 published a snapshot of conditions in police custody, documenting ill-treatment of a detainee held at Ermera police station in June 2016.<sup>22</sup> The report also highlighted other issues such as lack of more than 1 cell in several municipalities and *eskuadra* (so inability to separate by sex and age) and the bureaucracy involved in obtaining funds for food for detainees.

Civil society in Timor-Leste has received many complaints regarding alleged ill-treatment by police during arrest, search and detention. Excessive use of force is analyzed in the next section.

In Dili between 2008 and 2015, civil society observed deficiencies in the toilet facilities in police custody – no separation between male and female detainees. However, there have been improvements on this issue in 2017.

There may be a need to more explicitly regulate conditions in police custody: While the Decree-Law No 14/2014 on Penal Execution is very detailed, it does not cover police custody. Safeguards for detainees held by police in Criminal Procedure Code (Article 60 and following) are also minimal, guaranteeing access to lawyer, family, and medical assistance. There appears to be no specific legal provisions in national law on bedding/food/water/hygiene in police custody, or on how detention registry is to be managed. It remains unclear whether this is covered in a Standard Operational Procedure (NOP)<sup>23</sup> approved by current PNTL Command.

**Recommendation:** Police Command (General Commander of PNTL) to adopt a Standard Operational Procedure safeguarding conditions in police custody, and widely disseminate it to PNTL and civil society monitoring conditions in detention.

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<sup>22</sup> *Provedoria Direitos Humanos no Justisa Relatóriu kona-ba Monitorizasaun Fatin Detensaun Polísia iha Timor-Leste*, September 2016, p.34

<sup>23</sup> *Normas de Organização e Procedimento* as per Decree-Law No 9/2009 Organic Law PNTL Article 41. Some procedures have been drafted and/or adopted during UNMIT but some PNTL consider them out-of-date or even invalid and many PNTL are not aware of them.

#### 4. Excessive use of force by security forces

Local human rights groups in Timor-Leste continue to receive frequent complaints of alleged excessive use of force by police and military, and have repeatedly called for an enhanced accountability of security forces.<sup>24</sup>

Over the period of 2012-2015, an NGO-based Early Warning Early Response (EWER) system recorded 111 cases of violence involving police officers, and 53 cases of violence in which members of the armed forces were involved.<sup>25</sup> The NGO Fundasaun Mahein recorded 18 incidents of alleged excessive use of force by police between April 2014-August 2016, in particular by the Special Police Unit called the Public Order Battalion (BOP).<sup>26</sup>

##### Joint security operations

In relation to joint security operations in 2014-2015 against an anti-government group, civil society organizations received regular complaints of ill-treatment and excessive use of force by the Timor-Leste police and military.<sup>27</sup> The NGO HAK, for example, received 56 such complaints during the operation in 2015. In addition to these cases, of serious concern was the shooting to death of a civilian male who reportedly was supporting the armed forces in their search for the leader and members of the anti-government group, by the military in 3 July 2015 in Baucau Municipality. Other instances of the use of lethal force concern the shooting and injuring of three young men by police in April 2015 near a police check-point in Baucau - even though they allegedly did not constitute a threat to the police. In addition, police reportedly shot and injured two male youth who did not appear to have posed a threat, while riding away on motorbikes from a police checkpoint in Liquica Municipality, on 19 April 2016.

On 3 August 2016, a person with a mental disability was shot to death by PNTL in Covalima.

In December 2016, 91 road vendors were forcibly removed by guards employed by Dili Municipality and by police. Some vendors allege ill-treatment by police, involving some beatings and the use of derogatory language.

Video footage of a soccer game at Malibaka stadium in Maliana on 22 April 2017 clearly shows excessive use of force by police against a spectator.

The Human Rights Defenders Network in Timor-Leste (Rede Defensór Direitus Umanus – RDDU) has raised all the above cases with PNTL and F-FDTL and with the Prosecutor-General, requesting serious disciplinary and criminal investigations into the alleged torture and ill-treatment.<sup>28</sup> Though Commanders of both forces have publicly announced in some of the cases that the alleged perpetrator was suspended pending

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<sup>24</sup> See for example Timor-Leste Civil Society Coalition on UPR, Alternative UPR Report 24 March 2016, para. 13; and the related Briefing Note (jointly with NHRI) on the Right to life and security of person – Respect by Security Forces, September 2016.

<sup>25</sup> Belun, EWER monitoring reports available at: [www.belun.tl/en/publications/](http://www.belun.tl/en/publications/). Incidents of violence may involve slapping, beating, kicking, hitting with baton and/or gunshots fired.

<sup>26</sup> Fundasaun Mahein, "Police Vigilantism and Use of Violence are Increasing, Press release, 8 August 2016, on [www.fundasaunmahein.org](http://www.fundasaunmahein.org)

<sup>27</sup> Fundasaun Mahein, *The Joint Operation: Bad Practices in the Security Sector*, Mahein's Voice No. 99, 24 March 2015 at: [http://www.fundasaunmahein.org/wp-content/uploads/2015/03/MNL-Nu.-99- The-Joint-Operation\\_24032015\\_English-Version.pdf](http://www.fundasaunmahein.org/wp-content/uploads/2015/03/MNL-Nu.-99- The-Joint-Operation_24032015_English-Version.pdf); HAK Association, *Annual report on the human rights in Timor-Leste*, 2014, p.4 and 2015, pp.7-9 at [http://www.haktl.org/wp-content/uploads/2016/02/Relatoriu\\_anual\\_2015\\_3.pdf](http://www.haktl.org/wp-content/uploads/2016/02/Relatoriu_anual_2015_3.pdf); AJAR and HAK association, *Press release - Result of monitoring of joint operation F-FDTL and PNTL regarding Mau Maruk and his group*, 22 April 2015; Amnesty International, *Urgent action – Dozens arrested and tortured in Timor*, 12 May 2015 available at <http://www.amnestyusa.org/get-involved/take-action-now/timor-leste-stop-the-arrest-and-torture-of-dozens-of-individuals-ua-10615>

<sup>28</sup> RDDU Press Release 16 December 2016; RDDU Press Release 2016; RDDU letter to Prosecutor-General 2 December 2016.

investigation,<sup>29</sup> the result of disciplinary and criminal investigations in most of the above cases remains unclear.

Under national law, any use of force – including a baton or spray, or unclipping a firearm - carries reporting requirements notifying the prosecutor and the hierarchical superior in the relevant security force. Civil society is doubtful that this is consistently done by police, prison guards and military after they used force.<sup>30</sup> This impacts the impartiality and seriousness of investigations of torture and ill-treatment, a self-standing obligation under international human rights law.

#### Case study on applying the crime of torture/ill-treatment to excessive use of force

On 9 December 2011, a man accused of domestic violence attended Venilale police station (*eskuadra*) in Baucau municipality to discuss his case. In court it was alleged that the Station Commander slapped the man twice on his cheek and kicked him once in the back. A second police officer reportedly kicked the man once on the chest and third police officer allegedly kicked the man again on the back resulting in the man falling down. The Station Commander handcuffed the man and made him stand under the flag pole for around 20 minutes.

The prosecutor charged the three police officers with torture/ill-treatment (Penal Code Article 167) Civil society has not monitored any other cases in court where suspects have been charged with this criminal offence.

Eventually, the court amended the charges to common assault ('simple offence against physical integrity – RDTL Penal Code, Article 145), a semi-public crime where prosecution depends on complaint by the victim. Given that the police officers and the man had already reconciled, the court then on 30 June 2017 simply approved their agreement (*omóloga*).<sup>31</sup>

While this is far from the most serious ill-treatment allegation documented by civil society, the effort of the Baucau prosecutor to apply the crime of torture/ill-treatment to a case of alleged excessive use of force by police is a small step forward in holding security forces accountable.

**Recommendation:** The Government should strengthen internal disciplinary mechanisms (*Departamentu Justisa*) within the PNTL and F-FDTL, ensure they are sufficiently resourced, and that these have the political support to function effectively. There should be increased transparency of results of investigations into allegations of human rights violations involving security forces.

**Recommendation:** Judicial actors, including the police, should rapidly initiate investigations into reported violations, and commence judicial processes in cases of human rights violations involving security actors. Sufficient resources should be allocated to them to undertake these processes. Prosecutors should more routinely consider applying the crime of torture/ill-treatment in cases where excessive use of force by security forces is alleged.

<sup>29</sup> For example, incidents involving police and military between April and June 2016

<sup>30</sup> Decree-Law 43/2011 Legal Regime on the Use of Force, Article 22.

<sup>31</sup> JSMP, Case Summaries, Baucau Court, June 2017 Monitoring Reports

## Lack of impartiality

Civil society regularly receives complaints of a lack of impartiality by police and military, including affiliation with martial arts groups in Timor-Leste.<sup>32</sup> In 2013, Government prohibited three martial arts groups from further operating and asserted a zero-tolerance policy for PNTL and F-FDTL members who participate in martial arts groups.<sup>33</sup> It remains unclear whether a new legal regime (March 2017) will result in greater impartiality of security forces when addressing violent incidents involving martial arts groups in Timor-Leste.<sup>34</sup>

Groups advocating the rights of LGBTI and group advocating rights of persons with disabilities also received reports of perceived bias in policing.

**Recommendation:** The General Commander of PNTL should remind all PNTL of the oath they took to be impartial.<sup>35</sup>

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<sup>32</sup> Belun, *Dynamics of martial arts related conflict and violence in Timor-Leste*, Research Report, May 2014, p.27; Fundasaun Mahein, Thematic Issue in the Security Sector 2015 “*Response and Reflection Lesson*”, Mahein’s Voice No. 115; Fundasaun Mahein, *An Oath for Members of the F-F-FDTL and PNTL: End Ties with Martial Art Groups* Mahein’s Voice No. 96, 30 January 2015

<sup>33</sup> RDTL Government Resolution No16/2013 Extinguishment of Martial Arts Groups

<sup>34</sup> RDTL Law No5/2017 Legal Regime on the practice of martial arts (and others), Fifth amendment to Penal Code, <http://www.fundasaunmahein.org/2017/10/04/police-torture-in-oecussi-requires-an-immediate-government-response/>

<sup>35</sup> RDTL Decree-Law No 9/2009 Organic Law of National Police of Timor-Leste (PNTL), Article 1.3

## 5. Violence against women and children by private actors

Timor-Leste has a positive obligation to exercise due diligence to prevent, investigate, prosecute and punish torture and ill-treatment perpetrated by private actors.<sup>36</sup> The State should ensure victims of abuses such as sexual violence and abuse, rape, marital rape and domestic violence are able to come forward and seek and obtain redress.<sup>37</sup>

### Prevalence of violence against women in Timor-Leste

A study conducted by The Asia Foundation in 2015 documenting the prevalence of partner and non-partner violence against women in Timor-Leste showed that three in five (59%) women aged 15-49 years, who have ever been in a relationship (ever-partnered), reported having experienced some form of physical or sexual partner violence, or both, by a male partner in their lifetime, and 47% in the 12 months before the interview. More than one in ten (14%) of all women surveyed said they had experienced rape by a man who was not their intimate partner at least once in their lifetime, and one in ten (10%) reported experiencing this in the last 12 months.<sup>38</sup>

Notably, 62 % of court cases monitored by civil society in 2016 involved violence against women and girls. 65 per cent of those were characterised as domestic violence, while 9 per cent involved sexual violence.<sup>39</sup>

### Weakness in current RDTL law

Civil society organizations JSMP and ALFeLa have identified deficiencies in the current legal framework protecting women and children against violence. To address these, civil society in 2015 proposed detailed amendments to the RDTL Penal Code and the Law Against Domestic Violence - most notably to create specific crimes of incest and marital rape, amend evidentiary rules for sexual coercion and rape in accordance with international best practice, and add aggravating circumstances for sexual offences.<sup>40</sup>

### Incest

Children in a relation of trust and dependence within the family are particularly vulnerable. There is still no specific provision criminalising incest in Timor-Leste. Existing laws, which allow for the prosecution of acts of incest as sexual abuse of a minor or rape, are inadequate. The current law only makes an act of incest punishable where the victim is less than 14 years of age, or it can be proven that actual force or serious threats were used. Civil society commends courts on making some progress in 2016 with the implementation of lengthier prison sentences for perpetrators of incest. However, public prosecutors and courts continue to have problems with the charging and sentencing of perpetrators of incest. Often, they disregard one or more of multiple aggravating circumstances<sup>41</sup> which could lead to heavier (towards the maximum end of the relevant sentencing range) sentences.<sup>42</sup> This could be partly addressed to charging and sentencing directives, defining incest as a distinct crime would offer greater protection to children.

**Recommendation:** Government (through Ministry of Justice) to draft amendments to the Penal Code and the Law Against Domestic Violence as proposed by civil society; Parliament should discuss and adopt the amendments.

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<sup>36</sup> Committee Against Torture, General Comment No.2, 2008, para. 18.

<sup>37</sup> Committee Against Torture, General Comment No.3, 2012, para. 33.

<sup>38</sup> The Asia Foundation, *Understanding Violence against Women and Children in Timor-Leste: Findings from the Nabilan baseline Study – Main Report*, 2016, pp. 51 and 64

<sup>39</sup> JSMP, *Overview of the Justice Sector*, 2016, p.17: 582 out of 941 criminal cases monitored by JSMP in 2016 involved VAW

<sup>40</sup> JSMP and ALFeLa, *Improving the Penal Code to better protect women and children*, Submission to the National Parliament of Timor-Leste, January 2015

<sup>41</sup> Such as the victim being vulnerable by reason of his/her age, being in a situation of hierarchal and economic dependence on the perpetrator and the perpetrator committing the crime of abuse of power and authority over the victim.

<sup>42</sup> JSMP, *Overview of the Justice Sector*, 2016, pp.30-31.

### Obstacles to access to formal justice

While women's ability to obtain redress has increased since the adoption of the Law Against Domestic Violence in 2010,<sup>43</sup> results of extensive monitoring of violence against women cases in court by JSMP also point towards continued obstacles: With regard to charging, legal errors are made (charging a lesser crime) and prosecution of rape within marriage is virtually non-existent. Lack of resistance by victims is often seen as evidence of consent, and little effort is made to look for corroborating evidence when there is no medical evidence available. In general sentences are not commensurate with the gravity of crime.<sup>44</sup> At the entry point of the judicial process, most police officials are now well aware of their role and will record the initial information on violence against women and children. However, in many cases, unless the civil society lawyer assisting the victim pushed the case forward, investigative acts slow down or come to a halt after the first response.

#### Case study on failure to conduct impartial investigation into alleged ill-treatment of woman

Mena and Domingos (not real names) married in 1995 and have 8 children. There is a long history of Domingos committing domestic violence against Mena that includes physical beatings, strangulation and haircutting. When the violence started, domestic violence under the applicable Indonesian law was a semi-public crime dependent on the victim's complaint and Mena for a variety of reasons did not wish to pursue a complaint. Neighbours were also reluctant to intervene as Domingos was a police officer.

At some point Domingos committed a murder of another person and was convicted to two years in prison. During that time Mena received his salary. Upon release, Domingos argued Mena has to pay back the salary to him instead of 'wasting it on their children'. Enraged, Domingos continued to physically assault Mena. One day, Domingos beat Mena so badly that he caused her a leg injury resulting in a permanent disability. She also has head injuries and psychological trauma resulting from constant fear of returning to her private home, where she knows she will be abused, and the lack of support in the neighbourhood because of the position Domingos holds in the community, even after his dismissal from the police force.

Following the adoption of the Law Against Domestic Violence in 2010, Mena felt more confident in informing police of the domestic violence and trusted that they would take swift action to protect her. Although police at Uato-Lari station in Viqueque municipality is well aware of the domestic violence, Mena has never received any information on how her case is proceeding within the judicial process. Every time a new act of violence occurs, Mena informs local police but police asserts they are unable to locate the suspect (Domingos). In reality, Domingos is often seen having a drink together with his fellow police officers.

The specialized police of the Vulnerable Police Unit and other partners in the referral network such as the technical staff of the Ministry of Social Solidarity and civil society partners PRADET, Fokupers and ALFeLa have offered support to Mena, secured her a place in a shelter and in August 2017 were instrumental in negotiating a safe return for Mena to her house (with Domingos eventually accepting to move to another location).

Mena, and civil society services supporting her, feel the Viqueque prosecutor is not serious in managing the criminal investigation, and police of Uato-Lari station showed a lack of impartiality by not being able to locate the suspect (Domingos) for the domestic violence criminal investigation, while contacting him with ease to invite him to the August 2017 negotiations outside the formal judicial process on who would reside where.

<sup>43</sup> RDTL Law No 7/2010

<sup>44</sup> JSMP, *Charging, Trials and Sentencing in Cases of Sexual Violence in Timor-Leste 2012-2015*, 11 March 2016, pp.34-36 available at [http://jsmp.tl/wp-content/uploads/2012/05/sexual-violence-report-FINAL\\_ENGLISH-VERSION-PDF.pdf](http://jsmp.tl/wp-content/uploads/2012/05/sexual-violence-report-FINAL_ENGLISH-VERSION-PDF.pdf);

**Recommendation:** The General Commander of PNTL should remind all PNTL of the oath they took to be impartial<sup>45</sup> and a strict implementation of current Standard Operational Procedure for *suku* police on the response to violence against women and children; The Office of the Prosecutor-General should issue charging directives, and the President of the Court of Appeal should develop sentencing directives in accordance with the State's due diligence obligations in responding to violence against women.

### Suspended sentences

Effective prison sentences for domestic violence are still rare, for example only in 4.5% of domestic violence cases observed by civil society in court in 2016. A suspended sentence continues to be the preferred sanction domestic violence case, for example in 77% of DV cases observed by civil society in court in 2016. Rules of conduct - requiring defendants to periodically present themselves to either their nearest court or police station - are rarely imposed and in practice, defendants don't face any real repercussions for their non-compliance of the rule of conduct imposed by the court.<sup>46</sup> Furthermore when a defendant re-offends, proper procedure to revoke the suspension is often not adhered to.<sup>47</sup> Databases of all judicial actors are not well integrated, and often judicial actors are not aware of a previous suspended sentence.

**Recommendation:** Government (Ministry of Justice – Directorate of Prison Services and Social Reintegration DNSPSR)<sup>48</sup> should more consistently monitor suspended sentences, and Courts and the DNSPSR should develop community work orders and reintegration plans that involve existing community structures such as *suku* councils and community police.

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<sup>45</sup> RDTL Decree-Law No 9/2009 Organic Law of National Police of Timor-Leste (PNTL), Article 1.3

<sup>46</sup> JSMP, *Overview of the Justice Sector*, 2016, pp.20-22. The conditions or rules of conduct that can be imposed on a defendant are diverse in nature. However, JSMP has only monitored the application of Article 70.1(g) Penal Code, i.e. defendants to periodically present themselves to either their nearest court or police station - as an additional condition to a suspended sentence.

<sup>47</sup> JSMP, Press Release, Oecusse District Court, *Oecusse District Court imposes an effective prison sentence of six months against a defendant for the crime of domestic violence*, 2 August 2017

<sup>48</sup> RDTL Decree-Law 14/2014 on Penal Execution, Articles 148-154



## 6. Corporal punishment in educational settings

Other UN treaty bodies consider corporal punishment is ‘invariably degrading’ and views the prohibition against torture or other cruel, inhuman or degrading treatment or punishment extends to excessive chastisement as an educative or disciplinary measure.<sup>49</sup>

In Timor-Leste, civil society organization Belun contributed to the following UNICEF research approved by the Ministry of Education:

### Findings of UNICEF, Study on violence against children in and around educational settings Timor-Leste, 2016

**Physical violence** perpetrated by teachers against students appears to be a prevalent form of violence against children in schools, and there appears to be widespread impunity for teachers who perpetrate violence against children, despite the MoE Zero Tolerance for violence against children directive. The research showed **75% of boys and 67% of girls** reported that they had experienced physical violence by a teacher at school in the last 12 months, including being hit (with hand or object), slapped, kicked, pinched or pulled by a teacher. Hitting, slapping or pinching children at school, if perpetrated for reason of discipline, is generally not considered to be injurious to children. In fact, it is typically regarded as a protective measure; necessary for children’s moral and educational development and parents are generally supportive of violent disciplinary practices at schools. Severe hitting of a child which leads to serious injury or bleeding may be regarded as less acceptable; however, it is unlikely that it will trigger a child protection response or referral, or cause any disciplinary action to be taken against the teacher.

According to the report, **emotional violence** against children perpetrated by teachers appears to be more prevalent than physical violence. The majority of children - **80% of boys and 75% of girls** - in the survey reported experiencing some form of emotional violence by a teacher at school, including: being subject to ‘bad words’ or personal insults (such as being called ‘stupid’ or subject to insults directed at their family), threats of violence, and being subject to humiliating and degrading punishment at school.

### Criminal accountability

While there are crimes in the Penal Code that cover acts of violence against children, the above study points to hurdles in the current national legal framework to address violence against children in educational settings, including the distinction between semi-public – that are dependent on a victim’s complaint - and public crimes, and the lack of standing of victims under 16 years of age.<sup>50</sup>

### Disciplinary accountability

The Ministry of Education has undertaken steps to complete the disciplinary legal and policy framework for teachers.<sup>51</sup> In 2015, a directive was issued on teaching and learning techniques and methodologies that explicitly prohibits teachers from using physical and psychological punishment.<sup>52</sup> In 2017 a Disciplinary Regulation for Teacher’s (and teaching staff) was promulgated but will only take effect once the Code of

<sup>49</sup> Committee on the Rights of Children, General Comment No. 8, 2006, para 11 Human Rights Committee, General Comment No.20, 1992, para 5

<sup>50</sup> UNICEF, Study on violence against children in and around educational settings Timor-Leste, 2016, pp.19-20

<sup>51</sup> Consultations with Ministry of Education

<sup>52</sup> Despacho Ministerial n.º \_\_\_/G-ME/IV/2015, *Que Aprova as Diretrizes sobre as Técnicas e Metodologia de Ensino e Aprendizagem para a Educação Pré-Escolar*, rule No19. A similar directive was issued to teachers in basic education but the exact references of both directives are unknown as they are inaccessible on the website of the Official Gazette (Jornal da Republica). Hurdles in citizens and public officials knowing (and accessing) law is another but compounding issue in Timor-Leste.

Ethics and accompanying interpretative tools have been finalized and adopted.<sup>53</sup> Importantly, the regulation highlights protection measures for children, including referral to nearby police and to networks of support services at municipal level (Article 34). School directors are required to record disciplinary infractions by teachers (such as tardiness, absence but also corporal punishment) and a failure to do so may lead to disciplinary consequences for the directors themselves (Articles 11 and 14). A teacher and a child will serve as focal points in each school for the wider community to encourage lodgement of complaints against teachers (Article 17).

The National Action Plan for Children in Timor-Leste 2016-2020 published by Government in May 2017 acknowledges measures taken by the Ministry of Education to investigate complaint of corporal punishment in schools but advocates that it needs to be supported with a law that explicitly prohibits violence against children and abuse or corporal punishment.<sup>54</sup>

**Recommendation:** Government (Ministry of Education) to finalize the teacher’s Code of Ethics and widely disseminate the disciplinary regulation, to conduct serious and impartial investigations into complaints of corporal punishment (including referral to support services to protect best interest of the child and notifying the alleged crime to prosecutor). Government (Ministry of Social Solidarity) to conduct meaningful consultations on the draft Law on Child Protection and disseminate a Tetum translation to enable civil society inputs.

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<sup>53</sup> Government Decree No29/2017, Approving the Regulation of Discipline for teaching staff and teachers in school settings, Article 7 and 70.

<sup>54</sup> Government Resolution No. 27/2017, National Action Plan for Children in Timor-Leste 2016-2020, sections 1.2

## 7. Transitional justice: Inadequate reparations for victims of past torture and ill-treatment

### Relevant findings of CAVR

Detention, torture and ill-treatment were among the most frequently reported violations across the entire mandate period (1974-1999) of the Commission for Reception, Truth, and Reconciliation Timor-Leste (CAVR). Of all the non-fatal violations reported to the Commission, 42.3% (25,347/59,972) were detentions, 18.5% (11,123/59,972) were acts of torture and 14.1% (8,436/59,972) were acts of ill-treatment. Nearly 67%, or two-thirds, of victims of non-fatal violations reported being detained at some point. Most torture and ill-treatment occurred while in detention.<sup>55</sup>

From its statement-taking process the Commission documented 853 reported instances of sexual violations. Rape was the most commonly reported sexual violation, at 46.1% (393 out of 853) of all sexual violations documented by the Commission. Rape was followed in frequency by sexual harassment and other acts of sexual violence (27.1%, 231/ 853) and sexual slavery (26.8%, 229/ 853).<sup>56</sup>

### Judicial process for past human rights violations

Civil society is aware of at least three cases involving persons charged with crimes against humanity that are still pending in court in Timor-Leste.<sup>57</sup> The Special Panel for Serious Crimes have been unable to convene in the absence of international judges (2 required)<sup>58</sup> following their removal pursuant to resolutions by parliament and government in October 2014 that have been widely condemned for interfering with the independence of the judiciary and separation of powers.<sup>59</sup> Although a Protocol was signed in February 2016 between Timor-Leste and Portugal re-establishing full cooperation in the area of justice,<sup>60</sup> international judges have not been re-engaged in Timor-Leste to serve judicial functions.

**Recommendation:** Government should fully restore judicial cooperation with Portuguese speaking countries; Government and Parliament should fully respect independence of the judiciary; Government should explore with Parliament and judicial experts the feasibility of amending the national legal framework to enable pending serious crimes cases to conclude

### Long awaited establishment of public memory institute

A public memory institute - Centro Nacional CHEGA! (CNC) - has been established in July 2017 and is tasked with monitoring the implementation of the recommendations of the truth-seeking bodies CAVR and CTF. It seeks to promote solidarity with the most vulnerable victims of human rights violations between 1974 and 1999.<sup>61</sup> This focus is welcome given that many victims feel that to date the bulk of assistance programs and rehabilitation services have benefited - in majority male - veterans of the struggle. The at times artificial distinction between 'veterans' and 'conflict victims or survivors' especially impacts on

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<sup>55</sup> Chega!, Report of the Commission for Reception, Truth, and Reconciliation Timor-Leste (CAVR). Executive Summary, p.87.

<sup>56</sup> Chega!, Report of the Commission for Reception, Truth, and Reconciliation Timor-Leste (CAVR). Executive Summary, p.116.

<sup>57</sup> UNTAET Regulation 2000/15 on the Establishment of Panels with exclusive jurisdiction over serious criminal offences, Article 5. The pending cases include Case No. 273/C.Ord/2011/TDD (against members of *Aileu Hametin Integrasaun* militia, and two cases against members of *Besi Merah Putih* militia: No. 282/C.Ord/2012/TDD2 and No.707/C.Ord/2012/TDD.

<sup>58</sup> UNTAET Regulation 2000/15 on the Establishment of Panels with exclusive jurisdiction over serious criminal offences, Article 22.

<sup>59</sup> JSMP, *Dismissal of international officials and advisors in the Timor-Leste judicial sector*, December 2014, available at [http://jsmp.tl/wpcontent/uploads/2012/05/Report-dismissal-of-international-judicial-officialsFINAL\\_ENGLISH1.pdf](http://jsmp.tl/wpcontent/uploads/2012/05/Report-dismissal-of-international-judicial-officialsFINAL_ENGLISH1.pdf); Amnesty International, *Timor-Leste: Victims' rights and independence of judiciary threatened by arbitrary removal of judicial officers*, 21 November 2014 at

<https://www.amnesty.org/en/documents/ASA57/003/2014/en/>; UN Special Rapporteur on the independence of judges and lawyers, 24 November 2014 at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15339&LangID=E#sthash.w6x2AIQG.dpuf>

<sup>60</sup> Government of Timor-Leste, *Press Release. Protocol re-establishes full cooperation with Portugal in the area of Justice*, 25 February 2016

<sup>61</sup> Decree-Law 48/2016 on the establishment of Centro Nacional CHEGA!, Article 2 and 5 (f)

women: Several research studies by civil society have highlighted that women survivors of past human rights violations continue to face obstacles to access for government benefits, health, education health, education, psychosocial or economic support services.<sup>62</sup> One university has a policy to ensure access to children of veterans but not for conflict victims. MSS in 2017 has channelled some assistance for conflict victims through ACbit on an ad hoc basis but more strategic support is needed. A Trust Fund benefitting victims of serious crimes and their families, envisaged by the UN Transitional Administration in Timor-Leste, has never been established.<sup>63</sup> Parliament has not yet put back on its agenda a draft law on reparations.

**Recommendations:** In line with its statutory mission, the Centro Nacional CHEGA! (CNC) should collect data on the most vulnerable victims and their surviving families in each municipality, identify gaps in services and formulate a clear strategy on how to strengthen existing services. The CNC should also explore an appropriate model for a Trust Fund for conflict victims in Timor-Leste and consult with civil society including conflict victims. MSS should ensure full rehabilitation<sup>64</sup> of conflict victims by providing better information and assistance for accessing benefits, and by extending its referral network, including shelters and psychological support services, to women conflict victims.

### No Commission searching for Disappeared Persons

Despite efforts from civil society and the National Human Rights Institutions in Timor-Leste and Indonesia to locate and bring back Timorese who disappeared during the war, so far only a few Timorese who were taken to Indonesia have been reunited with their families. Government involvement in these efforts has been limited, and a Commission to search for disappeared persons (a recommendation of CAVR/CTF) has not been established.

Timor-Leste has not yet ratified the Convention on the Protection of All Persons from Enforced Disappearances.

**Recommendations:** Government to establish a Commission to search for the Disappeared tasked with investigation and full rehabilitation for families of the disappeared. Timor-Leste Parliament to ratify the Convention on the Protection of All Persons from Enforced Disappearances.

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<sup>62</sup> ACbit and AJAR, *Our Path is Upwards; Becoming string together*, February 2017; ACbit, *Chega +10 – Where are women now?*, November 2015 and AJAR (Asia Justice and Rights), *Enduring Impunity - Women Surviving atrocities in the absence of Justice*, October 2015 at <http://asia-ajar.org/2015/07/participatory-action-research-on-women-and-impunity/>

<sup>63</sup> UNTAET Regulation 2000/15 on the Establishment of Panels with exclusive jurisdiction over serious criminal offences, Article 25.

<sup>64</sup> Full rehabilitation should be holistic as articulated in Committee Against Torture, General Comment No.3 (2012), para.12 and ACbit and AJAR, *Our Path is Upwards; Becoming string together*, February 2017

## 8. Non-refoulement

In July 2013 civil society publicly raised concerns over actions by Government to forcibly return 95 potential asylum seekers from the Rohingya minority in Myanmar and from Bangladesh to Indonesia.<sup>65</sup> The group presented themselves to police after they landed when their boat was in distress. While the spokesperson alleges the group claimed asylum, government publicly contradicted this. International Refugee Law doesn't require an explicit asylum request. The Rohingya were highly likely stateless persons and in need of protection and police should have referred them to immigration officials for in-depth interviews to determine their status before returning them to a country (Indonesia) that is not a signatory of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.

Government restricted access for humanitarian actors to the group.

Civil society received information that the group was threatened by police with physical force and were held at gunpoint, transported in rubbish trucks, made to sleep in the open during periods of heavy rain, and denied access to services, including lawyers, that might have been able to assist. One woman gave birth in a house of the local community while she was in police detention during the ten days on Timor-Leste territory.

The case exposed the lack of awareness of national and international safeguards for asylum-seekers and refugees and the lack of operational guidance under the then immigration law.<sup>66</sup>

A new Immigration law has entered into force in June 2017, and in a positive step explicitly defines the principle of non-refoulement and reiterates the relevant articles in Refugee Convention (Article 33) and the Convention Against Torture (Article 3).<sup>67</sup> It remains to be seen whether the implementing regulatory framework will offer better protection against refoulement and access to humanitarian support.

**Recommendation:** Government (Immigration Service) to widely disseminate the new immigration law, develop the necessary templates to record asylum claims<sup>68</sup> and develop and deliver quality training on the Constitutional right to asylum<sup>69</sup> to PNTL. Government at the highest level to refrain from interference and allow humanitarian actors full access and conclude the agreements required under the new law to enable this.<sup>70</sup>

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<sup>65</sup> The East Timor NGO Forum, Letter to the President, Prime Minister and NHRI (Providor for Human Rights and Justice), 26 July 2013.

<sup>66</sup> It appeared formats for recording asylum claims had never been developed and arrangements with non-governmental organization to provide humanitarian support to asylum seekers – envisaged in RDTL (now superseded) Law No9/2003 Immigration and Asylum Law, Article 112 - were never formalized.

<sup>67</sup> RDTL Law No11/2017 Immigration and Asylum Law, Article 2 (s)

<sup>68</sup> RDTL Law No11/2017 Immigration and Asylum Law, Article 159

<sup>69</sup> RDTL Constitution, Article 10

<sup>70</sup> RDTL Law No11/2017 Immigration and Asylum Law, Article 121.

## 9. Persons with disabilities and LGBTI

### Mental health

Currently Timor-Leste only has one psychiatrist. Each municipality has only one case manager (nurse) responsible for mental health, TB and many other diseases, and health staff often lacks access to transport. Acute care centres are still under construction. To treat persons with mental health issues, currently in public health care medication is used that has many side effects. A privately run facility in Laclubar uses more effective medicine. The facility has only limited beds available.

Often, in the absence of adequate public health care facilities for mentally ill, communities in Timor-Leste feel they have no other option but to restrain their relative or friend, in order to prevent harm to themselves or others. Due to shame and stigma associated with disability, many families hide children inside the house or limit their exposure to society. This includes instances of shackling and restraining of children with disabilities, particularly children with psychosocial impairments.<sup>71</sup> Women also face restrictive measures:

#### Case study on women and mental health

Women with mental problems are at most risk of abuses and sexual violence. An upcoming ADTL report on the Study on Violence Against People with Mental Health Problems documents more than 60 cases of people with mental illness. The Study found that 46% of the cases involve sexual violence against women with psychosocial problems, and many more are left unattended on the street. The study also confirmed the traditional practise of harm and torture against people with mental health issues: 19% of the cases involved home-detention of both male and female. The report mentioned that in ten cases, the person was confined to the house by their close relatives who felt they had no other option to treat them.

**Recommendation:** Government to – in cooperation with donors - develop a scheme of scholarships to support youth to study psychiatric medicine abroad. Government (Ministry of Health) to review its pharmaceutical protocols based on evidence-based research, and identify medicine most effective for mental health problems. Government to establish an integrated services centre for people with psychosocial problems and also people with double or complex disabilities particularly people with intellectual disability, as they were treated as mentally ill.

### LGBTI

A 2014 research report among 198 gay and transgender persons in Timor-Leste showed that 27% had experienced physical maltreatment, 35% had been verbally maltreated, 31% had been refused access to health care services and 25% were provided with poor quality health services.<sup>72</sup>

**Recommendation:** Government (Ministry of Health) to explicitly guarantee non-discrimination on the basis of sexual orientation in its policies; and in its professional training programs and instructions to all health staff incorporate sessions on gender, empathy and professionalism (no stigmatization).

<sup>71</sup> Joint civil society submission (JSS) as summarized in a summary of stakeholders' submissions prepared by OHCHR for the UN Human Rights Council for its Universal Periodic Review of Timor-Leste, A/HRC/WG.6/26/TLS/3, 17 August 2016, para. 67

<sup>72</sup> ISEAN/HIVOS, *Analysis of ISEAN-HIVOS Program (IHP) Baseline Research on MSM and TG Experiences of Stigma and Discrimination in Indonesia, Malaysia, Philippines and Timor Leste, Final Report*, April 2015, pp. 10-14, and Annex D.

### **Accountability for health professionals**

The legal framework and systems to address complaints against health professionals – including complaints of practices that may amount to torture or ill-treatment - is quite weak. An ethics code for nurses and midwives has reportedly been drafted but not yet approved by Government. Only a rudimentary draft exists of an ethics code for doctors. The Ministry of Health operates complaints boxes at the national hospital and all regional referral hospitals. One can also send a written complaint, meet focal points at referral hospitals or attend the Ministry of Health in person.<sup>73</sup> However, none of these avenues are well known by ordinary Timorese. In two pilot areas (Baucau and Suai), the Ministry of Health is now trialling a community based monitoring system to score quality of service at health posts and hospitals through text messaging. Initial attempts were hampered by technological issues and the pilot needs to be underpinned by a wider socialization campaign for which the Ministry has now sought assistance from civil society. Responsibility for quality control, complaint management and disciplinary process is spread out over several entities within the Ministry of Health.<sup>74</sup>

**Recommendation:** Government (Ministry of Health) to finalize the code of ethics of medical professionals and draft a robust disciplinary regulation framing the ethics codes; Councils of Ministers to approve them. Ministry of Health to develop a robust information campaign to better inform the public of its accountability mechanisms.

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<sup>73</sup> Consultations of civil society with Ministry of Health in September 2017

<sup>74</sup> Including General Inspectorate of Health (inspectors), Legal Office (legal advice), Office for Inspection and Oversight (ethics and accreditation) and the Department of Policy and Strategic Planning (M&E, approval of policies)