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## UNMIT

United Nations Integrated Mission in Timor-Leste

### Press Conference on the launch of the UNMIT Report on Human Rights Developments in Timor-Leste: 1 July 2008 to 30 June 2009

*Rejecting Impunity: Accountability for Human Rights Violations Past and Present*

15 September 2009

Transcript

**Gyorgy Kakuk (UNMIT Spokesperson):** I would like to welcome our speakers, Mr. Louis Gentile, the head of Human Rights and representative of the Human Rights Commissioner at UNMIT and Mr. Silveirio Pinto Baptista, the deputy head of the Provedor. Today they are going to present the latest human rights report.

**Silveirio Pinto Baptista:** (Speaking in Tetum, translated here) Well, thank you. I think, first of all I would like to say good morning to Mr. Louis as head of UNMIT human rights section, and to Mr. Gyorgy as UNMIT spokesperson. As well as colleagues, journalists, colleagues from the UNMIT human rights section, and other colleagues working with United Nations Mission.

I think this the third opportunity, particularly for me, to participate in a meeting like this, for the launch of our report on human right situation in our country. I would like to thank colleagues from UNMIT, which is launching the report. If we look at the report, it truly reflects the actual situation in our country.

I think the Provedoria for Human Rights and Justice, as a national institution for human rights, should truly look at this kind of matter seriously. However, until this time we are still facing a number of limitations. The Provedoria is not able to complete all its roles as a national institution for human rights. That is why colleagues from the UNMIT human rights team are able to produce this report. Yet, I expect that this report, if we look into the report, has various recommendations, including for the Provedoria on how to accomplish its work according to the mandate as stated in Constitution of Republic and of Provedoria's statute itself.

If we look into the report, as I mentioned earlier, it reflects the real situation in our country. We really need all the bodies, all State bodies to look properly at this report, as well as the recommendations as stated in the report. We should be open to this report and accept it, and implement its recommendations. On this matter, I would just like to say, to ask all State bodies to respect the principles of a democratic State which are set out in the Constitution of the Republic. So that our State can properly be faithful to its Constitution as well as human rights values that have been stipulated in our Constitution and also the many international treaties which Timor-Leste has been ratified. Timor-Leste has responsibilities, is morally obliged to consider the matters which have been raised in this report. And I think it is for all of us, especially colleagues from the media, to help make this report available publicly, to make sure the public receive this report. We also hope, we believe, that colleagues from UNMIT can distribute the report to all bodies, to the President of the Republic, to the Government, to the Parliament. We can all see in

this report, we hope, a mirror for us all – and we can reflect upon the report and implement its recommendations. For my part, this is what I would like to say.

**Gyorgy Kakuk:** Thank you very much. I will pass the floor to Louis Gentile to say a few words on behalf of the UN authors of the report.

**Louis Gentile:** (Speaking in Tetum; translated here) Good morning. Thank you very much for your time, for your presence here this morning, to listen about our report on human rights in Timor-Leste. I want to say thank you very much to the Deputy Provedor, Mr. Silveirio Baptista Pinto, for his comments on our report. I want to share some thoughts about the report and about the situation generally in relation to human rights in Timor-Leste.

(Switched to English)

Last night I was thinking of what I would say this morning at the press conference and I received a copy of a speech that my High Commissioner will give to the Human Rights Council in Geneva later today. I read that speech and I saw that the High Commissioner in her speech is saying that there's no country in the world, in fact, that doesn't have human rights violations or doesn't have some human rights challenges. In fact, every country has some of these. So, then I thought that instead of just reciting the main findings of a report—which you have copies of—maybe it's more fruitful and productive if I talk very briefly about where is Timor-Leste doing better than average in the human rights area, where is it making progress - and has it made progress in the last year? - and then finally where are the main challenges still ahead.

So, starting with where is Timor-Leste doing better than average and better than in fact most of the countries in the world? I thought that actually in looking at the way we've worked here in the past year and comparing it to the year before, there are actually a number of areas where Timor-Leste is far better than average. One of those, which is the most obvious, is the open access, unrestricted access we have to detainees and prisoners held anywhere in the country. We are able to go anywhere to visit detainees and speak with them freely without any restriction, and this is actually quite rare in the international world in working with human rights.

Secondly, in relation to human rights defenders, civil society actors, our partners and civil society, our partners from the Provedor for Human Rights and Justice, our own human rights workers in the UN. We actually can do our work without any threat to our own security and safety, and this again is better than far more than half of the countries in the world where there is often intimidation against people who are working to defend human rights.

In terms of some of the most serious types of human rights violations, and the most notable being torture, we have had no confirmed reports of torture committed by the security forces in the past year. This is quite exceptional.

Another area which is very positive here compared to many other countries, including western developed countries and democracies, is tolerance towards migrants and foreigners. Even people who don't have proper documentation to work in the country are not harassed, they are not put in prison, asylum seekers are not detained as a matter of policy and there is more tolerance to outsiders than in many countries in the west, and this is very positive feature of Timorese society.

So these areas I've just mentioned are areas where not only is Timor-Leste doing well, but it's doing far better than the average, internationally.

Then moving to positive trends in the past year. In practical terms we have seen some very concrete developments, in measurable terms. For example, the total number of violations reported to us declined significantly over last year.

Secondly, and this is really a fundamental improvement, is the independence of the judiciary and the presence of the courts in the districts, with Timorese actors who are capable to act as prosecutors, judges and public defenders and are doing their job in a professional way. This has increased during the past year and this is a real improvement to the justice system as a whole, which is fundamental to respect for human rights.

Fundamental laws, most importantly the Criminal Code, were also passed during the reporting period. This Criminal Code also makes domestic violence a public crime. It does not criminalize defamation, and it is a very good and positive piece of legislation which is important for the rule of law and respect for human rights in the country.

Furthermore, the Office of the Provedor for Human Rights and Justice has managed to increase its own capacity to act as a national institution to promote and protect human rights. Very importantly it has established in the past year a presence in four districts, to cover regional issues and to receive complaints from people and make their office and their work more accessible to people living outside of Dili. You will see in the Report's recommendations that we encourage the Government to continue to ensure that adequate resources are devoted to the build-up of the Office of the Provedor for Human Rights and Justice and to augment the presence in the districts.

Another major positive step in the past year has been the addressing of the IDP (internally displaced persons) situation, which is not finally resolved because we still need to ensure that people are supported in their return and that they have adequate resources to ensure that integration in their communities lasts and is sustainable. But a major step forward has been made in reintegrating and returning most IDPs to their home communities.

The beginning of some basic social assistance programmes for vulnerable people, including those in the districts, during the past year has also been a very positive thing. For people who are living on the margins of society with very poor conditions to have social assistance from the Government, even if it is a small amount, is a big improvement for those people. So this is also a positive development.

Now I'll just mention another concrete improvement, especially from the international human rights law perspective, and that is that the Government presented its report on the Convention on the Elimination of all Forms of Discrimination Against Women very recently. It was a very frank report which also admitted many of the challenges still facing Timor-Leste to promote the rights of women, but it is a very positive thing that the Government went to New York and presented to the committee, acknowledged the challenges ahead and is willing to address those in a serious way.

Then finally turning to the main challenges ahead. I think that if we look at these challenges one-by-one we can see in each of them also some positive signs. Although they are areas of concern from a human rights perspective, we also see some areas where things have improved to a degree.

Starting with, for example, the work of the PNTL. When we talk about human rights violations committed during the last year by the PNTL, we saw that the number of violations declined over the previous year. However, we also see that the excessive use of force during arrest is still far more prevalent, more common, than it should be, and that this trend really needs to stop. During

the past year there were five cases that actually went before the courts. This is included in the report and you will see this when you read the report, where PNTL officers were convicted of criminal offenses related to violations committed during their professional duties. What is better than in many other countries where I have worked in relation to the police force, is when we actually go to speak to police officers in the districts or in Dili, they are very frank with us. They are very willing to share information. They, for the most part, most officers want to ensure that they respect human rights, they want to learn more about human rights and be trained in human rights. They also want to be trained more thoroughly in the local legal context, including the new Criminal Code. What is also very interesting is that the police have actually provided a lot of the important information in this Report to us. Rather than not cooperating or sharing information with human rights actors, they in fact have provided some of the essential components of this Report that we are publishing today.

When we talk about accountability for past human rights violations, including the serious crimes committed during the occupation and in 1999, I think you are all aware of the case of Maternus Bere which was very much covered in the media in the last weeks. The position of the United Nations on this issue is very clear, and it has always been clear, and that is that there should not be and cannot be impunity for serious crimes, including crimes against humanity, war crimes and genocide.

Looking forward what we really think is important is that one needs to separate the political relationship and having a positive relationship with neighbours, which is a very reasonable and good thing to do. In fact, having good relations with your neighbours is essential for the development of the country. It is essential for peace and security in the country. And the relationship between friends is one that is based on mutual respect, so that the issue of a matter of international principle which all countries have signed up to, like the fact that there can be no impunity for serious crimes, should not interfere with a positive relationship. They need to be separated from each other.

When we talk about actions for the future, we also need to consider what can be done in the current context also for the victims who have recently held a national conference and congress in Dili and who would like to see, for example, the CAVR report tabled and debated in Parliament. It has been languishing since 2005 without proper consideration.

And then finally I would just like to add that last year I identified some of the core challenges for Timor-Leste to really be a leader in human rights, and I think those core challenges still remain. Those include, specifically, reducing violence against women and children, this is one of the core problems and challenges that has to be addressed and improved. Improving the realization of economic, social and cultural rights- what this mean in practice is essentially making sure that investment in education, primary health care, rural development are the absolute priorities of Government. These are national priorities now and we hope that in investing in the future, in young people, in health, then you will see a real improvement in the quality of people's lives, which in turn means an improvement in their human rights. On accountability the national institutions with the responsibilities for bringing people to justice who have committed violations need to continue to pursue justice when violations have been committed. This includes the judiciary, but it also includes those who are responsible for the security forces to ensure their officers behave in a professional way and do not abuse the rights of citizens. And then finally I think it is really still a challenge and will take some years to build up the capacity of national institutions to promote and protect human rights. The Provedor's office, we already mentioned, has made big improvements in the past year and we hope that the resources will be there to continue that trend in the next year and the coming years.

Then finally on the overall atmosphere of promoting a culture of human rights, there are many initiatives that have been taken during the past year, including a national consensus dialogue, including efforts by the Office of the President to promote the City of Peace as an example of how to promote human rights values in communities. These are all very positive initiatives and things that should continue in order to promote the resolution of dispute through dialogue and peaceful means and not through violence. This is really essential to the future of human rights in Timor-Leste.

Thank you for your time.

**Gyorgy Kakuk:** This is the opportunity for you to raise your questions?

*Question: (Speaking in Tetum, translated here) Thank you very much for the time. I am from the STL Media Group. The position of the UN is clear – there must not be impunity for violations of human rights committed in 1999. Now my question is what is the position of the UN when it comes to the pressure for the establishment of international tribunal?*

**Louis Gentile:** Actually the position of the UN on that issue has been clear for many years, and essentially this also why the Bere case is so important, because primary jurisdiction for crimes against humanity is with the countries where the violations took place. So, if Timor-Leste and Indonesia are prosecuting effectively those persons who are alleged to have committed serious crimes then that prosecution is fine and can stand and there is no need for a Tribunal. However, if the two countries where people are within their jurisdiction are not willing and are not intending to prosecute people who have committed crimes against humanity then there is the principle of universal jurisdiction for these crimes and there must be also responsibility of the international community to find a way to bring these people to justice. This has always been the position of the UN. Nothing has changed. This is actually very old news in terms of the position of the UN.

*Question (AFP): What's the latest on Bere now? Is he likely to be deported or are there negotiations between the governments making it likely that he'll be deported now?*

**Louis Gentile:** We still don't have clear answer on what will happen. Our position has been that he should be brought to justice based on the charges that were brought against him in Timor-Leste, and we are still hoping that that will be a case.

*Question: (Speaking in Tetum, translated here) I am from Diario Nacional. I want to ask a question about the case of Maternus Bere who committed violations of human rights in 1999. He came to Timor-Leste, and the Government has released him. What is your position, the human rights position, on this matter?*

**Louis Gentile:** The UN position on this matter has been made clear since the release or handover came to light, because it's not yet clear that he has been "released" although he's been released from prison. We hope that he is still within the jurisdiction and can be returned to prison to await trial. So, impunity, as I said, impunity for crimes against humanity is something that the UN has always opposed and continues to oppose and cannot in any way sanction or agree to. Full stop.

**Silveirio Baptista Pinto:** (Speaking in Tetum, translated here) I would just like to add a little information. If you direct this question on Bere to the Provedoria, the position of Provedoria is

clear: according to our Constitution, according to the laws in force, whoever commits a crime, he must be responsible for it.

I would like to say this to all of you, Mr. Marternus Bere's eldest son works with the Provedoria. Perhaps people might ask how this can be? But we must remember that whoever does the deed, he must be responsible for it. Not that the father acts and the son be responsible for it. A criminal case is not like that, though a civil case might be different.

And on Marternus Bere, we have a legal principle that is very fundamental, and we must abide by this: the legal principle that states that only the court has the right to decide whether someone is guilty or not. Not just anyone, not the President of the Republic, not the Prime Minister, not Parliament, not anyone in this country, only the courts. In fact we are startled that Mr. Bere has not been tried by the court.

I think that this represents a major failure on the part of our State. If he committed crimes in 1999, take him to the court, try him properly, because we hold the principle of the presumption of innocence. As a democratic state we hold firmly to this principle. This is a fundamental principle, we cannot ignore it. Therefore, for whoever acts wrongly take him to the court, try him, and if he is guilty then he must will be held responsible. We must bear in mind that in Timor Leste it is the court which decides upon a sentence for an offender, this is not an act of revenge. No, because Timor-Leste has the view, I want to stress this, that if a sentence is handed down to someone, we consider this as part of his rehabilitation. Because of this the Constitution of the Republic does not allow the death penalty or life imprisonment, because these are against human rights principles.

I just want to add a little bit. I think you might want to know what will be the position of the Provedor's office on Bere's case? It's clear that referring to the Constitution of Timor-Leste and also the applicable laws in Timor-Leste whoever commits the crimes he or she is to be taken to the court. I would like to inform you that Maternus Bere's eldest son works for the Provedor and this is the reality. And what is fundamental here is that whenever there is a decision by the court there should be no interference by whoever. Whether it's the President of the Republic, National Parliament, Prime Minister. Only the court has the authority to decide who actually commits violations of anything. So, when it comes to Bere's case, in my view, our state of Timor-Leste has done a big failure in terms of the promoting of the rule of law. So, we need to be aware of the concept or the notion of the presumption of innocence. So anyone who commits crimes needs to be taken to the court and lets the court decide and this should not have in mind that when a court issues a decision that does not mean that it's taking revenge from the part of the court against someone, because, we, Timor-Leste, adopt the notion of the philosophy that when we sentence someone the person will be cured. Therefore, in our Constitution there is no death penalty and also there is no life imprisonment.

***Question:** (Speaking in Tetum, translated here) Good. I heard today from Mr. Louis Gentile when he responded to a question that Maternus Bere should go to the court. But which court? International or national? I have information that the Government of Timor-Leste has plans to deport the ex-militia commander Bere. So how do you see this?*

**Louis Gentile:** The position is the one that I have already stated. Right now there is no international court with jurisdiction over Mr. Bere. Therefore our opinion is that he should be tried based on the laws and Constitution of Timor-Leste for the allegations against him. And as my colleague from the Provedor's office has said, he has the right to be presumed innocent, to

have a fair trial, but he should be brought to trial and brought to justice for the serious crimes with which he is charged.

If he is deported, which would be regrettable, then Indonesia can also exercise universal jurisdiction for crimes against humanity and prosecute him in Indonesia. But the question is: is that the intention of the Government, to prosecute for crimes against humanity. Yes or no? We don't even know the answer to that question.

Furthermore the UN Commission of Experts which looked at the Ad-Hoc tribunals that were set up in Indonesia to try serious crimes committed in Timor-Leste were found - by UN Commission of Experts - to be manifestly inadequate. So even if there were to be a trial the past experience has not been a positive one.

Then finally to answer your question, if there is no trial in Timor-Leste and there is no trial or adequate trial in Indonesia, then the Security Council, which has said that there must be accountability for serious crimes including for those committed in Timor-Leste, has to consider what other option is available to bring those people to justice, including an international tribunal. They have to consider that because the two countries with primary jurisdiction will have relinquished that responsibility. We still don't know if that is going to be the case or not, but if that is the way it goes then that is an obligation on the Security Council to consider whether there needs to be an international tribunal because the two countries concerned will not prosecute, or do not intend to prosecute, for serious crimes committed.

*Question: (Speaking in Tetum, translated here) On Mr. Bere's case, do you think that there is political interference?*

**Louis Gentile:** What we know is that the legal means to release someone from prison were not followed, so whatever has happened must be therefore something that is political and there must be some kind of interference. The law was not followed.

**End transcript.**