



JUSTICE UPDATE

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PLANS FOR THE REINTEGRATION OF THE PNTL IN DILI

1. Background

One of the many difficult issues arising out of the recent period of unrest in Timor-Leste is that of how to address the problems which have become apparent in the National Police of Timor-Leste (“the PNTL”). The PNTL was directly involved in some of the violence which occurred in Dili and surrounding areas earlier this year. As a result the PNTL was removed from active duty in Dili District on 25 May and have not operated in Dili since that time.¹

In recent weeks several plans have emerged for processes by which the PNTL might be returned to active duty in Dili. It appears to be agreed by all stakeholders that it is necessary to screen members of the Dili PNTL before returning the force to active duty. At the minimum, this process is intended to remove from the force those persons who have committed criminal or disciplinary offences.

However political difficulties appear to be hampering the effective implementation of any single PNTL re-integration plan. Plans have been formulated by both the International Police Force in Timor-Leste (“IPFTL”) and the Timor-Leste Government and it is possible that a third plan will be put forward by the United Nations Integrated Mission in Timor-Leste (UNMIT).

2. The police reintegration plans

The IPFTL Plan

Since July the IPFTL have been working on a plan for the screening and reintegration of the PNTL in Dili.

¹ Since their arrival international police and military forces have carried out all policing functions in Dili. Under the Status of Forces Agreements entered into by Timor-Leste with Australia and Portugal respectively the international forces have the same powers as the PNTL.

The IPFTL plan has been the result of community consultation, including discussions with civil society (including NGOs), the Office of the Provedor for Human Rights and Justice, and the Government. During these discussions, the IPFTL plan was explained to stakeholders and the latter were given opportunities to discuss concerns with the IPFTL, thereby having some input into the plan.

The plan itself utilizes existing legislative procedures to carry out a screening process for all existing PNTL members in Dili. Where information about a particular individual suggests a need for a formal disciplinary or criminal process, the individual would be referred to such a process.

The IPFTL plan was first presented to the Ministry of the Interior on 18 July. After that time negotiations occurred at length between the Ministry and the IPFTL.

The Government's Plan

On 22 August, with no prior warning or discussion, a Government Resolution was passed creating process for the screening and reintegration of the PNTL that differed in a number of respects from the plan proposed by the IPFTL. No community consultation was undertaken independently by the Government in relation to this issue. Nor was the new plan discussed with the IPFTL before it was passed by the Government.

The possibility of an UNMIT plan

Pursuant to Security Council Resolution 1704, passed on 25 August, a new United Nations mission is to be established in Timor-Leste: the United Nations Integrated Mission in Timor-Leste (UNMIT). The new mission will have 1608 police personnel,² and one of its roles will be to provide support to the PNTL, including through assisting with training, institutional development and the strengthening of the PNTL and the Ministry of the Interior.³

The UN will therefore have to come up with its own strategy for how UNMIT is to provide assistance and support to the PNTL as required by its mandate. However it is not clear to what extent PNTL screening will be involved in such a plan or how it could interact with any pre-existing plan implemented by the Government and/or the IPFTL.

3. JSMP's recommendations

JSMP is concerned by the lack of communication and cooperation between the Government and the IPFTL. It is unfortunate that a situation has now been

² Security Council Resolution 1704 (2006), para. 1.

³ Security Council Resolution 1704 (2006), para. 4(c). Other roles relating to police and security are covered in paragraphs 4(d) and (e).

reached in which competing plans are being proposed and a stand-off is possible.

JSMP is appreciative of the IPFTL's attempts to undertake some community consultation in preparing its plan. Conversely, it is disappointing that such consultation was not undertaken by the Government before it passed its plan as a formal Resolution. It is particularly unfortunate that the IPFTL and the Government have not been able to work together effectively in formulating one plan.

JSMP has insufficient information about each of the respective plans to provide a detailed analysis of their respective merits. However it is necessary to emphasize that there are certain elements which must be contained in a plan for the screening and re-integration of the PNTL if such a process is to be effective and fair. The most important of these are as follows:⁴

1. The process established by the plan must be consistent with the Constitution and the laws in force in Timor-Leste.⁵ The latter includes applicable provisions of international human rights instruments.⁶
2. The process must provide PNTL members who are to be screened with procedural fairness.⁷ This demands that a number of specific requirements are met, including the following:
 - persons must be informed of any allegations made against them and be given the opportunity and resources necessary to adequately defend themselves (including taking into account access to information and legal representation); and
 - persons responsible for carrying out disciplinary or criminal proceedings must be independent and impartial from both a subjective and objective perspective; and
 - persons dismissed, suspended or subjected to other sanctions under the proposed process should be given an opportunity to appeal.

⁴ Many of the following principles are based on the standards set out in the Office of the United Nations High Commissioner for Human Rights' *Rule-of-Law Tools for Post-Conflict States: Vetting: an operational framework*, HR/PUB/06/5, 2006.

⁵ Relevant laws include Government Decree-Law 8/2004 The Organic Law of the National Police of Timor-Leste (PNTL), Government Decree 3/2004 Organic Structure of the Ministry of the Interior, Government Decree-Law 13/2004 Disciplinary Regulation of the National Police of Timor-Leste; and Law 8/2004 that Approves the Statute of the Civil Service. (Article 4(2) of the latter states that it applies to members of the PNTL until a separate statute for the PNTL is approved.)

⁶ Treaties which have been ratified and published in the official gazette become binding law in Timor-Leste: section 9 RDTL Constitution.

⁷ This is required by article 14(1) of the International Covenant on Civil and Political Rights, which has been ratified by Timor-Leste. Article 14(1) provides for a right to fair and public hearing by a competent, independent and impartial tribunal established by law. The Human Rights Committee, which oversees the treaty has held that this provision applies to administrative proceedings relating to the dismissal of employees: *Casanovas v France*, HRC Communication No. 441/1990, 10/08/94, para.5.2.

3. A substantial program of training and mentoring should be implemented for those who pass the screening process. To the extent possible under the law, for a period of time the activities of these police officers should be carefully regulated and monitored.
4. Plans should be made for a public education campaign about the process which is adopted. This should serve to raise public confidence in the re-integrated PNTL. The education campaign should include information about the process that is being adopted, the extent and timing of the PNTL's return to duty, and how persons with information about specific PNTL members can contribute this information to the screening process.
5. Some planning must be undertaken concerning the status and future of those who are dismissed from the PNTL under this procedure. This planning should address the potential problems that may arise if a large number of persons are dismissed, both from the perspective of addressing the need for more recruitment and of dealing with the possibility of unrest.
6. The process should be monitored by an independent body. The most appropriate body to carry out such a role is the Office of the Provedor for Human Rights and Justice.
7. Any process that is adopted should not be restricted in its application to Dili District (though there are clearly strong grounds in favour beginning the process in Dili) but should be carried out across the whole PNTL.