

**Report of the
Ombudsman for Human Rights and Justice of
Timor-Leste
For CEDAW Committee
2009/2010**

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Introduction

Timor-Leste as a new nation obtained its restoration of Independence on 20 May 2002 and is committed to human rights. This commitment can be seen through ratification of the 7 international treaties as follows: International Convention of Civil and Political Rights, International Convention on Economic, Social and Cultural Rights, International Convention

against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, International Convention on the Rights of the Child, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, International Convention on the Elimination of All Forms of Racial Discrimination, and International Convention on the Elimination of All Forms of Discrimination against Women.

According to the Constitution of the Republic, article 27 says the Ombudsman for Human Rights and Justice (PDHJ), is “an independent organ in charge to examine and seek to settle citizens’ complaints against public bodies, certify the conformity of the acts with the law, prevent and initiate the whole process to remedy injustice.”

PDHJ is a National Institution of Human Rights in Timor - Leste, according to decree law number 7/2004. According to the Paris Principle, the PDHJ role is to promote and protect all citizen’s human rights. In order to exercise this role, the PDHJ Division of Human Rights have developed 3 departments: First, the investigation department is responsible for the investigation of the complaints of the citizens against public entities; Second, advocacy and monitoring department, which is responsible to do the monitoring in the police detention center, prison and other concerns in economic, social and cultural rights. Advocacy work is to submit a proposal of laws that will be discussed in the council of ministers including the National Parliament. Third, public education department the responsibility is to promote the promotion of human rights through the social communication, posters, brochures, pamphlets, books, theaters, campaign in schools, universities, workshops, training for the Timor Leste National Police (PNTL), Falintil-FDTL, prison guards, human rights teachers in all the districts and all the community leaders.

Article 25.2. (b), and Paris Principle, section 3, states PDHJ as a National Human Rights Institution, has its role and responsibility to submit a report on implementation of International Convention which was ratified by the government of Timor Leste, National Parliament and also other commissions in the United Nations and to other institutions in the region. Therefore, with this opportunity PDHJ would like to present its report on the implementation of the CEDAW to CEDAW committee. PDHJ would like to raise the issues according to the results of the monitoring during these 3 years.

Substance of the Report:

According to the results of the discussion on 13 – 14 Marco 2009, at Vila-Verde Hotel, Dili, between Deputy Ombudsman for Human Rights, National Director for Human Rights and officers of the Department of Human Rights decided that the issues to report for the CEDAW committee will be as follows:

1. Justice for women victims of sexual violence during the Indonesian military occupation.

2. Women's access to Information and Sanitation Facilities in Detention centers and prisons.

Part I.

Those women who became victims for the sexual violence during the Indonesian military regime occupation have not achieved formal justice and reparation.

According to the Articles that mentioned in the CEDAW Convention:

Article 2: State Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and to this end, **section (C)**: to establish legal protection of the right of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

Article 15: (1) State parties shall accord to women equality with men before the law.

I. Facts.

1. During the Indonesian Military occupation regime from 1974 – 1999, most Timor-Leste women encountered many kinds of violence including sexual violence.
2. The Transitional Government mandate (UNTAET), established a Truth and Reconciliation Commission (CAVR), according to UNTAET regulation No. 10/2001.
3. According to UNTAET regulation No 10/2001, CAVR mandates were: to do research, to write reports of human right violations in Timor-Leste, covering 25 April 1974 – 25 October 1999, submit recommendations for indictments to the Prosecutor General, facilitate community reconciliations and assist in the recuperation of victims' dignity.
4. Stated that on 31 October 2005, CAVR would finish its mandate and submit a final report with recommendations to the President of the Republic of Timor-Leste.
5. Stated that on 28 November 2005, the President of the Republic of Timor Leste would submit a copy of a final report of CAVR to the National Parliament.
6. Stated that on 20 January 2006, the President of the Republic should submit a final report of CAVR to the Secretary-General of the United Nations.
7. Stated on page 129 of the report of Commission for Reception, Truth and Reconciliation in Timor-Leste (CAVR), that there were 853 victims who came to the commission to make declarations. From this number the actors who were involved were the following:
 - Indonesian Military with their collaborators numbered about 93,3 % out of the total number of 796/853 victims
 - From Fretilin Party 2,5% with 21/853 victims
 - From Falintil 1,2 % with 10/853 victims
 - From UDT party 0,6% with 5/853 victims
 - From Apodeti Party 0,1% with 1/853 victims

- Others 0,9% with 8/853 victims
8. According to the Commission, there were many victims who did not come to make declarations in the Commission due to the following reasons:
- Many victims were already dead,
 - Some victims are still in West Timor (Timor Oeste),
 - Some victims are afraid of the humiliation that they may feel before their family, and society or rejection from people when they learn about their experiences as the nature of their sufferings were very sensitive.
9. Based on these reasons, the commission said the number of victims of violence could be higher than the cases that the commission received. The commission estimated that women who experienced sexual violence from the Indonesian security forces could be more than thousands, not hundreds as reported.
10. Now we will look at the violence by the Indonesian military towards Timorese women as follows:
- They cut women's sexual organ, put batteries on women's vaginas and burned women's nipples and sexual organs with cigarettes.
 - They electrocuted women's sexual organs, breasts and mouths.
 - In one case a large group of security forces raped a widow.
 - They forced the prisoners to do sexual acts to one other while the security forces laughed and watched them.
 - They performed sexual acts with women political prisoners, then, they would torture them for a long period.
 - They sexually abused women while their hands and legs were tied together and their eyes covered. In some cases they did this until the women were unconscious.
 - They pulled the pubic hair of women in front of other military members.
 - They did sexual abuses with pregnant women and those women who just gave birth. They also sexually violated women who were about to give birth.

- They forced victims to walk naked and after that they would sexually abuse women in front of strangers, in front of the victims' families and friends. In one case they did the sexual act in front of the victim's mother and killed her afterwards. In some cases, they sexually abused and tortured the victim in front of her children.
- Some women were forced to do sexual act in front of their fellow prisoners, that was the abusers 'way to threaten the victim and other prisoners.
- Before they performed sexual acts with these women, they would put them inside a water tank for a long period of time.
- They also used snakes to scare women during the sexual torture.
- They also threatened these women that if they resisted or reported the sexual abuse to anybody, then the military or security forces would go and kill their children or they would torture their family members.
- They also forced the victims to do oral sex and urinated in victims' mouths.
- They also registered and made a list of women in all the places where military built a camp, so that everyday they could go and force these women to come over to the military camp for sexual relationships. They shared the names of these women from one military unit to another and ordered them to report every morning so that all the security forces would have sexual relationships.

II. Causes why sexual violence happened

We could also see in CAVR report reasons sexual violence:

- Abuse of power by those people who possessed arms, such as those who became political leaders, Indonesian military members and those who collaborated with them.
- Victims had no power and/or were afraid to face perpetrators. When the perpetrators sexually abused victims, they would immediately threaten the victims. The perpetrators told them that if they reported or told anyone or their commanders what happened they would do worse than this and possibly to kill them together with their family members. Because of these threats therefore most women victims preferred to keep quiet and not to reveal the abuse to anyone.

- Some victims voluntarily gave themselves in order to save their family from military killings.
- There was not an effective judicial system, especially to deal with cases committed by political party leaders and the armed forces. During that time the state system was ineffective, without any executive, legislative and judicial organs. Only the military regime, those who possessed arms and political leaders had power within the towns.
- Limited information on the judicial processes to report the cases against the Indonesian military and those who collaborated with them.

III. Injustice for women victims of sexual violence

Based from the observation of the Ombudsman for Human Rights and Justice, after the CAVR mandate ended and they submitted their final report and recommendations to the President of the Republic on 31st of October 2005, to date the CAVR recommendations, notably its recommendation that perpetrators of violence should be liable to criminal proceedings in a national or international court, have not been implemented due to the following:

1. The Timor-Leste Government is interested more in the political arena to create a good relation between Timor-Leste and Indonesia. This political interest mostly came from male political leaders in Timor-Leste. They always say we should forget what had happened in the past, and look towards the future for the development of our country. However, dynamic female political figures in Timor Leste such as MP Fernanda Borges, has called for justice to be done and for the CAVR recommendations to be implemented.
2. Limited budget for the establishment of an International Tribunal.

This statement has been repeatedly made by Timorese political leaders. Most victims under the National Alliance for an International Tribunal keep insisting on the establishment of an International Tribunal for the prosecution of the actors who committed crimes against humanity in Timor-Leste. However, according to our leaders, justice for the Timorese is Independence.

3. Timor-Leste State still defends its economic concerns against Indonesia.

This statement also has been repeatedly made by the Timorese leaders. They said, we must think, even though we have gained our independence economically most of our basic needs are still imported from Indonesia. When we insist on justice against those who committed crimes against humanity, they are also the current political leaders in Indonesia, and could cut off diplomatic relations and stop their businessmen from exporting their goods for our needs.

IV. Government of Timor-Leste actions taken to assist the victims of sexual violence and their families.

1. Established Serious Crimes Tribunal.

According to UN Security Council Resolution, number 1272, states that the mandate of UN Transitional Government (UNTAET) has the power for legislative, executive and justice administration. Looking at this mandate UNTAET has established a Serious Crimes Unit (SCU) and the Special Panels for Serious Crimes (SPSC) to prosecute the actors who committed crimes against humanity in 1999. Based on Resolution 1271, UNTAET established the Serious Crimes Unit (SCU) to investigate and prosecute War Crimes, Crimes against Humanity and individual offences of murder torture and rape committed in East Timor between 1 January and 25 October 1999. All charges brought by the SCU are tried before one of the Special Panels of Serious Crimes, each which consist of two international judges and one Timorese judge. During the existence of these panels some cases of crimes against humanity were tried. However those actors who received the sentences from the serious crime court were only the lower ranking ones. The important actors are currently residing in West Timor, Indonesia including some Indonesian generals who are currently ruling Indonesia, and as such cannot be prosecuted.

2. Establishment of Truth and Friendship Commission (CTF)

When the CAVR submitted its final report and recommendations to the sovereign state of Timor-Leste and to the Secretary General of Timor-Leste on 14th of December 2004, the President of the Republic of Indonesia together with the Prime Minister of Timor-Leste signed a joint declaration to establish a Truth and Friendship Commission (CTF). The mandate of the CTF is to disseminate the truth about the 1999 human rights violations in Timor-Leste and recommend

appropriate means to heal the wounds of the past and to recuperate the dignity of the victims.

3. Committee A of the National Parliament debated the CAVR report and made a resolution on CAVR.

According to Article 92 of the Constitution of the Republic: The National Parliament is the organ of sovereignty of the Democratic Republic of East Timor that represents all Timorese citizens and is vested with legislative supervisory and political decision-making powers". According to this role, Committee A of the National Parliament has debated and created a resolution presented to the plenary. However, until today the National Parliament has not yet included this Committee's resolution in their agenda for discussion. Section 6 of this resolution said, "*National Parliament recommended to the Prosecutors Office to use all its efforts to complete all the demands mentioned in the Article 160 of the Constitution of the Republic which states that all crimes against humanity, genocide and war crimes committed from 25th of April 1974 to 31st of December 1999, to prosecute these crimes through national or international tribunals and:*

- a. *Cooperate with the Serious Crimes Investigation Unit established under UNTAET in Timor-Leste to investigate all the crimes committed in 1999.*
- b. *Issue indictments for crimes committed in 1999 with assistance from the Serious Crimes Investigation Unit.*
- c. *Commence the investigations and indictments for all serious crimes, which were reported in the CAVR from 1974 to 1999.*
- d. *To write an annual report for the National Parliament on the progress of the investigation and indictments.*

4. Social Assistance from the Ministry of Social and Solidarity

According to information from the Ministry of Social and Solidarity, the government has not implemented any recommendations which have been mentioned in the CAVR final report to date, because the National Parliament has not yet debated the resolution prepared by Committee A. However, the government through the Women's Department, Directorate of Social Reinsertion, Ministry of Social and Solidarity (MSS) has provided social assistance to those vulnerable women. In this program those women who were sexually abused during the Indonesian military occupation became beneficiaries of the following Social Assistance programs:

a. Bolsa da Mae

This program assists children of the widows and the single mothers. Last year the beneficiaries of this program were 7200 students.

Each sub-district has 45 primary students who benefitted from this program. Each month 1 primary student receives \$5.00, while the 25 pre-secondary and 20 secondary students each receive \$10.00 per month.

There are about 500 university students who continue their studies within the country and each of them receives \$250.00 per year. While for those 250 students who continue their studies abroad, each of them receives \$360.00.

b. Women Cooperative Group

This is a social assistance from MSS together with Alola Foundation. This assistance has benefitted women in 5 districts.

c. Social Housing

MSS works together with the community and community leaders, is to assist and rehabilitate the houses of widows within the community that were destroyed. This rehabilitation includes the repairing of roofs, walls, windows, and doors, etc.

d. Shelter

This program was implemented through cooperation between MSS and stakeholders. For example, MSS assisted in the establishment of shelters in the Districts of Baucau, Suai, Maliana and Oecusse. The objective of these shelters is to provide counseling assistance to women who experienced domestic violence and those who suffered from sexual violence in the past.

e. Solar Cell Assistance.

This program was implemented through cooperation of Ministry of Energy and Policy Development with MSS. Those who lived in the rural areas were the beneficiaries of this program, especially the population without access to electricity. According to the PDHJ observation, most female victims of sexual abuse during the Indonesian military occupation also received this assistance.

V. Recommendations

1. CEDAW Committee should ask the sovereign organs of Timor-Leste, especially the National Parliament, to debate the resolution on the implementation of the recommendations of the CAVR which are written in the Chega Report.
2. We would like to request the CEDAW committee to insist that the sovereign organ of Timor-Leste, creates a law on Reparation for Victims, including the recommendations of CTF to give psycho-social assistance for victims.
3. We would like to request the CEDAW Committee ask the Parliament to create a law on reparations, with support from the UN Human Rights Unit of Transitional Justice (HRTJS) and establish a follow-up institution to the CTF and the CAVR with a mandate to investigate and collect information on missing persons during the conflict in Timor Leste, including the children who were separated from their families.

Part II

In Part II, issues that raised here are from the PDHJ Monitoring results of the Police Detention Center in Dili and the Prison in Gleno.

According to articles mentioned in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW):

Article 2: State parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: **section (c):** to establish legal protection of the rights of women on unequal basis with men and to ensure to competent national tribunal and other public institutions the effective protection of women against any act of discrimination.

Article 3: State parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the

full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 15: (1) State parties shall accord to women equality with men before the law.

I. Facts.

1. According to criminal procedure (Procedural Penal Code of Timor-Leste), the accused who have been involved in a crime will be immediately arrested by a police with 72 hours detention and subject to an investigation process. In Dili district, those arrested by the police were detained in Caicoli cells.
2. Based on the data of monitoring from PDHJ, Human Rights Division, Department of Monitoring and Advocacy, from June 2008-2009, Dili District Police arrested 65 women who were involved in criminal activities.
3. In the Caicoli Detention center, there are separate detention cells between men and women. However, both men and women use only one toilet.
4. This toilet is located closer to the men's cells and the condition does not meet hygienic standards and has no door. Therefore when somebody is using a toilet, others can see inside. The walls of the toilet are very short so when somebody stands inside the toilet, people outside can see from the chest up. The condition of this toilet makes detained women uncomfortable, because most detained men try to look at women whenever they use the toilet.
5. PDHJ received some complaints, and based on PDHJ monitoring results found some discrimination against women prisoners in Gleno prison by

the Gleno prison guards. According to the data of PDHJ, Human Rights Division, Department of Monitoring and Advocacy from 2006 to March 2009, there were 5 women imprisoned in the Gleno Prison. The duration of their detentions ranged from a minimum of 1 year to a maximum of 9 years. There are 20 male prisoners in Gleno.

6. According to the PDHJ Monitoring results, the government through the Ministry of Justice provided 2 television sets to the Gleno Prison. The 2 television sets were installed one in female cell and 1 in male cell. The objective to install these 2 sets of televisions was to provide information to the prisoners. However, the television set that installed in the women detention area is already broken. The broken television is just an ornament. The good television set was installed in male's detention area.
7. After seeing this situation and condition during the visit of Minister of Social and Solidarity in Gleno Prison, MSS immediately gave two cassette recorders for women prisoners, so that they may have access to information. However the prison manager took away these cassette recorders and placed them in the prison administration office.

II. Loss of women's rights in prison

1. Most women prisoners feel that when they are inside the prison, they have lost all their rights, including right to information.
2. Because the government have no campaign programs or socialization on laws which are applicable in Timor-Leste, many people do not know about the laws that are applicable in the national territory.
3. Because patriarchal culture is still in the minds of these women, they feel second class in the community. Hence, when their rights are

violated, they believe this is very natural, and have accepted all these conditions quietly.

III. What the actions the government should take.

a. Substance

The Government through the Ministry of Justice has the responsibility to take measures to fix the conditions within the prison. The Minister of Justice is responsible for the administration of the prison.

The Government did not pay attention to the detention facilities which have been destroyed. In almost all the detention centers in Timor-Leste, the government did not pay attention to repair sanitation facilities.

b. Structure

Government has a moral responsibility to guarantee prisoners' rights. The government should be liable and protect the rights of prisoners.

The Government should allocate a larger budget to the Secretary of State for Security to rehabilitate the sanitation facilities in the police detention cells in all the districts.

Recommendation

- We request the CEDAW Committee, to ask the Timor Leste government to improve the justice system in Timor Leste as cited below:

1. Improve the conditions of the police detention centers and prisons for women who are detained so that these women will not lose their human dignity and right to information. The state should treat every human being as equal under the law.
 2. To disseminate information on the laws that are applicable in Timor-Leste to all the population through all means: media, public discussions, seminars, workshops within the community, and universities.
- We would like to request the CEDAW Committee ask the United Nations Mission in Timor Leste (UNMIT), particularly the Human Rights Unit for Transitional Justice (HRTJS) and UN Agencies to continue work together and support PDHJ staff with all human rights network in all the districts on the area of monitoring, advocacy and public education on human rights.
 - We would like to request the CEDAW Committee to inform the government and the National Parliament of Timor Leste, when discussing the general state budget, to approve a sufficient budget for the PDHJ office so that the PDHJ may implement programs to promote and protect human rights in Timor-Leste.