



Challenges on the Execution of Law and Order in Terms of PNTL Action
Mahein's Voice No. 70, 20 February 2014



Report of Fundasaun Mahein's voice is supported by the People of America Through the United State Agency for the International Development (USAID) and The Finland Embassy in Jakarta

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Introduction

There have been many previous reports particularly from the National and International Organization that have strongly questioned the National Police of Timor-Leste's (PNTL) over actions that have violated law and order. These reports have raised various arguments and recommendations from the aspects of politics, law and human rights.

From Fundasaun Mahein's monitoring it has become apparent that the Timorese public is still questioning the PNTL's actions that have violated the laws and regulations of the state. Because these actions seem to be the result of officer's following orders, other arguments and concerns from public have been about the lack of training by Police officers and their commanders in the law and in human rights. This has led to calls for more intensive training in the use of force among all levels of the police force. These concerns have now become a challenge for the PNTL to face whenever they are now deployed and are increasingly forcing them to obey the mission which has been defined by constitution and the laws of the nation

In this report, analysis is focused on the execution of law and order in terms of PNTL actions which have been based on the competency and training of the Police Officer's themselves. It also analyzes when force should be used based on the challenges that have confronted the PNTL thus far.

Methodology

The methodology that has been adopted in this report is from the discussion group called the Security Sector Discussion (SSD), involved by components of the PNTL and civil societies that work for human rights and justice. This report is the result of the monitoring of the PNTL actions in the field thus far including reports from the National Organization and media coverage.

Judgment in at the Scene

At the start of 2014, reports in the national media, that echoed what was becoming part of the national discussion, were being released over some of the PNTL's actions that had killed people and where physical aggression against the victims had occurred. Fundasaun Mahein considers that such actions done in this manner are indicative of unprofessional duties in the field.

In the past many cases against members of the PNTL allegedly involved such actions which were not proportional to the situation. Worse was that the using of weapons was not based on necessity from which the members of the PNTL have themselves become suspects in any action. It is necessary that any actions that the PNTL undertake have the legal basis and should be consistent with the threat they face.

As an example, on the 31st May 2013 in Audian-Dili area, a task force member (PNTL)

hit a member of the National Parliament (PN) from Fretilin; Manuel Castro. This case took place when this member of the National Parliament tried to calm down the PNTL member who had hit a youth in Audian. Currently some of the members of the NP and civil society organizations are strongly arguing that in this action the PNTL member has violated the legal procedures which have been written on the constitutions and laws.¹

Reports from the Justice Security Monitoring Program (JSMP) observed that PNTL did not work professionally because the human rights violence always occurred in their actions against civilians. These facts have shown through cases and concerns raised by the members of the national parliament, as well as from the report of human rights institutions such as the Ombudsman (PDHJ), Amnesty International and local NGOs.²

Another case is that a member of the PNTL shot dead a youth in Balibo. This case took place on the 3rd January 2014 in Balibo sub-district, Bobonaro district, during a conflict between youth and police. In this incident some of the members PNTL shot dead a victim, Leao Gama, from this district at 02:00 Am. However, based on the information given, the victim was revealed to have had a mental condition for almost two years;³ eventually the court absolved the suspect.⁴

Another case is that a member of the PNTL of Becora station shot dead a victim, Armindo Pereira Soares, on the 16th of July 2012 in Hera. This occurred when some members of the PNTL went to Mota-Ki'ik hamlet to calm down a tense situation. Testimonies at the event affirmed that without warning these police got of their car and shot at random, after which one of the members carried the victim came down from the hamlet to the car where the suspect Mariano was waiting. When the victim got on the car, eyewitness testimony reports that the suspect Mariano loaded his pistol and then shot the victim in the stomach.⁵

When Should Use Force and How?

¹ MPJS (05 June 2013). Press Release of Monitoring Program of Judicial System – MPJS. Can access in. <http://jsmp-pop.page.tl/Komunikadu-Imprensa.htm>. FM accessed on 19 February 2014.

² MPJS (05 June 2013). Press Release of Monitoring Program of Judicial System – MPJS. <http://jsmp-pop.page.tl/Komunikadu-Imprensa.htm>. FM accessed on 19 February 2014.

³ May. (10 January 2014). SIKN had investigated member of the PNTL who shot dead Leão. <http://www.indiario.com/2014/01/10/sikn-investiga-ona-oknum-pntl-neebe-tiru-mate-leao/>

⁴ May. (19 February 2014). Tribunal absolved the suspect of Balibo Balibo case. Nasional Diariu Newspaper.

⁵ Myn. (26 June 2013). Prove of the Shot Dead Armindo Soares, Member of the PNTL Imprisoned 16 years. <http://www.diariutimorpost.tl/berita-772-prova-tiru-mate-armindo-soares--membru-pntl-tama-prizaun-tinan-16---.html>

From these challenges that we have highlighted in this report an analysis can be done based on the law and regulations of the PNTL. This report will also see if legislation governing the security sector have been defined to note in which cases it is acceptable for Members of the PNTL to use force, and if so the amount of force that is legal.

Based on the organic law of PNTL, the roles and responsibilities of the PNTL are to: maintain order, security and ensure public tranquility. They are also tasked with having competency over criminal prevention and acts against the laws and regulations of the country.⁶

These competencies that the PNTL has defined as well as the mechanisms in place to safeguard any abuse of power by the PNTL should make clear that the PNTL exist as the exclusive mechanism by which applicable laws and constitutional rights are upheld.⁷

The Mechanism and competencies that the PNTL has defined, as well as article 4 of the organic law of the PNTL, define that: based on the law, PNTL can use force when there is a disturbance or a violent situation and no other means exist to disarm or subdue the people who are not obeying the the law or are against the PNTL. Force can be used for self-defense or to defend other people against any aggressive actions that are breaking the law or are threatenng the integrity of the PNTL. Force that is used should be necessary in order to re-establish law and order and should be proportional against any threats. The PNTL should not use force or to threaten to use force if it is not a necessity.⁸

The decree law No. 43/2011, 21st September of the Juridical Regime over the usage of forces, on the article 4 about using of force which is stated;

1. *The responsibility of civil servants for the application of the law will only use force in whatever situation which is permitted by the law, especially in the case of legitimate defense or detention admitted by law.*
2. *The use of force should be done in a reputable and disciplined manner*
3. *Only use forces if it is really needed but insist to obey the legal duties.*
4. *The PNTL shall use a minimal amount of force and will only increase the force if the amount of force is not sufficeint to calm the situation*

As written by the organic law of PNTL and the decree law No.43/2011 - 21st September in using forces, stated that the use of force should be proportional, accountable and

⁶ Article 2, Number 1 to 2 part a to w. Decree Law No. 09/2009, on 18 February 2009, Organic Law of PNTL's.

⁷ Article 2, Number 1 no 2. Decree Law No. 09/2009, on 18 February 2009, Organic Law of the PNTL's.

⁸ Article 4, Number 1 to 4. Decree Law No. 09/2009, on 18 February 2009, Organic Law of the PNTL's.

based on necessity. First, it should only be used with the specific intention against people who cause conflict. Secondly, to oversee the use of force according to the necessity in the field. For example the use force against any demonstration should first be based on the procedures and internal controls possessed by the police and should not immediately resort to the use of force. Thirdly, the final decision to use force or weapons to respond to a situation but should be based on existing laws and legislation.

Using force proportionally would signify handling the situation with balance. This means to act against any situation the PNTL should first observe the level of the problem or threat so the police can calculate the amount of force to use.

Using force should have its place legally however using force should be based on the law. If the use of force is based on the laws of the nation the law itself will protect you but if the use of force is not based on the law, the law itself will condemn you.

Accountability; whenever a member of the police uses force they should write a report in order justify this use of force. For example; a member of the PNTL uses a stick to resolve a situation, this police officer should write the reason why he/she used the stick and also why the use of force was appropriate. If a member of the PNTL does not write why he/she has used force in a certain circumstance, this could implicate their action as using unreasonable force. Some important things that the officer should write in their report are: time of action, where, what reason, with whom and how.

Necessity: all force should be used according to the necessity of the situation and not according to their wishes. This means only in certain circumstances should the police officer use force. It is also very important to note the police officer's approach, for example only using a weapon in a threatening situation, and afterwards for the officer to write a full report in order to justify that any actions that have been made are completely necessary.

If these processes that justify the use of force are ignored the consequence may be that the police will themselves become the suspect in any case where force has been used and will lead to the loss of the legitimacy of the PNTL. Fundasaun Mahein's observation thus far is that the members of the PNTL have obeyed the orders by their commanders but have been condemned for following these orders.

As an example, the incident that took place on July 16th 2012 in Hera resulted in a student, Armindo Pereira, being killed. The officer responsible for the killing was in turn found arrested and found guilty by the court. However in this incident the suspect argued that he had only executed his commander's order. If this is the case the responsibility

lies with the commander for the death of Armindo Pereira. Finally in this case the member of the PNTL who carried out the shooting thus became the victim.⁹

Ironically, as part of the process after the shooting of the late Armindo Pereira, an interview was held with the Dili district commander. On the press conference the commander, superintendent chief Pedro Belo disagreed with the verdict of the Public Ministry that sentenced his member to 12 to 25 years.¹⁰ Hence the commander should be responsible for his action because of the use of force was not proportional, legally, accountable or necessary.

Summary Recommendations

Recommends to the Secretary State of Security (SES) and PNTL General Command to evaluate the prior trainings and also to intensify the training received in the nations law and in human rights. It is also very important that the laws regarding the use of force are extended to the Special Police Unit (SPU) and Task Forces.

⁹ MPJS (05 June 2013). Press Release of Monitoring Program of Judicial System – MPJS. Can access in. <http://jsmp-pop.page.tl/Komunikadu-Imprensa.htm>. FM accessed on 19 February 2014.

¹⁰ Myn. (26 June 2013). Prove of the Shot Dead Armindo Soares, Member of the PNTL Imprisoned 16 years. <http://www.diariutimorpost.tl/berita-772-prova-tiru-mate-armindo-soares--membru-pntl-tama-prizaun-tinan-16---.html>

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