

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL TLS I/2019

12 June 2019

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 35/15, 32/32, 33/9 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged unlawful killings of three individuals by off duty police men in November 2018 and the alleged infliction of injuries on five others as well as a reported lack of access to adequate health care for the injured, the alleged killing of one and ill-treatment against eight individuals by members of the army and police forces in October 2018 and the alleged injuring of another individual in February 2019. Further information was also received on injuries resulting from police dispersal of a protest in April 2019 and legislative restrictions on freedom of assembly.

According to the information received:

18 November 2018

On 18 November 2018 in the early morning, during a family ceremony held in Kuluhun de Baixo, in the capital Dili, Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] all between the ages of 18 and 24, were reportedly killed by at least two off-duty Policia Nacional de Timor-Leste (PNTL) officers. Five others, Mr. [REDACTED], Mr. [REDACTED], Mr. [REDACTED], Ms. [REDACTED] and Mr. [REDACTED] were wounded, some of them seriously.

The two off-duty officers were in civilian clothes and carrying their pistols, which is against standard procedure. Reportedly one of the officers fired shots into the air whereas the other, who may have been intoxicated, fired into the crowd. The incident appears to have been triggered by an argument between persons taking part in the ceremony.

Shortly after the incident, four police officers were arrested, two of whom were placed in preventive detention on 21 November 2018.

The Prime Minister, the General Commander of the National Police and the President condemned the actions of the police officers. The General Commander committed to strict implementation of the rule that police officers cannot carry weapons when off duty except under special circumstances. The Prime Minister also called for the Police to take weapons control more seriously. A police enquiry has been opened regarding the incident and interviews have been carried out by the office of the Prosecutor in Dili. In May 2019, the Prosecutor reportedly finalized an indictment against two police officers.

The families of the deceased have been given some financial support for funeral proceedings, but have yet to receive adequate compensation. Two of the victims were married and had two children under one year of age. They have sought social assistance but may have been told that since there is no legislation in place, they may not be able to receive such support.

It is reported that the injured have received treatment that is inadequate and one of them may be at risk of permanent disability owing to an arm wound. To date, one of the victims still has a bullet in his chest and has been informed that the hospital does not have the expertise to remove the bullet. As a result, he is reported to increasingly experience psychological distress. Another individual who had his kidney removed may not be getting adequate or regular checkups. Reportedly, adequate medicine and equipment is not available at the hospital. Requests from the victims to be transferred to other countries where they can receive the needed appropriate medical treatment have allegedly not yielded any positive action. Reportedly, transfers to other countries for medical treatment is often arranged for officials as a result of the limited medical infrastructure, expertise and equipment available in Timor-Leste itself.

The victims have reportedly sought support from the Prime Minister to receive the health care and social support needed. They met an adviser to the Prime Minister in February 2019 who subsequently contacted the Ministry of Health. As a result, a hospital doctor was sent to the home of the victims in late February. However, the doctor did not carry out any medical check up but rather informed that the awaited medical visit would take place later that day and that it would be joined by the media. The victims reportedly refused medical treatment that would compromise their privacy and confidentiality with the presence of the media. Furthermore, the lack of appropriate medical infrastructure and equipment as well as the negative attitudes of the health care personnel have reportedly deterred the victims from accessing the health care needed at the national hospital.

5 October 2018

On 5 October 2018 a bus, which was accompanying a car carrying the body of a deceased army officer back for burial in his municipality of origin, was assaulted by unidentified individuals in Laga. The motive for the assault on the bus is unclear. Despite the damage to the bus, it managed to continue its approximately 15 to 30 minute journey to the home of the deceased army officer.

After learning about the incident, army officers from Falintil-Força de Defesa de Timor-Leste (F-FDTL) who had accompanied the body of their deceased colleague, returned to the area of the attack on the bus and intervened, allegedly beating to death a young man. The police arrived after the army officers had reportedly killed the young man. Police arrested eight persons [REDACTED]

[REDACTED] in three different places and reportedly beat all eight individuals, breaking the arm of one of them. The eight individuals alleged they were not involved in the bus assault, but were in the area of the incident, which is near the sea, as they are fishermen.

Several victims have filed complaints with the Office of the Prosecutor, the National Human Rights Institution, and the National Parliament. The army has interviewed some of the victims as part of disciplinary investigations and a trial of at least one police officer has started at the Baucau Court.

Other incidents and statements on the use of force and firearms

Reportedly since the start of 2019 there has been at least one more incident of use of firearms by a member of the Timor-Leste army against individuals leading to injuries. On 2 February, a young male was reportedly shot in the hand by an officer of the Timor-Leste Military Police in Caicoli, Dili in the context of an alleged fight between individuals. Also in early February, the Commander of the Timor-Leste Army called for strong use of force to defend stability and allowing for putting human rights aside in this response.

Early April 2019 dispersal of protest

On 2 April 2019, mobile vendors, who are among the poorest trying to make ends meet but are reportedly prohibited from selling their goods in some of the city's public spaces, held a protest against the restrictions. The police used teargas to disperse the protestors which resulted in several injuries.

Police stated the protesters had not informed the authorities of the planned protest, as is required by law, and were demonstrating within 100 meters of government buildings, which is prohibited in the Law on Freedom of Assembly and Demonstration (Law 1/2006). However, in practice, this prohibition is often not

implemented. Furthermore, as Dili is a small city, the 100m perimeter in effect prohibits protests in large parts of the capital.

The response by the Police was widely questioned by the Parliament, the NHRI as well as civil society.

While we do not wish to prejudge the accuracy of the information made available to us, we express serious concern at the alleged excessive use of force by police and army officers leading to the deaths of four individuals and injuries to at least six others; the ill-treatment by members of the security services against eight other individuals; the lack of access to appropriate health care for the wounded; and the limited social assistance received by family members of the deceased. We are also concerned by reported comments on the use of force by the commander of the army, which could encourage members of the army to use excessive force when involved in law enforcement missions. We are further concerned by the injuries to peaceful protestors, and concerned that the restriction on demonstrating within 100 meters from government buildings may neither be necessary nor adequate in the Timor-Leste context.

These allegations, if confirmed, would be contrary to article 6, 7 and 21 of the International Covenant on Civil and Political Rights (ICCPR), which the Democratic Republic of Timor-Leste acceded to on 18 September 2003, providing for the right to life, security and not to be arbitrarily deprived of life and the prohibition of torture and other forms of ill-treatment; and the right to freedom of assembly.

We welcome the statements condemning the use of force by off duty police officers in November 2018 and calling for a stricter regulation of the use of weapons by law enforcement personnel. We also welcome that an investigation was opened into this incident, and information that a trial has started for the alleged ill treatment by security forces of individuals in Baucau in 2018. In this context, we would like to underscore that investigations into alleged unlawful killings and incidents of ill-treatment or torture should be conducted in a thorough, prompt and impartial manner as required by international standards and perpetrators should be brought to justice. We also highlight the importance of ensuring fair and adequate compensation to victim's families within a reasonable period of time.

With regards to the statements made by the commander of the army, we underline that law enforcement officials may use force only when and to the extent strictly necessary for the performance of their duty and in a manner proportionate to the threat to be addressed, and that the notion of law enforcement officials include military authorities exercising law enforcement functions.

We are concerned by allegations that at least one additional incident in which firearms were used has occurred since the start of 2019. We underline that States are expected to take all necessary measures to prevent excessive use of force by their law enforcement officials and highlight the importance of swift actions to ensure that no further incidents occur.

We welcome that there are human rights training programmes in place for both the army and police, conducted jointly with the National Human Rights Institution of Timor Leste (Provedoria dos Direitos Humanos e Justiça) and the United Nations, but note that these programmes are most effective when there is a clear accountability system in place within the police and through the judiciary and that police officers know that they are accountable for any human rights violations committed in the discharge of their duties.

We also highlight the importance of ensuring that members of law enforcement are equipped with various types of weapons and ammunition that allow for a differentiated use of force and firearms and that this should include non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons.

With regards to the access to healthcare, States must ensure that those who do not have sufficient means have access to the necessary health care. In particular, all healthcare services must respect the right to privacy and confidentiality of health information. Confidentiality is a duty of health care professionals and an essential aspect of right to health.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide the details, and where available, the results, of the investigations and judicial or other inquiry being undertaken in relation to the above killings of civilians and injuries to others.
3. Please provide information on the health care provided to those injured in these incidents and how they conform with the right to physical and mental health, including in terms of the confidentiality of health information.
4. Please provide information on the training and the frequency of such training provided to law enforcement officials, and to soldiers assigned to law enforcement missions; on the internal procedures in place within the police and army regulating the use of force, including weapons, in the context of civilian policing; as well as existing accountability mechanisms within the police, the military and the judiciary for violations of human

rights committed by these personnel in the conduct of their duties. Regulatory frameworks and accountability mechanisms are all the more warranted when the use of force may result in violations of the right to life and serious bodily harm injury.

5. Please provide information on the various types of equipment that are available to those in charge of law enforcement to ensure that force is used only when and to the extent strictly necessary and proportionate and if adequate equipment is not available, what plans the Government has to avail itself of such equipment.
6. Please provide information on the monitoring and control mechanism that exists for police authorities to assess personnel compliance with the rule that off duty police officers are prohibited from carrying firearms, and to ensure they are strictly respected. Please also indicate what sanctions or other measures are taken when law enforcement officers are found to have violated such regulations.

We would be grateful for a prompt and detailed response to this communication. This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

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Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer to article 6 (1) of the International Covenant on Civil and Political Rights (ICCPR), which Timor-Leste acceded to on 18 September 2003, which guarantees the inherent right to life of every individual and provide that this right shall be protected by law and that no one shall be arbitrarily deprived of his life.

Right to life

In General Comment No. 6, the Human Rights Committee reiterates that the right to life is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation. Moreover, in General Comment No. 31 the Committee has observed that there is a positive obligation on States Parties to ensure protection of Covenant rights of individuals against violations by its own security forces as well as by private parties or entities. States Parties permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate and bring perpetrators to justice could give rise to a breach of the Covenant (CCPR/C/21/Rev.1/Add.13).

Prohibition of Torture

We would also like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in **articles 2 and 16 of the Convention against Torture** and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Timor Leste acceded to on 16 april 2003.

Use of force and firearms

With regards to the reported excessive use of force by members of the police and army, we would like to stress that under international law any loss of life that results from the excessive use of force without strict compliance with the principles of necessity and proportionality is an arbitrary deprivation of life and therefore illegal. According to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990 (Basic Principles), and the UN Code of Conduct for Law Enforcement Officials, law enforcement officials may only use force when it is strictly necessary and only to the extent required for the performance of their duties. Force used must be proportionate to the legitimate objective to be achieved. Should lethal force be used, restraint must be exercised at all times and damage and/or injury mitigated. Medical assistance should be provided as soon as possible when necessary. Law enforcement officials includes military authorities who exercise police powers.

We would also like to draw the attention of your Excellency's Government to the Report of the Special Rapporteur on Torture **A/72/178 presented to the General Assembly**, regarding extra-custodial use of force, in paragraph 47 the Special Rapporteur

indicates that “extra-custodial use of force involves the intentional and purposeful infliction of pain or suffering on a powerless person as a vehicle for achieving a particular purpose will always amount to an aggravated form of cruel, inhuman or degrading treatment or punishment, irrespective of considerations of lawful purpose, necessity or proportionality and irrespective of its qualification as torture under the applicable treaty definition.”

Investigations

Furthermore, according to Principle 9 of the Principles of the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, there is an obligation to conduct thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death. The Minnesota Protocol on the Investigation of Potentially Unlawful Death which in 2016 updated the original UN Manual on the Effective Prevention of Extra-legal, Arbitrary and Summary Executions of 1991; and the UN Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (1989), states that an investigation must be a) prompt; b) effective and thorough; c) independent and impartial; and d) transparent.

Compensation

Additionally, principle 20 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, (resolution 1989/65 Economic and Social Council) states the families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time.

Preventive measures and training

We further highlight that according to Human Rights Committee General Comment No. 36 States parties are expected to take all necessary measures intended to prevent arbitrary deprivations of life by their law enforcement officials. These measures include appropriate legislation controlling the use of lethal force by law enforcement officials, procedures designed to ensure that law enforcement actions are adequately planned in a manner consistent with the need to minimize the risk they pose to human life, mandatory reporting, review, and investigation of lethal incidents amongst others. In particular, all operations of law enforcement officials should comply with relevant international standards, including the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169)(1979) and the Basic Principles law enforcement officials should undergo appropriate training designed to inculcate these standards so as to ensure, in all circumstances, the fullest respect for the right to life.

Furthermore, according to article 2 of the Basic Principles, Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would

allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons.

Right to freedom of peaceful assembly

We wish to refer your Excellency's Government's attention to article 21 of the ICCPR which protects the right to freedom of peaceful assembly. We highlight that no restrictions may be placed on this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

We further note that failure to notify authorities of an assembly does not render it unlawful, and consequently should not be used as a basis for dispersing the assembly. This applies equally in the case of spontaneous assemblies, where prior notice is otherwise impracticable or where no identifiable organiser exists. (A/HRC/31/66 para. 23).

Right to Health

Finally, States Parties to the International Covenant on Economic, Social and Cultural Rights shall guarantee that the rights enunciated there-in, including the right to physical and mental health, will be exercised without discrimination of any kind (art.2.2). Accordingly, States Parties shall fulfil their obligation to respect the right to health by refraining from prohibiting or impeding equal access for all persons to health services. (Committee on Economic, Social and Cultural Rights General Comment 14, para. 34). In this connection, States must ensure access to health care and provide those who do not have sufficient means with the necessary health insurance and health facilities (para 19). Furthermore, all health care services must be respectful of medical ethics and be designed to respect confidentiality and improve the health status of those concerned (para 12). Confidentiality is a duty of health care professionals and an essential aspect of right to health (A/HRC/23/41/Add.3). In addition, pursuant to principle 5(c) of the Basic Principles, law enforcement officials should ensure the provision of timely medical assistance to anyone injured as a result of the use of force or firearms.

