



REPUBLIKA DEMOCRATICA DE TIMOR LESTE
PROVEDORIA DOS DIREITUS HUMANUS E JUSTIÇA



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**NHRI submissions to the Committee on the Convention against Torture and
Other Cruel, Inhuman or Degrading Treatment or Punishment**

In relation to the Review of the Democratic Republic of Timor-Leste by the UN Committee on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Session 62 - October 2017)

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The Office of the Provedor for Human Rights and Justice was established by the Constitution of the Democratic Republic of Timor-Leste in May 2002 and first opened its doors in 2006. It is charged with providing oversight over State entities. The main activities of the PDHJ include: cooperation with national and international entities for the advancement of a human rights framework in Timor-Leste, good governance and human rights monitoring, activities for the promotion of human rights and good governance principles, reporting to the United Nations treaty bodies and the UPR, activities for human rights education as well as conducting investigations in relation to human rights issues or abuses.

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List of abbreviations

CAT – Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

CRC – Convention on the Rights of the Child (& Committee)

F-FDTL – *Falintil-Forças de Defesa de Timor-Leste* (Timor-Leste Defence Force)

HAK- Asiasaun HAK

ME - *Merenda Eskolar* (School Feeding Program)

MOE - Ministry of Education and Culture

MOI - Minister of the Interior

MOJ - Ministry of Justice

MSS - Ministry of Social Solidarity

NGO - Non-governmental Organization

NOPS - *Normas de Organizacao e Procedimento*

NHRI - National Human Rights Institution

PDHJ - *Provedoria dos Direitos Humanos e Justiça* (Office of the Provedor for Human Rights and Justice)

PNTL - *Policia Nacional de Timor-Leste* (National Police Force of Timor-Leste)

PRADET - Psychological Recovery & Development in East Timor

PTA - Parent Teachers Associations

RASP - Enkontru Regular Rede Apoiu Servisu Prizonal

RDTL - *Republica Democratica de Timor-Leste* (Democratic Republic of Timor-Leste)

SOPs - Standard Operating Procedure

UN – United Nations

VPU - Vulnerable Persons Unit (VPU)

Introduction

Through this submission to the 62nd Committee on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the *Provedoria dos Direitos Humanos e Justiça* (PDHJ) fulfils its obligation as an A-accredited National Human Rights Institution.

The Democratic Republic of Timor-Leste acceded to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in 2003.¹ Following its accession, the Timor-Leste State (RDTL) has and continues to acknowledge recommendations set out by the Conventions articles in terms of protecting its citizens against torture and ill-treatment. The RDTL's Constitution, Penal Code, Criminal Procedure Code, and public policy initiatives have helped give effect to some of its commitments pursuant to CAT.² Nevertheless, despite certain human rights advances, systematic ill-treatment still persists in Timor-Leste.

This submission has been drafted to provide the Committee Against Torture with a better understanding of the current implementation of CAT in Timor-Leste. The PDHJ, by way of its own investigative and monitoring capacity, and in consultation with other relevant authorities and international bodies, can identify several areas pertaining to torture and ill-treatment committed by RDTL institutions. That is not to say the state is deliberately engaged in the torturing or mistreatment of its own citizens *per se*, but rather indirectly through inadequate laws, poor policy implementation and disconnectedness between key inter-government departments, institutions and the NGO sector.

The report will first define torture and ill-treatment in accordance with international and domestic law and then examine corporal punishment perpetrated against children in Timor-Leste. This will be addressed by looking at the systemic mistreatment of children in the school and then home setting, largely from the PDHJ's own monitoring of the *Merenda Eskola* (ME) school feeding programme. In monitoring the implementation of this state-sanctioned project, the PDHJ can present data citing widespread child abuse. This research will reveal that corporal punishment is prevalent throughout Timor-Leste, as well as in the home setting with a high percentage of child questionnaire respondents having experienced violence.

Within Timor-Leste's prison system, torture and other forms of ill-treatment perpetrated against incarcerated inmates remains an ongoing concern. Although the PDHJ's own data and research points to human rights violations committed in this setting, it is presently difficult to divulge the full extent of mistreatment without full Ministerial disclosure pertaining to alleged cases. More specifically, despite improved living standards for inmates, the prison system lacks accountability when torture and ill-treatment complaints are made. This may be attributable to a number of different administrative deficiencies or inadequacies; however the existing prisoner complaints protocols lacks transparency, due diligence and are open to wilful mismanagement.

The State national police force, *Policía Nacional de Timor-Leste* (PNTL), also requires scrutiny with the Committee's recommendations in mind. In particular, the arrest and detention standards and practices of PNTL officers while on duty. This has culminated in past and present mistreatment of arrestees and detainees resulting in continued breaches of CAT. This report will refer to data findings, individual complaints and recent police-civilian confrontations to highlight as much. The PNTL's controversial role during the 2015 joint-operations will be examined amid longstanding allegations of torture and ill-treatment. Further, the report will interpret PDHJ interviews with detainees and police officers alike. The findings will point to shortcomings in the execution of policing practices and the existing Standard Operating Procedure (SOPs) when arresting and detaining.

¹ UN Treaties Website, *Status of ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (accessed Jan. 6, 2015), available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en

² See Part III Legal Analysis.

Summary of Recommendations

Corporal Punishment against Children

- Explicitly prohibit all forms of corporal punishment in all settings.
- Train all public servants whose work involves children, especially teachers, on the negative consequences of corporal punishment.
- Continue and intensify awareness-raising campaigns for teachers, children, parents and community leaders, on the negative consequences of corporal punishment and alternative ways to discipline children.
- Ensure that teachers adhere to the guiding principles of the imminent Teacher's Code of Conduct.
- Ensure that the children who are victims of corporal punishment have access to reporting mechanisms.

Prison Incarceration

- All prisons should establish a formal procedure for managing prisoner complaints in a confidential and impartial manner.
- The Government needs to acknowledge the issue of overcrowding in Becora and Gleno prisons. Priority needs to be given to expanding Suai's facilities and overall capacity.
- The relevant authorities must take immediate action to put an end to the use of initiation rite violence. This includes subjecting prisoners to violence as part of an introduction to prison life. This may include providing training to prison guards to understand human rights standards.
- Encourage lawyers to continue to provide greater legal support and assistance by visiting their clients and assisting them with relevant case information.

PNTL Arrest and Detention

- Introduction of registration books at all facilities. Registration books should record all areas encompassing the detention process, from the time of arrest, detention duration, through to time of court transferral.
- Due to poor training in a number of crucial areas, such as torture and ill-treatment, it is important that the PNTL conducts specific and widespread training on these issues for all personnel. Such training should consider community-based policing strategies with less an emphasis on physical force, only as a last resort.
- There is also a lack of Standard Operating Procedures (SOPs) present in detention facilities in the pivotal areas of arrest and detention. While SOPs do exist and have been published in both areas, they need to be distributed throughout all PNTL stations.
- Recommend to the PNTL Command that when conducting arrests officers use personal IDs so that it is not difficult to identify any member that does not follow the established rules in carrying out their duties
- Recommend to the PNTL Command to guarantee all detainees have access to legal counsel, Public Defender or Embassy representative.

Legal Framework

The upcoming session is the first opportunity for the Committee Against Torture (the Committee) to formally monitor Timor Leste's (RDTL) implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) since RDTL ratified the convention. It is therefore important to consider whether RDTL's legal framework sufficiently and effectively complies with its obligations under the convention. Our analysis has revealed that while the domestic law purports to comply with the convention there are areas that require further improvement and consideration. Importantly, the current RDTL's Penal Code does not satisfy the requirements under Article 4 of the convention, namely:

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.³

The relevant article of RDTL'S penal code provides for one definition to cover torture and other ill-treatment which is inconsistent with the separate and distinct definitions in the convention. Although not having been tested in a domestic court, it is likely that criminal liabilities under the convention may not have been completely covered by RDTL's penal code.

Analysis

The term "torture" under the convention 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.⁴

In RDTL, Article 167 of the Penal Code provides that,

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.

The RDTL's penal code purports to treat the expressions "torture" and "cruel, inhuman or degrading treatment or punishment" (ill-treatment) as a collective expression treating both conducts alike. It might have intended to be

³ Art.4 of the convention.

⁴ Art 1 of the convention.

more encompassing by penalising the conduct of ill-treatment the same way as torture. However, discussions below indicate that it is problematic.

Article 167(3) of the penal code purports to define torture and ill-treatment as if they are of the same substance.⁵ The definition poses at least two problems. Firstly, it treats torture in the same way as ill-treatment when the convention has purposely made them different concepts.⁶ Under the convention, ill-treatment does not require intent and a negligent act or suffering resulting from public official's omission will suffice to hold violation. Also, ill-treatments do not require a purpose under the convention. The convention is concerned with the suffering whether the public official did it for a reason or for no particular reason. The conflated definition in the penal code means that, any acts (or omissions) occasioned by officials that do not have a proscribed purpose (i.e. obtain information, to punish or intimate as required under sub-article 167(1)) but nonetheless covered by ill-treatment under the convention, would not be fixed under article 167.

Secondly, the definition in this sub-article does not reflect what torture is defined in the convention. This sub-article only provides for the "severity" and "intentional" elements of what are required in the convention. The "purpose" element and the "public official" elements appear to have been provided in sub-article 167(1), however, sub-article 167(1) does not include pain and suffering inflicted for reason of "discrimination of any kind" which is one of the prescribed reasons under the convention. In fact the committee has been emphatic on serious abuses based on discrimination of any kind.⁷ The ambit of "public official" element in the penal code is much narrower than that intended in the convention. Under article 167(1), references were made to acts and actors relevant to "offence/respective penalties" and situations where people are under formal "detention or arrest". On the contrary, articles 1 and 16 of the convention cover a wider ambit only making references to matters relevant to public officials or those acting in that capacity. What this means is that torture occasioned by public officials based on discrimination of any kind and in a non-law enforcement or custodial setting will not be covered by article 167.

Ill-treatment is covered under article 16 of the convention which provides that:

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.

Clearly, article 16 under the convention is meant to be a "catch-all" provision to cover acts and omissions which are not as serious as torture but nonetheless must be prevented by state parties. While article 2 of the convention declares that acts of torture is non-derogable (i.e. the prohibition of which is absolute with no exceptions) the Committee has made its interpretation of article 16 clear that such non-derogable character of the prohibition applies to ill-treatment as well.⁸ For this reason alone, ill-treatment under article 16 of the convention should likewise be

⁵ The State report under review dated 23 Aug 2016 had inconsistent remarks that (at par 35) "...and national laws define torture as "degrading or inhuman treatment, in order to obtain from another person a confession, deposition, statement or information and acts that punish"(sic)"...". Then (at par 37) it remarked that, "...the PC in particular clearly define torture and criminalize acts of torture, because the Convention provides references and international laws are common law (sic) and Timor-Leste has adopted international principles in its national laws..."

⁶ See article 16 of the convention, discussed further below.

⁷ Under the Committee's General Comment No2 (at paragraph20) it has emphasized *that the discriminatory use of mental or physical violence or abuse is an important factor in determining whether an act constitutes torture*. See also paragraph 21 where a non-exhaustive list of examples has been set out to demonstrate the State parties' obligations. The underlying grounds of discrimination have also been highlighted by the Committee in its General Comment No3 (at paragraph 8) when it considers the issue of restitution in the context of victim's rights to redress by the State.

⁸ See the committee's general comment No2 dated 24 Jan 2008 (CAT/C/GC/2), at 3 where the committee opined that, *[t]he obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter "ill-treatment") under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to*

required to be under domestic criminal law.⁹ Resorting prosecutions under other heads of assault offences in the penal code may not be the best option in terms of a contracting party's convention obligation and would seem to have less deterrent effect.

References of 'torture' or 'cruel, inhuman or degrading treatment' have been made in various articles in the penal code, namely, in articles 124, 125, 139, 160 and 168. These references further complicate the matter. In the context of crimes against humanity, 'torture' is to be *construed as infliction of severe pain or suffering, whether physical or mental, upon a person in custody or under control of the perpetrator.*¹⁰ This definition apparently partly mirrors that provided in the Rome Statute.¹¹ Other references made in articles under the title "crimes against individuals", where these expressions are used but not specifically defined which brings into question whether they should be understood in their ordinary dictionary meaning; the meaning provided by s167(3), or the meaning under the convention, as implicitly allowed by the constitution (see below).

Other relevant domestic legal regime in relation to the prevention of torture and ill-treatment

The Constitution of the RDTL (C-DTL)

The basic human rights are enshrined in the C-RDTL and most importantly under article 25(5) it upholds that, even in the events of emergency when some fundamental human rights may be suspended:

*[i]n no case shall a declaration of a state of siege affect the right to life, physical integrity, citizenship, non-retroactivity of the criminal law, defence in a criminal case and freedom of conscience and religion, the right not to be subjected to torture, slavery or servitude, the right not to be subjected to cruel, inhuman or degrading treatment or punishment, and the guarantee of non-discrimination.*¹²

The C-RDTL also specifically stipulates that, ***no one shall be subjected to torture and cruel, inhuman or degrading treatment.***¹³ It authorises the exclusion of any evidence obtained by torture, coercion, infringement of the physical or moral integrity of the individual, amongst other grounds, in any criminal proceedings.¹⁴ Seemingly these constitutional guarantees also apply to the extradition law in that no extradition should be permitted when the accused may be subjected to torture and ill-treatment.¹⁵ The constitution also authorises laws to be made allowing political asylum sought by foreign nationals.¹⁶ Consequently, under the Immigration and Asylum law provisions have been made for asylum requests and refugee resettlement.¹⁷ Under this law expulsion powers of foreign nationals are vested in the Minister of the Interior (MOI) and detailed procedures have been set out in the law. However when an appeal against the expulsion order is sought by a foreign national, whether the expulsion order will automatically suspend expulsion or suspension is only at the discretion of the appellate judge depends on whether the foreign national is a permanent resident or who entered and remained in Timor-Leste legally.¹⁸ For instance, an unsuccessful asylum seeker who is subject to an expulsion order and who entered and remained in Timor-Leste illegally and sought appeal against the expulsion order might not have his/her appeal finalised before expulsion.

Children and youth are particularly mentioned under the C-RDTL and special protections are required for children particularly against all forms of violence, oppression and exploitation.¹⁹

prevent torture. Article 16, identifying the means of prevention of ill-treatment, emphasizes "in particular" the measures outlined in articles 10 to 13, but does not limit effective prevention to these articles.....the Committee has considered the prohibition of ill-treatment to be likewise non-derogable under the Convention and its prevention to be an effective and non-derogable measure."

⁹ See also further the committee's general comments No3, 2012 (CAT/C/GC/3) in relation to victim compensation and the rationale why ill-treatment should be criminally legislated.

¹⁰ Article 124(f) of the penal code.

¹¹ *Rome Statute of the International Criminal Court* 1998, see article 7(2)(e).

¹² Article 25(5).

¹³ Article 30(4).

¹⁴ Article 34(4).

¹⁵ Article 35(3).

¹⁶ Article 10.

¹⁷ See articles 84 to 89 of the Immigration and Asylum Law, DL 09/2003.

¹⁸ Article 76.

¹⁹ Articles 18 & 19.

How much these constitutional guarantees have been invoked in court it is not clear. Our data and anecdotal cases (discussed below) have shown that these constitutional rights have not always been respected and protected by the law enforcement agencies and public officials. In addition, serious human rights violation prevention, such as the prevention of torture and ill-treatment, based on constitutional guarantees in citizens' daily life is inefficient. It is because firstly, court actions based on constitution guarantee is civil in nature which do not have the same deterrent effect as criminal sanctions would have had. Secondly, the lower courts often do not have or only have limited jurisdiction to adjudicate matters of constitutionality.

With pride, two aspects of the C-RDTL significantly and practically prevents torture and ill-treatment and these constitutional guarantees are way ahead of many member states including some developed states. Under C-RDTL death penalty and life imprisonment are specifically outlawed.²⁰ It is hoped that corporal punishment in custodial institutions and particularly corporal punishment committed on children in all aspects of their lives will be clearly legislated against. As evidences have shown (discussed below), corporal punishments in children in family and school setting are still prevalent in practice despite the existence of some child protection legislations and policies.

The Criminal Procedure Code DL 10/2011 (CPC)

There are also substantive provisions under the CPC that are relevant to torture and ill-treatment.

First, any evidence obtained through torture or duress, in general or by offences (even with consent) against the physical or moral integrity of a person is absolutely prohibited.²¹ The CPC also sets out the strict time limits a suspect can lawfully be detained for identity inquiry²², how searches and seizures without a court order can be carried out under limited urgent circumstances and such allowances do not apply to home search.²³ The CPC also sets out the rights of a defendant including the time limit a defendant must be brought before a judge for the first time.²⁴ Of importance is that this law also prohibits the use of methods and techniques in questioning a defendant which might restrict or impair the freedom of will of the defendant.²⁵

The Penal Execution Scheme DL 14/2014 (prison reform law)

The preamble of the prison reform law sets out the rationale behind its enactment and acknowledges that, it takes into account "***the instruments of international Human rights law applicable to the administration of justice that Timor-Leste has already been linked, namely the Convention on Civil and Political Rights and its Protocols and the Convention against Torture and Other Cruel, Cruel, Inhuman or Degrading Treatment, among others...***". Under article 15 of this law it sets out the human rights of an inmate, and amongst other things, it guarantees that the inmates have the rights to the *protection of life, health, personal integrity and freedom of conscience and cannot be tortured, subjected to ill-treatment or cruel, degrading or other cruel, inhuman conditions*²⁶.

The Legal Regime for the Use of Force DL 43/2011 (Use of force law); Police Organic Law DL 9/2009; Police Disciplinary Regulations DL 13/2004 (police reg)

Under the Use of Force law police officers could be criminally liable under the penal code for violations of the established law and relevant legislations. When the misuse of force involves a co-accused who is a commander or a group leader, the crime is aggravated and penalty be increased by one third.²⁷ This law also made provisions in relation to recruitment of law enforcement officers, requiring that the authority must include in the selection process to evaluate the recruit's suitability including respect for human rights.²⁸ Correspondingly, this law also provides that, in the training of the law enforcement officers special attention must be paid to issues of police ethics and human rights.²⁹ Importantly, this law stipulates that in relation to compensatory civil liabilities when improper use of force occurred: *State shall be jointly and severally liable for law enforcement officers who have been prosecuted.*³⁰

²⁰ Articles 29(3) & 32(1).

²¹ Article 110(1)&(2).

²² Article 53.

²³ Article 56.

²⁴ Articles 60 & 63.

²⁵ Article 62(2).

²⁶ Article 15(2).

²⁷ Article 17 of DL 43/2011.

²⁸ Article 13.

²⁹ Article 14.

³⁰ Article 19.

Under the Police Organic law, it clearly sets out the limits and guidelines of use of force by police on duty. Amongst other criteria: *force may only be used in self-defence or in defence of third parties, to repel an actual and unlawful aggression against the physical integrity of PNTL members of other citizens.* Also the police (PNTL) *shall not impose restrictions or use coercive means beyond those that are strictly necessary.*³¹ This law also authorizes the set up of an internal inspectorate for the operational and administrative duties. Inter alia, this inspectorate has responsibilities to initiate disciplinary proceedings and to implement decisions relating to ethics and discipline.³² Rules on organization procedures (*Normas de Organizacao e Procedimento, NOPs*) adopted by the General Commander should not affect the rights of citizens or otherwise have been regulated by specific statutes.³³

The Police regulation clearly stipulates a police officer's duty of propriety which requires that s/he should never abuse his or her functional powers or exceed the limits when coercive means to restrain a person is considered indispensable.³⁴ This reg also compels the disciplinary authority to file a complaint with the competent public prosecutor when a PNTL member is accused of criminal conduct.³⁵ While a superior order can cause the cessation of disciplinary liability such superior order will cease to be in effect when commission of a crime is involved.³⁶

Article 26 of the police regulations sets out a range of disciplinary sanctions against their wrong doings ranging from a reprimand, suspension from duty to dismissal.³⁷

The Military Organic Law DL 15/2006; Military Discipline Regulations 17/2006 (military reg); Military Police Organic Law 26/2009

The Use of Force law mentioned in the preceding heading covers also military forces by virtue of article 2(2) where it provides that, *it shall also be applicable to the military forces and their respective members, whenever acting in situations or circumstances related to the scope of internal security, regardless of whether they are part of their legal duties.*

Under the military reg, the military ratings and officers could have disciplinary sanctions against their wrong doings ranging from reprimand, detention to discharge from military service.³⁸ However, a breach of discipline punishable under this regulation is not considered a crime by either specific military or other legislation.³⁹ Disciplinary procedure is independent of criminal proceedings.⁴⁰

The military police is authorised under the Military Police Organic law to conduct investigations of crimes and disciplinary offences. The Military police is competent and required to investigate crimes of a military nature and shall inform the competent authority of the crimes of a military nature or of common crimes committed in the respective area of jurisdiction that comes to its knowledge.⁴¹

Concluding remarks on legal framework in relation to obligations under Article 2, 3, 4, 5, 14 and 16 of the convention

Above analysis has shown that the domestic laws in RDTL do not fully comply with the convention obligations, in particularly article 4 due to the problematic definition under article 167(3) of its penal code. In relation to the law enforcement agencies the respective laws have made provisions to require these public officials to respect human rights and prevent torture and ill-treatment. Evidently, human rights violations relevant to improper use of force by law enforcement agencies continue to occur. Our issue based discussion below may show that the real problem is not directly due to insufficient legal framework but rather the lack of political will to prosecute perpetrators of violations, lack of clear administrative rules and instructions, failure to establish independent mechanism to ensure prompt and impartial investigation and the lack of redress procedures and mechanism to prevent repetition.

³¹ See article 4(2) and (4).

³² See article 14(2).

³³ See article 41.

³⁴ Article 9.

³⁵ Article 38.

³⁶ Article 40.

³⁷ Article 26 of the police reg.

³⁸ Article 29 of the military Reg.

³⁹ Article 3 of the Reg.

⁴⁰ Article 50.

⁴¹ Article 11 of the Military Police Organic Law, DL 26/2009.

Clearly more can be done to improve its legislative framework particularly in the area of victim compensation regime as required under article 14 of the convention. While the Use of Force law (DL 43/2011) has provided for a compensatory liability its application is limited to violations occasioned by the state's law enforcement agencies. It is important to note that under article 14 of the convention, monetary compensation, when applicable, is only one facet of the redress regime required. The committee has opined that by setting up a comprehensive redress regime it not only ensures justice done and the state's obligation fulfilled but it would also help to prevent repetition of torture and ill-treatment.⁴² The State appears to have conflated the notion of victim support (such as sheltering service in domestic violence case)⁴³ with victim redress and the latter requires a comprehensive legislative, administrative, procedural and policy framework to fulfil which RDTL is seriously lacking. The notion of redress includes restitution, compensation, rehabilitation, victim's satisfaction and right to truth and guarantees of non-repetition, as discussed under the committee's general comment No3. There are measures in legal, policy and administrative area the State can do without unduly burden its existing resources.⁴⁴

Corporal Punishment against Children

The Committee has raised questions about measures taken to combat violence against children, including corporal punishment equating to ill-treatment and torture.

As will be explained, the widespread incidence of corporal punishment indicates a lack of awareness among teachers, parents and other caregivers on the negative consequences of corporal punishment. In fact, elements of Timorese society condone corporal punishment as a necessary form of a child's development⁴⁵.

Under the convention, the act of torture requires four elements, namely: a) the severity of the act, b) the act being intentional, c) the purpose of the act and d) the involvement of the public official.⁴⁶ The Committee also requests recommendations pertaining to 'Other Cruel, Inhuman or Degrading Treatment or Punishment'. As such, both conditions equating to torture and ill-treatment will be examined with corporal punishment and the unique vulnerability of children in mind. As defined by the Committee on the Convention to the Rights of the Child General Comment No. 8, corporal punishment is defined as:

[A]ny punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting ("smacking", "slapping", "spanking") children, with the hand or with an implement - a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children's mouths out with soap or forcing them to swallow hot spices). In the view of the Committee, corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment that are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.⁴⁷

It is this report's assertion that corporal punishment committed against children in Timor-Leste does satisfy the aforementioned conditions and be treated as such when considered with child mistreatment. Further, inflicting corporal punishment for the purpose of discipline, or as a matter of discriminating against children, does fit in the first three elements of torture and ill-treatment under the convention.⁴⁸ The fourth element (public official as perpetrating actor) will be examined with emphasis on assessing the government school system's role, rather than pointedly

⁴² General comment No 3 generally.

⁴³ See State Report Aug 2016 paragraphs 103-113 particularly 105.

⁴⁴ General comment No3, in particular paragraphs 12, 18, 19 & 45.

⁴⁵ Global Initiative to End All Corporal Punishment of Children, *Country Report for Timor-Leste* (2007), <http://www.endcorporalpunishment.org/progress/country-reports/timor-leste.html>

⁴⁶ Article 1 of the Convention.

⁴⁷ CRC General Comments No. 8 definition of 'Corporal Punishment'.

⁴⁸ *Terminology: Ill-treatment will be used *in lieu* of 'Other Cruel, Inhuman or Degrading Treatment or Punishment'.

vilifying teachers.⁴⁹ Further, the report will state that torture and ill-treatment are not merely transient one-off acts between teacher-student and/or family-child, rather should be measured with prolonged suffering in mind, considering psychological distress and the prospect for generational cycles of violence.

This report also points to violence committed against children in the school and domestic setting. Within Timor-Leste there is an entrenched culture whereby corporal punishment and child discipline are complementary and permissible. Under these pretences children are being verbally and physically assaulted to varying degrees of severity, ranging from physical injury to verbal torment which may lead to mental illness⁵⁰, as will be addressed.

In respect to violence in the school setting, it is the obligation of the State to provide a safe, secure environment for children that facilitates learning. More specifically, under Article 3 of the CRC, the state must: “... ensure that the institutions, services and facilities responsible for the care or protection of children conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision”.⁵¹ Any government program targeted at children must comply with this requirement. Indeed the C-RDTL itself gives particular mention that these special provisions are implemented in protecting children against all forms of violence, oppression and exploitation.⁵² However, without adherence to the national constitution, and the implementation of a code of conduct that trains teachers to positively discipline students, there is little hope for change in the short term.⁵³

In the home setting the immediate prospects are equally poor without immediate State support and a seismic shift in cultural and familial attitudes concerning disciplining children. The task becomes more haphazard when contending with the underreported nature of corporal punishment in the home. Insofar that family dynamics encompassing gender-roles, age, sexuality and social class all complicate and contribute to violence being perpetrated in private - neither for public consumption nor legal judgement.⁵⁴ Notwithstanding these challenges the RDTL must adhere to key principles of all the human rights conventions, such as the Convention of the Rights of Child (CRC) to which it is a party.⁵⁵ Within this Convention, children have the right to be able to express their views on matters relating to their safety and well-being. More specifically the Committee on the CRC states:

Article 12 highlights the importance of children’s participation, providing for children to express their views and to have such views seriously taken into account, according to age and maturity. This includes their views on all aspects of health provisions, including, for example, what services are needed, how and where they are best provided, barriers to accessing or using services, the quality of the services and the attitudes of health professionals, how to strengthen children’s capacities to take increasing levels of responsibility for their own health and development, and how to involve them more effectively in the provision of services, as peer educators. States are encouraged to conduct regular participatory consultations, which are adapted to the age and maturity of the child, and research with children, and to do this separately with their parents, in order to learn about their health challenges, developmental needs and expectations as a contribution to the design of effective interventions and health programmes.⁵⁶

Special attention needs to be made to this recommendation in terms of acknowledging and addressing corporal punishment in the school and home setting. In terms of protecting and building the child’s capacity, RDTL must adopt a Children’s Code and implement laws prohibiting corporal violence with mandatory reporting obligations.⁵⁷ In addition, such a code should be holistic in its approach when it comes to reporting incurred violence to the appropriate

⁴⁹ Child Fund International, The Right to Education, not Punishment, in Timor-Leste, <https://www.childfund.org/Content/NewsDetail/2147488733/>

⁵⁰ Kathryn Robertson, Timor-Leste’s Law on Domestic Violence Just the Beginning (2015), The Asia Foundation, <http://asiafoundation.org/2015/03/04/timor-lestes-law-on-domestic-violence-just-the-beginning/>

⁵¹ CRC, Art 3(3).

⁵² Articles 18 & 19.

⁵³ Global Initiative to End All Corporal Punishment of Children, *Corporal punishment of children in Timor-Leste*, www.endcorporalpunishment.org

⁵⁴ Child Rights International Network, *Timor-Leste: Child Rights References in Universal Periodic Review*, 12th Session (2011), <https://www.crin.org/en/library/publications/timor-lestes-child-rights-references-universal-periodic-review>

⁵⁵ UDHR, Arts 2, 7, 21(2); ICCPR, Art 2 2, 3; ICESCR, Arts 2(2), Art 3; CRC, Art 2; CEDAW.

⁵⁶ Committee on the Rights of the Child, *General Comment no 15*, op cit at p 3

⁵⁷ Committee on the Rights of the Child, *Concluding Observations on the combined second and third periodic reports of Timor-Leste*, op cit p 6-7.

authorities, utilising policy-makers, social workers, allied health professionals, law enforcement personnel effectively; along with NGOs in strengthening each child's capacity to speak out against mistreatment in all its forms.

Further to underpinning a child's capacity to voice mistreatment, article 19 of the same Convention states:

*Governments should ensure that children are properly cared for and protect them from violence, abuse and neglect by their parents, or anyone else who looks after them. In terms of discipline, the Convention does not specify what forms of punishment parents should use. However any form of discipline involving violence is unacceptable.*⁵⁸

The report will scrutinise the government's role in upholding its responsibility to Timor-Leste's children through the implementation on the *Merenda Eskolar* (ME) and the subsequent data findings relevant to torture and ill-treatment. Indeed the report's findings will directly contradict the 2008 Ministry of Education (MoE) 'Zero Tolerance' directive prohibiting violence against children in schools.⁵⁹

Merenda Eskolar (ME) monitoring

The PDHJ's monitoring of the *Merenda Eskolar* (ME) (school feeding programme) has provided insights into the nature of child corporal punishment in Timor-Leste.

Since 2012 the RDTL have implemented its national school feeding program which provides food to children in its state and catholic schools in each of the 13 municipalities of Timor-Leste. Its primary objective is to increase access to education by both incentivising attendance at school and reducing attrition rates.⁶⁰ Other objectives include improving nutritional outcomes for students, increasing student's concentration in class, developing local economies by utilising local produce, and involving communities in managing education programs within local schools.⁶¹ This program has had some success ensuring Timorese children are fed at school, however ongoing mismanagement, both financially and otherwise, continues to deprive children of this service in full, thus contributing to poor nutrition and higher drop-out rates.⁶²

Although the ME's maladministration and potential for illegality (i.e. misappropriation of funds) are pertinent questions for further analysis and reporting, in the interest of child rights the PDHJ has acquired data relating to corporal punishment and the ill-treatment of children in Timor-Leste.

Methodology

Yearly monitoring questionnaire

The PDHJ follows its Standard Operating Procedure (SOP) when it comes to coordinating with and contacting the respective School Director before each school visit. Once introductions have been conducted the monitor will ensure teaching staff and ME administrators leave the immediate vicinity so as to distribute the surveys amongst the 15 students (per school sample allocation). Once the surveys have been completed and retrieved, monitoring officers are then responsible for both analysing the data and the writing of the yearly report. In total 749 school child (aged 8-17) respondents participated to this year's survey sample.

The survey itself consists of 21 questions. The questions range from the name of the school; student's gender and age; months and days of week that the ME is implemented (if at all); through to how students commute to school. Questions 16-21 of the survey address discipline and so complete the questionnaire.

The questions referring to discipline are:

16. Does your teacher punish you?

17. If so, in what manner? (multiple choice responses)

⁵⁸ CRC, Art 19.

⁵⁹ UNICEF, Study on Violence Against Children In and Around Educational Settings Timor-Leste, Executive Summary (2016).

⁶⁰ PDHJ, *Monitoring of the School Feeding Program* (2014), 10-12.

⁶¹ Ibid.

⁶² Ibid.

18. What was the reason for punishment (multiple choice responses)?

19. Do you get punished at school?

20. If so, in what manner? (multiple choice responses)

21. Who punishes you at home? (multiple choice responses)

Data Indicators

Of the 749 survey respondents whom completed the 2017 survey, 745 students nominated their gender, with 409 girls (54.8%) and 336 boys (45.2%). Their ages ranged between 7 to 17 with the largest age demographics coming from 11 (102), 12 (99) and 14 (99) years. PDHJ monitors visited schools in their respective target municipalities and subdistricts and met with 15 students per school. The districts where most students were drawn from was Dili (165), Ermera (128) and Aileu (128). The rationale behind why these locations had the larger number of respondents is due to city populations, staff logistics and increased urbanisation; as more Timorese people move with their families to its cities for work opportunities.⁶³ Only Liquica was markedly lower than the other districts comparatively.

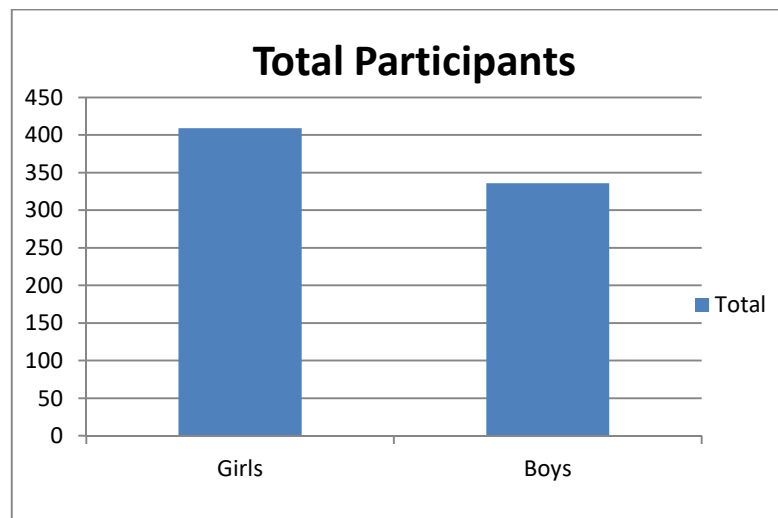


Figure 1 Total child participants by gender

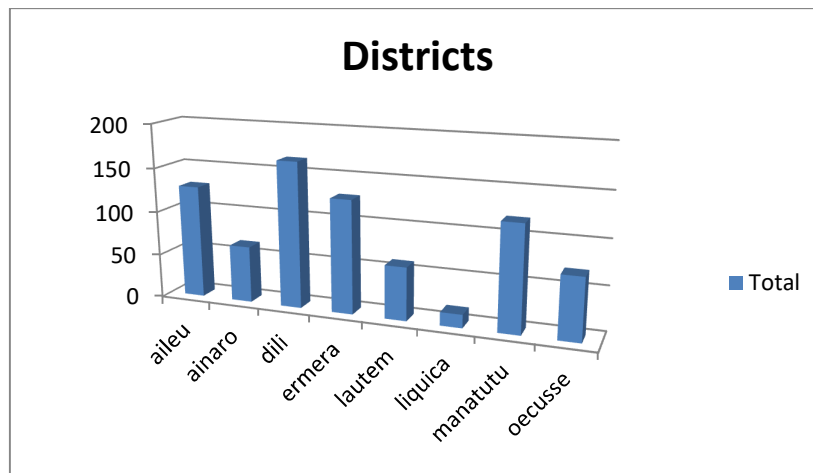


Figure 2 ME monitoring by district

⁶³ Index Mundi, *Timor-Leste Urbanization* (2017) <http://www.indexmundi.com/timor-leste/urbanization.html>

From the 749 asked whether they had been punished by teaching staff at school or in the home setting, 745 and 747 responded respectively. From the 745 children asked whether they had been punished by their teacher, 592 (79.5%) noted true. Similarly, from the 747 that responded to punishment in the home, 514 (68.8%) also signified that they had been physically and/or verbally punished.

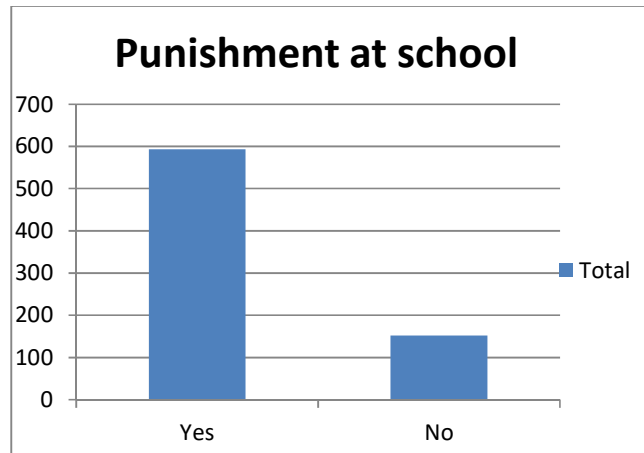


Figure 3 Children punished at school

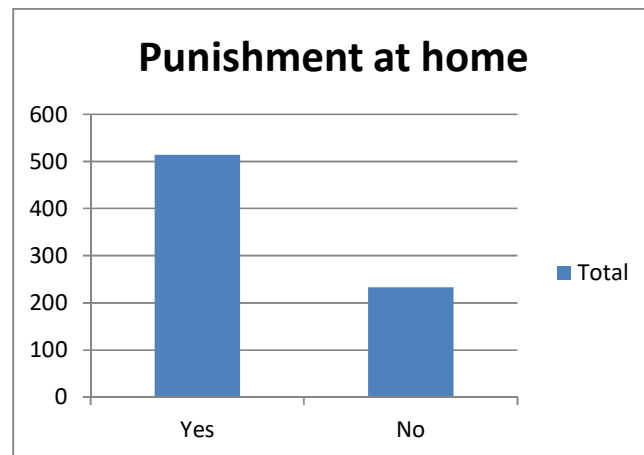


Figure 4 Children punished at home

Upon answering true or false to violence in both these settings, the students then chose from a list of punishments relevant to their personal experiences. These ranged from verbal abuse; forcing the child into running around the school campus; sitting on their knees for prolonged periods; pulling up grass and dirt; to physical violence by cane, hand or legs. In the school setting 652 children responded to this question by citing one, some or potentially all the above punishments.⁶⁴ Importantly the data reflects that these cited forms of punishment are higher than the overall sample percentile. For example, from the 652 respondents punished in the school setting, each student on average received two or more forms of punishment (227.60%). In the home setting, the percentage is marginally lower than the school, although the overall percentage and average sits above the one-punishment-per-child mark (167.89%).

What is also concerning is that the most common punishment are forms of physical violence. In the school setting, the most frequent punishments are the use of the cane (19%) and the pulling of the child’s ears (18%). In the home setting, these included the use of the cane (30.3%), pulling of ears (20.74%), along with striking with the hand (17%). The data also raises an important question as to what ‘other’ forms of punishment may mean, especially with the breadth of the physical and mental discipline forms already provided in the survey. Below this report elaborates on which punishments are being perpetrated, with attention to corporal punishment allegations made against

⁶⁴ *It should be noted that 592 responded ‘true’ to Q19 receiving punishment from their teacher, however 652 children responded to Q20 by listing one or more forms of punishment.

teachers, as well as sexual assault complaints. To remedy this ambiguity in the future, the ME surveys will be amended to allow the students this opportunity to write sentence responses to elaborate upon received punishments.

Type of punishment	SCHOOL	HOME
Bad language	43	31
Sitting on knees	219	80
Running	31	31
Pull up grass	92	13
Pick up dirt	233	64
Push-up exercises	32	10
Pulled by ears	268	179
Use of cane	282	262
Use of hand	146	147
Use of legs	38	30
Other	32	16
TOTAL	1484 (652 respondents)	863 (514 respondents)

Table 1 Punishment inflicted on children at school and home

Individual Cases

This high percentage of ill-treatment reflected in the data will be considered further in conjunction with PDHJ case complaints and its own study into the corporal punishment in the District of Oecussi schools. Moreover, the report will refer to further research and monitoring findings from other organisations that posit corporal punishment as a common feature of life for children in Timor-Leste.

Last year three complaints filed with the PDHJ revolve around teacher-student ill-treatment: physical violence, intimidation and even sexual assault in the school setting. All three victims are female and children:

Case One:

On 20/06/2016 it is alleged that a female student (10 years old) was severely beaten by her teacher in Lautem with a piece of wood. At 14:00, during an exam scenario, the complainant claims that the teacher lost patience with his/her students beyond the scheduled examination completion time. The teacher then started verbally pressuring each of the students who had not yet completed. At not being satisfied with the progress the teacher then slapped some of the students at which time the victim was hit with a piece of wood. When the victim returned home she informed her parents and they in turn complained to the police. The victim was referred to a doctor before spending two nights in the local Lautem district hospital before transferral to the Dili National Hospital for further treatment.⁶⁵

Case Two:

On 29/07/2016 at 11:00 the alleged the victim was walking with her friend along a footpath in Ainaro when one of their female teachers suddenly approached in an aggressive manner. The confrontation related to an incident earlier in the week when the teacher's younger brother was supposedly bullied by the two girls. The teacher first verbally chastised the two before slapping the victim on the face repeatedly. The teacher continued to threaten the two students stating: "you do not know I am one of your teachers", thus intimidating the students to the point whereby they would not escalate the matter.⁶⁶

⁶⁵PDHJ Complaint, 775/DH/2016.

⁶⁶ PDHJ Complaint, 764/DH/2016.

Case Three:

The final case(s) relate to multiple sexual violence complaints made against the same teacher. On the 06/08/2016 in Ainaro district, a female primary school student made a complaint to the PDHJ that she had been groped by her teacher on her chest. The victim left the school distraught and informed her parents; who in turn escalated the complaint to the school. Due to a lack of evidence the complaint was dropped along with two subsequent allegations (13/09/2016; 03/12/2016). In the investigation notes relating to the third complainant of repeated assaults, she was deliberately failed in her examination by the teacher so he/she could isolate and leverage sexual favours in return for better marks. In that particular instance the student was again touched inappropriately.⁶⁷

In response to similar allegations and suspicions of the systemic corporal punishment and other ill-treatment in Timor-Leste's schools, in 2014 the PDHJ investigated claims of corporal punishment in the District of Oecusse. Despite the narrow scope of the study, it found 86% of students reported to have experienced corporal punishment.⁶⁸ While the study was limited to five schools, and a more expansive survey is required, the high percentage of positive responses is consistent with the aforementioned data findings and case allegations. It is also important to note that none of the teachers that the PDHJ surveyed reported receiving training on the negative impacts of corporal punishment.⁶⁹

Beyond the PDHJ's own findings reporting child corporal punishment, in 2016 UNICEF sanctioned a nationwide study on violence against children in and around educational settings. Similar to the PDHJ's monitoring activities and reach, UNICEF conducted research across the same administrative municipalities and utilised its findings from randomly selected sample of pre-secondary and secondary school students. From the total 1405 students surveyed (705 girls; 700 boys), the report indicates widespread corporal punishment. In addition to the sample student respondents, the study also referred to teachers (114 female; 150 male).⁷⁰ The interview and data indicators point to systemic failings by the State in creating a safe environment for children. More specifically, physical violence, bullying, verbal abuse and sexual violence are common forms of corporal punishment.⁷¹ From the total 1405 students surveyed, 75% of boys and 67% of girls reported that they had experienced physical violence by a teacher at school in the last 12 months.⁷² Importantly, the report acknowledges emotional violence as an equal measure of corporal punishment. From the sample 80% of boys and 75% of girls had experienced amounting to: shouting, personal insults, threats of violence and acts of humiliation.⁷³

Although the predecessor to its latest report investigating child corporal punishment, the 2006 UNICEF 'Speak Nicely to Me' survey similarly found that a majority of respondents (67%) had experience physical violence under the pretences of punishment and discipline.⁷⁴ The same study found that 60% of these children reported that their parents used a stick for purposes of discipline.⁷⁵ Furthermore, in a study by Ba Futuru, 84% of students interviewed stated that they regularly saw violence, while 40% of the students reported that they were beaten at least once a week.⁷⁶ This suggests that with such a high percentage claiming violence in both settings, many children are subjected to violence on a recurring and prolonged basis. This form of violence, committed against children during their formative years, has been proven to contribute to and propagate a culture of violence; wherein learnt and felt experiences of violence manifest in future generations.⁷⁷ Furthermore, these studies although dated, remain poignant and chart exactly how little the State has done - rather the latest report findings deduce that the situation in Timor-Leste is worsening.

⁶⁷ PDHJ Complaint, 849/DH/2016.

⁶⁸ PDHJ, *School Questionnaire* (2014), 2-5.

⁶⁹ Ibid.

⁷⁰ UNICEF (2016), *Study on Violence against children in and around educational settings Timor-Leste*, Executive Summary.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Office of the High Commissioner for Human Rights, *Of Course We Can: Report on the Rights of Persons with Disabilities in Timor-Leste* (2011), 38.

⁷⁵ Office of the High Commissioner for Human Rights, *Of Course We Can: Report on the Rights of Persons with Disabilities in Timor-Leste* (2011), 49.

⁷⁶ Ba Futuru, *Lessons Learned: Simple & Effective Strategies for Transforming Timorese Classrooms* (2012), 5.

⁷⁷ United Nations Development Programme, *Breaking the Cycle of Domestic Violence in Timor-Leste: Access to Justice Options, Barriers, and Decision-Making Processes in the Context of Legal Pluralism* (2013), 5.

In the face of proven corporal punishment within its schools, both the RDTL and UNICEF have published a collaborative inclusive report that focuses on teacher practices in 2016. Despite the report's attention on the pre-school teaching practices, its baseline survey findings similarly reaffirm child violence in the school and home settings. It does not however elaborate upon these findings, nor does it explicitly give credence to the fact that such punishments could amount to corporal punishment. The report's only study into the prospect for corporal punishment amounts to one table highlighting positive teaching strategies with minimal analysis. Even then the report is more concerned with highlighting new and progressive approaches to student discipline, rather than giving full disclosure to that nature of the systemic problem.⁷⁸ As such, future RDTL publications investigating teacher practices need to be more critical and less discerning when using survey data indicators findings, thus ousting corporal punishment as a major problem.

NGOs and Mandated Responsibilities

Without significant government support in protecting the rights of the child, the burden of decreasing the prevalence of corporal punishment has largely been left to NGOs, albeit at the micro level. This takes the form of educational and outreach campaigns. One such initiative, led by Ba Futuru in partnership with ChildFund, developed a workshop with the objective of educating teachers about corporal punishment and its negative impacts. With the purpose of replacing corporal punishment with healthier work practices aimed at non-physical positive discipline, this intensive programme ran for three months in Liquica; bringing together teachers, student leaders and school administrators.⁷⁹ Although narrow in its capacity and participant level, such workshops do provide a demonstrable professional standard for teachers to learn and develop when disciplining their students. As such these initiatives should be taken into consideration by relevant ministry officials and policy officers in strategising a broader governmental response.

Despite a lack of meaningful coordination between NGOs and government in addressing corporal punishment, the relationships between relevant bodies and organisations are already in place. As set out in the Situation Analysis of Children in Timor-Leste (SitAn) report, multiple ministries, commissions and NGOs do mobilise and meet periodically on matters relating to the protection of child rights and corporal punishment.⁸⁰ These include - but not limited to - the Ministry of Social Solidarity (MSS), MOE, Polisia Nasional Timor-Leste (PNTL), the Vulnerable Persons Unit (VPU), Psychological Recovery & Development in East Timor (PRADET) and Casa Vida.⁸¹ Each of these organisations have independently made progress in their fields, as highlighted by the Ba Futuru workshop, however they require the collective approach in ending child corporal punishment. Consequently, the government's persisting *modus operandi* in relying upon NGO initiatives to effect change needs to develop and consider nationwide preventative services, such as the implementation of a teacher's code of conduct.⁸²

Government reform and Teacher's Code of Conduct

With more evidence available citing the prevalence of corporal punishment in Timor-Leste's schools, the Ministry of Education has drafted and despatched its recommendations and guidelines on pre-school teacher discipline. Although not enforceable until December 2017, the drafting of the code of conduct is altogether positive. The guidelines clarify professional standards for teachers and school administrators to adhere to. The 'Peaceful Discipline'⁸³ guidelines are such an advance and will be pertinent for this and future Committee submissions. Of particular importance is guideline 24.2 which states:

⁷⁸ UNICEF (in collaboration with the RDTL), *New Evidence on Pupils' Skills, Teacher's Attitudes and Practices from a Baseline Survey of Public Pre-schools in Timor-Leste* (2016), 50-51.

⁷⁹ Ba Futuru, *Project Report: Children Against Violence* (2015), 5-10.

⁸⁰ Ministry of Finance, *Situation Analysis of Children in Timor-Leste*, 141.

⁸¹ *Ibid.*

⁸² *Ibid.*, 142.

⁸³*Terminology: 'Peaceful discipline' also referred to as positive discipline throughout report.

The use of physical and/or psychological punishment against students by the teacher or by any other office of the educational establishment may result in criminal prosecution and/or disciplinary proceedings, in accordance with the criminal law and the law applicable to the civil service.⁸⁴

Additional guidelines set out in this ministerial despatch are equally clear in terms of improving the teaching professional culture and providing theoretical legal avenues for prosecuting child corporal punishment offenders. Nevertheless, it is unclear if this order equates with a working code of conduct and whether it will be robust enough to deter child corporal punishment, let alone prosecute offenders.

Prison Incarceration

Similar to children in terms of their special vulnerability, Timor-Leste's prisoners are disproportionately subjected to human rights violations while under State care. Prisoners fall under the authority of the state and are reliant upon its functioning judiciary, along with the immediate prison management in upholding basic rights including food, water and shelter. The state has an obligation to ensure that prisoner's human rights are defended and that they are not subjected to cruel or inhumane treatment, as set out under the Convention.

It is, however, important to note that Timor-Leste's prisons generally do meet with international standards. This is reflected in both improved living conditions and the creation of an additional prison in Suai, which will assist in alleviating over-crowding in Becora and Gleno. There are Standard Operating Procedures (SOPs) in place that theoretically assist bureaucratic staff and guards to manage each prison in accordance with the Ministry's directives, policies and logistics. Indeed this relatively new prison system has come a long way in terms of development through continual reform.⁸⁵ However, despite these advances, and considering Timor-Leste's relatively low prison population *vis a vis* national population, the report will draw attention to findings that warn human rights violations, sometimes amounting to torture and other forms of ill-treatment.

Actual situation

Currently in Timor-Leste there are three prisons: Becora in the Dili Municipality, Gleno in Ermera and Suai in Covalima. As of June 2016, in Becora there are 395 convicted and 160 pre-trial detainees incarcerated. Within these two main categories, there are a total of 31 male juveniles and 23 foreigners. Gleno prison houses a total of 111 mixed gender prisoners. This number includes 88 male prisoners (70 convicted and 18 pre-trial detainees), and 23 women prisoners (19 convicted and 4 pre-trial detainees). There is currently one female juvenile and 6 foreigners. Suai Prison is notably smaller than the other two with only 25 prisoners (as of September 2017), and it is the intention of the Ministry of Justice to increase its numbers so to alleviate over-crowding in Becora and Gleno⁸⁶. This course of action is altogether necessary and welcomed by the PDHJ.

Another area of improvement pertains to the Ministry's self-regulatory mechanism in terms of investigating allegations of torture or mistreatment when perpetrated by its own staff against prisoners. Through the PDHJ's own monitoring activities, along with anecdotal reports from NGOs, there is a legitimate concern that a number of complaints are discarded in the absence of a transparent external (independent) investigation procedure. Hence transparency is of utmost importance for a functioning prison system and will be expanded upon later in the report.

The National Directorate of Prisons within the Ministry of Justice conducts regular inspections of its prisons. The prisons have a memorandum of understanding with several stakeholders. The Ministry of Social Solidarity (MSS) is responsible for the organisation of family visits, as well as finding places to sleep for one night for the visiting families. Additionally, the MSS is engaged in the return of the prisoners into their community. The Public Ministry is responsible for the collection and management of data up to the appointment at the tribunal. Between all these stakeholders, and with the PDHJ's own monitoring in mind, there are still recurring allegations of torture and ill-treatment.

⁸⁴ Ministry of Education, *Approving the Guidelines on Teaching and Learning Methodology and Techniques for Pre-School Education*, 14.

⁸⁵ United Nations Development Programme, *Timor-Leste Human Rights Report: Executive Summary* (2014), 2-3.

⁸⁶ Interview with the Ministry of Justice's Prison Director, 06/09/2017.

In addition to the National Directorate and the PDHJ's own monitoring of prisons, local NGOs also conduct inspections. One such is the NGO Asiasaun HAK. HAK monitors Gleno prison and relies ostensibly on allegations and anecdotal evidence in compiling its findings. It also refers cases to the PDHJ for further investigation. In the past year it can cite one case in particular regarding prison torture and ill-treatment. This complaint, in which the family came forward on behalf of the victim, purports that prison guards beat up their family member. It is the opinion of the HAK's Monitors that corporal punishment in the prison setting is common, and the lack of access to victims is compounding the nature of the systemic problem.⁸⁷

An important aspect of the prison system of Timor-Leste is the Prison Working Group (Enkontru Regular Rede Apoiu Servisu Prizional (RASP)) which conducts regular meetings. Members of this prison group involve the PDHJ, Ba Futuro, Pradet, HAK, HDS, SHC, Amu Kapilaun, MSS, Director of Prisons (Ministry of Justice), Becora Prison Director and Caritas Australia. The prison working group meets once every two months to discuss their work so to address relevant issues. The last occasion the working group convened was September, 2017.

Methodology

The PDHJ conducted interviews with prisoners by randomly selecting their names from a list. This is to ensure that no particular prisoner was chosen by the guards, which would then favour certain experiences over others. It is important for PDHJ to gather information from a wide variety of prisoners, and that they are randomly selected. Guards were also selected at random, namely PDHJ interviewed guards who were on duty during the time of the visit. The interviews were conducted privately, securely, and in complete confidence. No third party or person in a position of power was privy to the conversation at any time.

Data collection methods

As the prison monitoring is a continuous activity over several years, it is important to have a questionnaire to ask general questions which do not need to be repeated in every monitoring visit. These questions focus on the communication between the different responsible entities and on data relating to prisoners in the prison facilities. For example: *How many prisoners are currently in Block A? How many prisoners currently receive education?*

Regular monitoring questionnaire

The weekly monitoring questionnaire is available on ODK tablets. The responsible monitor collects the data by filling out the questionnaire on a tablet. The data is then analysed by the monitoring staff in the PDHJ's Dili headquarters.

Monitoring results

From 2015 – 2016, PDHJ conducted the following monitoring:
Prisoner interviews in Gleno: 96
Prisoner interviews in Becora: 15
Women: 30
Juveniles: 8
Preventiva: 37
Foreigners: 7
Total prisoner interviews: 111
Prison Director interviews in Gleno: 3
Prison Director interviews in Becora: 1
Total prison Director interviews: 4
Prison Guard interviews in Gleno: 4
Prison Guard interviews in Becora: 7
Total prison Guard interviews: 11
Cell checks: 24
Document checks: 1

Table 2 PDHJ prison monitoring

⁸⁷ Interview with Director of Asiasaun HAK (10 September 2017)

As at June 2016, the statistics in all prisons are as follows:

<i>Gleno Prison</i>
Convicted: 98
Pre-trial: 13
Male: 88
Female: 23
Foreigners*: 6
TOTAL: 111
Block A: 23
Block B: 27
Block C: 27
Block D: 14
Block E (isolation): 7
Block F: 13
<i>Becora Prison</i>
Convicted: 395
Pre-trial: 160
Juvenile: 31
Ex-FDTL: 1
Ex- PNTL: 8
Foreigners**: 23
TOTAL: 555
Block A: 74
Block B: 76
Block C: 94
Block D: 56
Block E: 60
Block F: 60
Block G (Juvenile): 31
Block H: 34
Centro A: 40
Centro B: 27
Alternative (isolation): 4
<i>Suai Prison</i>
***TOTAL: 25

Table 3 2016 prison demographics

* All foreigners in Gleno are currently from Indonesia

** The 23 foreigners in Becora are currently from Indonesia, Philippines, Singapore, China and Australia.

*** Suai prison population as of September, 2017.

Interviews with Prison Guards

PDHJ conducted a total of 11 interviews with prison guards; four from Gleno prison and seven from Becora. This number included eight male guards, and three female guards. All guards claimed to have not witnessed any violence in the prison within the last two months of their interview. This included violence between prisoners as well as violence between guards and prisoners. Not unsurprising, and fitting in with a culture of underreporting or silence in the prison system, prisoner interviews and monitoring efforts directly contradict the assertion that there is no violence occurring.

Information obtained informally by PDHJ monitoring officers included the lack of female guards presently working in Gleno prison (out of the 33 guards in Gleno there are nine females). While female guards mainly supervise women prisoners, interviewees commented that when the prison is short-staffed, male guards have to supervise the women, which is adverse.

Training

The ongoing training of prison guards remains the best strategy to combating torture and ill-treatment in Timor-Leste's prisons.

Providing guards with a training manual must be the first necessary step in removing physical violence as a form of deterrence. In Timor-Leste, two guards reported that they have not received any training in 2016 previous to their interview being conducted. Out of the remaining, training was reported to have been received in the following areas:

Training received in 2016 on:	Yes	No
Use of force	45%	55%
Torture	63%	37%
Rights of prisoners	72%	28%
Condition of the cells	63%	37%
Registration	36%	64%
Prisoner violence	36%	64%
Disciplinary procedures	36%	64%
Separation of prisoners	36%	64%
Medical assistance	45%	55%

Table 4 Training received by guards in the 2016

The above findings are especially pertinent and reinforce global prison practice norms that demonstrate that a lack of training results in increased instances of torture and ill-treatment⁸⁸. From the latest prison guard survey, only two guards (5.8%) from 34 received anti-torture training. It should be pointed out that 2017's data indicators are still being retrieved and yet to be disclosed in full, although preliminary findings do not bode well.

Complaints

One guard stated that he had received two complaints about the prison system by prisoners in the last year when the PDHJ conducted their interview. The reasoning behind these complaints involved the food, water, cell conditions and sanitation. The guard stated that they communicated with the Chiefs of the relevant blocks in which the particular prisoners were being housed, as opposed to the Prison Director. The guard recorded the complaints in a registry book, and maintained the complaints were both resolved. However, the guard said that neither they nor anyone else spoke with the prisoners about their complaints after they were made, nor were the prisoners asked any follow-up questions.

In accordance with UN standards, every prisoner must be allowed to make a confidential complaint, which should not involve having to talk directly to the guards, who may or may not be involved in the particular complaint. There should be an approved procedure for the handling of such complaints, which should be made to the central prison administration or other proper authorities. Every request or complaint, unless evidently frivolous, should be dealt with and replied to without undue delay.⁸⁹ PDHJ found that it is not evident that such a procedure exists in Timor-Leste's prisons, and those complaints are made informally to the guards or the prison managers themselves.⁹⁰

⁸⁸ UNODC, *United Nations prison-related standards and norms*, <http://www.unodc.org/newsletter/en/perspectives/no02/page004a.html>

⁸⁹ SMR Article 36.

⁹⁰ Interview with the Director Of Prisons, Minister of Justice, 06/09/2017

Interviews with prisoners

PDHJ monitors determined that the 111 prisoners interviewed were found to be clean and without injuries. Unless prisoners are currently in isolation (common when first entering prison), all are allowed to be out of their blocks for two hours a day.

Complaints

Seven prisoners reported to PDHJ monitoring officers that they had made complaints during their time in prison. These complaints were made to guards (2), the Prison Director (4) and to their private lawyer (1). Complaints involved their treatment while imprisoned, the absence of their lawyer visiting, problems receiving medicine, and problems receiving specific types of food when feeling ill. Four prisoners stated that their complaint was followed up, while two complaints were not and one prisoner did not know.

Beyond the PDHJ receiving prisoner complaints, the existing prison internal complaints mechanism is defective. In Timor-Leste all prison investigations are arranged by the Ministry of Justice (MOJ), more specifically the Inspection Department, Auditoria Department and the Prison National Directorate. This 'in-house' arrangement is problematic in terms of transparency, fairness and undermines prisoner human rights. The other alternative avenue for complaint would be to directly approach the prison manager. Such a complaint avenue is unsatisfactory, reflected by the inability of the Ministry to produce any filed complaints submitted when requested. This process that forces inmates to complain to prison managers is unacceptable and counterintuitive to their rights, namely because complaints are escalated to potentially the same hierarchy that they may hold grievance. In the unlikely event that a prisoner does come forward, the fear for reprisal or gaining a troublemaker's reputation would worsen their circumstance. Conversely, when considering the position of the prison manager, it would not be in their interest to escalate such a complaint, especially when their administrative abilities may be called into question.

Despite the pretences of due diligence, in effect this arrangement contributes to a culture of silence and underreporting. This is reaffirmed by the Ministry's inability to produce one ongoing or archived case whereby a prisoner sought to make a complaint with a prison manager.⁹¹

Torture and Ill-Treatment

The following figure indicates the number of prisoners who reported they had experienced torture and ill-treatment to PDHJ monitoring officers (and what type of ill-treatment they experienced).

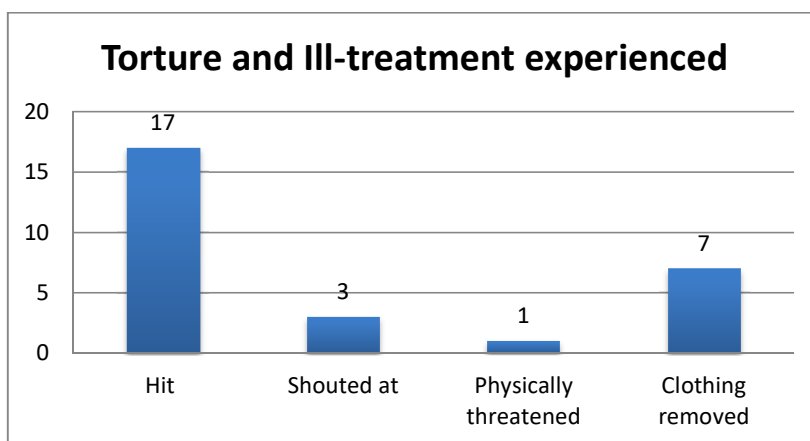


Figure 5 Types of ill-treatment experienced by prisoners

Hit

17 prisoners reported they had experienced being hit. 15 of these incidences were by a guard, and two claimed to have been hit by both guards and other prisoners. They involved being hit with a hand (10), hands and a stick (2), hands and legs (4) and by all three (1). All 17 prisoners stated that these incidences occurred when they first entered

⁹¹ Ibid.

prison, however none had made a complaint. It is likely that this is part of the initiation rite that prisoners are subjected to upon entering the prison. Further explanation can be found below.

Initiation rite

Both the data and anecdotal evidence suggests that upon entering prison prisoners are immediately beaten, tormented and/or isolated in a dark cell. In Becora, prisoners reportedly stay in this cell for two nights and three days, while in Gleno it is reportedly a week - six nights and seven days. Prisoners are not provided with a mattress or a change of clothes, however they do receive three meals a day and sufficient water. Part of the treatment is regular beatings with hands and kicking of the upper body, including the chest and head of those in the isolated cell. Cases of prisoners who had to be treated in a hospital after these beatings have allegedly occurred.

Beyond physical violence, psychological degradation and torment are equally important when addressing torture in this setting. Indeed non-physical forms of corporal punishment can be more effective in establishing discipline and the prison status quo, especially for new inmates. To exemplify further the non-physical forms of ill-treatment, a sample of 25 prisoners from Becora and Gleno noted the form initiation rite they received upon entering prison. The most common form of degradation and torment involved removing a prisoner's clothes, whilst spitting and shouting were the next most common forms. Although further monitoring is required to understand the scale of ill-treatment, it is clear to PDHJ monitoring officers that most prisoners (men and women, juveniles and pre-trial detainees who are yet to be found guilty) are subjected to some form of ill-treatment whilst incarcerated. Women receive their initiation from female guards.

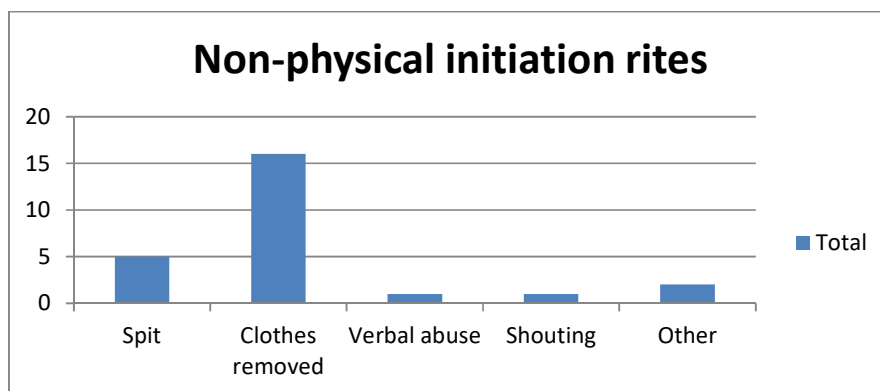


Figure 6 Types of initiation rites experienced by prisoners

Relevant to understanding the nature of initiation rites, non-physical and verbal abuses are often used in conjunction with physical violence, whereby guards exhibit to the prisoner that they no longer have the freedoms and authority they once had on the outside. According to 2017's data, from a sample of 25 prisoners, the most common form of non-physical ill-treatment was the removal of clothing. The rationale behind using a degrading punishment is to humiliate and debase the prisoner "... in such a manner that shows a lack of respect for, or diminishes, his or her human dignity, or arouses feelings of fear, anguish and inferiority capable of breaking an individual's moral and physical resistance".⁹² As such, non-physical corporal punishment also contravenes the UN minimum standards and breaches basic human rights principles, such as Article 5 of the UN Declaration of Human Rights, which states that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.⁹³

In addition to international law and prison practices and norms, the Constitution of Timor-Leste, in Article 30(1), states that 'no one shall be subjected to torture and cruel, inhuman or degrading treatment'. Article 167 of the Timor-Leste Penal Code very clearly prohibits this behaviour, stating that:

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

⁹² Yutaka Arai-Yokoi, Grading Scale of Degradation: Identifying the threshold of degrading treatment or punishment under Article 3 ECHR, 390-391.

⁹³ OHCHR, *Universal Declaration of Human Rights: Standard Minimum Rules for the Treatment of Prisoners* (1955), 4.

who have been detained or arrested and commits torture or cruel, degrading or inhumane treatment, in order to

a) (...)

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.

Despite the Penal Code's framing of torture and ill-treatment, there is a break in the justice system that juxtaposes the actual frequency of assaults with a lack of disciplinary protocol for guards. In addition to the PDHJ's aforementioned concerns regarding the internal prisoner complaint mechanism (wherein judgement is weighted to protect guards above prisoner's rights), a similar absence of protocol or precedence exists in how the Ministry metes justice out to its own. With attention to the third clause of the Penal Code's Article 167, citing imprisonment for perpetrators of ill-treatment (subject to severity and due process), in reality disciplinary actions are lenient or simply discarded. When asked how it carries out disciplinary actions regarding torture and ill-treatment, the Ministry stated there have no ongoing or referenced cases for dismissal. In the absence of any cases, the PDHJ asked the Ministry in the likelihood that such a transgression may warrant disciplinary action, the punishment would first result in a monthly pay reduction, or at worst and for repeat offenders, transferral to another prison for two years.⁹⁴

Shouted at

Three prisoners reported that they had been the recipients of shouting; two by guards and one by another prisoner. The incidences involving guards were in relation to not following orders, and the one involving another prisoner involved his fellow prisoners threatening to pour water on him and dragging him out of his block while asleep if he did not stop his way of praying/worshipping.

Physically threatened

The one prisoner who reported he had been physically threatened involved a guard and occurred when they first entered prison.

Clothing removed

Seven prisoners reported that guards had forced them to remove their clothing when they first entered prison. No reason was given to them as to the purpose of such an act.

Special categories

Women

PDHJ interviewed 30 women, 21 of which had received a medical check while eight had not, and one did not know. Out of the 21 women who had received medical checks, 16 were able to consult with specifically a female doctor. Three of these women were found to be pregnant (which they had all previously known before entering prison), however one reported that they had not received specific pregnancy treatment.

There is gender discrimination in Gleno prison between how long the female and male inmates are allowed to time spend outside their cells respectively. Although this may be contributable to a number of organisational realities, namely staff shortages and facility limitations, it is reported that women spend more time in their cells when compared with male prisoners. Gleno prison must ensure that all its prisoners are treated fairly and consistently across both genders. Keeping prisoners interned for long periods in their cells leads to psychological distress and may be torture when in seemingly indefinite measure. Although torture in these terms is more associated with solitary confinement, cell confinement without the prospect for exercise or natural sunlight is still problematic - regardless whether the cell

⁹⁴ Ibid.

is populated or not⁹⁵. The PDHJ recommends that Gleno prison adheres to UN standards and gender equality in this respect⁹⁶.

Pre-Trial

PDHJ interviewed a total of 37 pre-trial detainees. When they were first arrested, 31 responded that police had informed them when they were arrested that they were entitled to a lawyer, while five were not and one did not know. In relation to lawyers, 29 currently have a public defender, four have a private lawyer, and the remaining four detainees claimed to not yet have a legal representative.

In terms of access to legal assistance, standards with the Convention dictate that lawyer visits should be allowed, and suitable to facilitate the resolution of legal issues relating to the prisoners cases. Visits should take place in a private area where confidential conversation can take place.⁹⁷ While both prisons facilitate private meetings with lawyers, 16 reported that their lawyer had never visited them while imprisoned.

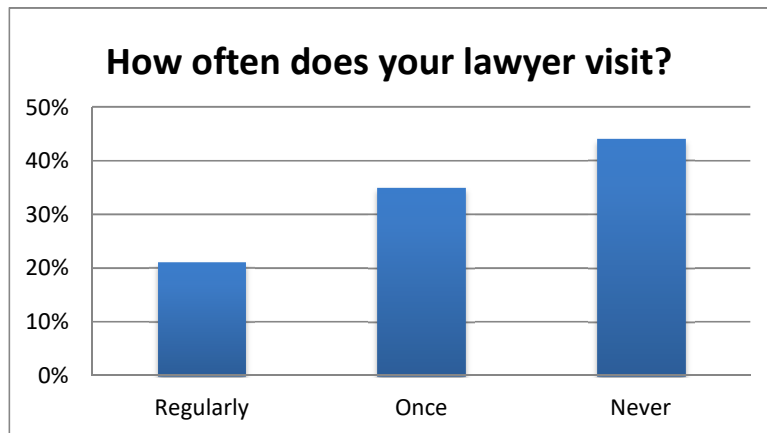


Figure 7 Frequency of lawyer visits to pre-trial detainees

Juveniles

PDHJ conducted interviews with eight juvenile prisoners, all housed in Becora. National law states that youth until 21 years old shall be separated from adult prisoners.⁹⁸ Young offenders who are detained in Becora sleep together in a separate block from the rest of the adult prison population. While they are supposed to be kept separate from the adult detainees, in practice it appears that, for example during the distribution of the food or with sporting and other social activities, juvenile offenders are in close proximity and communication with adult prisoners.

Foreigners

PDHJ conducted interviews with seven foreign prisoners, being housed in both Becora and Gleno. All maintained that they had been given the opportunity to consult with a diplomat or a representative from their Embassy, and that they visited them on average once a month.

Cell observations

UN standards require prison accommodation to meet certain health conditions, climatic conditions, cubic content of air, lighting, heating and ventilation.⁹⁹ Every prisoner should be provided with a separate bed or mattress and sufficient bedding, which should be maintained to ensure its good condition and cleanliness.¹⁰⁰

⁹⁵ Jason Breslow, *What does solitary confinement do to your mind*, Frontline (2014),

<http://www.pbs.org/wgbh/frontline/article/what-does-solitary-confinement-do-to-your-mind/>

⁹⁶ SMR Article 19

⁹⁷ Article 68.1 of the Prison Reform Law (14/2014).

⁹⁸ Article 18 of the Prison Reform Law

⁹⁹ United Nations, *Standard Minimum Rules for the Treatment of Prisoners*, Article 10, 30 August

1955, https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf

¹⁰⁰ SMR Article 19

PDHJ found that cubic content of air and ventilation was all found to be adequate, with open windows provided in every cell. The cells were determined to be adequately clean, as prisoners clean their cells on a daily basis, and maintain that they can easily be kept in a hygienic condition. While there was no stagnant water found in any of the cells, monitoring officers reported that 11 out of the 24 cells can sometimes experience drips coming down from the roof when it rains.

The foremost concern PDHJ monitoring officers found when conducting cell checks, was the clear evidence that Becora and Gleno prisons is experiencing issues of overcrowding. For example in Becora, cells are at capacity in terms of the number of mattresses that are able to fit in each cell, with some prisoners having to share mattresses. This issue is highlighted by the current statistics, as there are 555 prisoners being housed in a facility that was originally built for approximately 290 people.

Water and sanitation facilities

In accordance with UN minimum standards, adequate sanitary installations should be provided so that every prisoner can use the toilet when necessary, and in a clean and decent manner. Showering facilities should be provided and be permitted to be used as frequently as needed to maintain general hygiene¹⁰¹, and toiletries should be provided for health and cleanliness.

PDHJ found there to be toilets and washing facilities located in each block, which are easily accessible to prisoners at all times of the day and night. In terms of toiletry articles, one towel is provided to each prisoner. Every month, prisoners receive a sufficient amount of toothbrushes, toothpaste, women's sanitary products, soap and washing powder (for clothes).

19 out of 24 cells had taps (if a tap is not located in every cell, they can be found within the same block), however 1 out of the 19 was not functioning.

PNTL Arrest and Detention

PNTL corporal punishment and detention standards remain a key monitoring focus for the PDHJ despite challenges in obtaining relevant data. Monitoring the frequency of police violence and along with its detention facilities allows the PDHJ to document torture and ill-treatment in Timor-Leste. Another important aspect to detention monitoring is its preventative function by providing recommendations that will improve PNTL practices, thus minimising the likelihood for future torture crimes. The report will point to individual case investigations conducted by the PDHJ that exemplify the severity to torture and ill-treatment under the Convention.

Actual Situation

The PNTL is responsible for the organisation, coordination of criminal investigations along with the execution of arrests and detention in Timor-Leste. The PNTL was originally founded in March 2000 with the support of the United Nations Transitional Administration East Timor (UNTAET), who until May 2004, remained in control along with its successor, the UN peacekeeping mission, the United Nations Mission in East Timor (UNMISSET). According to The Asia Foundation, while these first few years of the PNTL established foundations for a police service with recruitment and the provision of basic training, less was achieved in relation to developing a *“strong overall institution with effective strategic planning, management, and administrative systems”*.¹⁰² In terms of recruitment, the institution was established using new recruits with no history of policing experience, as well as approximately 370 officers¹⁰³ who had previously served in the Indonesian police force (POLRI) prior to independence. The inclusion of POLRI officers would later cause significant levels of tension and division within the PNTL, as did the events during the 2006 crisis.

¹⁰¹ SMR Articles 12 & 13

¹⁰² TAF Report

¹⁰³ TAF Report

Since 2006 the international community has attempted to strengthen all facets of the PNTL, including the process of vetting prospective officers, capacity building and training systems, and the building of institutional structures. However, this report will suggest that the adherence to institutional processes and procedures is still limited. While significant efforts have been made, it is clear that more reform is needed to solidify the PNTL as the vital and highly functioning, cohesive institution it needs to be.

The PNTL has one police station per administrative post, and 13 additional larger police stations on the municipal level, which equates to 78 police stations in Timor-Leste in total. All of these 78 police stations have one or more cells to hold detainees, although as the report's findings will suggest, all cells are not necessarily available for detainees at the time of arrest.

Monitoring these detention facilities allows the PDHJ to gather relevant data and document detention in Timor-Leste, and identify to what extent the State respects international law and national law in relation to detention. Additionally, monitoring can create a basis for dialogue with detaining authorities, with whom the PDHJ can share their information and directly give recommendations to. Another important aspect of detention monitoring is its preventive function, as it advances transparency, which in turn promotes self-regulating behaviours. The overall purpose of the monitoring system is to promote and monitor the implementation of human rights and good governance issues, and to ensure information collected by the PDHJ regarding the state of detention facilities is made available to the public and all relevant authorities.

While there is no complete data on detention in Timor-Leste, information received by the PDHJ at a meeting with the PNTL in Caicoli Police Station, gives an insight into the extent of detention. Caicoli is one of the biggest and busiest detention facilities in the country, and over a period of nine months (January - September 2015), housed a total of 433 detainees. 217 of these detainees were arrested *flagrante delicto* (when a person has been caught in the act of committing an offence), 156 for identification and 60 with an arrest warrant. Out of the 433 detainees, 52 were transferred to prison while the others were released. The detainees consisted mainly of Timorese nationals but also included 38 people from Indonesia, one person from Turkey, one person from the USA and 18 people from China. A total of three detainees were juveniles at the point of arrest.

In Timor-Leste, the longest period of arrest that is legally permitted is 72 hours for *flagrante delicto* and 12 hours for the purpose of identification. According to information obtained from PDHJs meeting with the Commander at Caicoli, detainees typically stay in the regional, smaller detention facilities for 2-3 hours. After which, they are transferred to larger, better-equipped stations such as the one in Caicoli. This is due to the fact that many small detention facilities have inadequate water, sanitation and food to house detainees for an extended period of time. While detained in the smaller facilities, PNTL officers must rely on contacting families to bring food to the detainee.

Due to the limited amount of research conducted in this field coupled with poor administration in the detention facilities, it is difficult to ascertain the exact number of arrests and overall number of people being detained in these facilities on a daily basis. However, the NGO Belun identifies violent incidents and trends in Timor-Leste using their Early Warning, Early Response (EWER) monitoring system, which monitors 43 Administrative Posts on a monthly basis.¹⁰⁴ This information demonstrates the type of crimes people are being arrested and detained for. According to EWER on average the main incident types consist of physical assault, followed by property destroyed. The location of the incident is typically on the street, followed by home and then farmland. In terms of who responded to the incident, the results show that they are overwhelmingly being responded to by the PNTL. Traditional and local leaders also respond, however to a much less extent. Belun reports that the person who initiates violent incidences is typically a youth, followed by a family member. The gender of those who initiate violence is overwhelmingly male. Again, this gives us insight into who is being arrested and for what reasons.

In terms of being arrested, the law prohibits arbitrary arrest and detention, but authorities frequently violate these provisions, often because magistrates or judges are unavailable or in shortage outside of Dili, in order to issue warrants or make determinations on detentions. This shortage of magistrates also contributes to police often making decisions without legal authority about whether persons arrested should be released or detained after their government regulated 72 hours in custody (government procedure requires a hearing within 72 hours of arrests to review the lawfulness of an arrest or detention). These concerns stress the importance of detention monitoring by PDHJ, in order to ascertain whether or not human rights are being violated, as well as international and national law.

¹⁰⁴ Belun, *Early Warning, Early Response*, <http://www.belun.tl/en/early-warning-and-early-response-ewer/>

PNTL and Joint-Operations allegations of torture

In the absence of a functioning magistrate to issue warrants and act as a deterrent to offenders, alleged cases of torture continue to undermine the reputation of the PNTL, along with its 2015 joint operations role in conjunction with the *Falintil-Forças de Defesa de Timor-Leste (F-FDTL)*. The PDHJ can refer to multiple cases in which the PNTL and joint-operations applied heavy-handed arrest practices and torture.

PNTL

Case One:

With Timor-Leste already in a state of heightened alert awaiting the formation of a new government, on 21 August 2017 the implementation of law no. 5/2017 resulted in public disapproval and organised demonstration. This parliamentary ruling concerning the re-sale of undervalued government vehicles to former parliament members met with student protests outside the parliament building. In responding to perceived civil unrest, the PNTL used tear gas in an attempt to disperse the crowds. Reports remain unclear who instigated the ensuing confrontation; however there is consensus that the police response was heavy-handed and out of proportion with the size of the protest. The demonstration descended into violence with damaged property; four students were injured, three police officers injured, 13 students arrested and 12 government cars destroyed.¹⁰⁵

Case Two:

An online Youtube clip has been released screening the bashing of one young man at a football game in Maliana on the 22 April 2017. The PNTL officers (clearly evident by the insignias on their uniforms) are seen repeatedly striking a man on the ground, whilst other officers stand by and idly watch. The clip runs for some 20 seconds with hundreds of witnesses present. The atmosphere at the football ground is tense with those present yelling and screaming.¹⁰⁶ The victim was then kicked on the ground and then the officers used tear gas on the individual, as per set out in the coinciding PDHJ complaint.¹⁰⁷

Case Three:

On the 2 February 2016 a complaint was lodged with the PDHJ regarding the incarceration and detaining of a Baucau school student. It is alleged that PNTL officers visited the victim at his school following the end of classes. At which time the student was taken into custody on suspicion of involvement in a criminal case. Without charges being laid, the student was put into a dark cell and was subjected to beatings whilst in detention¹⁰⁸.

Joint-Operations

In March 2015, it was reported that dozens of individuals were arbitrarily arrested and tortured by Timor-Leste security forces as part of security operations in the Baucau district. These incidents occurred as part of a series of joint-operations by the police and military to capture Mr. Paulino Gama (also known as Mauk Moruk), a former independence fighter and leader of the banned Maubere Revolutionary Council (KRM), and his followers. Among other things, the government demanded that member of KRM and two other groups (Bua-Malus and CPD-RDTL) handed in uniforms and arms and that their leadership would turn themselves in to the police.

Local human rights organisations documented dozens of cases where individuals who were thought to be followers of KRM or the other organizations were repeatedly kicked and beaten by the police during their arrest and subsequent detention. It is also reported that many had their hands and legs tied throughout the ordeal. While most were released after brief periods of detention and interrogation, due to the lack of documentation, their time spent in detention is unknown.

¹⁰⁵ Belun (2017), Early Warning, Early Response (EWER) August Situation Report, 1-2.

¹⁰⁶ Youtube, *Polisia Baku Joven Ida Iha Estadiun Football Maliana (2017)*, <https://www.youtube.com/watch?v=Xgpl-6Rx80Q&app=desktop>

(Accessed 19 September 2017).

¹⁰⁷ PDHJ Case Complaint, C. 928/DH/2017.

¹⁰⁸ PDHJ Case Complaint, C.638/DH/2016.

The PDHJ decided to start monitoring the conduct of police and army during this joint-operation, focusing on the Baucau district which was the traditional powerbase of Mr. Gama. A brief overview of human rights violations encountered will be listed here: [1]

- Another complaint received at the PDHJ by complainant relates to mistreatment by both PNTL and F-FDTL personnel. On the 28 November 2016, estimated to be around 1200, the alleged victim was in his own house when seven members of F-FDTL and three members from the PNTL entered the home. All members were carrying guns and, whilst one of the armed men kept repeating: “baku ona, baku ona (lets beat him up)”. The offending personnel then proceeded to beat the victim to the ground. During the ensuing beating it is alleged that the armed men aimed their firearms at the daughters of the victim. One of the daughters cried and shouted hysterically in protest so one of the armed men pushed her into an adjoining room.¹⁰⁹
- A 14 year old boy, out in the fields, was forced to provide information on the whereabouts of an individual sought by the police. He was threatened and physically abused, forced to hand over his phone and taken to a detention facility, all without any legal grounds.
- A team of army and police members entered the house of a lady without search warrant, searched the house, threatened her with serious violence (for example to throw grenades on the house), forced her to dig holes in her backyard as the officers suspected that weapons were buried there.
- A family house was entered, without a search warrant, by a team of army and police members after which all family members were brought outside and lined up. The officials accused the women of hiding their husbands and cooking for them in the forest. They threatened them with violence and in several cases proceeded to physically abuse their children, for example beating them with rifles and kicking and slapping them.
- A man was woken up in the middle of the night and forced to come out of his house. After failing to provide information, he was handcuffed and beaten on the head. He was put in a detention facility for one night without any formal accusation.
- A man was woken up in the middle of the night and without further explanation kicked in the chest by a police officer. The man was still coughing blood at the time of the interview.
- A man was tricked to come to a meeting, but only found members of the joint-operation there waiting for him. He and a friend were arrested and physically assaulted. They were threatened, for example the security forces told them ‘you need to tell us the truth, if not, you will be dead’.

This list is not exhaustive and the PDHJ has more examples of situations in which civilians were threatened, abused, intimidated, unlawfully detained, and more. All these cases have been documented in the PDHJ’s monitoring report on the Joint-Operation¹¹⁰.

In response to such complaints, online media, anecdotal evidence and other local human rights organisations citing torture and ill-treatment, the PDHJ monitors PNTL detention facilities. This report will cite inadequate remand conditions, including problems for detainees accessing water; lack of administrative procedure when processing detainees, including required documentation and registration of those entering and exiting detention facilities.

The appropriate treatment of detainees

All arrestees and detainees have the right to be treated in a humane manner regardless whether they are suspected of a crime.¹¹¹ This means that no person deprived of their liberty, without exception, shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.^{112 113} Additionally, orders from a higher ranked officer cannot be used as a justification for torture, and use of force can only be applied proportionally.^{114 115} Any

¹⁰⁹ PDHJ Case Complaint, C.851/DH2016.

¹¹⁰ [1] *Provedoria dos Direitos Humanos e Justiça*, ‘Public report from the department of monitoring and advocacy regarding State Actions in 10 Districts based on: Parliamentary resolution no. 4/2014, Government Resolution No. 8/2014 and Government Resolution No. 13/2014’, 14 August, (2014).

¹¹¹ Body of Principles for the Protection of All persons under Any Form of Detention or Imprisonment, principle 1.

¹¹² UDHR article 5, ICCPR article 7, Convention against Torture (CAT) article 5.

¹¹³ CAT, article 1.

¹¹⁴ CAT, article 2.

¹¹⁵ Code of Conduct for Law Enforcement Officials, article 3.

individual who alleges that he or she has been subjected to torture shall have the right to complain and to have the case examined by authorities.¹¹⁶

All interrogation rules, instructions, methods and practices pertaining to detained persons shall be kept under systematic review with a view of preventing torture.¹¹⁷ Additionally, detainees shall be held in places which are officially recognized as places of custody and a detailed register shall be kept of every person deprived of their liberty.^{118 119}

All detainees have the right to receive written information about the regulations, which apply to them as well as their rights and obligations.¹²⁰ The families, legal representatives, and if relevant diplomatic missions of detainees must receive full information about the fact of their detention and where they are held.¹²¹ All detainees shall be offered a proper medical examination and treatment as soon as possible after admission.¹²² Restraint can only be used as a precaution against escape during transfer and for no longer than strictly necessary.¹²³

Adequate Standard of Living

All persons deprived of their liberty shall have the right to an adequate standard of living, which includes adequate food, drinking water, accommodation and clothing and bedding.¹²⁴ Accommodation for detainees shall provide adequate cubic content of air, floor space, lighting, heating and ventilation.¹²⁵ All detainees who are not allowed to wear their own clothing shall be provided with suitable clothing.¹²⁶

Detainees contact with the outside world

No one shall be subjected to arbitrary interference with his or her privacy, family, home or correspondence.¹²⁷ All detainees shall have the right to communicate with the outside world, especially with their families.¹²⁸

Complaints and Inspection Procedures

Anyone whose rights and freedoms have been violated has the right to an effective remedy, determined by a competent court.¹²⁹ Every person deprived of their liberty shall have the right to make a complaint regarding his or her treatment and, unless the complaint is evidently frivolous, to have it dealt with promptly and, if requested, confidentially. If necessary, the complaint may be lodged on behalf of the prisoner or by his or her legal representative or family.¹³⁰ Prisons and detention facilities shall be inspected regularly by qualified and experienced inspectors from a competent authority separate from the prison or detention facility administration.¹³¹

Special Categories of Detainees

Women detainees shall not suffer discrimination and shall be protected from all forms of violence or exploitation.¹³² Women detainees shall be supervised and searched only by female officers and staff.¹³³

¹¹⁶ Principles on Detention or Imprisonment, principle 34.

¹¹⁷ CAT, article 11.

¹¹⁸ Principles on Summary Executions, principle 6.

¹¹⁹ Standard Minimum Rules for the Treatment of Prisoners: rule 7, Declaration on enforced Disappearance article 10, Principles on Summary executions principle 6.

¹²⁰ Principles on Detention or Imprisonment, principle 13, SMR, rule 35.

¹²¹ Principles on Detention or Imprisonment, principle 12.

¹²² Principles on Detention or Imprisonment, principle 24.

¹²³ SMR, rule 33.

¹²⁴ Principles on Detention or Imprisonment, principle 34.

¹²⁵ SMR, rule 10.

¹²⁶ SMR, rule 17(1).

¹²⁷ UDHR, article 12; ICCPR, article 17.

¹²⁸ Principles on detention or Imprisonment, principle 19.

¹²⁹ ICCPR, article 2, CAT. Art. 13.

¹³⁰ Principles on Detention or Imprisonment, principle 33.

¹³¹ Principles on Detention or Imprisonment, principle 29.

¹³² CEDAW, articles 1,6 and 7.

¹³³ SMR rule 53.

Children who are detained shall be treated in a manner which promotes their sense of dignity and worth, facilitates their reintegration into society, reflects their best interests and takes their needs into account.¹³⁴ Juveniles of compulsory school age have the right to education and to vocational training.¹³⁵

Persons in Prison without sentence

Everyone charged with a penal offence has the right to be presumed innocent until proved guilty.¹³⁶ Everyone has the right to liberty and security. No one shall be deprived of liberty except on such grounds and in accordance with such procedures as are established by law.¹³⁷

Anyone who is arrested shall be informed, at the time of arrest, of the reasons for the arrest and of his or her rights. Anyone who is arrested shall be promptly informed of any charges.¹³⁸ Anyone who is arrested shall be brought promptly before a judicial authority for the purpose of having the legality of his or her arrest or detention reviewed and shall be released if the detention is found to be unlawful.¹³⁹ Anyone who is arrested has the right to trial within a reasonable time or to release.¹⁴⁰ Comprehensive written records of all interrogations must be kept, including the identity of all persons present during the interrogation.¹⁴¹ All arrested or detained persons shall have access to a lawyer or other legal representative and adequate opportunity to communicate with that representative.¹⁴²

Untried detainees shall be allowed immediately to inform their families of their detention and shall be given all reasonable facilities for communicating with their families and friends.¹⁴³

These are the global, local accepted norms and legal expectations for the arrest and detaining of a suspected criminal. The report will now point to multiple instances whereby the PNTL has not adhered to the above standards, culminating in torture and ill-treatment.

Methodology

Data collection methods

Monitoring used and direct observation, in order to inspect the conditions and treatment of detainees in each of their respective stations and sub-stations. The PDHJ also conducted interviews with PNTL members.

Questionnaire

A questionnaire has been developed specifically for the detention monitoring and has been put on ODK tablets. The questionnaire has been developed by taking into account both the country-specific context in Timor-Leste, international and national laws as well as international minimum standards for detainees. In order to gain knowledge about all relevant aspects of detention it is important to include different parts in the questionnaire.

Interview with District Commander

The first section of the questionnaire incorporates questions for a district commander. This section focuses on the communication between the different detention facilities and the central district police station and consists of yes/no questions or questions, which have only a limited possibility of answers.

Interview with PNTL Member

In the second section, the monitor speaks to a member of the PNTL. Here, the focus of the questionnaire lies on finding information about the police station and the detention at the specific detention facility.

¹³⁴ CRC; articles 3 and 37.

¹³⁵ ICESCR, article 13, CRC article 28.

¹³⁶ UDHR, article 11, ICCPR, article 14.

¹³⁷ UDHR, article 3, ICCPR, article 9, para.1.

¹³⁸ ICCPR, article 9, para 2, article 14, para 3.

¹³⁹ ICCPR, article 9, para 4.

¹⁴⁰ ICCPR, article 9, para 3.

¹⁴¹ Robben Island Guidelines, para.28.

¹⁴² UDHR, article 11; ICCPR, article 14, para 3.

¹⁴³ Principles on detention or imprisonment, principle 16.

Interview with Detainee

In the third section of the questionnaire, the monitor speaks to one detainee, if present in the police facility at the moment of monitoring. In case there are more detainees, the third section can be repeated. Here the questionnaire focuses on asking questions in relation to the rights and treatment of the detainees. As it is difficult to build up trust with a detainee by simply asking yes and no questions, the questionnaire changes its method and incorporates narrative passages, where the detainee can explain his experiences without being lead by the questions included in the questionnaire. This approach makes it more likely that a detainee will open up and speak of ill-treatment or torture, which increases the chances of the PDHJ to gather relevant data on those two issues.

Direct Cell Observation

The fourth section consists of observing questions for the cell(s) in the police station. The questions revolve around the standard of living in the cell and can again give insights on potential human rights violations of detainees in Timor-Leste.

Document Observation

The fifth and final section of the questionnaire consists of observing questions for documents used in the police station. The monitor is supposed to gather the relevant documents, which can for instance be: SOPs for arrest, SOPs for detention, arrest forms or registry book. The observing questions ask if the forms are in balance with the international/national law and international minimum detention standards.

Monitoring results

PDHJ conducted monitoring of Timor-Leste's detention facilities from 2015 to 2017.

The scope of the interview questioning with PNTL officers, District Commanders and detainers discussed a number of different issues. For the benefit of the Committee the report will focus on findings relevant to the treatment of detainees (i.e. whether they had been subjected to corporal punishment), along with PNTL training standards and protocols. Thus, the report findings suggest that torture and a lack of PNTL training and appropriate equipment is inextricably linked.

Interviews with PNTL Officers and District Commanders

According to PDHJs monitoring results, a lack of training is provided to PNTL officers. When asked whether or not they had received training in a number of relevant areas, the results were mostly negative. The following table lists the areas of training that PDHJ enquired into, and the subsequent results of interviews conducted with PNTL members.

AREA OF TRAINING	RECEIVED	NOT RECEIVED
Torture and ill-treatment	51%	49%
Use of force and restraint	82%	18%
Rights of detainees	64%	36%
Registration processes	55%	45%
Violence between detainee incidences	46%	54%
Disciplinary procedures	40%	60%
Adequate condition of cells and detention facilities	43%	57%
Medical assistance	40%	60%

Table 5 Received training for PNTL officers and commanders

As reflected in the alleged cases, and by these cited findings, there is unsurprisingly a breakdown in training practices pertaining to how some PNTL officers react to certain scenarios. This may be partially contributable to the lack of a functioning disciplinary body that encourage police to act humanely in terms of arrest and detention standards.¹⁴⁴ Another consideration may be contributable to police equipment and Standard Operating Procedures (SOPs), in particularly when faced with civil unrest. Despite an Australian Federal Police contingent already in-country

¹⁴⁴ Human Rights Watch, *East Timor: Torture and Mistreatment by Police* (2006), <https://www.hrw.org/news/2006/04/20/east-timor-torture-and-mistreatment-police>

assisting local (community) policing methods training through the UN Police program 'Operation Serene', the PNTL hierarchy needs to promote a culture more flexible and discerning in its ability when to use arbitrary force or not.¹⁴⁵ The use of non-lethal weapons in daily policing, in conjunction with mandatory SOPs providing stringent accountability measures (i.e. daily log book), would decrease the propensity for torture and ill-treatment. This would not remove all cases of individual criminality, however it would make it more difficult for officers to commit human rights violations.

Standard Operating Procedures (SOPs)

As shown in the below figure, 64% of detention facilities do not have SOPs regarding the process of arrest. While SOPs in this area do exist and have been published, there is clearly a problem in terms of its distribution to all facilities.

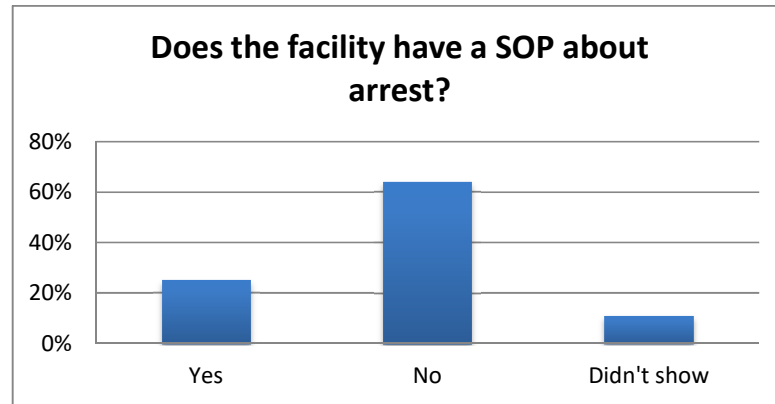


Figure 9 Percentage of facilities with arrest SOP

According to the SOP outlined in the PNTL Guidelines¹⁴⁶ and the Human Rights Standards and Practice for the Police in Timor-Leste¹⁴⁷, there are certain procedures that are involved in completing an arrest which include:

- Ensuring that you have reason to make an arrest, either in a *flagrante delicto* case, or based on a previous or emerging situation.
- Being conscious of the special situation when attending to situations involving the arrest of women and children.
- The seizure of the hand (in a humane and dignified manner, without the use of force unless strictly necessary; the rules of which are outlined in PNTL Organic Law) and the use of the phrase "to arrest you"
- Telling the person about the reasons for his or her arrest. The arrestee has the right to be informed of the reason for the arrest at the time of the arrest, and this should be said and done in a way that the person can easily understand.
- Promptly after the arrest, the arrested person has the right to be informed of any charges that will be filed against him.
- Promptly after the arrest, any arrested person has the right to access a lawyer, and must be provided with the opportunity to make contact with a legal representative.
- Promptly after the arrest, the arrested person has the right to notify family regarding their situation, including where they are currently being detained.

¹⁴⁵ Nautilus Institute for Security and Sustainability, ADF: current operations in Timor-Leste, <https://nautilus.org/publications/books/australian-forces-abroad/east-timor/adf-current-operations-in-timor-leste-east-timor/>

¹⁴⁶ Section 4.1.3, Livro Mata Dalam Ba PNTL.

¹⁴⁷ UNMIT, *Padraun no Pratika Direitus Umanus nian ba Polisia iha Timor-Leste* (2008).

The PDHJ found that 68% of facilities do not currently have an SOP on detention (as shown below). While SOPs in this area do exist and have been published, there is clearly a problem in terms of its distribution to all facilities.

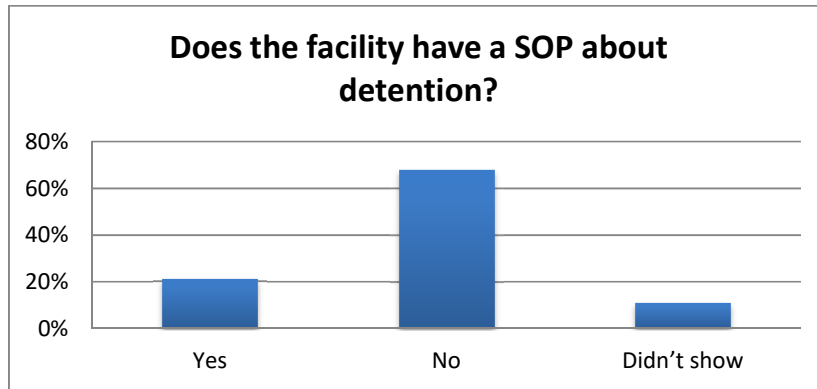


Figure 10 Percentage of facilities with detention SOP

The Standard Operating Procedure regarding detention is outlined in the Human Rights Standards and Practice for the Police in Timor-Leste.¹⁴⁸ It outlines the rules and procedures that should be followed by PNTL, which include, but are not limited to the following:

- Regular checks on detainees should be conducted to ensure their safety and security
- Study the PNTL Organic Law on the use of force
- Adult and children should be separated while detained
- Men and women should be separated while detained
- Detainees must be informed of what they've been accused of, and the reason for their detention
- Detainees have the right to contact and receive visits from their family, and communicate with a legal representative
- All detainees have the right to submit a judicial review, to ascertain whether their detention is legal or not
- All detainees have the right to consult medical personnel
- Deliver a report immediately if any ill-treatment, physically or mentally, of detainees is suspected
- Never use confining instruments as a form of punishment. These instruments should only be used to prevent escape during transfer, for medical reasons that have been certified, or due to an order from the Director, or when other methods have failed to prevent the injury of the detainee or other persons.

This SOP also outlines the procedures in order to protect the rights of children and women while in detention. For example, the detention of children should be used only as a last resort, and should last as short a time as possible.

Interviews with detainees

Throughout the monitoring process, PDHJ was only able to interview three detainees. This is due to the fact that monitoring is conducted on a 'surprise' basis, which does not guarantee the presence of a detainee at the time of monitoring. At the time the interviews were conducted, the detainees had been detained for 48 hours, 62 hours and 12 hours respectively; all of these times adhered to the current law, which states a maximum of 72 hours in detention before a hearing.

Access to Legal Assistance

Some issues were raised in relation to the access to legal assistance for one of the detainees, who was not informed of their right to contact a lawyer while detained. UN Principles require that the accused have the assistance of a legal representative. He or she should be informed of this right by the competent authority promptly upon arrest.

¹⁴⁸ UNMIT, *Padraun no Pratika Direitus Umanus nian ba Polisia iha Timor-Leste*, UNMIT (2008).

The UDHR and ICCPR state that all arrested or detained persons shall have adequate opportunity to communicate with that representative.¹⁴⁹

There is currently a presence of Public Defenders in Baucau, Maliana, Oecusse, Suai and Dili, as these municipalities contain a Public Defenders Office. However there are only 5 of the 13 municipalities where detention facilities provide legal access for detainees, leaving eight without appropriate access to legal representation and information.

Cell observations

One of the systemic issues that PDHJ uncovered through their detention facility monitoring, was the lack of separation between detainee categories due to the misuse of cell areas. Such categories include gender, age and type of crime (i.e. violent or non-violent). The Human Rights Standards and Practice for the Police in Timor-Leste maintains the importance of separation of men and women, and adults and youth.

As shown in the below graph, 30% of detention facilities currently only have one cell in use.

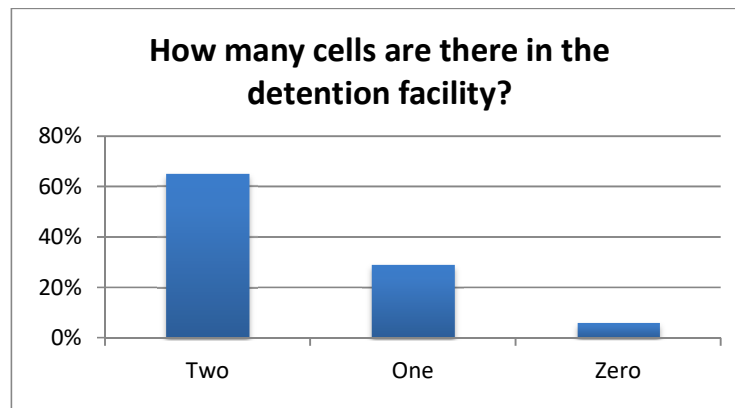


Figure 11 Number of cells in detention facilities

While all detention facilities are equipped with two or more cells, PDHJ found that many cells are being used as storage rooms for items such as evidence and PNTL equipment.

Light and Ventilation

UN standards require detention accommodation to meet certain health conditions, climatic conditions, cubic content of air, lighting, heating and ventilation¹⁵⁰. As observed, 34% of cells do not have electricity. 42% do not have electricity, however light is present due to the existence of a window/windows. 24% of cells do contain electricity.

Access to Water

International standards maintain that water should be permanently available to every detainee whenever he or she needs it.¹⁵¹ PDHJ found that 73% of detention facilities do not contain access to water in the cells where detainees are held. 27% do have direct access to water, either from a tap (21%) or a form of hose (6%). Considering that Timor-

¹⁴⁹ UDHR, article 11; ICCPR, article 14, para 3.

¹⁵⁰ United Nations, *Standard Minimum Rules for the Treatment of Prisoners*, Article 10, 30 August 1955, https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf

¹⁵¹ SMR Article 20.2.

Leste's temperatures does seldom drop below 30 degrees celsius, and also that many of the prisons are concrete, conditions can and do get stifling hence requiring access to water.

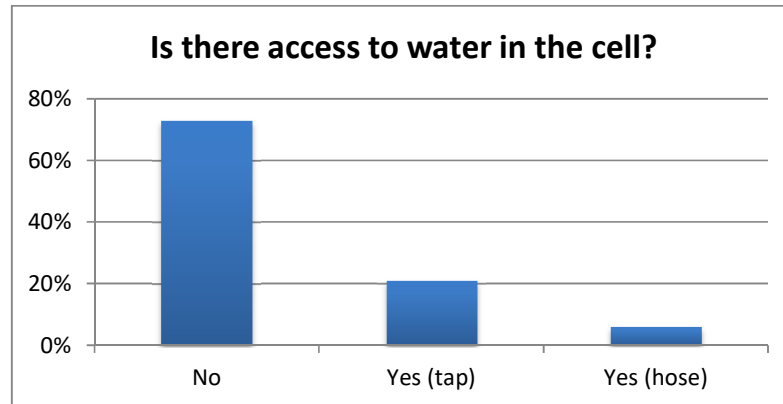


Figure 12 Access to water in cells

Document Checks

Complaint procedure

Only 7.5% of facilities claimed that they had SOPs regarding the issue of detainees making a complaint. This is a very low percentage, despite the fact that international standards state that every person deprived of their liberty shall have the right to make a complaint regarding his or her treatment.¹⁵²

Registration Book

While 78% of detention facilities were found to have a registry book, 22% reported that they do not. It was found that those facilities that do contain registry books, are made individually by the Commanders, and are therefore not uniformed or standardised. Registry books are intended to record basic details of who is coming in and out of the facility, such as detainee's names, ages, gender, time of submission and offence.

According to 13.3.7 of the PNTL Guidelines,¹⁵³ after an arrest is made of a person suspected of committing an offence, the police must obtain information that explains the situation of the arrest.

Information that should be recorded must include:

- Details from the arrestee
- Proof of identity and where the arrestee lives
- Details from the police member who made the arrest
- Process of identification
- Facts relevant to the case
- Declaration from a lawyer
- Attach name of the witness and their details
- Reports from any people who witnessed the arrest
- List of proof / evidence
- Report about arrest
- Declaration from Police
- Declaration from witness

Without these details, it is difficult to collect baseline data, such as the quantities of detainees being housed, for what period of time and in which Administrative Post. It is also important for judicial reasons, in terms of documenting arrest records.

¹⁵² Principles on Detention or Imprisonment, principle 33.

¹⁵³PNTL, Livro Mata Dalam Ba.