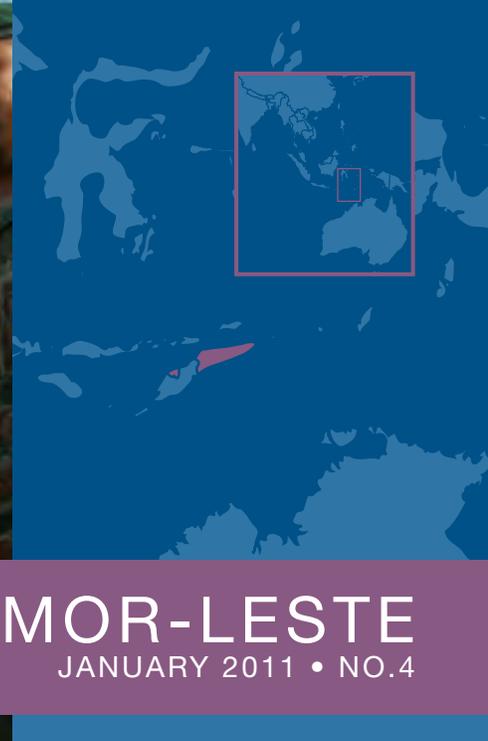




Addressing International
Governance Challenges

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Cover photo: José Ramos-Horta, president of Timor-Leste, returns home after receiving medical treatment in Australia for near-fatal wounds inflicted during an attack by a rebel group. UN photo by Martine Perret.

INTRODUCTION

The third edition of the *Security Sector Reform (SSR) Monitor: Timor-Leste* acknowledged that the national justice system continues to face major obstacles, even though recent strategic planning and initial efforts to improve access to justice have showed promising signs for future justice system development (see The Centre for International Governance Innovation [CIGI], 2011). Two increasingly serious challenges to the justice system — and also the broader security sector — are the political intervention in the justice system and the lack of accountability for both past crimes and more recent crimes associated with the 2006 internal crisis.

In the years following the Indonesian occupation, the national political leadership — primarily former President Gusmao and then Foreign Minister Ramos-Horta — pragmatically promoted political reconciliation rather than prosecutorial justice for crimes against humanity cases from 1999, as well as crimes resulting from the conflict with Indonesia. Following the 2006 crisis and his election in 2007, President Ramos-Horta’s political use of pardons to resolve high-profile cases has undermined the justice system and exacerbated perceptions of impunity. The president’s policy of political reconciliation culminated in August 2010, with controversial presidential pardons of particular significance to the security sector, enabling the release of 26 soldiers and paramilitary police officers who had been convicted of serious crimes related to the 2006 crisis.

ABOUT THE SSR MONITOR

The *SSR Monitor* is a quarterly publication that tracks developments and trends in the ongoing security sector reform processes of five countries: Afghanistan, Burundi, Haiti, South Sudan and Timor-Leste. Adopting a holistic definition of the security sector, the *SSR Monitor* covers a wide range of actors, topics and themes, from reforms in the rule of law institutions and armed forces to demilitarization activities and the role of non-statutory security and justice actors.

Research for the *SSR Monitor* is field based: a resident researcher in each case study country leads data collection and analysis, with support from desk-based analysts at The Centre for International Governance Innovation (CIGI). The same research guidelines are employed for each country. All editions of the *SSR Monitor* are subjected to an external peer review process in addition to our internal editorial review.

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Given the increasingly entrenched culture of impunity in Timor-Leste, this edition of the *SSR Monitor* will focus on presidential pardons of state security providers and discuss the negative impact of this practice on the development of the justice system, the broader security sector and the country's future stability. In the SSR paradigm, political actions promoting impunity in the security sector are considered anathema to "good" SSR. With his political preference for reconciliation, President Ramos-Horta directly challenged established theories and assumptions that promote prosecutorial justice, security sector accountability and the establishment of the rule of law. Reconciliation aimed at short-term stability may have serious implications for the future development of an independent justice system in Timor-Leste, particularly in the context of the ongoing national SSR process.

THE GIFT OF RECONCILIATION

President Ramos-Horta issued presidential decree 31/2010 on August 20, 2010. The date was significant for the national army, Falintil-Forças de Defesa de Timor-Leste (F-FDTL), as it was the 35th anniversary of the establishment of the Forças Armadas de Libertação de Timor-Leste (FALINTIL), armed liberation forces, on the eve of Indonesia's military invasion in 1975.¹ In the introduction of the presidential decree, FALINTIL's historic resistance is linked to the promotion of "reconciliation" for the 2006 crisis, brought about by the dismissal of 594 F-FDTL soldiers: "So, on the anniversary of FALINTIL, a day in which we celebrate the sacrifice of the men and women of Timor-Leste who took to up arms [struggled] to bring us peace and liberty, in the name of the people of Timor-Leste, our State offers a gift of reconciliation, in order to place in the past [put behind us] the sadness

¹ FALINTIL was set up as a resistance army during the internal conflict in colonial Timor-Leste to counter the threat of Indonesian invasion in 1975. It was transformed into the current FALINTIL-FDTL national army on February 1, 2001, following the end of the Indonesian occupation in 1999.

and pain that the crisis of 2006 caused our country” (Democratic Republic of Timor-Leste [RDTL], 2010).

That “gift of reconciliation” refers to the commutation of sentences of 26 F-FDTL soldiers and national police (PNTL) convicted of direct involvement in two serious incidents related to the 2006 crisis and rebel attacks in 2008 on the president and the prime minister. One of the high-profile incidents referred to was the case in which eight PNTL officers were shot dead by F-FDTL soldiers. The second involved unexpected armed attacks by rebel forces, led by Alfredo Reinado, in which the president was shot, almost fatally, and the prime minister was fired upon.

PNTL SHOT BY F-FDTL SOLDIERS



Eight unarmed Polícia Nacional de Timor Leste (PNTL) members were fatally shot and other unarmed PNTL and UN Police (UNPOL) officers were shot by F-FDTL soldiers on May 25, 2006.²

In Timor-Leste’s semi-presidential political system, the powers of the directly elected president, as head of state, are limited under the 2002 Constitution in comparison with the separately elected government under the prime minister.³ In the Constitution, presidential powers include the granting of pardons and the commutation of prison sentences. In this respect, the August presidential decree refers to *indulto* (in

² The four F-FDTL soldiers convicted received presidential pardons. Three soldiers returned to active duty following their release from ad hoc military detention.

³ It should be noted that in addition to being head of state, the president is also the supreme commander of the national defence force. For full information about presidential powers see (RDTL, 2002: Section 85).

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the original Portuguese) meaning it offers the commutation of sentences rather than granting “full pardons.”

Nevertheless, most Timorese understand those *indulto* to be “pardons,” most notably President Ramos-Horta, who refers to his actions as granting “pardons.”⁴

⁴ For example, President Ramos-Horta stated, “I *pardoned* them based on humanitarian grounds” (Agence France Presse [AFP], 2010). For this reason, the term “pardon” will be used as more appropriate to common understanding throughout this text unless the distinction is specifically required. It should be noted that the United Nations (UN) refers strictly to commutation of sentences in its official reporting on this issue (see United Nations Secretary-General [UNSG], 2010: 32).

The official reason provided in the presidential decree for commuting the sentences was for “good behaviour and humanitarian reasons” (RDTL, 2010). The 10 defendants sentenced to 16 years’ imprisonment in relation to the attack on President Ramos-Horta’s residence received commutations of varying lengths.⁵ The commutations were purposely calculated to result in the immediate release of all 26 security sector personnel. Full pardons could have been granted, which occurred in the case of an F-FDTL soldier pardoned in December 2009, but the calculation of commutations enabled the defendants’ release from imprisonment. After the decree, the surviving group of 21 rebel soldiers and two paramilitary police were released from civilian prison, only six months after their high-profile conviction. The remaining three convicted soldiers returned from ad hoc military detention to active duty in the F-FDTL, in violation of military services regulations (UNSG, 2010: 33).

PARDONS FOR THE FATAL SHOOTING OF POLICE OFFICERS BY SOLDIERS IN 2006

The return of the three F-FDTL soldiers to active duty raises serious concerns in terms of security sector accountability.⁶ The convictions of the three soldiers in civilian court in November 2007 will stand; after all, they were involved in the fatal shooting of eight unarmed PNTL officers as well as the shooting of other PNTL officers and two UNPOL during a ceasefire between the F-FDTL and PNTL on May 25, 2006.⁷ Shortly after the presidential pardons were issued, the F-FDTL chief of staff announced that the three soldiers were being

⁵ For full details and analysis of the pardons and related legal questions see *Competency of the President to Grant Pardons* (Judicial System Monitoring Programme [JSMP], 2010b).

⁶ In fact, a fourth F-FDTL soldier was convicted in the PNTL shooting case. He received a full presidential pardon on the grounds of elderly age and good behaviour in December 2009. It is understood that he retired from F-FDTL due to his age. In that round of presidential pardons, the three F-FDTL soldiers received commutation of their sentences by three years, prior to their subsequent pardons and “release” in August 2010.

⁷ See full details in the report of the UN Commission of Inquiry (UNCOI) into the 2006 crisis (UNCOI, 2006).

reinstated “as part of military discipline and based on rules and procedures” (*Televisaun Timor-Leste News* [TVTL], 2010d). In mid-October, the chief of the UN Integrated Mission in Timor-Leste (UNMIT) peacekeeping mission told the UN Security Council (UNSC) that President Ramos-Horta had requested that the F-FDTL commander “take action” on the resumption of active duty by the convicted soldiers.⁸ In early November, it is understood that the three convicted soldiers still remained on active duty with the F-FDTL.⁹

Doubts also remain about the F-FDTL’s earlier efforts to ensure accountability for all four of the F-FDTL soldiers convicted in the case. Despite their convictions by the civilian court and sentences ranging between 10 and 12 years, the four soldiers did not spend any time in civilian prison. Instead, the F-FDTL hastily set up temporary military detention facilities following the conviction, to detain the convicted soldiers in the absence of a military prison facility. Whether the four were properly detained is also in doubt, according to various witness reports (UN Office of the High Commissioner for Human Rights [UNOHCHR], 2008: 12). This was also supported by photographic evidence showing one of the convicted soldiers present, in uniform, at the crime scene within hours of President Ramos-Horta being shot in February 2008 (see photo on following page).

The convicted soldiers continued to receive salaries, raising further questions, particularly as the widows of the slain PNTL officers did not receive their compensation payments of US\$2,500 from each of the individual soldiers, as ordered by the court decision in 2007. The PNTL widows were only paid compensation in the month prior to the pardons, with the source of the payment being affiliated with the F-FDTL (UNOHCHR, 2010: 47).

⁸ See the Statement of the Special Report of the Secretary-General at the UNSC Meeting in October 2010 (UNSC, 2010).

⁹ Communication with an UNMIT official, November 4, 2010.

F-FDTL SOLDIER RAIMUNDO MADEIRA ON ACTIVE DUTY



F-FDTL soldier Raimundo Madeira (pictured smoking) on active duty after the rebel attacks on the president's residence on February 11, 2008.¹⁰

The overall impression given by this set of events is that the F-FDTL has acted to protect its soldiers, even after their conviction in civilian courts for, arguably, the most vengeful act in the short history of the nation's security sector. The presidential pardon of the four convicted F-FDTL soldiers and, in particular, their immediate return to active duty, reinforces the perception that F-FDTL soldiers are above the rule of law.

PARDONS FOR ARMED ATTACKS BY REBEL SOLDIERS AND POLICE IN 2008

Most of the pardoned “security providers” — 21 rebel F-FDTL soldiers and two PNTL paramilitary police convicted in the attacks on the president and prime minister — were members of an armed rebel group under the leadership of Major Alfredo Reinado. The group launched separate armed attacks against the president and the prime minister on February 11, 2008.¹¹ The

¹⁰ This photograph raised doubts about Madeira's detention in an ad hoc military detention prison after his conviction in November 2007, along with three other F-FDTL soldiers, for the shooting of unarmed PNTL and UNPOL officers on May 25, 2006. After his presidential “pardon,” Madeira reportedly returned to full active duty in August, in violation of F-FDTL regulations.

¹¹ The “Reinado” group, led by the late Major Alfredo Reinado (fatally shot during the February 11, 2008 attack), was the belligerent core from the larger group of 596 dismissed soldiers and other deserting army and police officers from the 2006 crisis. Surviving members of the group consecutively surrendered during joint operations of F-FDTL and PNTL between February and April 2008, after fleeing from the February 11 attacks. For further information see International Crisis Group [ICG] (2009: 1–5).

swift pardoning of the group of disgruntled “security providers” who attacked the nation's leaders should not be understated — particularly in terms of future ramifications for security sector accountability.

EX-F-FDTL REINADO LEADS REBELS



Major Alfredo Reinado (centre), deserting F-FDTL Military Police Commander, leading the rebel group of F-FDTL and PNTL in the months before he was fatally shot during the armed attack on the president's residence in February 2008. Dismissed F-FDTL soldier Marcelino Caetano is pictured on the left.¹²

In a high-profile trial on March 3, 2010, the Dili district court convicted 24 members of the rebel group and acquitted four others on various counts of attempted murder, including charges pertaining to the attempt on the life of the president and on illegal weapons possession.¹³ The president granted the commutations just six months after the lower court's final decision, in the case and only several weeks after the Court of Appeal's decision to uphold the conviction, highlighting the excessive use of pardons for political ends. At the same time, these “pardons” undermine the legitimacy of the judicial process.¹⁴

¹² Marcelino Caetano received a presidential pardon shortly after his conviction of 16 years in relation to the armed attacks. In 2009, President Ramos-Horta was reported in the media to have “no doubts” that Caetano had shot him, but it was not proven in ballistics reports submitted during the trial.

¹³ For detailed information, see JSMP (2010a). Of the 24 convicted, one individual was not pardoned. In fact, that individual was neither arrested nor imprisoned after the conviction; nevertheless, it is expected that the individual will be pardoned in the future.

¹⁴ Interviews with a senior national judge; a former commissioner in the Timor-Leste Commission for Reception, Truth and Reconciliation (CAVR) and the bilateral Indonesia-Timor-Leste Commission for Truth and Friendship (CTF); and Luis de Oliveira Sampaio, director of the JSMP, Dili, September 2010.

eBook: *The Future of Security Sector Reform*

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The president publicly announced his intention to pardon the defendants on May 20, 2010, shortly after the completion of the trial in the lower courts (TVTL, 2010c). It is somewhat encouraging for the independence of the justice system that the president of the Court of Appeal called on President Ramos-Horta to wait at least until the Court of Appeal completed the appeal process before granting pardons, albeit without any criticism of

the decision itself (*Timor Post*, 2010b).¹⁵ The president of Parliamentary Committee A (constitutional issues, justice, public administration, local government and government legislation) criticized the president's early announcement of his intended pardon, saying it "destroy[ed] the foundations of the judicial system" (*Diario Nacional*, 2010a). The president, as a result, delayed the pardons until after the Court of Appeal decision in June 2010.

Despite President Ramos-Horta's eventual acquiescence to the legal process, the widespread certainty that the February 11 attackers would receive pardons is reflected in public perceptions of impunity. The president had, in fact, indicated his intention to grant pardons before the end of the trials: "Although I'd like to, I still can't pardon Salsinha and his men because the trial is still going on, but when it is over I will, just like I have said before" (*Suara Timor Lorosae* [STL], 2009). The president had allegedly offered pardons during a meeting with former Lieutenant Salsinha, the leader of the rebel group, and other defendants while they were in pretrial detention in December 2008.¹⁶

The announcement of the intended pardons before the trial had even begun, turned the trial into political theatre and undermined the judicial process and the rule of law.¹⁷ According to the director of the JSMP, a Dili-based national non-governmental organization (NGO), the president's pretrial promise of pardons degraded the quality of the trial proceedings. With the promise of certain freedom, the defendants demonstrated a lack of respect for the court judges and the proceedings remained silent on a number of critical issues, thereby effectively concealing the truth of the events.¹⁸ Moreover, the expectation of presidential

¹⁵ At present, the president of the Court of Appeal is the highest serving official in the national justice system.

¹⁶ Interview with Nelson Belo, director of Fundasaun Mahein, a security sector monitoring NGO: Dili, September 2010

¹⁷ Interview with Arsenio Bano, vice-president of FRETILIN party (opposition), member of parliament (Parliamentary Committee B for defence and security): Dili, March 2010.

¹⁸ Interviews with Nelson Belo and Luis de Oliveira Sampaio, Dili, September 2010.

pardons arguably contributed to the judges' decision to acquit all 27 defendants in a subsequent trial related to the 2006 crisis, the Fatu Ahí trial, in September 2010. Several of the defendants prosecuted in this separate case had been pardoned the previous month in relation to the February 11, 2008 attacks.¹⁹

THE POLITICS OF PARDONS

“JUSTICE FOR OUR SPECIFIC SITUATION”

Why did the president pardon soldiers and police convicted of serious crimes such as manslaughter and attempted murder, particularly as the pardons included rebel soldiers convicted of an armed attack in which the president himself was shot? Does he disagree that pardoning convicted security sector personnel undermines accountability in the security sector and the deterrent effect of prosecution? The president is clear that his motive is to promote political reconciliation to bring an “end” to the 2006 crisis through his constitutional prerogative to grant pardons: “as long as there is no amnesty law, there will be pardons, because that’s within the competency of the President of the Republic” (*Diario Nacional*, 2009).²⁰ In fact, President Ramos-Horta’s pardons in recent years have resulted in the release of not only actors in the 2006 crisis, including the former interior minister, but also former members of pro-Indonesian militias convicted of crimes against humanity in relation to the violent conflict in 1999. These cases will be discussed below.

¹⁹ The judges' decision to acquit all defendants was due to insufficient prosecutorial evidence; however, the decision has led to speculation that the judges intentionally decided to close the trial with the assumption that all those convicted would be granted presidential pardons. From an interview with Luis de Oliveira Sampaio, Dili, September 2010. See also JSMP (2010d) for analysis of the decision.

²⁰ The president has repeatedly promoted national reconciliation through blanket amnesty laws for crimes not only from 2006, but from 1974 onward during the Indonesian occupation. Parliamentary parties, however, have generally not been willing to support blanket amnesty legislation.

President Ramos-Horta does not appear to have been heavily pressured or influenced by other political leaders or any significant political support base to grant his pardons. Some pro-Parliamentary Majority Alliance (AMP) politicians publicly supported the decision, citing political balance for previous pardons, but others remained critical in private.²¹ Many oppose political interventions in the form of pardons; the results of a comprehensive survey on the justice system in Timor-Leste conducted by the Asia Foundation in 2008 suggest that an overwhelming majority of respondents did not support impunity or pardons for serious crimes (Asia Foundation, 2008: 41). President Ramos-Horta has, nevertheless, remained consistent in his personal philosophy of forgiveness for criminal acts. In defence of his commitment to reconciliation as a political means to end violent conflict, he has said, in relation to other international examples of reconciliation, “We are not doing differently in Timor-Leste, treading complex issues with care, prudence, always bearing in mind that we must reconcile our people, heal the wounds of the past, honor and assist the victims, moving small steps at a time in building democracy and the rule of law, and a durable peace. On this and other complex and sensitive matters I never camouflaged my views from our people. They know where I stand on this sublime matter” (Ramos-Horta, 2010a). Prior to the 2006 crisis, and in order to forge political and economic bilateral relations, Ramos-Horta emerged as the leading Timorese politician advocating reconciliation with Indonesia rather than seeking punitive justice for crimes during the Indonesian occupation.

President Ramos-Horta justified the pardon of the February 11 attackers as part of his intention “to strengthen national unity” after consultation with all stakeholders, including political parties (*Diario Nacional*,

²¹ For example, the president of the national parliament (from the governing coalition) (see STL, 2010b), Aderito Hugo, MP for the National Congress for Timorese Reconstruction (CNRT) party (from the governing coalition) (see STL, 2010a) and CIGI interview with an AMP politician (from the governing coalition), Dili, September 2010.

2010e). He frequently indicated his intention to close that case by pardoning the group of attackers on “humanitarian grounds,” as they also constitute “victims” of the 2006 crisis (*Tempo Semanal*, 2010): “Our constitution says that we have to consider circumstances, so we want to give justice to our specific situation” (AFP, 2010).

The conciliatory approach to addressing cases from the years of Indonesian occupation, as well as the cases from the 2006 crisis, reflects President Ramos-Horta’s political pragmatism as much as a genuine belief in forgiveness. The August 2010 pardons can also be viewed as a political balancing act to mitigate adverse reactions within the security sector by including “all sides” from the conflict in 2006 in the pardons — the group of rebel soliders and police linked to the anti-government faction of “western” regional political groups as well as the serving F-FDTL soliders associated with the opposing pro-government “eastern” regional grouping convicted of attacking police.²² Despite the efforts toward political balance, pardoning the three soldiers angered some PNTL officers, leading one observer to claim that the east-west regional problem remains a “time-bomb” within the security sector.²³ The question remains, however, whether Nobel laureate Ramos-Horta’s pragmatism will contribute to or undermine long-term stability and the rule of law.

THE IMPLICATIONS OF PARDONS

The president’s commitment to political reconciliation by circumventing the justice system is not widely accepted as pragmatic or necessary. A variety of experts agree that the pardons undermine the justice system and exacerbate perceptions of an increasingly entrenched culture of impunity, particularly in relation to accountability for the security

forces.²⁴ As a result, the long-term threat to establishing the rule of law and stability outweighs the short-term benefits of political reconciliation without justice. The presidential pardons have serious implications for the justice system, the security sector and long-term political stability.

The Impact on the Justice System

President Ramos-Horta has maintained that the pardons were not intended as an intervention into the judicial process (TVTL, 2010c).²⁵ However, the JSMP, a national NGO, criticized the pardons as an “irresponsible political decision ... minimizing the authority of the courts and rendering court decisions meaningless,” and thereby threatening to undermine the functioning and credibility of the justice system.²⁶ The response of Bishop Nascimento to the pardons, in a country where the majority remain devoutly Catholic, is highly significant in the national context:

My gravest concern is that this decision may undermine justice in this country. Firstly, it means that there is a lack of trust in judicial actors. Secondly, the decision may cause a crisis of confidence in this country because people will say there is no justice: that a person can commit any crime and after having gone through the courts and been sentenced to prison, the President can just pardon that person. ...Therefore, if we continue with such decisions, our justice system will be weakened as judicial actors will be demotivated to undertake their duties and public opinion may also follow the same path. If I were a judicial actor, I would ask myself, am I of any value to this country? (*Diario Nacional*, 2010c)

²⁴ Interviews with a senior national judge; an AMP politician (from governing coalition); Jose Teixeira, member of parliament and FRETILIN (main opposition) spokesperson; Fernanda Borges, member of parliament, president of Parliamentary Committee A (constitutional issues, justice, public administration, local government and government legislation) and president of the National Unity Party (PUN) (opposition); a former national commissioner in CAVR and CTF; Luis de Oliveira Sampaio; Nelson Belo; the director of a leading national NGO; and a former clandestine youth leader from Ermera district, Dili, September 2010.

²⁵ President Ramos-Horta stated that the pardons were based on “humanitarian grounds,” as the recipients were the “victims” of the 2006 crisis.

²⁶ For further information see JSMP (2010b).

²² Interview with Luis de Oliveira Sampaio, Dili, September 2010.

²³ Interview with Nelson Belo, Dili, September 2010.

It is suggested that the most recent presidential pardons have frustrated a number of judges and prosecutors who are privately critical of such “political interference” in the judicial process for two reasons. First, presidential pardons undermine the efforts of the judiciary in a justice system that is already challenged by its limited resources to conduct complex trials. Second, presidential pardons, in effect, overturn court decisions by questioning their validity.²⁷

According to a senior national judge, speaking carefully as a “citizen,” the August 20 presidential pardons set a bad precedent for the national justice system due to the lack of results for completed trials: “Politicians do their job and judges do theirs; an institutional culture is needed which recognizes the independence of the court and which promotes respect for the court.”²⁸ Although the judge confidently believes that the public recognizes that politicians are intervening in judicial decisions for political reasons,²⁹ it remains that those political actions significantly undermine public confidence in the national justice system, particularly when individuals with official positions or political connections are the beneficiaries of excessive pardons or other forms of impunity.

The Impact on the Security Sector

Accountability is critical to the national SSR process. The fact that a group of renegade soldiers and paramilitary police were readmitted into society effectively unpunished, and convicted soldiers returned to military duty, seriously undermines accountability and discipline in the security sector. Questions will inevitably emerge concerning why convicted soldiers were able to return to military service, but dismissed soldiers and (pardoned) rebel security personnel were not reinstated.³⁰ This will remain

²⁷ Interview with Luis de Oliveira Sampaio, Dili, September 2010. According to Sampaio, some judicial actors encourage civil society organizations to pressure the political leadership due to their former group’s limited ability to publicly speak out against such decisions.

²⁸ Interview with a senior national judge, Dili, Sept 2010.

²⁹ Interview with a senior national judge, Dili, Sept 2010.

³⁰ In March 2006, 594 soldiers known as the “petitioners” — almost half of F-FDTL — were dismissed. Without the option of return to the military, the government provided one-off separation payments to those individuals in 2008.

a politically charged issue that the security sector and political leaders may need to address, particularly during election campaigns.³¹

FORMER PNTL “SUSAR” SURRENDERS



Rebel PNTL paramilitary police officer “Susar” (left) shakes hands with the F-FDTL commander after his surrender in 2008.³² Source: East Timor Legal Blog.

Striking the appropriate balance when dealing with different security sector groups embroiled in the 2006 crisis will be critical in the future. Consider the example of a former paramilitary police officer and ex-FALINTIL guerrilla fighter named Amaro Suarez da Costa, better known as “Susar,” who was a leading member of the rebel group and was pardoned for the February 11 attacks. When acquitted in the subsequent trial for the Fatu Ahi attack on May 23, 2006, “Susar” declared his readiness to “assume responsibilities as a PNTL officer.”³³ Furthermore, he claimed that half of the other 26 other former security sector personnel acquitted would also return to F-FDTL or the PNTL (STL, 2010c). Based on the general lack of accountability in the security services, the return of “Susar” as an adviser to the PNTL (and possibly others as well) remains a possibility in the future.³⁴ Indeed, “Susar” is considered to have political value

³¹ Interview with Nelson Belo, Dili, September 2010.

³² In August, “Susar” received a presidential pardon shortly after being sentenced to 16 years for his role in the attack on the president’s residence in February 2008. He was subsequently acquitted in the trial of the case of armed confrontation with F-FDTL soldiers in May 2006.

³³ A number of the defendants in the Fatu Ahi case, including “Susar,” had been previously pardoned for the February 11 attacks. See JSMP (2010d).

³⁴ The F-FDTL commander, however, has stated that former rebel soldiers will not return to F-FDTL (see *Diario Nacional*, 2010e).

to F-FDTL and the PNTL due to his status as a guerrilla veteran. In this respect, any political deal for his return to the PNTL should take into consideration equitable reconciliation and political balance in relation to other pardoned security sector actors.³⁵

Of course, the preference would be that, as a rule, security sector personnel convicted (and pardoned) for political crimes be dismissed from the security sector. Political deals and inconsistencies exacerbate the fundamental problems of accountability for the future development of the security sector. President Ramos-Horta is adamant that the pardons will not lead to instability (AFP, 2010). The FRETILIN spokesperson, however, insists that the pardons will result in feelings of revenge and that long-term efforts will be required to “ensure that revenge is not entrenched in the institutional culture of the security sector.”³⁶ The younger generation of security providers need to learn by example, particularly because generational change within the military is frequently considered to be the solution to the problem of the professionalism within the F-FDTL.³⁷ One leading security sector analyst views such impunity and political deals as “reinforcing the sense that F-FDTL is not subject to the rule of law given the mentality of the younger generation of soldier and thereby results in more arrogance toward the PNTL in the future.”³⁸

Although the recent pardons have further contributed to a broader sense of impunity, particularly in the security sector, the medium- and long-term threat to the reform and development of the security sector remains to be seen. From the public’s perspective, the pardons of F-FDTL and the PNTL personnel will certainly increase the sense that security providers remain above the law and under

political protection. The lack of accountability for high-profile cases thereby presents challenges to ensuring there is public trust in the independence and professionalism of the justice sector, but also in security sector institutions, particularly the police. It is also clear, however, that the presidential pardons can undermine the deterrent effect of prosecutions for future criminal or political actions by security sector actors, particularly at a time of political upheaval. Political intervention in the system of the rule of law also fundamentally undermines the legitimacy of the rule of law, a legitimacy that will be critical to the national security sector, particularly for the delineation of the roles of F-FDTL and the PNTL, in the event of the future implementation of recent national security legislation (see CIGI, 2010).

The Impact on Future Stability

The first significant test of the effect of promoting political reconciliation to ensure national stability — as the recent presidential pardons were intended to do — will be the national elections in 2012 and the subsequent municipal elections. The politicization of security sector issues, particularly in relation to the 2006 crisis, remains a real possibility, especially at the local level. The return of the pardoned group of rebel F-FDTL soldiers and the PNTL paramilitary police to their communities is potentially a polarizing event. According to a former clandestine resistance leader, who was previously supportive of the group of dismissed F-FDTL soldiers: “to pardon them and to allow them to return to the district will result in political problems, they will not sit still, but become involved in politics and politicians will attempt to manipulate them, particularly at a time of elections.”³⁹

³⁵ Interview with Nelson Belo, Dili, September 2010.

³⁶ Interview with Jose Teixeira, member of parliament and FRETILIN (main opposition) spokesperson, Dili, September 2010.

³⁷ Interview with a long-term international observer of the security sector, Dili, September 2010.

³⁸ Interview with Nelson Belo, Dili, September 2010.

³⁹ Interview with a former clandestine youth leader from Ermera district, Dili, September 2010.

SALSINHA LEAVES COURT



In August 2010, former F-FDTL Lieutenant Salsinha, leading figure of the rebel group of F-FDTL and PNTL, received a presidential pardon after his 10 years and eight months' sentence for the armed attack on the prime minister's convoy in February 2008. Source: East Timor Legal Blog.

The underlying reasons for the desertion, dismissal and rebellion of the F-FDTL and other groups remain largely unaddressed for various reasons. Different political parties or groups will attempt to “recruit” the group or members for political ends.⁴⁰ As an example of the potential politicization of such issues, former Lieutenant Salsinha, leader of the 2006 group of dismissed soldiers, recently suggested that the political elite should be punished for causing the 2006 crisis rather than the “little people.”⁴¹ Although the prospect of the offer of positions (such as for “Susar”) or local government infrastructure opportunities (such as for former Lieutenant Salsinha) will likely accommodate the group, the re-politicization of those issues linked to the security sector remains a real possibility in future political campaigns.⁴²

40 According to differing political perspectives, various combinations of FRETILIN, the Democratic Party (PD) and the new National Development Party (PDN) are currently trying to gain the support of members of the group and other dismissed soldiers from 2006. Interviews with an AMP politician (governing coalition); Jose Teixeira, member of parliament and FRETILIN (main opposition) spokesperson; Nelson Belo, director of Fundasaun Mahein NGO: Dili, September 2010. In fact, a maverick PD parliamentarian, Lucas da Costa, even proposed that the state should compensate former Lieutenant Salsinha and his group for time lost in prison (STL, 2010a).

41 Former Lieutenant Salsinha also reportedly said that “the officials are like Pilate. They’ve all washed their hands, [I]t was only the little people, the followers, that went to jail” (Belford, 2010).

42 Interview with Nelson Belo, Dili, September 2010. It is significant that FRETILIN leader, Mari Alkatiri, reportedly said that Salsinha and his group were “victims,” used by politicians who themselves remain free (*Diário Nacional*, 2010b).

Political intervention in the justice system, once established as an acceptable strategy, will be a difficult policy to reverse for future generation of political leaders.⁴³ The president of the national parliament is generally considered to be a prominent politician in the so-called younger generation of political leaders, perhaps even a future president of the country. His reported congratulatory remarks for the pardon of former Lieutenant Salsinha and the rebel group demonstrate that younger politicians are also learning politics from the example, “the rule of political deals prevails over the rule of law” (*Diário Nacional*, 2010e).⁴⁴

Further, President Ramos-Horta’s policy of political reconciliation has led to the public’s expectation of political intervention to effectively challenge court decisions. One example is the recent conviction of two former FALINTIL fighters in relation to a high-profile political case that emerged from a shooting incident during the 2006 crisis.⁴⁵ Their families and supporters publicly demanded “political intervention” in the court decision from “the president, government and national parliament”: “We insist that the judges who collectively handle the case resign because they have no power and responsibility in this case. We consider the decision to be a time bomb which could spur a new conflict in future. We will not accept the court’s decision if it is a mandatory decision, so we ask the sovereign institutions, we will not hand over our members for imprisonment” (TVTL, 2010a).

The politics of this case related to the fact that the defendants were among more than two hundred civilians, including former FALINTIL fighters and PNTL, who had allegedly been supplied with automatic weapons by F-FDTL in May 2006 (UNCOI, 2006: 95, 96). In fact, the F-FDTL commander, Major General Ruak, also publicly criticized the judicial decision for “criminalizing those who defended the nation” (TVTL, 2010b). This statement came

43 Interviews with Luis de Oliveira Sampaio and Nelson Belo, Dili, September 2010.

44 Interview with Nelson Belo, Dili, September 2010.

45 The conviction was for criminal activity and illegal use of firearms in relation to a fatal incident at Mercado Lama on May 25, 2006 (see UNCOI, 2006: 87, 129).

just months after the case against Major General Ruak, the former defence minister, and other F-FDTL senior commanders for the alleged illegal distribution of weapons, was closed due to insufficient evidence (see CIGI, 2011).

Subsequently, the Court of Appeal overturned the conviction, leading to speculation and suspicion that the criticism had influenced the decision. Nonetheless, presidential pardons were widely anticipated. The case is indicative of not only the alarming lack of public respect for the justice system, but also the expectation of political intervention and the potential for political agitation in the absence of intervention. A FRETILIN opposition parliamentarian demanded, in a parliamentary session, that the president pardon two convicted arsonists in a politically motivated incident from 2007 rather than (politically) discriminate by *not* pardoning

them, further confirmation of the extent of the problem (*Timor Post*, 2010c). Indeed, the expectation of political intervention will remain a significant feature of national politics for the foreseeable future.

OAN KIAK WITH F-FDTL WEAPON



Oan Kiak with a weapon received from F-FDTL in May 2006.⁴⁶

TABLE 1: PRESIDENTIAL PARDONS AND COMMUTATED SENTENCES, 2002–2010

Date of presidential decree	Pardons or commutation of sentences	Highest sentence commutation
President Xanana Gusmao (2002–2007)	53 commutations	8 years, in sentences of 33 years (for 4 convicted individuals)
May 19, 2004	32 commutations	8 years, specifically for 3 former militia convicted of crimes against humanity in 2001; their sentences of 33 years were reduced to 25 years in line with the maximum sentence in the Timor-Leste Constitution of 2002
May 19, 2005	12 commutations	2 years
June 26, 2007	9 commutations	4 years
President Ramos-Horta (2007–present)	13 pardons 132 commutations	12.5 years in sentences of 25 years (for 3 convicted individuals)
January 23, 2008	38 commutations	11 years, including commuted sentences for 10 individuals convicted of crimes in 1999.
May 19, 2008	10 pardons 84 commutations (from a total prison population of 179)	12.5 years; the sentences of 3 former militia serving sentences in relation to crimes against humanity in 1999 were halved, leading to release by the end of 2008. Another 20 individuals had been conditionally released by July 2008, including the former interior minister, whose sentence in relation to 2006 crimes was commuted.
December 30, 2009	3 full pardons (including prisoners of “elderly age”); 47 commutations	8 years and 6 months, 1 of the pardons was granted to 1 of the 4 F-FDTL soldiers convicted of manslaughter of 8 PNLT; the pardon was granted due to his elderly age and good behaviour. The other 3 F-FDTL received commutations of their sentences by 3 years.
August 20, 2010	26 commutations	11 years and 6 months (10 individual sentences)

⁴⁶ In May 2010, the Court of Appeal overturned the conviction of Oan Kiak and another defendant in relation to a fatal shooting on May 25, 2006.

THE CULTURE OF IMPUNITY

RAISING EXPECTATIONS

Although the presidential pardons of the 26 soldiers and police are cause for significant concern for the justice system, the security sector and broader political stability, presidential intervention through pardons has increasingly become the norm in recent years. As seen in Table 1, the number of presidential pardons and commutations of sentences dramatically increased following President Ramos-Horta's election in 2007. The scale of the increase is evident with 94 prisoners, more than half of the total prison population, receiving pardons or commuted sentences on May 20, 2008 (UNOHCHR, 2008).

The use of presidential pardons in high-profile cases for reasons of political reconciliation is the subject of much controversy. These cases include:

- the former interior minister, who was convicted of manslaughter and illegal distribution of weapons during the 2006 crisis;
- nine former pro-Indonesia militia members who were convicted of crimes against humanity related to the 1999 violence; and
- the controversial figure of Vicente da Conceicao, known by the alias "Railos," who was released three days after the presidential pardon (commutation of sentence) following his conviction for an armed attack on F-FDTL during the 2006 crisis.⁴⁷

⁴⁷ For more detailed information see UNOHCHR (2010: 68). The decision was significant to the political opposition, particularly in that "Railos" had controversially acted as a district campaign coordinator in President Ramos-Horta's own presidential election campaign in 2007.

"RAILOS" GROUP IN POLICE UNIFORMS



Vicente da Conceição, a.k.a. "Railos" (pictured middle with microphone), speaking at the surrender of PNTL weapons received from the former interior minister.⁴⁸

High-profile political pardons have generally led to the increased public perception that political interventions serve to "protect" only high-ranking political figures, security sector actors and perpetrators of political crimes.⁴⁹ In this respect, a discernible disconnect has developed since the 2006 crisis between the political elite and the rest of society. The extent of the presidential pardons and the lack of visible signs of justice in relation to the 2006 crisis contribute to growing public sentiment that an entrenched culture of impunity has emerged in Timor-Leste.

Following the recent presidential pardons, not a single individual currently remains in detention in relation to the cases from the 2006 crisis (see Table 2). To date, the majority of cases recommended for investigation or prosecution by the UNCOI either resulted in acquittals or remain under investigation (UNCOI, 2006). In the cases of the convictions of nine defendants in three trials, including the former interior minister, presidential pardons have led to the release of seven of those nine convicted individuals, including four F-FDTL soldiers.

⁴⁸ The "Railos" group wear uniforms from PNTL Unidade Reserva Policia (URP), a former paramilitary police unit. Sitting on his right is Maurakat, who is also indicted in the case and believed to remain fugitive in Indonesia. "Railos" received a presidential "pardon" three days after his prison sentence started, leading to his subsequent release.

⁴⁹ In recent years, district community leaders and the general public have increasingly raised questions in public forums of why everyday people are jailed for stealing chickens, while those leaders responsible and perpetrators convicted in relation to the 2006 crisis received pardons or remain free. Interview with an international official working on the security sector, Dili, September 2010.

TABLE 2: STATUS OF CRIMINAL CASES RELATED TO THE 2006 CRISIS AND THE 2008 REBEL ATTACKS, AS OF NOVEMBER 2010

	Cases from 2006 recommended for investigation or prosecution by UNCOI	Cases of armed rebel attacks on February 11, 2008
Cases under investigation	11 cases	--
Closed cases	4 cases (including the former prime minister, former defence minister, the F-FDTL commander, deputy commander and two senior commanders)	--
Trial acquittals	4 cases (43 defendants) (mainly F-FDTL and PNTL, including the former PNTL Dili district deputy commander)	4 defendants
Trial convictions	3 cases (9 defendants) (including the former interior minister)	24 defendants with sentences between 9 years and 4 months and 16 years imprisonment
Convicted individuals receiving presidential pardons leading to release	7 convicted individuals: <ul style="list-style-type: none"> • 1 convicted individual received a full pardon leading to immediate release; • 6 convicted individuals received commutation of sentence leading to immediate release*; • (2 other convicted individuals received four-month suspended sentences) 	23 convicted individuals released shortly after receiving presidential pardons (commuted sentences) (less than 10 weeks after the Court of Appeal upheld convictions in June 2010); 1 other convicted individual was not arrested or imprisoned (and thus not pardoned)

*The former interior minister was imprisoned in May 2007, but was (controversially) released for medical treatment abroad in August 2007. While abroad for medical reasons, he was officially released, on conditions, two weeks after the president commuted his sentence on May 20, 2008 (UNOHCHR, 2009: 42).

The other two convicted individuals received short suspended sentences.⁵⁰

The 43 acquittals in the four other trials is comparatively high, with various explanations, including the weakness of the prosecution cases, the lack of adequate witness protection and the lack of judicial independence or a lack of motivation on the judges' part to properly conduct full trials due to the certainty of presidential pardons. For perceptions of security sector accountability, the majority of those acquittals relate to cases that involve serving or rebel security sector actors at the time of the 2006 crisis, and include an armed attack on the F-FDTL commander's house by the PNTL Dili district deputy commander as well as incidents involving numerous PNTL paramilitary. The potential future political ramifications from the prosecution's closure of four major cases from 2006, including controversial cases against the former prime minister, former defence minister, the national F-FDTL

commander and three senior officers, should also not be discounted (see CIGI, 2011). Meanwhile, the 11 cases that remain under investigation do not show significant signs of "delivering" justice due to inadequacies in the trial process and the threat of presidential pardons.

The severely limited progress of the cases from the 2006 crisis raises significant concerns about accountability. Considering that the 2006 crisis involved significant institutional fighting within and between F-FDTL and the PNTL, the overall impact on security sector professionalism, in times of political instability, is of particular concern. Indeed, the underlying problems and the institutional rivalries that contributed to the conflict in 2006 remain largely unresolved. For the director of a leading national NGO, the lack of justice in relation to the 2006 crisis "leaves absolutely no judicial deterrence to anyone picking up weapons to fight in any future conflict."⁵¹

⁵⁰ The two co-defendants convicted in the case involving the former interior minister in March 2007 both received four-month suspended sentences.

⁵¹ Interview with a director of a leading national NGO, Dili, September 2010.

THE HISTORY OF IMPUNITY

The general public's growing sense of a lack of accountability for politically motivated crimes began to develop after the end of the Indonesian occupation in 1999. Justice for crimes against humanity and historical crimes as far back as 1974 remained a highly sensitive, bilateral political issue between the leaderships of Timor-Leste and Indonesia and also for the majority of Timorese citizens.⁵² Despite the many war crimes and crimes against humanity committed during the Indonesian occupation from 1975 until 1999, UN investigations focused on the crimes against humanity committed at the time of the UN-administered referendum in 1999, leading to indictments of almost 400 individuals, including the commander of the Indonesian armed forces and other senior military commanders.⁵³ In UN-funded trials in Dili district court until 2005, only 87 East Timorese low-level militia members were prosecuted, leading to 84 convictions.⁵⁴ Another 305 indicted individuals (including high-profile Indonesian military officers, but mostly former militia from Indonesian West Timor) and many more potential suspects remain outside the jurisdiction of the Timor-Leste court in Indonesia, which exacerbated the general sense of impunity for 1999 crimes. The lack of any formal investigation or prosecution of crimes from 1974 to 1999 further exposed the justice deficit with respect to historical political crimes for many Timorese.

The Timor-Leste political leadership progressively adopted a policy of non-judicial reconciliation with Indonesia — and did so without sufficient national consultation — which led to strong criticisms of

⁵² The most comprehensive account of the Indonesian occupation from 1975 to 1999, including accounts of the internal political conflict, can be found in the Report of the Timor-Leste Commission for Reception, Truth and Reconciliation (CAVR, 2005).

⁵³ The report of the UN Commission of Experts (UNCOE) into the prosecution of 1999 crimes provides detailed information on trial processes in Timor-Leste and Indonesia (UNCOI, 2005). The International Centre for Transitional Justice (ICTJ) website also contains several relevant reports, including reports on the “reconciliation” processes, such as CAVR and the bilateral ICTJ (ICTJ, 2005; ICTJ, 2010).

⁵⁴ All 84 convicted individuals have now been released, having completed their sentences (23 of them having received reduced sentences from the president).

impunity, primarily from victims' groups, national and international civil society, some politicians and, significantly, the Catholic Church, particularly for the lack of accountability for senior Indonesian military commanders. From 2003 onward, the political leadership of Timor-Leste, primarily then Foreign Minister Ramos-Horta and then President Gusmao, vehemently pursued a policy of reconciliation in order to forge good bilateral relations with Indonesia. This eventually led to the establishment of the bilateral Commission for Truth and Friendship (see ICTJ, 2005). At the tenth anniversary of the referendum, President Ramos-Horta reiterated his position on past crimes: “Ten years after the ‘Popular Consultation’ we must put the past behind us We are free in body and spirit, and we are free and clean in the eyes of God. Those who committed crimes are the ones who have to live with these crimes and the ghosts of their victims haunting them for the rest of their lives” (*Jakarta Post*, 2009).

The national political leadership's promotion of non-judicial cooperation rather than punitive justice and extradition can also be explained by the lack of political will on the part of the UN and the international community to establish an international criminal tribunal or to fully pressure Indonesia during its democratic transition from authoritarian rule and post-September 11 geopolitical considerations. Instead, UN investigations, prosecutions and trials had been funded in “hybrid” experimental international justice arrangements through UN peacekeeping missions from 2000 until their closure in 2005.⁵⁵

Despite the state policy of political reconciliation with Indonesia and the improbability of any future international judicial process, the national court has

⁵⁵ See ICTJ (2005) and Cohen (2006). UN investigations were resumed under the new UN peacekeeping mission mandate in 2006. However, those completed investigation cases have not been filed as indictments by the prosecutor-general, most likely due to the state policy of reconciliation and the backlog of post-1999 prosecution cases. For more details, see UNOHCHR (2010) and ICTJ (2010).

TABLE 3: STATUS OF CRIMINAL CASES FROM THE 1999 CONFLICT

	Total	2000–2005	2006–2010	Defendants' whereabouts
Convicted in trials in Timor-Leste	85 defendants	84 defendants	1 defendant	All released (23 through presidential pardons) except one convicted individual serving a 16-year sentence after conviction in March 2010.
Acquitted in trials in Timor-Leste	5 defendants	3 defendants	2 defendants	Presumed returned to communities in Timor-Leste or Indonesian West Timor former refugee communities.
Arrest warrants issued by Timor-Leste court	305 defendants	305 defendants	--	All believed to be in Indonesia, including 94 former or serving Indonesian military officials. The figure also includes Martinus Bere, released from prison.
Ongoing UN investigations	233 cases*	--	163 cases completed*	Suspects are believed to be in Indonesia, but no prosecution indictments filed.

*Source: UNSG (2010: 36).

continued to conduct trials of crimes against humanity since the withdrawal of direct UN support for trials in 2005. Taken together, the several police arrests, court-ordered detentions and the three trials of returning militia represent a significant assertion of the independence of the national police authority and the justice system to bring returning former militia to justice. In Dili court, the three separate trials of returning former militia indicted for crimes against humanity resulted in one conviction, with a sentence of 16 years imprisonment in March 2010 (UNOHCHR, 2010: 79). The convicted former militia member has not yet received a presidential pardon, but that possibility should not be ruled out.

THE BERE CASE

In August 2009, the Martinus Bere case brought the dynamics of the official state policy of political reconciliation into direct confrontation with lower-profile efforts in the security sector and justice system. The high-profile political intervention by the president and prime minister to enable the release from Dili prison of Martinus Bere, a returning former militia indictee from Indonesian West Timor, resulted in widespread national

and international condemnation.⁵⁶ The Indonesian foreign minister reportedly demanded the intervention of President Ramos-Horta and Prime Minister Gusmao to release Bere, who had served at one time as a low-level Indonesian government official in West Timor.⁵⁷ Bere's surrender to the Indonesian Embassy occurred on August 30, 2009, the day of the tenth anniversary of the referendum — timing, that by most accounts, ensured the Indonesian foreign minister's participation in the ceremony. Although the president and the prime minister received much criticism for their political intervention, Indonesia received less attention for its own political interference. This episode clearly demonstrated the nature of the dynamics of bilateral relations between the two countries.

Bere's release represented a public affront to the independence of the justice system. The justice minister was directly tasked by the prime minister to instruct the prison manager to release the pretrial detainee. In an encouraging affirmation of the independence of the justice system, the political intervention to release Bere was

⁵⁶ Former militia member Martinus Bere was indicted in 2003 on various counts of crimes against humanity, including extermination and torture, for his alleged involvement in the Suai church massacre in September 1999. He was arrested by national police after entering Timor-Leste territory from Indonesian West Timor in August 2009. The court subsequently ordered Bere to be held in pretrial detention. For more detailed information and numerous document links, see Lao Hamutuk (2009).

⁵⁷ The minister of justice subsequently told journalists that President Ramos-Horta had promised that Bere would be released before August 30, 2009 (*Centru Jornalista Investigativu Timor* [CJITL], 2010).

strongly criticized in a statement issued by the president of the Court of Appeal, the highest-ranking judicial official in Timor-Leste: “No non-judicial sovereign organ has the power to release a prisoner who has been imprisoned pursuant to a court order, not even for political reasons... When we don’t use legal means to resolve problems they may grow larger. The 2006 crisis was a good example of this...The law is the best guarantor of stability, violating the law leads to conflicts” (Court of Appeal, 2009).

In another positive response from the justice system to political interference, the national prosecution service officially notified the justice minister of her status as a suspect in a criminal case filed in relation to the release of Bere (UNOHCHR, 2010: 77). The justice minister reportedly stated that the president, prime minister and prosecutor-general should also take responsibility for the release. In fact, the prime minister openly took “sole responsibility” in defence of the decision during a defeated censure motion introduced by the main opposition parties in the national parliament.

THE FUTURE OF IMPUNITY

FUTURE POLITICAL INTERVENTION?

Bere’s release and the presidential pardons demonstrate that open political intervention in the justice system by the government leadership on the grounds of reconciliation and political necessity is clearly considered an acceptable political action. The Bere case raises serious questions about the respect that individual political leaders have for the independence of the justice sector and the separation of powers. Although *realpolitik* and the maintenance of good bilateral relations are relevant to the Bere case, the blatant political intervention to secure his release further exacerbated perceptions of impunity, particularly given the sensitivity of the case. Further, the lack of consistency

in the judicial and political reconciliation process is problematic and supports accusations of impunity: the release of Bere, due to his political connections in the Indonesian government, starkly contrasts with the subsequent 16-year conviction of another returned former militia member in March 2010. A uniform state policy on historical prosecutions — one that allows the justice system to function independently — would be preferable for the development of the justice system and the country’s future stability.

These recent examples of presidential pardons and political interference in the justice system, along with prioritizing political reconciliation over justice in historical crimes, raise the serious concern that the evasion of accountability for criminal actions has become the legitimate political strategy for future differences or crises, particularly for political bosses and security sector actors. This increasingly entrenched culture of impunity is a predicament that threatens to undermine the long-term development of the justice sector, the broader security sector and future SSR efforts. In this respect, allegations that the prime minister, who also serves as minister of defence and security, intervened “to prohibit an investigation into the destruction and arson of a school” raises concern, but it is, perhaps, indicative of the increasing political intervention in the justice system and the security sector despite ongoing efforts to strengthen the rule of law (JSMP, 2010c).⁵⁸

COMBATting POLITICAL INTERVENTION

A culture of respect for the independence of the judiciary urgently needs to be engendered at the highest level of political leadership, particularly by the current president and prime minister. It cannot be assumed that

⁵⁸ Interview with a long-term international observer of the justice sector, Dili, September 2010.

such progress will come with generational change. An increasingly likely prospect is that future generations will consider continued intervention in the operation of the justice system to be a viable political strategy; nevertheless, national efforts to combat political intervention in the justice system continue and deserve support. It is positive that the current situation in Timor-Leste allows for open criticism of such political decisions by politicians, the church, civil society and the media. The president of the Court of Appeal has publicly questioned the timing of the presidential pardons and the government interference in the Bere case, which is constructive in terms of bolstering the independence of the justice system. The prosecution case against the justice minister in relation to the Bere case is another positive indication of the strengthening of the justice system against the actions of politicians. It is significant that no references to political interference are included in the *Justice Sector Strategic Plan (JSSP) 2011–2030*, which was developed by the Ministry of Justice, the court, the prosecutor-general and others in the justice system and adopted in 2010 (JSSP, 2010).

In response to the presidential pardons, immediate efforts aim at circumscribing presidential powers. If successful, this will be an important step forward in combatting perceptions of impunity and strengthening the rule of law and the justice system. Indeed, a senior national judge clearly supports such an initiative: “in such a new country, the politicians must consider the impact of the implementation of laws, thus there is a need to regulate politicians’ actions.”⁵⁹ In April, the prosecutor-general suggested that parliamentarians draft legislation on pardons “to end the protracted discussion and disagreement on the presidential pardons issue,” after President Ramos-Horta publicly declared his intention to pardon the group of rebel soldiers and police (*Timor Post*, 2010a). The JSMP has been particularly active in initiating discussion on the pardon issue, in particular, organizing

a June seminar in which the president of the Court of Appeal, the president of Parliamentary Committee A and the justice minister participated, and establishing a working group to recommend guidelines on pardons to the president (JSMP, 2010b).

Following the August 20 controversial pardons, the Ministry of Justice initiated legislation that is being developed to clearly define the criteria and to regulate the process of presidential pardons. Currently, Parliamentary Committee A is taking the lead in drafting the legislation in consultation with national and international counterparts, including advisers from the Office of the President.⁶⁰ It is anticipated that the legislation will change the scope of pardons and commutations, including limiting excessive pardons for serious human rights violations. The recommendations of the UN-sponsored Independent Comprehensive Needs Assessment (ICNA) of the justice system may be incorporated, for example, increasing the transparency of the pardon process through input from affected parties and providing opportunity to the prosecution service and victims’ families to respond to proposed presidential pardons (ICNA, 2009: 84).

Further, the JSMP has significantly contributed to the discussion through its proposals on regulating presidential pardons, which include that the president should only be able to reduce the sentence of a convicted person relative to the length of sentence, and convicted individuals should not be relieved from a sentence in its entirety (JSMP, 2010c). It is also encouraging that the JSMP separately met with the president, the prosecutor-general and the justice minister in October to discuss its proposals; the president reportedly defended his philosophy of pardons, but the prosecutor-general supported “measures or legislation” to regulate presidential pardons (JSMP, 2010e). The legislation

⁵⁹ Interviews with a senior national judge and Nelson Belo, Dili, September 2010.

⁶⁰ Email communication with Fernanda Borges, president of Parliamentary Committee A (constitutional issues, justice, public administration, local government and government legislation), October 10, 2010. Interview with an international official working on the justice system, October 2010.

will probably be passed by the national parliament, but may face political challenges from the president in terms of promulgation and future implementation. Nevertheless, the proper reform of the presidential pardon process will be a high mark for the justice system and the broader establishment of rule of law.

INTERNATIONAL MOVES

The UN and the international community should continue to raise the problem of impunity and political intervention in the justice system. In addition to long-term criticism by international civil society, the UN and some members of the international community have become increasingly critical of political intervention in the justice system in recent years, most notably in the Bere case and the presidential pardons. In October, the chief of the UNMIT told the Security Council she had directly raised UN concerns with President Ramos-Horta that perceptions of impunity in relation to the recent pardons undermine public confidence in the rule of law (UNSC, 2010). Several Security Council members voiced similar concerns; however, President Ramos-Horta responded with a strong, yet pertinent, criticism of the UN on his official website:

The United Nations itself in passing judgments on decisions of sovereign countries in particular decisions that are the exclusive prerogative of the Head of State such as issuing pardons, seems to forget the UN's own record when it was a mission in Timor-Leste between 1999 and 2002 and it did not push for an international tribunal on East Timor at that time. As soon as it packed and left in 2002 then it decided to start lecturing the Timor-Leste authorities on international justice. (Ramos-Horta, 2010b)

Notwithstanding the “good offices” efforts of the UN and a number of international interlocutors, President Ramos-Horta continues to insist that political reconciliation is

the best strategy to address past conflict. The UN and the international community should press the issue of political intervention in the justice system in post-peacekeeping transition planning, particularly for the development of the future generation of political leaders, judicial actors and security sector officials.

CONCLUSION

Despite ongoing efforts to strengthen the weak justice sector, the recent examples of political interference in the justice system undermine the legitimacy and authority of the justice system. The increasing perception of a culture of impunity and intervention in the justice sector will have a negative impact on the broader system of the rule of law, in particular, the expectation of political intervention in trials.

Nevertheless, some encouraging signs of critical responses from the senior levels of the justice system and civil society deserve recognition, such as the questioning of excessive pardons and political interventions. The regulation and reform of presidential pardons is an important initiative to ensure that political agendas do not undermine the work of the justice system and the system of the rule of law. Engendering genuine respect for the independence of the justice system will remain a challenge, particularly as the future generation of political leaders and security sector actors continue to regard political interference in the justice system as an acceptable means to resolve political issues.

Accountability, particularly in the security sector, is a main principle of SSR methodology. Timor-Leste is promoting its own unique and nationally owned SSR process, which is proceeding in a context of questionable accountability. For most SSR theorists, the recent presidential pardons would represent worst-practice for security sector development; however, President Ramos-Horta views such notions as

“simplistic assertions that the absence of prosecutorial justice fosters impunity and violence” and states “historical evidence challenges these academic jargons” (*Jakarta Post*, 2009).

It remains to be seen whether President Ramos-Horta’s political solutions and other interventions will ensure future stability, particularly in the security sector. The national elections in 2012 will be the first significant test. In the long term, the overall impact of his recent political reconciliation strategies and the consequent lack of accountability will remain an underlying critical challenge to the future development of the justice system, the broader security sector and political stability in Timor-Leste.

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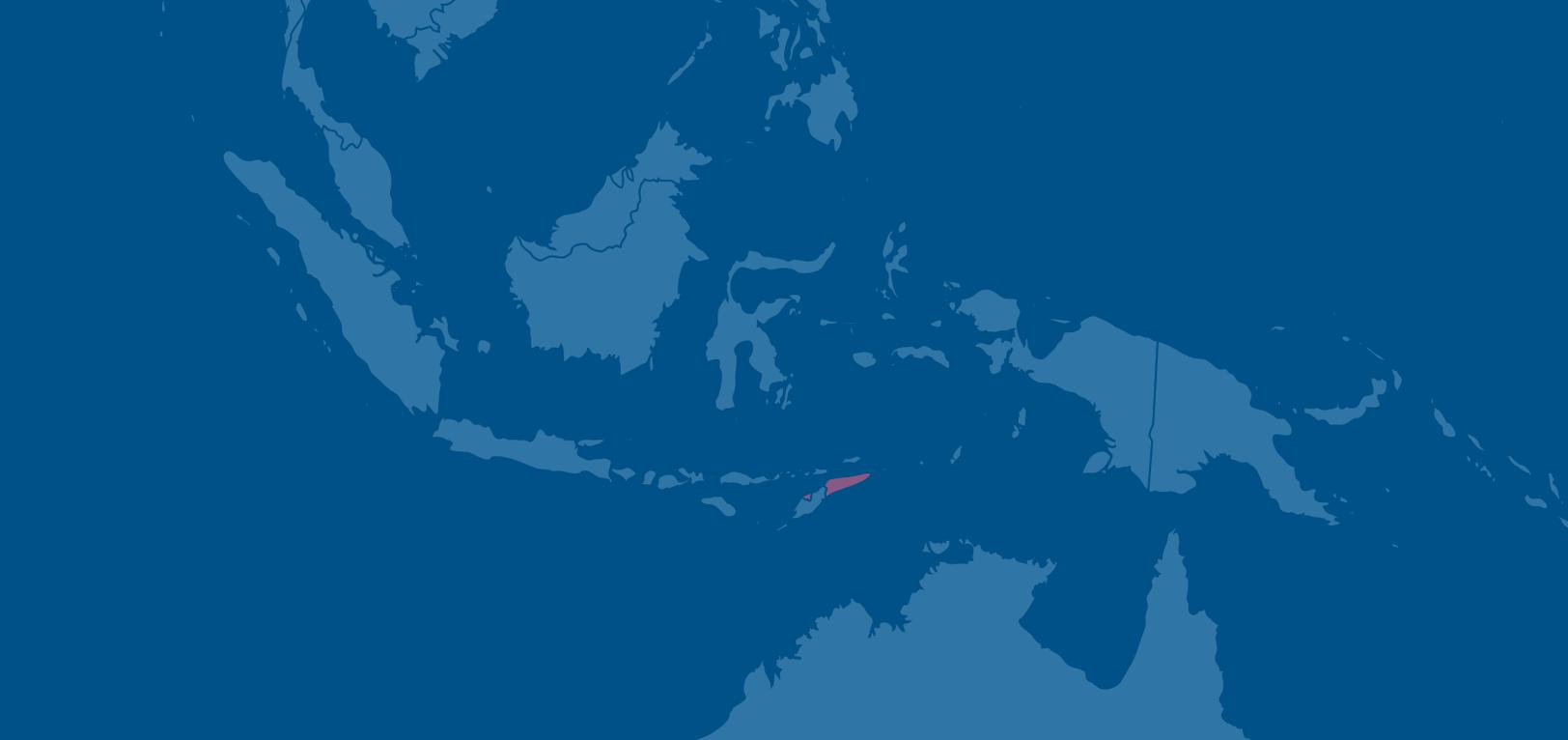
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