



Reporting Criminal Cases Through Correct Legal Channels

Mahein's Voice No. 73, March 20th 2014



This report is supported by the people of America through the United State Agency for International Development (USAID) and Finland Embassy in Jakarta

The opinions expressed in this publication do not necessarily reflect the views of the United States Agency for International Development (USAID) or the views of the Finland Embassy.



Website: www.fundasaunmahein.org

Contents

Introduction	3
Methodology	3
Which Institutions hold the authority to receive criminal cases?	3
Why do victims report their cases to the National Parliament?	4
Conclusion	7
Recommendations	8
Bibliography	9

Introduction

In Timor-Leste, victims often do not report crimes that have been committed according to the process as outlined by the penal code process of Timor-Leste article 49, which states that the eligible institutions that have the legal legitimacy to receive criminal cases are the Public Ministry, the Police¹ authorities, as well as the ombudsman (PDHJ) under the Republic Democratic Constitution of Timor-Leste.²

Some national media outlets have reported cases in which victims have presented their case to the National Parliament-NP, the Prime Minister office as well as to the Republic President's Office. Victims often choose to present their cases to the National Parliament because they believe they will receive a quick response and initiate public debate about their case.

Bringing legal cases to Parliament has become a habit for victimized individuals and communities. Fundasaun Mahein (FM) monitoring has documented that communities sometimes present their case and seek support from the members of the National Parliament not directly to individual members but through commissions and parliamentary benches. The majority of the cases presented by communities were criminal cases, and the majority of them included involvement from security authorities as well.

Methodology

The Methodology applied by FM in this analysis is the recollection of information and literature based on official documents, interviews, media publications, discussion inside the FM team (referred to as "Security Sector Discussions"-SSD), and monitoring in the field.

The content of this report discusses what government bodies are responsible for receiving criminal case reports and why victims so often present criminal case reports to the National Parliament. This report will detail current examples of cases reported to the National Parliament, and offer recommendations to the relevant institutions such as National Parliament, the ombudsman's office, the PNTL, and other relevant government institutions.

Which institutions hold the authority to receive criminal cases?

The constitution of Timor-Leste article 132 defines the responsibility for handling penal action as belonging to the Public Ministry, to act as the state's judicial organ to conduct the penal process against people violate the law, as outlined in the Penal Code Process

¹ RDTL. (2009). Legitimate. Part 3. Penal Code Process.p15.

² Assembly of Constituent. (2002). The Ombudsman's. Article 27 Part 2.Konstitution.p14.

(PCP) article 48 part 2, which states that only the Public Ministry has the authority to receive criminal cases and initiate the judicial process.³

PCP article 52 discusses police jurisdiction. The PNTL has an obligation to receive criminal case reports and register them with the Public Ministry for processing. The Public Ministry then initiates the judicial process, and is supported by the PNTL, which investigates the case and collects evidence.⁴ Therefore, cases reported to the police will follow legitimate procedures.⁵

The ombudsman (Provedoria Diretus Umanus no Justisa- PDHJ) as mentioned in the constitution of RDTL article 27, has the power to receive reports of criminal cases from the public. If the ombudsman cannot handle the case, the office can refer victims to the appropriate institutions to handle their case.⁶

The constitution and the penal code clearly state that criminal cases should be reported to the Public Ministry, Police, or PDHJ office. In practices, however, many victims bring their cases directly to the National Parliament and other institutions, which are not responsible for handling criminal complaints or human rights cases.

FM's monitoring has uncovered legitimate concerns that cause community members to report criminal cases to National Parliament instead of through the correct legal channels, such as through the PNTL.

Why do victims report their cases to the National Parliament?

A major factor causing victimized communities to present their cases to the National Parliament and other government institutions not related to justice is the fact that they have no confidence in the PNTL. This lack of confidence stems from PNTL actions that have damaged the organizations reputation, including instances of PNTL illegal activity that have negatively affected communities and irrevocably damaged community perception of the PNTL as an entity.⁷

A report published by the United Nations Organization for Human Rights and Transit Justice Units (UNMIT) raised questions regarding the strong ambivalence of communities to present criminal cases to PNTL. Community members are afraid to bring cases to the PNTL, especially when cases involve PNTL members, as they fear the

³ RDTL. (2009). Public Ministry's Attribution of Penal Code Process.p14.

⁴ RDTL. (2009). The Police Main Power. Penal Code Process.p15-16.

⁵ Rozario da Costa, Benvinda (19 February 2014). Suai District Prosecutor; Private Interview.

⁶ RDTL; (2002). The Ombudsman's. Article 27 Part 2. Constitution. p14.

⁷ May. (21 January 2014). NP Affirmed: People more Trust PM rather than PNTL. Diariu Nasional Newspaper. Can Access Here; <http://www.indiario.com/2014/01/21/pn-afirma-povu-fiar-liu-pm-duke-pntl/>

PNTL will end their case without delivering justice.⁸ Furthermore, cases involving PNTL members often are investigated with no transparency from investigators.⁹

The examples outlined above have contributed to community distrust of the PNTL and contributes to the hesitation of victims to present their cases to the PNTL. They perceive the PNTL of having little commitment to carrying out the legal process thoroughly.¹⁰ If such distrust continues, community members will continue to bring their cases to the National Parliament instead of the PNTL where they believe their concerns will be responded to.¹¹

In line with the examples given above, more cases are outlined below to serve as examples of communities presenting criminal cases to the National Parliament and other state bodies unrelated to the justice sector.

In one case, the family of Leão Gama brought her case to the National Parliament after a member of the PNTL fatally shot her in Balibo.¹² In another case, the village chief of Maleborok, Camea village brought his case directly to the National Parliament after a PNTL member physically assaulted him. The family of Leão Gama took their case to National Parliament committee B because the autopsy process for the body was taking a long time.¹³ In another case, the family of Mateus da Silva brought his case to the National Parliament in October 2013 because they were dissatisfied with the way authorities were handling the investigation of his apparent suicide-hanging in Becora prison.¹⁴

⁸ Security Council. (12 February 2010). Report by the Secretary General over the United Nations Integrated Mission in Timor-Leste.

http://www.laohamutuk.org/reports/UN/UNDocs/2010/SGRept10_85Te.pdf

⁹ TS. (22 February 2011). Suspiciously PNTL Protecting its Members, Ligia Hulan Questioned to Parliament . <http://temposemanaltimor.blogspot.com/2011/02/deskonfia-pntl-proteze-ninia-membru.html>

¹⁰ UNMIT. (30 June 2010). Periodically Report over Development of Human Rights in Timor-Leste.

¹¹ Pinto, Silveiro. (14 February 2014). Assistant of Ombudsman-PDHJ. Private Interview

¹² Alm, Ina. (09 January 2014). Died with Gun, Family Present case to the National Parliament. Diariu Nasional Newspaper. Can access here; <http://www.jndiario.com/2014/01/09/mate-ho-kilat-musan-familia-keixa-ba-pn/>

¹³ Alm, Ina. (09 January 2014). Died with Gun, Family Present case to the National Parliament. Diariu Nasional Newspaper. Can access here; <http://www.jndiario.com/2014/01/09/mate-ho-kilat-musan-familia-keixa-ba-pn/>

¹⁴ Alm. (16 October 2013). Mateus in Prison, Family insisted for Investigation. Diariu Nasional Newspaper. Can access Here <http://www.jndiario.com/2013/10/16/mateus-iha-prizaun-familia-husu-investiga/>

Another case took place in September 2013 involving a victim by the name of Inocencio. Inocencio was hit by a member of the F-FDTL in Dili, and in response his family brought the case directly to Prim Minister Xanana Gusmão.¹⁵ In 2011, a victim by the name of João do Rego, who is the village chief of Maleborok, Camea village, presented his case directly to the National Parliament committee B after he was hit by member of PNTL.¹⁶ In a separate incident in August 2011, Odete Varela was hit by member of PNTL in Baucau district; she presented her case to the National Parliament committee B after sustaining serious injuries from the attack.¹⁷

Another disincentive for communities to present cases to the PNTL is the long response time the PNTL shows in investigating cases. Even worse is the fact that community reports of cases involving PNTL members are often not investigated thoroughly, and sometimes not at all. In the latter cases, victimized the communities sometimes consider the of PNTL as an organization to be responsible for the criminal acts in question, and so they prefer to go directly to the National Parliament as a result.¹⁸

During 2012 and 2013 Fundasaun Mahein received reports of some cases involving victims who received criminal aggression at the hands of PNTL and F-FDTL members. One such case involves a victim named Salomão Bere. He reported his case on July 2013, but to date there has been no progress made on his case.¹⁹ Another case involves a victim named Ligia, who was the wife of a PNTL member from the Immigration Unit. She reported her case of domestic violence at the hands of her husband to the National Parliament after realizing that the PNTL's handling of the case was moving too slowly.²⁰

¹⁵ TS. (05 September 2012). Inocencio Met Xanana on the spring bad because suspiciously got aggression by soldier of F-FDTL. <http://temposemanaltimor.blogspot.com/2012/09/inocencio-hasoru-xanana-ihakulisaun.html>

¹⁶ Mx. (04 October 2011). Chief Hamlet presents Case to the National Parliament. http://partidocnrt.com/index.php?option=com_content&view=article&id=567:xefe-adeia-maleborok-hatoo-keixa-ba-komisaun-neebe-maka-trata-asuntu-seguransa-no-defeza&catid=32:nasional&Itemid=47

¹⁷ Da Silva, Domingos. (26 August 2011). PNTL Tortured the PNTL Agent Nunu de Deus's Wife. <http://www.cjilt.org/cjilttimor-today/cjilt-flash/725-pntl-halo-torturasaun-ba-ajente-pntl-nunu-de-deus-nia-fen>

¹⁸ TS. (22 February 2011). Suspiciously PNTL Protecting its Members, Ligia Hulan Questioned to Parliament . <http://temposemanaltimor.blogspot.com/2011/02/deskonfia-pntl-proteze-ninia-membru.html>

¹⁹ Bere, Salamão. (05 March 2014). Victim of the Physical Aggression by Member of PNTL Task Force. Private Interview.

²⁰ TS. (22 February 2011). Suspiciously PNTL Protecting its Members, Ligia Hulan Questioned to Parliament . <http://temposemanaltimor.blogspot.com/2011/02/deskonfia-pntl-proteze-ninia-membru.html>

In some instances, PNTL members who have family members who were mistreated by other PNTL members present the case directly to the National Parliament. One example is PNTL agent Nunu de Jesus, who presented a case to the National Parliament in which his wife Odete Varela was hit by a PNTL member from Baucau.²¹

Community members prefer to report their cases to politicians rather than to judiciary institutions because of a simple reason: they have lost confidence in the PNTL to investigate their reports in a timely and unbiased manner.

Conclusion

The Constitution of the RDTL and the penal code state that the Public Ministry is responsible for handling reports of crime. As the Public Ministry represents the state in prosecuting criminal actors, only the Public Ministry has the authority to receive criminal cases and initiate criminal processing.

However, many victims still prefer to present their cases to politicians as they believe they will get a better response from them. The intervention of politicians into the investigative process of law enforcement authorities will only decrease community confidence in the PNTL's ability to independently handle cases.

Public distrust of the PNTL is caused by a lack of understanding of the PNTL's procedure when investigating crimes in which PNTL members were involved. So when any member of the PNTL is involved in a crime, victims will avoid the PNTL and seek justice through other channels, such as the National Parliament. However, the proper organization to report crimes involving PNTL members is the Criminal Investigation and Justice Department within the PNTL.

The National Parliament must also remember that it is not a judicial institution. Ironically, in many cases where victims present their cases to National Parliament members, those members become spokesmen for the case in question. Instead, however, National Parliament members should respect the judicial process and refer victims to the appropriate state institutions to report their case properly.

²¹ Da Silva, Domingos. (26 August 2011). PNTL Tortured the PNTL Agent Nunu de Deus's Wife. <http://www.cjitl.org/cjitltimor-today/cjitl-flash/725-pntl-halo-torturasau-ba-ajente-pntl-nunu-de-deus-nia-fen>

Recommendations

1. Recommend to the National Parliament (NP) members not to act as the spokesperson for victims who are seeking justice in a criminal case. NP members should instead immediately notify the Public Ministry of the case. The National Parliament must remind victims that it is not a judicial institution, and should refer victims to the correct institutions to handle their cases.
2. Recommends to the National Parliament committee A, the Ministry of Justice, Ombudsman, and the PNTL, to organize a campaign to educate the public about how to seek justice for criminal cases and what institutions people should utilize.

Bibliography

- Alm, Ina. (09 January 2014). Died with Gun, Family Present case to the National Parliament. Diariu Nasional Newspaper. Can access here; <http://www.jndiario.com/2014/01/09/mate-ho-kilat-musan-familia-keixa-ba-pn/>
- Alm. (16 October 2013). Mateus in Prison, Family insisted for Investigation. Diariu Nasional Newspaper. Can access Here <http://www.jndiario.com/2013/10/16/mateus-iha-prizaun-familia-husu-investiga/>
- Bere, Salamão. (05 March 2014). Victim of the Physical Aggression by Member of PNTL Task Force. Private Interview.
- Da Silva, Domingos. (26 August 2011). PNTL Tortured the PNTL Agent Nunu de Deus's Wife. <http://www.cjtitl.org/cjtitltimor-today/cjtitl-flash/725-pntl-halo-torturas-aun-ba-ajente-pntl-nunu-de-deus-nia-fen>
- Constitution of Republic Democratic Timor-Leste
- Penal Code Process of Timor-Leste. 2009
- Monteiro, Armando. (11 February 2014). Commander of the National Operational – PNTL. Private Interview
- Mx. (04 October 2011). Chief Hamlet presents Case to the National Parliament. http://partidocnrt.com/index.php?option=com_content&view=article&id=567:xefe-adeia-maleborok-hatoo-keixa-ba-komisaun-neebe-maka-trata-asuntu-seguransa-no-defeza&catid=32:nasional&Itemid=47
- May. (21 January 2014). NP Affirmed: People more Trust PM rather than PNTL. Diariu Nasional Newspaper. Can Access Here; <http://www.jndiario.com/2014/01/21/pn-afirma-povu-fiar-liu-pm-duke-pntl/>
- Pinto, Silveiro. (14 February 2014). Assistant of Ombudsman-PDHJ. Private Interview.
- Rozario da Costa, Benvinda (19 February 2014). District Prosecutor of Suai. Private Interview
- Security Council. (12 February 2010). Report by the Secretary General over the United Nations Integrated Mission in Timor-Leste. http://www.laohamutuk.org/reports/UN/UNDocs/2010/SGRept10_85Te.pdf
- TS. (22 February 2011). Suspiciously PNTL Protecting its Members, Ligia Hulan Questioned to Parliament . <http://temposemanaltimor.blogspot.com/2011/02/deskonfia-pntl-proteze-ninia-membru.html>
- TS. (05 September 2012). Inocencio Met Xanana on the spring bed because suspiciously got aggression by soldier of F-FDTL. <http://temposemanaltimor.blogspot.com/2012/09/inocencio-hasoru-xanana-iha-kulisaun.html>
- UNMIT. (30 June 2010). Periodically Report over Development of Human Rights in Timor-Leste.