



The Joint Operation: Bad Practices in the Security Sector

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Photo: PNTL 2015

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Introduction

On 11th March 2015, the council of ministers approved a resolution to resolve the situation with the Maubere Revolutionary Council (KRM). Responding to the rebel group's actions on 8th March 2015, the government classified it as an organized attempt to destabilize the country and overthrow the government.¹

The first incident occurred in Lalulai on 9th March 2014; where two (2) members of the National Police of Timor-Leste (PNTL) received serious injuries. A similar incident occurred in Saelari on 15th January 2015, where a further 4 members of the PNTL were seriously injured and 2 pistols were seized by the rebels.

The most serious incident to date occurred at Bagaia police station, where on 8th March 2015, four (4) members of the PNTL were seriously injured. Rebels burned homes, cars, motorbikes, and other materials belonging to both the police and the community.²

The government responded to the incidents by articulating its position, categorizing the KRM as an illegal group using organized crime for the purpose creating instability in the young nation. The government adopted a joint act of defense and security forces based on terms No.3 article 36, law number 2/2010 of the national security law.

The law forbids the existence of groups, associations or organizations with the military or paramilitary characteristics, as approved by the council of ministers in resolution No. 11/2015 on the 11th March 2015.³ The government will resolve according to terms on line c), number 1 article 150 of the Democratic Republic Constitution of Timor-Leste (RDTL) of the national security.

Fundasaun Mahein (FM) strongly supports the impetus behind the Joint Operation: to restore order and will ensure peace and calm for the country. However, recent incidents have made many individuals and communities feel insecure, while also impeding public movement and economic activities. Concerns have been raised that the ongoing Joint Operation does not abide by the rules and fundamental rights laid out in the constitution.

¹ The Government Resolution No. 11/03/2015

² The Government Resolution No. 11/03/2015

³ The Government Resolution No. 11/03/2015

Methodology

The methods used to compile this report focus on the analysis of the ongoing operations measured against government resolution No. 11/03/2015 of the national legal framework, the Constitution of RDTL, the National Security and Defense laws, the Internal Security Law, and the Command Assistant Circular. To conclude this report Fundasaun Mahein (FM) convenes a panel of experts called a Security Sector Discussion (SSD).

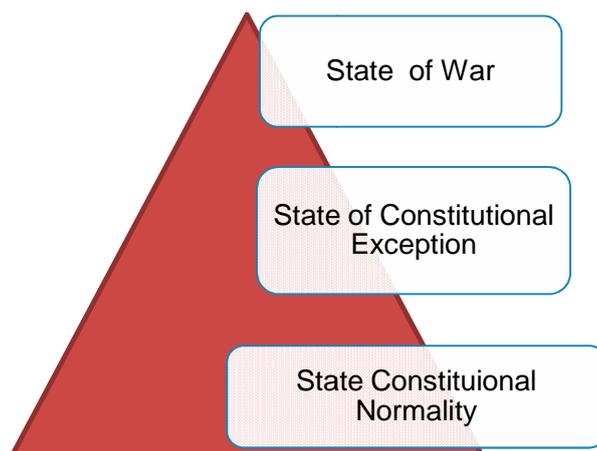
This report's purpose is to explain the nature of the current operation and its fundamental objectives, the rules regarding use of force during the operation, as well as the national security policy. Finally, the recommendations and the apprenticeship lessons of the previous operations in Timor-Leste.

Circumstances Leading to the Joint Operation

There has been much concern among the general public regarding the operation against the illegal groups in Baucau municipality. The operation has been referred to in the media as *the state of siege or the state of emergency*.

The graphic below attempts to answer the above concerns according to the constitutional order in terms of the security and defense forces operation and their nature.

Graphic 1: The Security Situation and its Circumstances



Source: Constitution of the RDTL



In the history of national security in Timor-Leste, the *State of Constitutional Exception* has only been declared once prior, in 2008 against the rebels group who attacked the president and the prime minister. This event has been referred to as “The 11th February Assassination”, and the operation itself called “Operation Friendship”.⁴

To explain the above graphic, “*State of War*” signifies a state of war where, there is threat from abroad, or any situation that threaten’s the state’s sovereignty. According to the constitution, only the president has the power to declare wars with the government’s consent, and requires the national parliament’s approval after a hearing from the State Council and the Supreme Council for Defense and Security.⁵

State of Constitutional Exception signifies “*State of Siege or State of Emergency*”. It can be declared in response to imminent or ongoing aggression from foreign forces, or unrest or the threat of unrest in a concentrated effort to undermine the democratic constitutional order. According to article 25 of the Constitution of Timor-Leste,⁶ the state of siege or state of emergency can be declared only by the national parliament’s authority, after hearing the State Council and the Supreme Council of Defense and Security.⁷

State Constituional Normality signifies the nation is at peace. Instances of crime or unrest shall be delt with while maintaining all of the fundamental rights of the people enshrined in the constitution.

The *State of War* and the *State of Constitutional Exception* involve the suspension of fundamental rights and freedoms in a situation where such actions are perceived to be necessary to preserve stability. The suspension of rights last for a period of 30 days, yet can be renewed as long as the situation requires.⁸

Some civil society organizations, as well as the Ombudsman of Human Rights and Justice (PDHJ), have expressed concern that during the operation there have been several instances of excessive use of force. These concerns have been echoed by the community; FM received

⁴ Atentadu 11 February assassinated in 2008 by the Group of Alfredo Reinaldo Alves wounded the Republic President Dr. Jose Ramos Horta at his residence Meti-Aut, Dili and attacked against a convoy of the Prime Minister in Balibar Dili, led by Gastão Salsina. Alfredo Reinaldo Alves died at the scene with his other man. Meanwhile the security guard of the Republic President is wounded and the car of the Prime Minister shot blasted by Salsina’s group.

⁵ Constitution of the Republic Democratic of Timor-Leste. Article 85) line h).

⁶ Look on the Constitution of the Republic Democratic of Timor-Leste. Article 25, No. 1) to 6).

⁷ Constitution of the Republic Democratic of Timor-Leste. Article 85) line g).

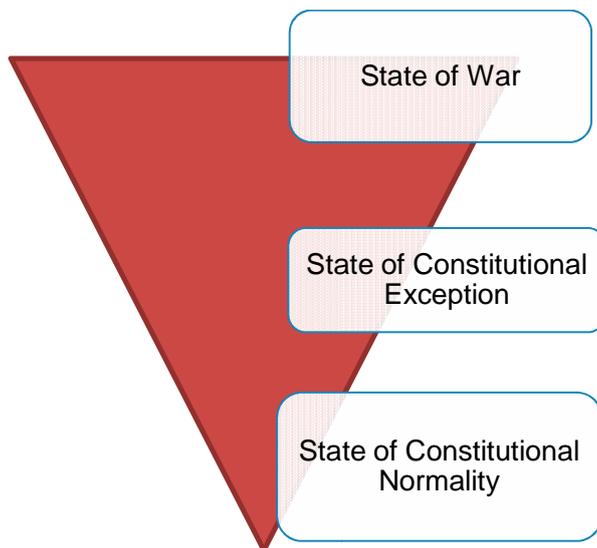
⁸ Constitution of the Republic Democratic of Timor-Leste. Article 25).

several claims from the communities in Baucau during the 2014 HABELUN operation.⁹

Regarding the communities' cases, security authorities informed them that the state conducted the operation using the amount of force it deemed necessary. Therefore, have taken place in the environment of limited constitutional application characterizing the State of Emergency.¹⁰

The following graphic illustrates the use of force in the cases mentioned above about the State of Constitutional Exception.

Graphic 2: Using forces from the security authorities on the previous operations



Source: The research outcomes of Fundasaun Mahein (FM) 2014.

FM is concerned by the numerous reports of excessive use of force by police and military personnel. In many cases, people who were identified as members of the rebel group by rumors or heresay have been arrested by authorities and detained without due process. Even as the operation's intention is to restore the public order and safeguard stability.

⁹ Friendship Operation: Reintegrate or Threats? Available at: http://www.fundasaunmahein.org/wp-content/uploads/2014/06/MNL_Nu.80_26062014_Operasaunpdf1.pdf. Accessed on 20 March 2015.

¹⁰ Friendship Operation: Reintegrate or Threats? Available at: http://www.fundasaunmahein.org/wp-content/uploads/2014/06/MNL_Nu.80_26062014_Operasaunpdf1.pdf. Accessed on 20 March 2015.



FM believes that actions mentioned above are not ordered by the operational commander but rather result from initiatives taken by lower ranking security forces personnel in order to root out rebellious elements. Whatever their intentions, these actions are a violation of the law regarding the acceptable use of force.

HANITA's Operation Nature

The government has repeatedly asserted that the unrest represents a threat to the nation's stability. Therefore, the government needs to find an alternative resolution according to the RDTL constitution line d), no.1 article 115 of the government's competency to secure the public order and social discipline. Resolution no. 11/2015, issued on 11th March by the Council of Ministers identifies the current mission to "prevent criminal acts by illegal groups." The government justifies the joint action of the defense and security forces according to law no. 2/2010, over the national security law no.3) article 36.

Article 36), no.3 describes:

"...can establish task forces in order to make coordination and the operational commander from the entities participants have the national integrate security system, there is complement for the specific mission of the national security, when seek there is a serious situation that justifying posses reason to hold the operation."

Regarding the national frameworks mentioned, the police and military have formed a task force in order to coordinate operational command.

The resolution directs PNTL General Command and Chief of the Armed Forces to solve according to the resolution's order:¹¹

- a) *Aprovar o empenhamento operacional conjunto da PNTL e das FALINTIL-Força Defesa Timor-Leste (F-FDTL) de modo a prevenir e a reprimir a actuaçã criminosa de grupos ilegais que estão a causar instabilidade no país, arrives de operações conjuntas de actuação proporcional no uso da força;*
- b) *Encarregar o Comando Geral da PNTL e o Chefe Estado Maior General das Forças Armadas, de criar uma forças-tarefa, integrando a PNTL e as F-FDTL, a fim de dar execução às operações de segurança*
- c) *Instruir o Chefe Estado Maior General das F-FDTL e o Comandante Geral da PNTL para elaborar e propôr ao Conselho de Ministros as Regras de Empenhamento para a Força-tarefa;*
- d) *Instruir o Chefe Estado Maior General das F-FDTL e o Comandante Geral das PNTL para implementar com a maxima urgência a presente Resolução.*

¹¹ The Government Resolution No. 11/03/2015



Unofficial translation:

- a) Approve the appointment of a joint PNTL and F-FDTL operation in order to prevent the criminal acts of the illegal groups in creating instability for the country, the joint operations' act should apply proportional force.
- b) Orient the PNTL General Command and the Major General Chief of State of the F-FDTL to create a task force, integrating the PNTL and F-FDTL in order to execute the security operation and bring the situation to resolution.
- c) Instructions to the Major General Chief of State of the F-FDTL and the PNTL General Command to elaborate and present to the Council of Ministers over the appointment rules of the task force.
- d) Instruction to the Major General Chief of the F-FDTL and the PNTL General Command to implement the resolution with maximum urgency.

If past operations are any precedent, reports of civil society's organizations, PDHJ, and the complaint cases from communities concerned by the level of violence will be forthcoming.

Therefore, FM recommends to the operation of task-forces pay special attention to obeying the rules approved by the Council of Ministers, according to the law no. 2/2010 of the national security law article 7 on using force described below:

Article 7, Law of the National Security.

1. *Using force and threats by the defense force the security service will be in accordance with the constitution and the Convention of International Human Rights that apply in Timor-Leste.*
2. *Using force or the threat of force to control, policy and juridical from the definition of the performance rules*
3. *Rules of the commitment for force and people, in all levels of the commander, will define the circumstance, condition, rank and forms which were used by these forces.*
4. *Rules of the commitment are conform to right, liberty and ensure the citizens and/people rights, the legal principle, particularly norms of rights from the International which already applied.*
5. *Rules of commitment is according to the type of force from the overall entity is forming the integrate system for the national security, which is away from the defense case, only people and do protection for force.*
6. *Rules of commitment for the FALINTIL-FDTL (F-FDTL) will be presented by the chief state major general of the army force and the national police of Timor-Leste (PNTL) by the PNTL general command, approval, on these two cases of the council of minister and made rectifying from the republic president while involve the performance from the F-FDTL.*



National Security Policy

National security policy is defined by the national framework of Timor-Leste on national security law article 11) as follows:

1. *The state undertakes a coherent for principle, purpose and orientation measures to adopt an integrated defense strategy.*
2. *The national policy is to ensure the coordination of duties of national defense and internal security as well as civil protection.*
3. *National security's necessities, the duties required and the political ramifications of it are to be available to the public.*

And define as well its characteristic on article 12) of the national security law:

The national security policy guidelines:

1. *To protect the entire national territory and take part as the national citizens as well the social traditional organization;*
2. *Integrate the all organs, individuals, and departments of the state and empower them to execute national security policy both;*
3. *Globally, military and non-military components;*
4. *Permanently, undertaken at any time and any place.*

However, despite the fact that national security law has defined the national security policy's characteristics, it has yet to formulate it. According to the national security law article 13) no 1) stated that:

"The government is to form the policy for the national security, confirm to the terms of the constitution and the permanent purposes that have been written on this law".

The other permanent purpose of article 13) of the national security law is responding to the constitution of RDTL article 6) order that defines over the fundamental purpose of the state on no. 1) to defend and guarantee the state's sovereignty in the face of the complex nature of today's transnational, asymmetrical, and multidirectional threats.

As outlined over the other national board in responding to threats such as the national security and defense, as well as civil protection in order to the state's fundamental security.¹²

¹² Look on the Constitution of the Republic Democratic of Timor-Leste article 6) over State Fundamental Purpose.



On article 18), the national security law for the national security integrated system (NSIS). The NSIS defines its mission and does not sacrifice for its autonomy and identity,¹³ where defined those authorities that take part on NSIS are:

- a) FALINTIL-FDTL;
- b) PNTL;
- c) National Intelligence Service;
- d) Authority of Civil Protection, include Fire Brigades Corps;
- e) Maritime Authority System;
- f) Aeronautic Authority;
- g) Prisional Services;
- h) Migration Service;
- i) Civil Security;
- j) Finance;
- k) District Boards for Security;
- l) Quarantine service.

Therefore, the NSIS gives the opportunity to deepen the collaboration from entities that have formed the NSIS on the operational, training and logistic aspects in order to improve resources allocation and mission execution efficiency. There is configuration from the defense and security forces as well as civil protection agents to participate on the NSIS, to promote flexibility, mobility and inter-operability of resources. The security integrated system is to strengthen the cooperation between civil and military, and promote good relations of services with the traditional organization.¹⁴

However, in practice, is there any coordination over the NSIS? FM's monitoring noted that there is only use a joint force to act against any disturbance of the public order, as recently took place on the HANITA operation against the illegal groups. Even the entities that have formed the NSIS which is not only from the F-FDTL and PNTL, but also from several other institutions that are taking part as mentioned on the article 18) of the national security law.

Other services defined in the national security law over the organization and the functioning of national security integrated system are the Interministerial Commission for Security and the Management Integration Center for Crisis. Up to present there is no national policy for these services, even in some joint actions, but it is incidental and depends on the situation for joint service. Ironically, authorities who take part at the Interministerial Commission for Security and the Management Integration Center for Crisis have not been established yet.

¹³ Law No. 2/2010, 21 April, Law of the National Security article 18), no. 1).

¹⁴ Law No. 2/2010, 21 April, Law of the National Security article 18), no. 2) 3) and 4).



Another case of FM's monitoring on civil protection, what is the importance of NSIS related to public services? Even the civil protection such as the fire brigade is an important component as defined on the national security law.

In the case of the civil protection, natural disaster management is not yet integrated into a center for crisis; each ministry is working by itself. The *Direcção Nacional de Gestão de Desastres* (DNGD), the ministry of social solidarity focused on humanitarian assistance, and the alert system is without coordination with the other ministry such as civil protection at the interim ministry's administration. So the DNGD alert system is made by facebook to share information over the climate, even those authorities who together formed the NSIS.

Recommendations

On 21st March 2015, the joint operation by defense and security forces was launched against the criminal groups. FM strongly supports the operation in order to strengthen the law and restore the public order. Therefore, this operation is very necessary to solve any other action that may upset public order. However, FM also stresses that the operation should be conducted in line with the constraints defined by national security law, performance rules and should not hold prejudice for the basic norms and the fundamental rights of the constitution.

In this scope, the operation has become a common symptom of the politically aggressive nature of the security sector of Timor-Leste, signifying that we must invest more in the struggle rather than just the peace and justice sector.

Timor-Leste needs to form a national security policy to respond to threats that it is facing right now. As evident in the current situation, the joint operation of the security and defense forces, national security law has defined clearly the NSIS and involves all relevant ministries.

1. Use force as necessary and according to the law
2. Obey operational constraints
3. The relevant ministers should be kept informed of operational developments on a weekly or daily basis
4. A report of the operation should be presented to the national parliament regarding the security situation and budget for the operation itself.
5. The national media, as well as the people, should be kept aware of the progress of the operation as it takes place
6. The people should also actively keep themselves informed about the operation regarding the command of the joint operation and the juridical authorities over the violating of the law, rules and the fundamental principle of the constitution.



Apprenticeship Lesson

FM urges the government to take a holistic approach to threat in order to integrate communities after the operational objectives are realized. Experience has shown that during previous operations, concerns then appear from people that the security force's actions have violated the basic principle of the constitution. FM sees this as a negative that can be easily mitigated through more diligent action by the government.



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