



Judicial System Monitoring Programme
Programa de Monitorizasaun do Sistema Judicial

www.jsmp.minihub.org

**The 11 February 2008 Case:
More Questions Than Answers**

Implications for the Justice Sector in Timor-Leste

February 2011

Contents

1. Introduction.....	6
2. Executive summary	7
3. About the justice system of Timor-Leste	9
3.1 The Constitution	9
3.2 The President	9
3.3 The Executive	9
3.4 The Judiciary	9
3.5 The Legislature, law and legislation	10
4. Context of the incident that occurred on 11 February 2008	12
4.1 Lieutenant Gastão Salsinha, the petitioners and the 2006 crisis in Timor-Leste	12
4.2 Major Alfredo Reinado Alves	13
4.3 The events of 11 February 2008	13
4.4 The response to 11 February 2008.....	14
5. Trial process.....	15
5.1 Praise for Timorese judicial and legal actors	15
5.2 The prosecutor’s investigation and charges laid.....	15
5.3 The 11 February 2008 case in the Dili District Court.....	16
5.3.1 The hearing of evidence	16
5.3.1.1 Crime scene inspection and reconstruction	16
5.3.1.2 Expert ballistics evidence	17
5.3.2 Final submissions.....	17
5.4 The Court’s decision	18
5.4.1 Findings.....	18
5.4.2 Sentencing	19

5.5	Post-trial review	20
6.	Trial analysis: causes for concern and implications for the Timorese justice system.....	21
6.1	An inconclusive resolution.....	21
6.2	OPG’s lack of resources.....	22
6.3	Defendants’ insufficient access to information	23
6.4	Pre-trial detention and trial delay	24
6.5	Inadequate security for trial participants.....	24
6.6	Problems with witness testimony	25
6.6.1	False testimony	26
6.6.2	Testimony from high-standing officials not forthcoming.....	26
6.7	Language issues	27
6.7.1	Interpreters.....	28
6.7.2	Language in court and the international law of human rights.....	28
6.8	Distribution of the Reinado autopsy photo	29
6.9	Media reporting on the case	30
6.10	Comments about the case by public figures.....	31
6.11	Pardoning of the convicted offenders	32
7.	Recommendations	33
8.	Conclusion	36
9.	Appendix.....	37
9.1	Trial chronology	37
9.2	Table of defendants, charges, findings and sentences	42
9.3	Excerpts of relevant legislative provisions.....	46
9.3.1	ICCPR.....	46
9.3.2	RDTL Constitution	47

9.3.3	Indonesian Criminal Code.....	48
9.3.4	Timorese Criminal Code.....	50
9.3.5	Timorese Criminal Procedure Code	51
9.3.6	UNTAET Regulation No. 56 of 2001.....	51
9.3.7	Law No. 5/2004 on the Status of Members of Parliament.....	51
9.4	Bibliography and further reading.....	52
9.4.1	International instruments.....	52
9.4.2	Timorese national legal instruments	52
9.4.3	JSMP Publications	52
9.4.4	Articles, reports and other sources.....	53

Acronyms

AFP	Australian Federal Police
F-FDTL	<i>FALINTIL-Forças de Defesa de Timor-Leste</i> (Timorese defence forces)
FRETILIN	<i>Frente Revolucionaria do Timor-Leste Independente</i> (Revolutionary Front of Independent East Timor)
ICCPR	International Covenant on Civil and Political Rights 1966
ICESCR	International Covenant on Economic, Social and Cultural Rights 1966
GNR	<i>Guarda Nacional Republicana</i> (Portuguese paramilitary police unit)
KII	<i>Komisaun Inkeritu International</i> (International Commission of Inquiry)
MUNJ	<i>Movimentu Unidade Nasional ba Justisa</i> (National Unity for Justice Movement)
PNTL	<i>Polícia Nacional de Timor-Leste</i> (Timorese national police)
OPG	Office of the Prosecutor General
PSD	<i>Partido Social Democrático</i> (Social Democratic Party)
RDTL	<i>República Democrática de Timor-Leste</i> (the official name for Timor-Leste)
UDHR	Universal Declaration of Human Rights 1949
UIR	<i>Unidade Intervenção Rápido</i> (riot police unit)
UNDP	United Nations Development Programme
UNPOL	United Nations Police
UNTAET	United Nations Transitional Administration in East Timor

1. Introduction

The 11 February 2008 case on the attempted murder of the Head of State (Jose Manuel Ramos-Horta) and the Head of Government (Jose Alexandre Kay Rala Xanana Gusmão) is the most significant, as well as the most well-known, legal case conducted in the history of Timor-Leste. To date, however, although the incident itself has been well-documented, there has been no comprehensive report on the trial.

On the third anniversary of the incident, JSMP is concerned that even after an extended court process, the public is still largely in the dark about several issues surrounding the event, including who shot the President, and who killed Major Alfredo Reinado Alves and his bodyguard Leopoldino Exposto. This report hopes to separate fact from fiction in this much-talked about matter. It is premised on the idea that scrutiny of the judicial process will allow for the examination and evaluation of the efforts of judicial actors in finding the truth amidst such complexity.

JSMP monitoring and the content of this report relate to the trial at first instance, heard by the Dili District Court.¹ A key aim of this report is to assess the Timorese justice system's performance in relation to the principles of a fair trial. Timor-Leste has ratified several international conventions;² some of these international legal instruments and treaties, including article 14 of the ICCPR, describe how to conduct a fair trial without undermining the rights of a person involved in a particular case.

This report contains eight sections and an appendix. Following this introduction and the executive summary, sections 3 and 4 provide a brief overview of the relevant legal and political context in Timor-Leste, to assist in both the understanding of the 11 February 2008 case and the appreciation of the importance of the trial. Section 5 outlines the conduct of the trial, and section 6 highlights some of the problems with the justice system made apparent in this case. Finally, JSMP's recommendations and conclusion are found in Sections 7 and 8.

¹ The trial was heard by a panel of three judges, presiding judge Constâncio Basmery, Antonino Gonçalves and Deolindo dos Santos; the decision was delivered on 3 March 2010 (Proc. No. 79/C.Ord/TDD/2009).

The subsequent appeal (upholding the original result) was not open to the public, however the judgment handed down by the Court of Appeal on 14 June 2010 (Proc. No. 2424/CO/2010/TR) has been taken into consideration in the analysis contained here. The judges of the Court of Appeal hearing the case were Claudio Ximenes, José Luis da Goia and Rui Manuel Barata Penha.

Please contact JSMP for copies of the decisions (both in Portuguese).

² Among these are the ICCPR and Optional Protocols 1 and 2. See http://www.adh-geneve.ch/RULAC/international_treaties.php?id_state=219 for a full list.

2. Executive summary

JSMP's monitoring of the 11 February trial process uncovered, on the one hand, the capacity of the Timorese judicial system – and the willingness of national judges – to handle significant high-profile cases; and on the other, an array of problems and the pressing need for major improvements to the country's justice system.

The 11 February 2008 incident is not isolated from the 2006 civil unrest that rocked Timor-Leste and in this respect, the trial also represents the contribution of the judiciary to the resolution of that crisis. The case involved many judicial actors, as well as several non-judicial actors:

- The 28 defendants³
- The judges of Dili District Court (and subsequently of the Court of Appeal);
- The Office of the Prosecutor-General (Ministériu Públiku), including the international prosecutor assigned to the case;
- The lawyers for the defendants, including public defenders;
- Over 120 witnesses;
- Court interpreters;
- Security personnel from the PNTL and GNR;
- High-level public officials, including the President and Prime Minister; and,
- Local and international print and television media.

This report finds that the right to a fair trial, enshrined in article 14 of the ICCPR, concerns all of these actors, who can have an impact on the extent to which this guarantee is upheld. The conduct of the 11 February trial infringed on this right in several respects.

The prosecution's lack of resources was a factor in the long period of time that elapsed between the incident, the commencement of the trial, and its completion. This imposed an unfair burden on the defendants, for example extending the period of time in pre-trial detention, inadequate disclosure of documents and prosecution of some charges without even a minimal level of evidence. Another considerable obstacle, and one which is recurrent in Timor-Leste, is that of language and interpretation – a source of both delay and confusion.

³ There were more suspects, but 28 were eventually charged. All of them were former F-FDTL soldiers, except for Timorese-Australian dual citizen Angelita Pires, who was a civilian. See Appendix 9.2 for a full list of the defendants in this case.

Inadequate security for trial participants and the possibility of a presidential pardon compromised the search for truth. Pre-trial detention, the unauthorised distribution of autopsy photos, and some comments made about the case by public figures, pose moral and ethical issues.

Evidence, including witness testimony, needs to be handled efficiently and carefully, in order to prevent tampering and the loss of useful information, time-wasting, and the confusion of facts (deliberate or otherwise). It is essential that relevant information be obtained and made readily available to parties on both sides so that they have the best opportunity possible to prepare their case, and that irrelevant information is excluded. Unfortunately, this was often not the case in the 11 February trial.

The lengthy investigation and trial process, and the critical questions left unanswered even after the final appeal, indicate problems of capacity. Timor-Leste's justice system is still in the process of development, and greater resources, and coordination and cooperation between actors in the justice system, are required.

Interference and obstacles in the trial, and the blurring of fact and fancy, demonstrate the need for a greater appreciation of the fundamentals of the rule of law: judicial authority and independence, the separation of powers, and respect for human rights. Support for, and confidence in the courts is diminished by the failure of the trial to resolve key points of contention; there is still a great deal of mystery surrounding what happened on 11 February 2008.

In light of these problems, JSMP has drawn up sixteen brief but important recommendations. They are targeted at different actors, and address various elements of the judicial process, with the aim of improving its efficiency and fairness.

3. About the justice system of Timor-Leste

Timor-Leste declared independence from Portugal on 28 November 1975, but was only recognised internationally as a sovereign state on 20 May 2002, after the 1999 referendum vote for independence from Indonesia.

3.1 The Constitution

The Constitution of the Democratic Republic of Timor-Leste, based on the Portuguese model, entered into force on 22 March 2002. It sets out the organisation of political and legal power, and contains a range of civil and political guarantees, as well as social, economic and cultural rights. There are four organs of sovereignty in the Timorese system of government: the President, Executive, Legislature and Judiciary.

3.2 The President

The President is the Head of State, elected by popular vote for a five-year term. The powers of the President are outlined in the Constitution, but they are designed to be largely symbolic.

3.3 The Executive

The Prime Minister is the Head of Government. Following legislative elections, the President appoints the leader of the majority party in the National Parliament as the Prime Minister. The Government includes the Ministers and Secretaries of State.

3.4 The Judiciary

As set out in sections 118 and 119 of the Constitution, courts are competent to process all cases in accordance with the Constitution. There is also provision for a Supreme Court to be established, but until such time as this occurs, the Court of Appeal is the highest judicial authority, and so exercises the powers of the Supreme Court.⁴

Under UNTAET Regulation 2000/11, four district courts were established in Dili, Baucau, Suai and Oecusse, and additional district courts may be created under section 123.1 of the

⁴ This authority is found in the transitional arrangements provided for in section 164.2.

Constitution. Civil and criminal proceedings are commenced in these courts, which have territorial jurisdiction extending to “all matters as courts of first instance”.⁵ The Dili District Court exercised this regular, territorial jurisdiction as the court of first instance in the 11 February 2008 case.⁶

Court proceedings are conducted in Portuguese, with an interpreter translating to and from Tetum, the other official language of the courts. Indonesian and English are also working languages. Occasionally translation between Tetum and other local languages is necessary, and resources to provide for this are a current challenge for the justice system.

The capacity of the Timorese judiciary is still limited, and the assistance of international judges and advisors continues to be necessary.

3.5 The Legislature, law and legislation

The National Parliament is unicameral, with between 52 and 65 members elected by popular vote to serve five-year terms.⁷ It is competent to make laws on a range of domestic and foreign policy issues outlined in section 95 of the Constitution and, under section 96.1, may also authorise the Government to create laws on certain topics, including the:

- a) Definition of crimes, sentences, security measures and their respective prerequisites;
- b) Definition of civil and criminal procedure;
- c) Organisation of the Judiciary and status of magistrates

Members of Parliament, parliamentary benches and the Government may all introduce legislation into Parliament.⁸ Legislation passed by Parliament is promulgated by the President, unless he decides to exercise his right of veto under section 88.

On March 2009 the promulgation of the Timorese Criminal Code replaced the Indonesian Criminal Code. For cases still being tried following that date, but concerning events taking place prior to March 2009, the Timorese Criminal Code operates retrospectively, except where this would be detrimental to the defendant, in which case the Indonesian Criminal Code will be

⁵ UNTAET Regulation 2000/11, article 6.

⁶ Note that the Dili District Court also has additional exclusive jurisdiction to hear “serious crimes”.

⁷ Constitution of Timor-Leste, section 93.

⁸ Constitution of Timor-Leste, section 97.

applied.⁹ Similarly, the Timorese Criminal Procedure Code was promulgated in March 2006 and governed the conduct of this trial.

In relation to the civil jurisdiction the Indonesian Civil Code continues to apply but it is expected that this will soon be replaced by a Timorese code based on Portuguese law.

⁹ Timorese Criminal Code, section 3.

4. Context of the incident that occurred on 11 February 2008

4.1 Lieutenant Gastão Salsinha, the petitioners and the 2006 crisis in Timor-Leste¹⁰

Gastão Salsinha had been involved in the FALANTIL resistance against the Indonesian occupation, and joined the military after independence. He was promoted to the rank of lieutenant, but became dissatisfied with certain leaders in the F-FDTL who claimed those from the western regions had not participated in the struggle for independence. He was also in a dispute with Commander Taur Matan Ruak over the sanctions imposed on him for smuggling sandalwood.

Consequently, Salsinha led 159 F-FDTL soldiers in what became known as the Petition, the catalyst for the 2006 crisis. The petitioners were unhappy with the hierarchy of the F-FDTL because of alleged discrimination against soldiers from the western regions of Timor-Leste in matters of recruitment, promotion, and sanctioning. On 9 January 2006, they submitted their signed petition to President Gusmão (as supreme commander of the armed forces) and issued copies to other political, diplomatic, religious leaders.

Attempts at negotiations involving the petitioners, the F-FDTL and the President were unsuccessful and the number of petitioners grew. Believing the government had not dealt with their grievances, Salsinha's group, now totalling 593¹¹ of the F-FDTL's 1400 soldiers, abandoned their barracks. On 6 March 2006, Taur Matan Ruak sacked the deserting soldiers. The President's response was to sharply criticize the F-FDTL in a televised speech, which precipitated further tensions.

In April 2006, the petitioners led demonstrations against the government, which quickly escalated into violence, particularly in Dili, and the destabilisation of Timor-Leste. According to estimates, the ensuing conflict displaced around 150 000 people and killed at least 37.

¹⁰ For more comprehensive reviews of the Petition and the 2006 crisis, see, for example, the Report of the United Nations Special Commission of Inquiry for Timor-Leste (2 October 2006), JSMP's Justice Update "JSMP Response To The Report Of The UN Independent Special Commission Of Inquiry For Timor-Leste" (Issue No. 14, October 2006), and the International Crisis Group's Asia Report No. 120 "Resolving Timor-Leste's Crisis" (10 October 2006). The information in this subsection is drawn from these sources.

¹¹ Initially 591 soldiers signed the petition, and two others subsequently added their names to the petition. Most media reports round this figure up to 600. Most of the petitioners were from the districts of Dili, Ermera, Bobonaro, Ainaro, Same, Suai, Aileu, Manatuto, Liquiça and Oecusse.

4.2 Major Alfredo Reinado Alves¹²

Major Alfredo Reinado Alves was Military Police Commander in the F-FDTL and Naval Commander when, on 3 May 2006, he and seventeen of his men, along with four members of the special riot control police unit (UIR), deserted in support of the petitioners. Reinado was allegedly involved in the deaths of a number of members of the F-FDTL during an attack in Fatu-Ahi on 25 April 2006. The trial relating to this incident was heard by the Dili District Court with the final decision being handed down in September 2010.¹³ After assuming leadership of the petitioner group Reinado was, in July that year, arrested in Bairro Pité, Dili for illegal possession of weapons. He was brought before the court and ordered into pre-trial detention with his men. However, while in preventative detention awaiting trial, Reinado and his men escaped from Becora prison and established themselves in the western region of Timor-Leste as guerrilla soldiers to await a satisfactory resolution of their complaints.

In March 2007 Australian SAS forces attempted to capture Reinado, while he was living with his supporters in Same. One member of Reinado's group was killed in this operation, however Reinado and the rest of his group were able to escape.

After this failed attempt at capture, President Ramos Horta sought to begin a process of dialogue with Reinado and his group, sending a 'letter of free passage' to enable Reinado to travel freely to attend negotiations. The President established a national forum, *Movimentu Unidade Nasionál no Justisa* (MUNJ) to facilitate this negotiation process. The Presidente met with Reinado and his men an number of times in Ermera between April 2007 and the day of the shooting.

4.3 The events of 11 February 2008¹⁴

The negotiation process did not go smoothly and on 11 February 2008 information was circulated that Reinado had attacked the President (now Ramos-Horta)¹⁵ at his residence in Metiaut, Dili, seriously wounding the President, and that Reinado and his bodyguard Leopoldino Exposto had also been killed in the incident.

¹² See JSMP's Justice Update, "The Case of Alfredo Reinado" (Issue No. 8, covering the period of July 2006), available on JSMP's website at <http://www.jsmp.minihub.org> under "Publications", for more information on Reinado, this incident, and analysis of its legal implications.

¹³ Please see JSMP Justice Update "OPG charges are weak: Defendants in the Fatu-Ahi Case absolved", Ed. December 2010, available in Tetun, Indonesian and English.

¹⁴ Please refer to press releases and justice updates on the attempts on the lives of the President and Prime Minister on JSMP's website at <http://www.jsmp.minihub.org>, under "Publications".

¹⁵ In July 2007, Jose Ramos-Horta was elected President of Timor-Leste, and he subsequently appointed Xanana Gusmão (the outgoing President) as Prime Minister. They were still in these roles at the time of the 11 February attacks.

On the same day a group led by Salsinha ambushed the motorcade of now Prime Minister Gusmão in Balibar. There were no fatalities, although the car he was travelling in suffered major damage as a result of the shots fired.

Before the trial, the facts surrounding what occurred were hazy. Many people told the media that Reinado did not attack the President and others said that Reinado and his men came to a meeting after being contacted by the President. This gave rise to conspiracy theories and stirred media interest in the matter.

4.4 The response to 11 February 2008

After these incidents the government announced a state of siege and emergency to restrict the movements of citizens; this remained in place across the country until 22 April 2008.¹⁶

Not long after the attacks, the Prime Minister established a joint operation involving the F-FDTL and PNTL. The aim was to convince those who were under the command of the deceased Alfredo Reinado who had fled to the jungle with their arms to come down to Dili and submit to the legal process. The joint operation was carried out for four to five months, at the end of which each of the members of the group involved in the attacks handed themselves in to authorities. The government claimed that this operation was a success because no shots were fired and there were no fatalities.

The next section contains an analysis of the trial that followed.

¹⁶ The district of Ermera, where the rebels were thought to be hiding, continued in a state of emergency beyond this date. See the Economist Intelligence Unit Country Report on Timor-Leste (April 2008).

5. Trial process

5.1 Praise for Timorese judicial and legal actors

JSMP is proud of the efforts of all of the judicial institutions, especially the Dili District Court, which has jurisdiction to try crimes that occurred during the 2006 crisis. Although there are concerns about a number of substantial issues, JSMP believes that the court has truly demonstrated its commitment to display institutional responsibility in accordance with the Constitution, and is working hard to provide justice and uphold and reinforce the rule of law in Timor-Leste.

With the completion of this trial the court has strengthened its position, having overcome institutional challenges present from the outset. It is far from easy to conduct a trial involving public figures and several members of the military and police, and the court is to be commended for managing this difficult task. The Dili District Court not only had limited human resources and forensic laboratory facilities to test evidence relating to the crimes of 2006, but the court actors themselves had to deal with limited security, as well as psychological and social pressure relating to the case before them. They also met with both direct and indirect political pressure and influence exerted by several political authorities.

Nevertheless, the court actors deserve our praise for their dedication, commitment and institutional motivation to take on this burden and responsibility, particularly given the complexity of the case.

JSMP believes that other parties are also deserving of our appreciation, namely the OPG, lawyers (individually and collectively), witnesses, defendants, court clerks, members of the PNTL and the Portuguese GNR who provided court security throughout the process, as well as members of F-FDTL, the national and international media who were involved and contributed to this process. Without their input and cooperation the court could not have succeeded in completing its task.

5.2 The prosecutor's investigation and charges laid

The OPG assigned one international prosecutor, Felismino Cardoso to the case. Whilst authorities were still attempting to convince the rebels involved in the attacks to hand themselves in, the prosecutor carried out a protracted investigation.

The crime scene investigation took place over a week after the 11 February events, meaning that much valuable evidence is likely to have been lost or tampered with. According to media reports, many F-FDTL and UNPOL tampered with the scene of the crime on the day itself, by posing for photos with the dead body of Reinado; which they also moved around for the photos.

The prosecution brought several different charges against the 28 defendants.¹⁷ These related not only to attempted murder against the President, the Prime Minister, and various F-FDTL soldiers, but also to damage to the Prime Ministerial motor vehicles, and the illegal use of weapons. The charges were based mainly on the Indonesian Criminal Code, but one charge each was drawn from provisions of the Timorese Criminal Code and UNTAET regulations.

5.3 The 11 February 2008 case in the Dili District Court¹⁸

The trial began on 13 July 2009,¹⁹ and was greeted enthusiastically by many people including the national and international media, and the families and sympathisers of the defendants.

The observations made below are based on JSMP monitoring of the trial.

5.3.1 *The hearing of evidence*

The hearing of testimony from the witnesses took a long time, beginning in July 2009 and finishing only in February 2010. Over one hundred witnesses were involved in the trial.

In the first hearing none of the defendants wanted to testify in court about the evidence presented by the prosecution against them. The defendants exercised their right to remain silent and the judge declared the trial open to the public to hear the testimony of witnesses.

Throughout the course of the trial, several problems relating to the notification of witnesses, their failure to appear in court, and the lack of quality and relevance of the testimony given became apparent. Changes in legal representation for the defendants also occurred for various reasons at several points in the trial.

5.3.1.1 Crime scene inspection and reconstruction

After all forthcoming witness testimony had been heard (with the exception of expert evidence), the court conducted crime scene inspections and reconstructions – at the President’s residence on 1 February 2010, and in Balibar on 2 February 2010. The police and the court clerks did not

¹⁷ See Appendix 9.2 for a full list of defendants, charges, findings and sentences.

¹⁸ See Appendix 9.1 for a hearing by hearing overview of the trial, based on JSMP monitoring.

¹⁹ See JSMP’s press releases from July 2009, available in Tetum and Indonesian on JSMP’s website <http://www.jsmp.minihub.org> under “Publications”.

allow the public to participate in the inspection and instructed them to maintain a reasonable distance.

5.3.1.2 Expert ballistics evidence

On 8 February 2010 the court heard testimony from an expert witness who had conducted ballistics tests in an Australian laboratory. The expert stated that the bullets that injured the President and killed Reinado and Leopoldino were not fired by any of the guns handed in by the defendants or the F-FDTL for assessment.²⁰ It is possible that the F-FDTL has still not submitted all the weapons fired on 11 Feb 2008, despite the fact that they were repeatedly asked for by the prosecutor general.

Furthermore, contrary to the arguments of the prosecution and the testimony of presidential guard Francisco Lino Marçal, who stated that he shot the two deceased rebels – autopsy reports indicate the gunshot wounds sustained by Reinado and Exposto were fired at close range, and not at a distance.

In relation to the attack on Xanana's car, the ballistics expert stated the bullets did not come from the guns of the defendants, rather they were the type of bullets used by members of UNPOL and PNTL that were accompanying the Prime Minister. The expert also stated that at least some of the shots fired came from inside the car.

5.3.2 *Final submissions*

On 11 February 2010 the court was scheduled to hear the prosecution's final recommendation in this case. However the prosecution submitted two new documents – the written testimony of President Horta and of Prime Minister Gusmão. The prosecution had also previously been asked for testimony from Paulo Martins and former Major Agostu "Tara" de Araújo, but they did not produce this, and the court did not pursue the matter.

The court heard the final recommendations of the prosecutor on 16 February 2010. The prosecution maintained the original charges, modifying only the charge relating to conspiracy

²⁰ See also media commentary on the AFP ballistics report: "AATL Ejji Tribunal Reezame Kilat Musan Tiru Major Alfredo", *Suara Timor Lorosa'e*, 10 February 2010, pages 1, 15; Adam Gartrell, "Timorese assassin plot doubt – Aussie expert testifies", *Daily Telegraph*, 13 February 2010, page 38; and Paul Toohey, "Guard's gun didn't kill rebel –AFP report will rock Dili trial of Reinado's lover", *The Australian*, 20 July 2009, page 6.

F-FDTL soldiers are issued with FNC and M16 weapons, and the rebel soldiers carried HK33 weapons; all three of these guns use 5.56mm NATO bullets, but neither Reinado nor Exposto (who were killed by different bullets from different guns) had been hit by such bullets. The President was hit by a 5.56mm bullet, but the court was unable to determine the shooter or the gun used to fire at him.

due to a lack of evidence. The prosecution stated that it had been proven that the defendants had also taken the guns from the guards at the residence of the President, and also that it had been proven that the defendants indicated intent to kill the Prime Minister because they had attacked and fired shots at the Prime Minister's convoy in Balibar.

Public defender Andre Peixoto Fernandes argued that the evidence did not prove Salsinha and his men had any intention to shoot, and that it could not even be established that they were in the relevant location at the time. He further recommended that all 28 defendants be acquitted based on insufficient evidence.²¹

5.4 The Court's decision²²

After efforts spanning some seven months, the Dili District Court handed down its decision on 3 March 2010. Many family members of the defendants and other sympathisers, as well as observers and members of the national and international media, were present to hear the announcement of the decision. The court was kept under strict guard by members of UNPOL (GNR) and PNTL.

5.4.1 Findings

After the examination of proof, witness testimony, documentary evidence, expert evidence, and ballistics examinations, the court decided that there was strong evidence presented by the prosecution in relation to the criminal charges brought against the defendants.

The court found that the defendants in the group travelling with the deceased Reinado had travelled from Laulara, dressed in full military uniform and illegally carrying firearms, to the residence of the President. It also found that the defendants were involved in planning to carry out two attacks, one at the residence of the President in Metiaut, Dili, and another on the Prime Minister's convoy in Balibar.

It could not, however, prove who injured the President and Celestino Gama, or who fired shots at the Prime Minister's motorcade. Nor could the court establish that the witness Lino Marçal was

²¹ "Julgamento do atentado contra Ramos-Horta e Xanana na fase final", *iOnline*, 11 February 2010. Note that the 28 defendants had different lawyers, although Peixoto Fernandes represented several of them collectively.

²² Proc. No. 79/C.Ord/TDD/2009. See also JSMP's press release, "Final decision issued by court in 11 February case fails to prove who shot the President of the Republic" (March 2010), available on JSMP's website <http://www.jsmp.minihub.org> under "Publications".

the one who shot and killed Reinado and Exposto, although it is clear they were killed after entering the President's residence, and before the President was shot.

Twenty-eight defendants were tried by the court; however only 24 were found guilty of any of the charges against them. The defendant Angelita Pires was charged with being a main player in the conspiracy to commit the attack and attempted murder; however the court acquitted her, together with three other defendants,²³ of all charges against them due to a lack of evidence. The convicted defendants were also acquitted on several charges.

5.4.2 Sentencing²⁴

Gastão Salsinha was sentenced to ten years and eight months imprisonment for leading the armed group in its attack against the Prime Minister²⁵ and for:

- the attempted murder of two of the Prime Minister's bodyguards;²⁶
- the illegal use of firearms;²⁷ and
- the destruction of property.²⁸

Those who were with Salsinha²⁹ when the motorcade of the Prime Minister was ambushed and shot at in Balibar were also found guilty of those offences. They each received sentences of nine years and four months imprisonment.

Amaro da Costa and nine other defendants³⁰ who were with Alfredo Reinado were found guilty by the court and sentenced to sixteen years imprisonment for:

- the attempted murder of the Head of State³¹, and

²³ Tito Tilman, João Amaral Bere, and Alfredo de Andrade, all former F-FDTL soldiers.

²⁴ See Appendix 9.2 for a full table of defendants and the corresponding charges, findings and sentences.

²⁵ Indonesian Criminal Code, articles 338 and 53.

²⁶ Indonesian Criminal Code, articles 338 and 53.

²⁷ Timorese Criminal Code, article 211(3).

²⁸ Indonesian Criminal Code, article 406.

²⁹ The convicted persons who were with Gastão Salsinha during the attack on the Prime Minister's motorcade in Balibar were: Avelino da Costa, Bernardo da Costa, Alexandre de Araújo, Januario Babo, Raimundo Maia Barreto, Julio Soares Guterres, Gaspar Lopes, Jose Agapito Madeira, Julião Antonio Soares, Quintino Espírito Santo, Adolfo da Silva, Jose da Costa Ventura and Francisco Ximenes Alves.

³⁰ Domingos Amaral, Gilson José Antonio da Silva, Paulo Neno Leos, Marcelo Caetano, Joanino Maria Guterres, Gilberto Suni Mota, Egídio Lay Santo Ximenes, Ismael Sansão Moniz Soares and Caetano dos Santos Ximenes.

- the attempted murder of a bodyguard at the residence of the President;³² and
- the illegal use of firearms.³³

In accordance with article 358 of the Timorese Criminal Procedure Code, the court did not order the defendants to pay court costs for the trial.

5.5 Post-trial review

Both the prosecution and defendants appealed against elements the trial decision. The Court of Appeal reviewed the decision and delivered its final judgment, upholding the Dili District Court's verdict and sentences, on 14 June 2010.³⁴

On 20 August 2010, President Horta pardoned 23 of the men convicted in the 11 February trial.³⁵ Presidential Decree No. 31/2010 also pardoned three other offenders who had been jailed for the murder of eight police officers, which was another 2006 crisis -related crime.

³¹ Indonesian Criminal Code, article 104.

³² Indonesian Criminal Code, articles 338 and 53.

³³ Timorese Criminal Code, article 211(3).

³⁴ The prosecution had made submissions regarding defendant Angelita Pires' legal representation and the extemporaneity of certain of the defendants' claims. The defendants had appealed on issues relating to the competency of the Dili District Court, the nullity of the trial court's orders, the photos of Reinado and Exposto suggesting they were executed, and the presentation and examination of the defendants' weapons at the first trial. The court dismissed all these points of appeal.

³⁵ It is unclear why Francisco Ximenes Alves was not pardoned along with the rest of the group that had, under Salsinha's command, ambushed the Prime Minister's convoy. JSMP believes this may be because Ximenes Alves, unlike the other defendants, did not serve a period of preventative detention, making him ineligible for the pardons granted on 20 August 2010. This example further highlights the arbitrary nature of presidential pardons, and how their use often works against the interests of justice.

6. Trial analysis: causes for concern and implications for the Timorese justice system

This section discusses problems affecting the 11 February trial and what they mean for the justice system in Timor-Leste. Many of the issues arising from the conduct of the trial relate to the defendant's right to a fair trial, pursuant to ICCPR article 14.³⁶ General Comment 32 of the Human Rights Committee clarifies and explains the various elements of this provision, and as a matter of international law, is persuasive in the interpretation of the guarantees provided in article 14.³⁷

The ICCPR, together with the ICESCR and the UDHR, form what is globally recognised as an international bill of rights, establishing obligations for States to guarantee certain protections for individuals. Under the Constitution, international treaties ratified by Timor-Leste are directly incorporated into national law.³⁸ It is essential that Timor-Leste meets these international benchmarks, which are an appropriate standard by which the Timorese justice system should be measured.

6.1 An inconclusive resolution

Although several convictions were made by the court, establishing the involvement of 24 of the 28 defendants in the two attacks, there is an alarming lack of evidence on key points. There is still no confirmation on who shot President Horta, despite the prosecution's argument that Marcelo Caetano was the culprit. This is because the guns that fired the bullets were never handed in to the court. There is also significant uncertainty about how Reinado and Exposto were killed, given the testimony of Lino Marçal contradicts ballistics evidence. The ballistics evidence is itself worrying because the weapons used to fire the two different bullets – neither of which pertain to standard F-FDTL weapons – were never located and never handed in to the ballistics expert by the F-FDTL, as required.

JSMP believes that there was enough time to identify the main actors who shot at the President and who killed Reinado and Exposto. The court's decision has thus left many questions unanswered for the family of the victims, and more broadly for the community of Timor-Leste.

³⁶ Note that shortly after the commencement of the 11 February 2008 trial in 2009, JSMP published a Justice Update outlining the key facts of the case, and the principal elements of the right to a fair trial. See “Kazu ‘11 De Fevereriru 2008’ No Prinsipiu Julgamentu Ne’ebe Justu” (August 2009), available in Tetum and Indonesian on JSMP's website <http://jsmp.minihub.org> under “Publications”.

³⁷ UN HRC, “General Comment 32 – Article 14: Right to equality before courts and tribunals and to a fair trial”, UN Doc CCPR/C/GC/32, 23 August 2007, replaces General Comment 13 on the same article.

³⁸ Timor-Leste acceded to the ICCPR on 18 September 2003.

In JSMP's opinion, given the inconsistency of evidence presented, it is doubtful that the Court had sufficient evidence to convict the defendants of any of the crimes alleged. In the eyes of many, including JSMP, all of the convictions were arguably unfair as there was very minimal reliable evidence presented to the Court.

Given the wide-ranging impact of the 2006 crisis on the whole country, it is vital that cases related to the crisis are satisfactorily resolved. The 11 February case involved an attack by a group who were originally seeking justice for a grievance about their status, but when this was not forthcoming, these citizens resorted to seeking vengeance or change by attempting to kill the President and Prime Minister of Timor-Leste. This highlights that a robust justice sector is absolutely fundamental.

6.2 OPG's lack of resources

The investigation and trial of this case was protracted. The prosecution needed time to identify all of the defendants, as well as the huge number of witnesses. The investigative process was not satisfactory in that it was not conducted in an in-depth manner; the lack of appropriate facilities and limited resources available to the prosecution made it difficult to gather together the necessary evidence. There was also insufficient coordination between the PNTL and the prosecution to ensure that the evidence was properly and efficiently identified and collected. There was a shocking eighteen-day gap between the 11 February incident and the examination of the crime scenes to retrieve bullets.³⁹

The number of charges not established is also worrying; even those defendants who were convicted were acquitted on a number of other charges. While JSMP recognises that crimes must be proven beyond reasonable doubt and that the prosecution will not always establish the crimes charged, JSMP is concerned that in this case the prosecution brought charges where there was little or no evidence to substantiate them – this is particularly true of the charges against Pires.⁴⁰

Only one prosecutor was assigned to the case. It is possible the OPG opted for an international prosecutor, Felismino Cardoso, because a national prosecutor may have felt pressured by political and personal security factors. However, considering the serious and public nature of the offences being tried, JSMP believes the OPG should have allocated more prosecutors – including local prosecutors – and more resources to the case.

³⁹ See “Investigasaun Ekipa Forensic Hetan Inbolku 91 Iha Residencia PM”, *Timor Post*, 29 February 2008, and Adam Gartrell, “Pires freed but many questions remain unanswered”, *AAP News*, 25 March 2005.

⁴⁰ See Appendix 9.2.

6.3 Defendants' insufficient access to information

Article 14(3) states that an individual is:

- (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.

JSMP monitoring found defence lawyers were not given enough time to examine the charges and had to deal with limited facilities. This was especially the case for Australian lawyer Jon Tippett, who needed evidence to be translated into English.

Defendants and their legal representatives did not have access to existing documents;⁴¹ they found that document disclosure requirements were not always observed, so that they were unable to receive some of the documents they requested.⁴² A notable example is the fact that the written evidence of the President and the Prime Minister – two key witnesses in the case – were only provided on 11 February 2010, just days before final submissions were due, and merely three weeks before the final decision of the court was delivered.

When this occurs it means that the rights of the defendants to have adequate facilities to present their defence have been violated, which can create a perception in the eyes of the global and local community that this trial did not meet international human rights standards and that justice was not done.

While an assessment about adequate time and facilities and which documents are essential may well be subjective and vary from case to case, it remains that documents and other evidence must be made available to defendants so they can prepare their cases properly and have the opportunity to communicate effectively with their lawyers.⁴³

Another requirement that was not satisfied relates to ballistics testing. Defence lawyers claim not all relevant weapons were submitted for testing, and that chain of custody rules were not followed. This is important because ballistics evidence was crucial to the prosecution's case.⁴⁴

⁴¹ The Australian lawyer Jon Tippett, who was the legal representative for the defendant Angelita Pires, raised these concerns at the start of the trial on 13 July 2009.

⁴² UNMIT, *Periodic Report on Human Rights Developments in Timor-Leste: 1 July 2009-30 June 2010*, page 19.

⁴³ See General Comment 32, paragraphs 32-34.

⁴⁴ UNMIT, *Periodic Report on Human Rights*, page 19.

6.4 Pre-trial detention and trial delay

Twenty-five of the twenty-eight defendants were placed in pre-trial detention in Becora prison, where they spent more than one year awaiting commencement of their trial. UNMIT monitoring suggests it is possible that at least two of the defendants were detained for over two weeks before being brought before a judge, in violation of the Criminal Procedure Code.⁴⁵ They remained in detention during the trial, and were not released until 27 August 2010, one week after the issuing of the Presidential Decree granting them unconditional release.

JSMP believes that despite the complexity of this case, the time that passed between the events of 11 February 2008 and the final decision on 3 March 2010 was unnecessarily long. This is partly because the OPG did not allocate sufficient resources to the case and consequently had difficulty collecting evidence. It is also because the Tribunal did not manage its schedules effectively, scheduling hearings which could not take place because of court holidays and regularly adjourning the trial for unspecified reasons.

The extended detention of the defendants must be viewed as contrary to the guarantee in article 14(3)(c) of the ICCPR, which provides for a person to be “tried without undue delay”. Delay prolongs the state of uncertainty in which defendants are kept, and also constitutes a deprivation of liberty.⁴⁶

6.5 Inadequate security for trial participants

Because of the high-profile nature of the case, there was a significant degree of participation from the public. JSMP closely observed this case and noted that despite the enthusiastic involvement of the community, including ordinary citizens, supporters and internationals, no personal security was provided to lawyers and witnesses who were summoned by the court. The defendants, their sympathisers and supporters regularly displayed their displeasure throughout the trial and this could have created problems. In this case of national importance, there was potential for a new crisis to occur.

Although both the PNTL and UNPOL were present to secure the Dili District Court premises during hearings, the sensitivity of the trial’s subject matter made protection for lawyers and witnesses necessary to guarantee that the parties could argue their case without fear. This was particularly the case because a number of key witnesses were members of the F-FDTL who attended court to give evidence with visible arms and in uniform. In our monitoring of this trial, JSMP regularly observed that both witnesses and lawyers were intimidated by the presence of

⁴⁵ *Ibid.*

⁴⁶ General Comment 32, paragraph 35.

these members of the F-FDTL. On days where no F-FDTL soldiers were present, witnesses gave evidence that was more honest and forthcoming. Lawyers also felt more secure representing their clients on these days. This shows that without security for all witnesses and lawyers, the search for truth is compromised.

The national Witness Protection Law⁴⁷ has been in force since 2009, but there are currently insufficient resources allocated to the implementation of this law. This is problematic because witnesses in the 11 February case should have been able to rely on this law to protect them, if they felt threatened or unsafe about giving testimony in such a sensitive trial.

6.6 Problems with witness testimony

JSMP has found problems relating to the selection of witnesses, their testimony, and the failure of many to appear in court as summoned.

It was difficult for the prosecution to identify the witnesses in this case, and it was also unable to use evidence on telephone usage to maximum advantage because of a lack of resources. JSMP obtained access to the witness list of approximately 120 people summoned to give testimony in court. However some of these did not appear in court because when the notifications were issued the court did not know their address, and others did not appear on the grounds that they were immune from giving testimony directly before the court because they were carrying out State duties.⁴⁸ Many witnesses lived in locations far from the court and some international witnesses had returned to their own countries or been sent on other UN missions outside of Timor-Leste.⁴⁹

On various occasions, the prosecution summoned witnesses who had no knowledge of the incident. During the examination phase of this trial witnesses often gave testimony that was confusing to all present. For example, many of those who were notified or summoned did not have first-hand knowledge of the incident – when asked to recount their version of the events

⁴⁷ Law No. 02/2009 on the Protection of Witnesses, available in English on JSMP's website <http://www.jsmp.minihub.org>, under "Resources". This law was designed with witnesses in domestic violence cases in mind, however the provisions are applicable to any witnesses in legal proceedings.

⁴⁸ See Section 6.6.2 below.

⁴⁹ See Adam Gartrell, "Pires freed but many questions remain unanswered", *AAP News*, 25 March 2010, and *Text of UNMIT investigation into the shooting of Ramos-Horta* (14 September 2008). Gartrell writes that many of those who were first to arrive at the crime scene never testified; meanwhile, the UNMIT report indicates UNPOL officers reached the President's house around ten minutes after receiving an anonymous phone call. It is likely these officers were no longer in Timor-Leste at the time of the trial, and were thus unable to testify in court. However, considering the number of witnesses heard in this case who did not have any first-hand knowledge of the incident, it may have been worth trying to obtain written statements from the UNPOL staff who did attend the crime scene.

they responded that they had only heard about it from others.⁵⁰ Under the Timorese Criminal Procedure Code, second-hand evidence is admissible in certain circumstances.⁵¹ However, JSMP believes that this should only occur if there is a clear connection or relevance, and that such evidence should be given lesser weight. JSMP is concerned that in the context of the trial as a whole, greater value than warranted may have been attached to this secondary evidence, clouding the truth of the matter and that calling such witnesses prolonged the trial unnecessarily.

6.6.1 False testimony

A further issue relating to witness evidence arises in the contradiction between the testimony of the witness Lino Marçal and the expert ballistics report. The court accepted evidence that the bullets that killed Reinado and Exposto were not fired from Lino Marçal's rifle, but rather the bullets were fired from a different weapon.

This suggests that the witness was lying, and action should have been taken subsequently to try him for perjury.⁵² The fact that the OPG did not do this, and that the court did not direct them to do this, is of significant concern both to the court's integrity to compel truthful testimony, and its commitment to prosecuting those who disrespect their obligations as citizens of Timor-Leste.

6.6.2 Testimony from high-standing officials not forthcoming

As detailed above, the trial involved over one hundred witnesses including some high-ranking officials of the state, however some of these witnesses did not testify directly before the court as they claimed to enjoy immunity when they were carrying out their functions as leaders of this nation.⁵³ For some of these witnesses to be able to testify at the trial, they would have required authorisation from the National Parliament after a hearing by the relevant committee. Other

⁵⁰ Refer to the progress of the trial on 28 October; 11, 19, and 24 November; 1, 11, and 15 December; and 12 January 2009, in Appendix 9.1.

⁵¹ Timorese Criminal Procedure Code, section 120.

⁵² Articles 278 and 279 of the Timorese Criminal Code relate to the crimes of perjury and bearing false witness.

⁵³ See Law No. 5/2004 on the Status of Members of Parliament, article 16.1. Note that the interpretation of this immunity, and the way in which it should be used, is still the subject of debate. See the discussion on this point in JSMP's press release of 30 October 2007, when the issue of parliamentary immunity from giving testimony arose, also in relation to the former Commander of the PNTL, now parliamentarian, Paulo Martins.

JSMP believes that immunity for Members of Parliament from testifying in court cases, when the action is not against them, should not be presumed; but rather that, in accordance with article 123 of the Criminal Procedure Code, witnesses should be obliged to testify unless exempted. The National Parliament should be more proactive in authorising members to give testimony in court.

witnesses refused to give testimony claiming that they were authorised to do so by article 126 of the Criminal Procedure Code which relates to professional secrecy.⁵⁴

In fact, President Horta and Prime Minister Gusmão should have appeared in court to provide testimony as they were victims in this case, however they decided to instead produce written statements at the very end of the trial and did not give oral testimony before the court. Although this written testimony is valuable, and of equal weight with oral testimony,⁵⁵ the fact that it was only made available days before the concluding arguments of the parties means there was little opportunity for such key evidence to be considered and used by the parties and by the court. This compromises the fairness of the trial and contributes to a prevailing view amidst the Timorese public that the justice system does not apply in the same way to powerful members of society.

Moreover, former Major Agostu “Tara” de Araújo, now a member of the National Parliament, did not attend court because the National Parliament did not remove his immunity from appearing in court and providing testimony in the case. Similarly, Paulo Martins neither appeared in court nor submitted written testimony. Such conduct from public figures shows a lack of respect for judicial authorities and the judicial process, and does not assist the standing of the courts in the community.

6.7 Language issues

The issue of language has been the subject of constant, serious, and at times heated discussion in Timor-Leste. Although section 13.1 of the Constitution states that the official languages of Timor-Leste are Tetum and Portuguese, the language debate continues to be one of national importance.

The matter intensified when the legal system adopted Portuguese as the exclusive official language of the courts. In other words, Portuguese is the only official way to communicate in the courts; it is the language in which trials are formally conducted, and notifications and final decisions are given.⁵⁶

Portuguese is not only a problem for those working in the judicial system – it also complicates the work of the members of National Parliament when debating laws that they are tasked with

⁵⁴ Article 126 of the Criminal Procedure Code provides that: Church or religious ministers, lawyers, medical doctors, journalists, members of credit institutions and other persons allowed or required by law to maintain professional secrecy may refuse to give a deposition on facts covered by that secrecy. In this case, a priest refused to testify and a journalist declined to comment on certain points, because of their profession.

⁵⁵ In contrast, oral testimony – and particularly the ability to cross-examine witnesses – is fundamental to the common law system.

⁵⁶ JSMP recognises that in reality trials are often conducted in the districts using Tetun since most Timorese lawyers and national judges do not speak Portuguese.

drafting and analysing.⁵⁷ This is extremely problematic because the vast majority of Timorese do not speak or understand Portuguese.

The trial moved slowly because instructions and questions had to be translated from Portuguese into Tetum. JSMP noticed that often the message conveyed by the interpreter was quite different from the original meaning delivered in Portuguese. For example, the interpreter – lacking the necessary technical legal vocabulary – struggled with legal terms and so the defendants and other non-Portuguese speaking participants were confused and could not provide proper answers to questions raised by judges, prosecutors and public defenders. This problem further serves to further obscure the truth of what happened on 11 February 2008.

6.7.1 Interpreters

Rather than close word-by-word translation, interpreters in the trial summarised witness testimony. Another problem was that one interpreter in particular served for whole days, without substitution.⁵⁸

The structure of the court, which positions the interpreter on the prosecution side, beside the prosecutor, may give the impression of bias. Interpreters often delivered their translations in a voice that was unclear and only directed towards the prosecution without considering the needs of the other lawyers, defendants and witnesses. Such conduct impeded the trial and prevented it from being run in a speedy and credible manner.

A further issue of interpretation arose in relation to Pires' lawyer, Jon Tippett. As he spoke neither Portuguese nor Tetum, he had to rely on a personal Australian Government interpreter to assist him in the trial, adding another layer of complexity to the process.

6.7.2 Language in court and the international law of human rights

Article 14(3)(f) of the ICCPR states that a defendant is entitled to the free assistance of an interpreter if he cannot understand or speak the language used in court. General Comment 32 reiterates this guarantee, adding that it is a right independent of the outcome of the proceedings,

⁵⁷ See JSMP's press release "Use of the Portuguese language makes it hard for a number of parliamentarians to debate the draft civil code" (May 2010), available in English and Tetum on JSMP's website <http://www.jsmp.minihub.org> under "Publications".

⁵⁸ See also UNMIT, *Periodic Report on Human Rights*, page 19.

and one which applies equally to aliens and nationals who do not understand the language of the court.⁵⁹

This is a basic right for defendants in any case tried by a court, to ensure that a lack of understanding of a language used in court, or difficulties in comprehension, do not become an obstacle affecting a person's defence. It is an issue addressed not only in article 14, but also in article 26:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, *language*, religion, political or other opinion, national or social origin, property, birth or other status.⁶⁰

When language is a barrier, it has the potential to be a source of discrimination. Thus, in the 11 February case, the inadequate availability and quality of interpreters calls into question the accuracy of testimony and other evidence, jeopardising the transparency of the process and indicating that the defendants may not have given a fair trial within the meaning of article 14.

6.8 Distribution of the Reinado autopsy photo

Whilst the trial was still underway, copies of photographs taken during the autopsy of the deceased Reinado were circulated by the local and international media. Meanwhile, the prosecution denied the existence of the 200-odd photographs, and argued against their use in the trial, claiming they were “unofficial”.⁶¹

Throughout the trial, the defendant Pires promised to take the issue forward as she strongly objected to the behaviour of the prosecution, who were standing next to those performing the autopsy and laughing.

It is unethical to distribute autopsy photographs in this manner because it is disrespectful and potentially offensive. The purpose of the autopsy is to pursue the interests of justice, rather than to entertain the community, and for this reason photographs of the procedure should not have been made available to the public – particularly as they were not ultimately accepted into evidence by the court. Their existence and distribution, which was given much weight in the

⁵⁹ See paragraph 40.

⁶⁰ Emphasis added.

⁶¹ Lindsay Murdoch, “Call for photos at Timor ‘plot’ trial”, *The Age*, 20 November 2009, page 16.

media, may have incorrectly affected the value attached to the document in the court's consideration of all available evidence.

6.9 Media reporting on the case

The trial of the 11 February 2008 case was conducted orally and publically, in accordance with article 14 of the ICCPR.⁶² Monitoring by the media and other parties, including JSMP, increased the transparency of the process, and thus the authority of the court as a judicial institution. A public trial was particularly important in such a high-profile case of interest to so many people, and to the Timorese as a nation.

JSMP is, however, concerned about the coverage of the case in the media, which has directly or indirectly served to mislead the public about the true facts. As noted above, the media's approach has the potential to confuse the facts and law related to the case. Journalists have ethical obligations which are even more important in serious criminal trials. Article 14 states that a defendant is to be presumed innocent until proven guilty, but some of the discussion in newspaper articles assumed the guilt of the defendants. Commentary on the likelihood of a pardon being issued to the rebels, for instance, suggested that there was no question about whether they committed the crimes or not, and further, that the trial was merely a formality pending a decision by the president to release them.

On 3 March 2009, before the opening of the trial and whilst investigations were still continuing, then Prosecutor-General Longuinhos Monteiro⁶³ gave a press conference confirming that the prosecution was ready to commence proceedings on the matter. The information he gave was reported in the newspaper *Suara Timor Lorosa'e* as indicating that the 11 February 2008 incident was the result of a conspiracy because of Pires' involvement.⁶⁴

Monteiro is further quoted as stating that ballistics evidence showed Marcelo Caetano had shot the President, where the court later found the necessary facts were not established.⁶⁵ Also in relation to ballistics evidence, the AFP investigation finding that Reinado and Exposto had been shot at close range (and not from a distance, as claimed by guard Lino Marçal) gave rise to

⁶² See General Comment 32, paragraph 28. Note that this paragraph also states that a public hearing requirement will not apply to all appeals – indeed, in the case of the 11 February 2008 appeal, a closed trial was conducted.

⁶³ He was replaced by Ana Pessoa that same month, amidst claims of corruption and substantial criticism of his political bias. The office of the Prosecutor-General was subsequently restructured, but lack of political independence continues to be a perceived, if not real, problem, because of Pessoa's previous role as Minister of State Administration under the last FRETILIN Government.

⁶⁴ "Kazu 11 Fevereiro Rezulta Husi Konspirasaun", *Suara Timor Lorosa'e*, 3 March 2009.

⁶⁵ See points 19, 20 and 21 of Section C of the Dili District Court's judgment (or Section 2 of the Court of Appeal's judgment) on facts not proven.

media claims that their deaths were “executions”. International media on the case tended to draw attention to conspiracy theories about whether Reinado and his men were set up. Australian reports focused on the involvement of one of the accused in particular, Angelita Pires, running headlines describing her as “Reinado’s lover”.⁶⁶

Additionally, within two weeks of the incident, before all the rebel soldiers had even surrendered to authorities, the possibility – or indeed the likelihood – of a presidential pardon being offered to them was already being flagged in Timorese newspapers.⁶⁷

6.10 Comments about the case by public figures

Although state officials made a commitment to fully support the trial until its completion, JSMP is concerned that certain public statements made whilst the trial was still in progress were inappropriate and did not reflect this commitment.

Notable examples include the statements made by President Ramos-Horta about pardoning the defendants.⁶⁸ The trial had not yet reached its final stages and evidence was still being obtained from witnesses when these statements were made. Such comments compromise the independence and integrity of the judicial process. They could have had a negative impact on court actors by discouraging them from seeking the truth – that is, lawyers and judges may have less motivation to prove that the defendants committed more serious crimes, if they knew that after diligently performing their duties, their efforts could be undermined by the President exercising his prerogative right to grant pardons.⁶⁹

Whilst the trial was still underway, President Horta also made negative comments about defendant Pires to Australian print and television media, describing her as:

a very manipulative individual; the worst negative element in the entire process ... I'm not saying that she was directly implicated or planning of assassination of me, or went to my house. But she was always the obstacle, always undermining every peace effort, always poisoning Alfredo's

⁶⁶ Note that early Timorese newspaper reports referred to Pires as “Reinado’s lawyer”, and did not pay such close attention to her involvement in the trial.

⁶⁷ “Vicente Guterres: Salsinha Rende, PN Sei Fo Amnestia”, *Diario Nasional*, 22 February 2008, pages 1, 11. This article also discusses the likelihood of a parliamentary amnesty to 2006 offenders being granted.

⁶⁸ See, for example, “Ramos-Horta welcomes assassination attempt trials, mulls pardon”, *AFP*, 5 March 2009.

⁶⁹ Section 85.1 of the Constitution confers this prerogative on the President as Head of State.

mind. So that's the problem. Not that she was materially involved... and if she's innocent, I hope she's set free and resumes her life.⁷⁰

The failure of high-ranking officials to appear and give oral evidence, as well as their comments on the trial while it was in progress have led to a situation where the community is suspicious that the trial was merely a formality, and not an authentic attempt to determine exactly what happened on 11 February 2008. This in turn is an obstacle to the resolution of 2006 tensions.

6.11 Pardoning of the convicted offenders⁷¹

The 11 February 2008 case is not the only case in which generous pardons have been granted. Although it is the President's prerogative to do so under section 85(i) of the Constitution, JSMP believes that practices such as this – especially if they become a regular occurrence – will have a negative impact in the future because it undermines the authority of the Timorese courts by putting justice into the hands of the President. Such non-judicial intervention undermines the separation of powers doctrine, enshrined in section 69 of the Constitution.

When pardons are granted liberally it means the decisions of the courts are no longer definitive. It can give rise to a culture of impunity affecting judicial actors such as the police, prosecutors, public defenders and judges. Such an environment is detrimental to the legal system and any attempts to deal with the ongoing consequences of the 2006 crisis.

⁷⁰ See Adam Gartrell, "Pires Freed But Many Questions Remain About Kill Plot", *Australian Associated Press*, 5 March 2010, and television report "Australian citizen trapped in legal limbo", *The 7.30 Report*, 18 February 2009, which includes a clip of Jose Ramos-Horta on *The 7.30 Report* on 19 April 2008.

⁷¹ For more comprehensive analysis of the granting of pardons in Timor-Leste, see JSMP's report "Competency of the President to Grant Pardons: Prerogative Right versus Credibility of the Justice System" (August 2010), available on JSMP's website <http://www.jsmp.minihub.org> under "Publications".

7. Recommendations

Based on monitoring and analysis of the trial, and the issues highlighted in Section 6, JSMP has developed a number of recommendations. These are designed to strengthen the efficiency, efficacy, and fairness of the justice system.

1. Judges and lawyers should continue to be provided with effective training so they can have a sound understanding of how to analyse all of the laws in force in Timor-Leste, in conjunction with the relevant applicable international laws that constitute important points of reference. An understanding of how to respect and value human rights should also be nurtured.
2. The Offices of both the Prosecutor-General and the Public Defender should assign national lawyers to handle cases such as the 11 February 2008 trial. Although there is still a need for international lawyers, they should not handle the cases directly and instead act only in the capacity of advisors to their Timorese counterparts.
3. The OPG should consider carefully the seriousness and difficulty of a case, and allocate resources accordingly. The result should be that more prosecutors are assigned to major cases, such as the 11 February 2008 case.
4. A strategy should be developed to improve coordination between the OPG and the PNTL in criminal investigations, ensuring the preservation of important evidence from crime scenes, and the efficient use of time and resources.
5. Guidelines setting out appropriate timeframes for access to documents and other information should be drafted and implemented to ensure that parties and their legal representatives, particularly defendants and their lawyers, have the opportunity to inspect relevant information with sufficient time to allow them to adequately prepare for trial. Such guidelines should take into account the time needed for documents to be translated.
6. Judges should play a more active role in supervising the giving of evidence. They should restrict the presentation of irrelevant evidence by the parties to ensure that time is not wasted on useless information.
7. More resources should be directed towards the implementation of the Witness Protection Law, to ensure that important evidence and testimony is not lost or compromised by key witnesses being afraid of testifying in court.
8. Resources should be provided for the security of witnesses, and also of judicial actors such as judges, lawyers and defendants, in sensitive cases – both inside and outside of the courtroom.

9. Pre-trial detention should not be imposed lightly and should take place only for the shortest time possible, because it is still a form of detention without trial. JSMP recognizes that in the 11 February case, preventative detention was appropriate, given the F-FDTL rebels, especially those with Reinado who had previously escaped from Becora prison, posed a significant flight risk.
10. A more proactive approach to parliamentary members' immunity from court proceedings should be taken. Pursuant to article 16.1 of Law No. 5/2004 on the Status of Members of Parliament, the National Parliament should, following an appropriate hearing by the competent committee, authorise members to testify as witnesses in judicial proceedings, in all but exceptional circumstances. JSMP considers that this immunity is designed to prevent holders of public office from being taken away from their duties and drawn into unrelated disputes; the 11 February case, however, was a matter of national importance, in which a number of high-level officials were directly involved as victims or witnesses. The court should also adopt a narrow interpretation of article 126 of the Criminal Procedure Code relating to professional secrecy, to ensure that its protection is only invoked in cases where such secrecy is absolutely essential.
11. Translations of court decisions should be made from Portuguese into Tetum and published simultaneously, to enhance scrutiny of the judicial process and prevent misinformation.
12. A greater effort should be made to hire and train more court interpreters, who should also be given complementary training on legal terminology to make court proceedings smoother and translations more accurate.
13. The positioning of interpreters in the courtroom must have the appearance of impartiality – justice must be seen to be done. Currently, interpreters are seated beside the prosecution; JSMP recommends that interpreters be permitted to move when performing substantial translation for the defence; or, that there be two interpreters, one on each side of the courtroom.
14. Section 85(i) of the Constitution states the President can grant pardons and commute sentences, but only *after consultation with the Government*. The process of granting a pardon or commuting a sentence should be conducted in a fully transparent manner and only in exceptional circumstances. In relation to the 11 February 2008 case, the President only stated, without further explanation, that the pardoned offenders “are also victims”; he should instead have provided a clear definition of the facts considered before granting the pardons. In addition, there should be a process in place to receive complaints from any party who feels directly or indirectly affected by these presidential pardons, for maximum accountability.

15. The media should comply with certain ethical obligations when reporting on serious criminal trials. Importantly, they should respect the presumption of innocence for defendants. The media should not publish disrespectful information or important pieces of evidence whilst the trial is still in progress.
16. High-level officials should not make statements about the trial before the finalisation of the process. Comments from public figures in positions of authority can have an unhealthy sway over community opinion, if not the reasoning and conclusions of the court which must remain, at all times, an independent judicial body.

8. Conclusion

The 11 February 2008 case is significant because of its connection to the 2006 unrest in Timor-Leste, and because it involved attacks on key state officials. The very public nature of the incident and subsequent trial made it crucial that the process and outcome of the trial be seen to deliver justice for all those involved.

While JSMP applauds the commitment and contributions of the Dili District Court and various other participants in the case – including the lawyers, witnesses, the PNTL and the Portuguese GNR, the F-FDTL and the media – JSMP monitoring has found some causes for concern. Of particular note are the failure to determine who shot President Horta, Major Alfredo Reinado or his bodyguard Leopoldino Exposto, or who shot at the Prime Minister; the indirect interventions of the highest-ranking leaders of the country; and infringements of the international law of human rights regarding a fair trial. Many of the issues highlighted in this report have implications beyond the 11 February 2008 case itself, revealing weaknesses in the Timorese justice system which need to be addressed. If the justice system was unable to perform its function effectively in this important and high-profile case, then this has grave implications for the situation of the justice sector more broadly.

9. Appendix

9.1 Trial chronology

The trial observations on the following pages are based primarily on JSMP monitoring of the hearings.

Date	Trial observations
11 February 2008	President Horta is shot at his home in Metiaut, Dili; Major Alfredo Reinado and bodyguard Leopoldino Exposto are killed at the scene. Prime Minister Gusmao's convoy is attacked shortly afterwards in Laulara.
29 April 2008	The last of the rebels involved in the 11 February attack submit to authorities.
<i>Over the next year, the prosecution gather evidence and file charges against the 28 accused</i>	
13 July 2009	<p>Trial into 11 February 2008 incident commences in Dili District Court.</p> <p>During the first hearing no defendants want to testify in court about the evidence presented by the prosecution against them. The defendants exercise their right to remain silent and the judges declare the trial open to the public to hear the testimony of witnesses.</p> <p>The first witness DA is a member of the F-FDTL and is summoned by the court to testify that he knows that the defendants Susar (Amaro da Costa) and Ismael Sansão Moniz Soares, and other defendants, had put down their Metra guns at the gate of the President's residence when the witness was on guard duty. The witness also says he knows all of the defendants because some of them used to be members of F-FDTL. However the witness tells the court he does not know who shot the President.</p>
<i>There is a three week judicial recess in August</i>	
September	Trial continues with hearing of witness testimony.
9 September 2009	Trial adjourned because one of the defendants is not present, claiming that he has not been notified by the court.
<i>There are three hearings in October</i>	
8 October 2009	The court is unable to hear witness testimony because the public defender Andre Peixoto requests permission to return to his home country Brazil, and so the trial is adjourned.
14 October 2009	<p>Examination of testimony from two witnesses, both members of the MUNJ organisation appointed by the government to mediate between Reinado and Salsinha's rebel group and the state.</p> <p>The witness CP tells the court that on 9 February he went to Suai to pick up Alfredo Reinado and take him to Dili to meet with state authorities at the government palace. However, the witness says that they were unable to follow through with their plan because at that time Angelita Pires stopped them with the excuse that it would not be safe for Alfredo Reinado to make his trip to Dili. In addition, the witness AJ states that he occasionally met with the defendants Susar (Amaro da Costa) and Gastão Salsinha when they were in the jungle. However, the witness says that he does not know about the incident that occurred on 11 February.</p>

Date	Trial observations
28 October 2009	<p>The court hears testimony from two witnesses. The witness JM does not appear in court but informs the court in advance. The court then hears testimony from the witness MJFP; however this witness does not provide detailed and clear testimony to the court, and says that prior to the event on 11 February the witness did in fact hire out his car to Leopoldino Exposto. The witness says that on that day he only heard the sound of shots near the residence of the President.</p>
<i>The court hears testimony from 52 witnesses in November</i>	
11 November 2009	<p>The court hears testimony from the witnesses ADS and PDR. The witnesses are the bodyguards of Prime Minister Xanana Gusmão, who are assumed to have knowledge about the attack on the Head of Government in Balibar. They testify that the back window of the car was destroyed by shots that also punctured the back tyre of the vehicle they were travelling in.</p>
16 November 2009	<p>The court continues the trial with the intention of hearing testimony from more witnesses. However the court also discusses the status of an international lawyer, George Barbosa who replaces the public defender Zeni Alves Arndt in representing the defendant Angelita Pires. Before the hearing commences, the prosecution represented by Felismino Cardoso question Barbosa, who completed his legal studies in Brazil. The prosecution asks the court to give some time to the lawyer to prove himself and produce documents granting him permission to practice as a lawyer, to show that he is authorized and able to replace Dr Alves Arndt, whose contract has expired with the government of Timor Leste.</p>
19 November 2009	<p>The court hears testimony from four witnesses, namely DM, FA, MA and AR. Three of them tell the court that they did not see what happened to Prime Minister Xanana Gusmão in Balibar. The witness DM tells the court that he heard shots but he was afraid and stayed inside with his children. Shots were fired at the bodyguard of the Prime Minister who was driving the vehicle, which resulted in the car entering into a ravine, and they yelled out for assistance to get the guns they were carrying but the witness was afraid and did not step outside.</p>
24 November 2009	<p>The court hears testimony from eight witnesses. The witness JB takes a unique stance by exercising his right to refuse to give testimony on the grounds that he is employed as a journalist, and while the deceased Alfredo Reinado and his group were hiding in the forest in Ermera, this witness frequently met with them in order to gain information. The other witnesses tell the court that they don't really know about the incident or the attacks, and one witness says that he has only heard about it from others.</p>

Date	Trial observations
<i>The court conducts four hearings in December</i>	
1 December 2009	Testimony is received from four witnesses, although seven people have been summoned. These four witnesses do not know about the incidents as they had only heard others talking about it one or two days later. Three witnesses do not attend, namely ML from Suai, FR who is in hospital being treated for an illness, and MK who is a priest in Suai who writes to the court excusing himself from giving testimony.
9 December 2009	The court hears the testimony of one of two witnesses summoned. The witness JF attends court and testifies that he does not know anything about the incident on 11 February. This witness also testifies that he has only heard about the incident from others. The witness DA does not appear in court due to heavy rain near his home in Comoro.
11 December 2009	The court summons two witnesses, however only one witness appears in court. This witness testifies that he does not know about the incident that involved the President. The witness JP does not appear in court because of heavy rain near his home.
15 December 2009	Two witnesses provided testimony after being summoned by the court. The witness JMP appeared first and told the court that he had heard about the incident from a third person. The witness IS told the court that he heard shots but he didn't know who fired them. The witness stated that a person L came to his house and said that the group under Alfredo Reinado would come and meet with the President on 11 February. The witness heard shots about 5 minutes after L left to go home.
<i>The court is in recess over Christmas and the New Year</i>	
12 January 2010	The court hears testimony from the witness CBL, an Australian working in Timor Leste. The court summons this witness because of indications that he is a good friend of the defendant Angelita Pires, who in turn was close to the deceased Alfredo Reinado. However the witness tells the court that he does not know the defendant Angelita Pires very well even though she was a staff member in the witness' company.
	After hearing this witness, the court issues warrants of arrest for three witnesses (NSG, CG, and FX) who have failed to respond to summons issued by the court. The court also issues an instruction to notify seven witnesses to provide testimony on the same day.

Date	Trial observations
<i>Crime scene inspection and reconstruction, expert ballistics evidence and final recommendations take place in February</i>	
1 February 2010	The court conducts an inspection of the crime scene at the residence of the President. Inspection is also made of the place where the President was shot, and of the location of the deceased Alfredo Reinado and Leopoldino Exposto. The police and the court clerks do not allow the public to participate in the inspection and instruct them to maintain a reasonable distance.
2 February 2010	Members of the court travel to Balibar where the group under the command of Gastão Salsinha ambushed the motorcade of the Prime Minister Xanana Gusmão.
8 February 2010	The court hears testimony from the expert who conducted ballistic tests in an Australian laboratory. The expert states that the results of the ballistic tests indicate that the bullet that injured the President was not fired from the same type of gun that was used by the defendants, and the bullets that struck the deceased Alfredo Reinado and Leopoldino Exposto also were not fired by guns used by F-FDTL.
11 February 2010	The court is scheduled to hear the prosecution's final recommendation in this case, however the prosecution submits the written testimony of President Horta and Prime Minister Gusmão to the court, and so 16 February is set as the day to hear the final recommendations of the parties.
16 February 2010	The court hears the final recommendations of the prosecutor, who maintains the original charges pursuant to the following provisions: articles 53(1), 65, 406, and 362 of the Indonesian Criminal Code and section 4.4.7 of UNTAET Regulation 2001/05. The prosecution only modifies the charge relating to conspiracy due to a lack of evidence. The prosecution states that it had been proven that the defendants had also taken the guns from the guards at the residence of the President, and also that it had been proven that the defendants indicated intent to kill the Prime Minister because they had attacked and fired shots at the motorcade of the Prime Minister in Balibar.
3 March 2010	Decision of the Dili District Court delivered.
5 March 2010	Written decision available.
<i>Post-trial</i>	
14 June 2010	Final decision of the Court of Appeal delivered.
20 August 2010	President Horta pardons 23 of the convicted defendants in the 11 February case.
27 August 2010	The 23 pardoned offenders held in Becora prison are released.

9.2 Table of defendants, charges, findings and sentences

Note 1. Under the Indonesian Criminal Code, in sentencing for multiple convictions, prison terms are to be adjusted and limited in accordance with article 65; accordingly, the court calculates a cumulative total. Additional sentencing rules relating to crimes of attempt are found in article 53.

Note 2. The findings of the Dili District Court were subsequently upheld by the Court of Appeal, including the length of the sentences handed down.

Name of defendant	Ruling*	Charges	Corresponding provisions	Prison sentence
Gastão Salsinha	<i>Criminal responsibility extinguished</i>	Conspiracy in the attempt on the President of the Republic	Articles 110, 88, and 104 of the Indonesian Criminal Code decriminalised in articles 30(1) and 118 of the Timorese Criminal Code	
	<i>Acquitted</i>	4 counts of attempted murder (Johnny Barbosa, José Maria Barreto Soares, Komsan Tookokgruado, Alongkorn Kalayanasoontor)	Articles 338 and 53 of the Indonesian Criminal Code	
		1 count of damage to a vehicle (a car with the numberplate 'SEC 1')	Article 406 of the Indonesian Criminal Code	
	<i>Convicted</i>	1 count of attempted murder (on Prime Minister Gusmão)	Articles 338 and 53 of the Indonesian Criminal Code	8 years
		2 counts of attempted murder (on Bobby Agaptio Gonçalves, Adolfo Soares dos Santos)	Articles 338 and 53 of the Indonesian Criminal Code	6 years for each count
1 count of damage to a vehicle (the Prime Ministerial car 'PM1')		Article 406 of the Indonesian Criminal Code	18 months	
1 count of use of a prohibited weapon		Article 211(3) of the Timorese Criminal Code	2 years	
Cumulative total			10 years 8 months	
Amaro da Costa, Domingos do Amaral, Gilson José Antonio da Silva, Paulo Neno Leos, Marcelo Caetano, Gilberto Suni Mota, Joanino Maria Guterres, Egidio Lay de Carvalho, Ismael Sansão Moniz Soares, Caetano dos Santos Ximenes (10 defendants)	<i>Acquitted</i>	1 count of damage to a vehicle (the F-FDTL car driven by Celestino Gama)	Article 406 of the Indonesian Criminal Code	
1 count of theft		Article 365(2)(ii) of the Indonesian Criminal Code		

Name of defendant	Ruling	Charges	Corresponding provisions	Prison sentence
		8 counts of attempted murder (Celestino Gama, Isaque da Silva, Pedro Joaquim Soares, Adelino da Silva, João Soares, José Luis da Costa Pereira, Agostino de Freitas, Filomeno Ximenes)	Articles 338 and 53 of the Indonesian Criminal Code	
	<i>Convicted</i>	Attempt on the President of the Republic	Article 104 of the Indonesian Criminal Code	12 years
		4 counts of attempted murder (Domingos Pereira, Albino de Assis, José Pinto Freitas, Francisco Lina Marçal)	Articles 338 and 53 of the Indonesian Criminal Code	4 years for each count
		Use of a prohibited weapon	Article 211(3) of the Timorese Criminal Code	2 years
Cumulative total				16 years
Avelino da Costa, Bernardo da Costa, Alexandre de Araújo, Januário Babo, Raimundo Maia Barreto, Júlio Soares Guterres, Gaspar Lopes, José Agapito Madeira, Julião Antonio Soares, Quintino Espírito Santo, Adolfo da Silva, José da Costa Ventura, Francisco Ximenes Alves (13 defendants)	<i>Acquitted</i>	4 counts of attempted murder (Johnny Barbosa, José Maria Barreto Soares, Komsan Tookokgruado, Alongkorn Kalayanasoontor)	Articles 338 and 53 of the Indonesian Criminal Code	
		1 count of damage to a vehicle (a car with the numberplate 'SEC 1')	Article 406 of the Indonesian Criminal Code	
	<i>Convicted</i>	1 count of attempted murder (on Prime Minister Gusmao)	Articles 338 and 53 of the Indonesian Criminal Code	7 years
		2 counts of attempted murder (on Bobby Agaptio Gonçalves, Adolfo Soares dos Santos)	Articles 338 and 53 of the Indonesian Criminal Code	5 years for each count
1 count of damage to a vehicle (the Prime Ministerial car 'PM1')		Article 406 of the Indonesian Criminal Code	1 year	
				2 years
Cumulative total				9 years 4 months

Name of defendant	Ruling*	Charges	Corresponding provisions	Prison sentence
<i>4 defendants acquitted of all charges</i>				
Angelita Pires	<i>Acquitted</i>	Conspiracy in the attempt on the life of the President	Article 104 of the Indonesian Criminal Code	
		19 counts of attempted murder	Articles 338 and 53 of the Indonesian Criminal Code	
		3 counts of damage to a vehicle	Article 406 of the Indonesian Criminal Code	
Tito Tilman, Alfredo de Andrade, João Amaral (3 defendants)	<i>Acquitted</i>	7 counts of attempted murder	Articles 338 and 53 of the Indonesian Criminal Code	
		Use of a firearm for the disturbance of public order	Section 4.4.7 of UNTAET Regulation No. 2001/5	

9.3 Excerpts of relevant legislative provisions

9.3.1 ICCPR

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
 - (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - (c) To be tried without undue delay;
 - (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
 - (g) Not to be compelled to testify against himself or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

9.3.2 RDTL Constitution

Section 67

(Organs of Sovereignty)

The organs of sovereignty shall comprise the President of the Republic, the National Parliament, the Government and the Courts.

Section 118

(Jurisdiction)

1. Courts are organs of sovereignty with competencies to administer justice in the name of the people.
2. In performing their functions, the courts shall be entitled to the assistance of other authorities.
3. Court decisions shall be binding and shall prevail over the decisions of any other authority.

Section 119

(Independence)

Courts are independent and subject only to the Constitution and the law.

9.3.3 Indonesian Criminal Code

Article 53

1. Attempt to commit a crime is punishable if the intention of the offender has revealed itself by a commencement of the performance and the performance is not completed only because of circumstances independent of his will.
2. The maximum of the basic punishments imposed on the crime in case of attempt shall be mitigated by one third.
3. If capital punishment or life imprisonment is imposed upon a crime, a maximum imprisonment of fifteen years shall be imposed.
4. The additional punishments for attempts are the same as for the completed crime.

Article 65

1. In case of conjunction of more acts which are to be considered as separate acts and which form more crimes on which similar basic punishments are imposed, one punishment shall be imposed.
2. The maximum of this punishment shall be the collective total of the maximum punishments imposed on the acts, but not exceeding one third beyond the most severe punishment imposed.

Article 88⁷²

“Conspiracy” exists as soon as two or more persons agree to commit a crime.

Article 104⁷³

⁷² Articles 88, 104 and 110 decriminalised by articles 3(1) and 118 of the Timorese Criminal Code.

⁷³ See above footnote.

The attempt undertaken with intent to deprive the President or Vice President of his life or is liberty or to tender him unfit to govern, shall be punished by capital punishment or life imprisonment or a maximum imprisonment of twenty years.

Article 110⁷⁴

1. The conspiracy to one of the crimes described in articles 104-108 shall be punished by a maximum imprisonment of six years.
2. The same punishment shall apply to the person who with the intent to prepare or facilitate one of the crimes described in articles 104-108:
 - 1st, tries to induce others to commit the crime, to cause others to commit or participate in the commission of the crime, to facilitate the crime or to provide opportunity, means or information relating thereto;
 - 2nd-ly, tries to provide himself or others with the opportunity, means or information for committing the crime;
 - 3rd-ly, has in store objects of which he know [sic] they are destined for committing the crime;
 - 4th-ly, makes plans ready or is in possession of plans for the execution of the crime intended to be made known to other person [sic];
 - 5th-ly, tries to hinder, to obstruct or to defeat a measure taken by the Government to prevent or to suppress the execution of the crime.

Article 338

The person who with deliberate intent takes the life of another person, shall, being guilty of manslaughter, be punished by a maximum imprisonment of fifteen years.

Article 362

Any person who takes property, wholly or partially belonging to another, with intent to appropriate it unlawfully, shall, being guilty of theft, be punished by a maximum imprisonment of five years or a maximum fine of sixty rupiahs.

Article 365

⁷⁴ See above footnote.

1. By a maximum imprisonment of nine years shall be punished theft preceded, accompanied or followed by force or threat of force against persons, committed with intent to prepare or facilitate the theft, or when taken in the act, either to enable for himself or for other accomplices to the crime to escape; or to ensure possession of the thing stolen.

2. A maximum imprisonment of twelve years shall be imposed:

...

2ndly, if the fact is committed by two or more united persons

...

Article 406

1. The person who with deliberate intent and unlawfully destroys, damages, renders useless or mislays property which wholly or partially belongs to another, shall be punished by a maximum imprisonment of two years and eight months or a maximum fine of three hundred rupiahs.
2. The same punishment shall be imposed upon the person who with deliberate intent and unlawfully kills, damages, renders useless or gets rid of an animal which wholly or partially belongs to another.

9.3.4 Timorese Criminal Code

Artigu 3

Lei penál nia aplikasaun iha tempu

1. Ema ida la bele hetan pena tanba faktu ne'ebé lei define hanesan krime iha momentu ne'ebé nia pratikafaktu ne'e kuandu lei posteriór dehan katak faktu ne'e la'ós krime ona.

Artigu 118

Kauza seluk

Responsabilidade kriminál extinge iha kazu ne'ebé lei prevee no tanba ajente mate, tanba amnistia no tanba indultu.

Artigu 211

Arma proibida

3. Ajente ne'ebé, maski laiha autorizasaun legál, detein, uza ka rai arma de fogu sei hetan pena prizaun too tinan 2 ka multa.

9.3.5 *Timorese Criminal Procedure Code*

Article 358

Liability to pay court costs and procedural fees

1. Where the defendant is found guilty, the court may also punish the defendant with the payment of the court costs and other procedural fees if the court believes that the economic status of the defendant allows him or her to bear such expenses.

...

9.3.6 *UNTAET Regulation No. 56 of 2001*

Section 4

Prohibition of Unauthorised Activity

4.7 Any person who without lawful authority imports into East Timor any firearm, ammunition or explosive with the intent to disrupt public order, or who uses any firearm, ammunition or explosive in the disruption of public order is guilty of a criminal offence and shall be punished by a fine not to exceed fifty thousand U.S. dollars (USD 50,000) or a term of imprisonment not to exceed twenty years, or both.

9.3.7 *Law No. 5/2004 on the Status of Members of Parliament*

Article 16

Rights of Members of Parliament

1. A Member of Parliament may not serve as a jury member, witness or expert without authorisation from the National Parliament, which may or may not be granted after the Member of Parliament has been heard in that respect by the competent committee.
2. The absence of a Member of Parliament from an official act or proceeding extraneous to his or her function by reason of a meeting or task of the National Parliament shall always constitute a good excuse for the postponement of such act or proceeding.

A Member of Parliament may not invoke the excuse provided for in this previous subarticle more than once in connection with such official act or proceeding.

9.4 Bibliography and further reading

9.4.1 *International instruments*

International Covenant on Civil and Political Rights annexed to the UNGA res. 2200A (XXI), 16 December 1966.

Universal Declaration of Human Rights annexed to the UNGA res. 217A (III), 10 December 1948.

UN HRC, “General Comment No. 32 – Article 14: Right to equality before courts and tribunals and to a fair trial”, UN Doc. CCPR/C/GC/32, 23 August 2007.

9.4.2 *Timorese national legal instruments*

RDTL Constitution 2002 (*Constitution*).

Penal Code of Indonesia (applicable to Timor-Leste) (last amended 1999) [Timor-Leste (East Timor)], 27 February 1952, UNTAET Regulation No. 56/2001, available at <http://www.unhcr.org/refworld/docid/3ffbcee24.html> (*Indonesian Criminal Code*).

Undang-Undang No. 13/2005 Yang Mengesahkan Kitab Undang-Undang Hukum Acara Pidana (*Indonesian Criminal Procedure Code*).

RDTL Law No. 5/2004 on the Status of Members of Parliament.

RDTL Law No. 2/2009 on the Protection of Witnesses.

RDTL Dekretu-Lei No. 19/2009 Kódigu Penál (*Timorese Criminal Code*).

RDTL Decreto do Presidente No. 30/2010.

UNTAET Regulation No. 2001/5 on firearms, ammunition explosives and other offensive weapons in East Timor.

9.4.3 *JSMP Publications*⁷⁵

Thematic reports

Timor: Legal System Faces Chaos (2003).

Observasaun Justisa iha Timor-Leste 2010 (forthcoming, February 2011).

⁷⁵ The following reports, justice updates and press releases are all available online at <http://www.jsmp.minihub.org>, under “Publications”.

Justice Updates

“JSMP Response To The Report Of The UN Independent Special Commission Of Inquiry For Timor-Leste” (Issue No. 14, October 2006).

“The Case of Alfredo Reinado” (Issue No. 8, covering the period of July 2006).

“Court’s Decision in 11 February Case demonstrates the significance and spirit of the Timorese Judicial Institutions” (Issue No. 6, June 2010).

“New Players in Timor-Leste’s Justice System” (Issue No. 31, August 2006).

Press releases

“Kontinuasaun Rona Depoimentus Ba Testamunha Akontesementu 11 Fevereiro Presiza Durubassa Ho Diak” (July 2009).

“Kazu ‘11 De Feveireru 2008’ No Prinsipiu Julgamentu Ne’ebe Justu” (August 2009).

“Tribunal Distrital Dili Kontinua Rona Testemunha Kazu Atentadu 11 Feveiru” (September 2009).

“Assesor Militar ba Prezidente fo Depoimentu iha Julgamentu Kontinuasaun ba Kazu 11 de Feveiru 2008” (September 2009).

“Kontroverziu Substituisaun Equipa Advogado Ba Kazu ‘Atentadu 11 De Feveiru’” (November 2009).

“Final decision issued by court in 11 February case fails to prove who shot the President of the Republic” (March 2010).

“Use of the Portuguese language makes it hard for a number of parliamentarians to debate the draft civil code” (4 June 2010).

“Competency of the President to Grant Pardons: Prerogative Right versus Credibility of the Justice System” (August 2010).

“Sistema justisa Timór Léste nafatin iha situasaun risku nia laran” (22 December 2010).

9.4.4 Articles, reports and other sources

“AATL Ejiji Tribunal Reezame Kilat Musan Tiru Major Alfredo”, *Suara Timor Lorosa’e*, 10 February 2010, 1, 15.

Adh Genève (Académie de droit international humanitaire-Geneva academy of international humanitarian law and human rights), *Rule of Law in Armed Conflicts Project*, <http://www.adh-geneve.ch/RULAC/international_treaties>.

“Accused Ramos-Horta assassination plotters face court”, *ABC News*, 13 July 2009.

“Advogada Angelita Hetan Kaer: Hahu Prosesu Hearing Horseik”, *Timor Post*, 19 February 2008, 1, 15.

Amnesty International, “Justice in the shadow” (2009).

“Angelita Hetan Livre TIR Husi Tribunal”, *Timor Post*, 20 February 2008, 1.

Asia Foundation, *Law and Justice in Timor-Leste: A Survey of Citizen Awareness and Attitudes Regarding Law and Justice 2008* (2009).

“Autopsy finds Reinado may have been executed”, *Reuters*, 13 August 2008.

Coelho de Morais, Abel and Firdia Lisnawati, “ONU confirma ligação de ataques a Ramos-Horta e Xanana Gusmão”, *Diário de Notícias*, 21 February 2008.

Doswald-Beck, Louise, “Fair Trial, Right to, International Protection”, in *Max Planck Encyclopedia of Public International Law* <www.mpepil.com>

Dunn, James, “East Timor: A New Dawn?” (May 2008). Available online at: www.hrca.org.au/wp-content/uploads/2008/06/a-new-dawn-james-dunn1.pdf (Accessed 1 January 2011).

“E Timor arrests Reinado ‘lawyer’”, *BBC News Online*, 18 February 2008.

“E Timor calls for probe into Ramos-Horta assassination plot”, *ABC News*, 5 March 2008.

“E Timor denies possible execution of Reinado”, *Reuters*, 18 August 2008.

“E. Timor leader defends pardon for rebels after UN criticism”, *AFP*, 23 October 2010.

“E Timorese rebels deny murder bid”, *BBC News Online*, 14 February 2008.

“East Timor’s Post-Trauma”, *ABC Radio National – Late Night Live*, 21 February 2008. Available online at <http://www.abc.net.au/rn/latenightlive/stories/2008/2169293.htm> (Accessed 13 December 2010).

“East Timorese sense blood in the air”, *The Canberra Times*, 3 April 2010, 10.

Economist Intelligence Unit, *Timor-Leste Country Report* (October 2010).

Economist Intelligence Unit, *Timor-Leste Country Report* (October 2009).

Economist Intelligence Unit, *Timor-Leste Country Report* (April 2008).

Everingham, Sara, “QC slams Ramos-Horta assassination case”, *ABC News*, 15 February 2010.

“Felismino Cardozo: ‘Asesor Alfredo Hetan TIR’”, *Diario Nasional*, 19 February 2008, 1, 9.

Gartrell, Adam, “Timorese assassin plot doubt – Aussie expert testifies”, *The Daily Telegraph*, 13 February 2010, 38.

Gartrell, Adam, “Asia: Pires freed but many questions remain about kill plot”, *Australian Associated Press*, 5 March 2010.

“Grupú Alfredo Nain Lima Hetan Ba Justisa”, *Diario Nasional*, 28 February 2008, 1, 11.

“Grupú Salsinha La Tama Lista Indultu”, *Diario Nasional*, 6 May 2010.

“Horta Sisi Tusan Atu Hetan Justisa ba Atentadu 11 Fevereiru”, *Tempo Semanal*, 9 February 2009.

Human Rights Watch, “Country Summary: Timor-Leste” (January 2009).

“Indultu Bele Garante Hado’ok Odio no vigansa?”, *Suara Timor Lorosa’e*, 22 May 2010.

International Crisis Group, *Asia Report No. 120: Resolving Timor-Leste’s Crisis* (10 October 2006).

International Crisis Group, *Timor-Leste’s displacement crisis* (31 March 2008).

International Crisis Group, *Update Briefing. Timor-Leste: No Time For Complacency* (February 2009).

“JSMP Lamenta Tinan 2 Salsinha Cs Seidauk Hetan Rezultadu”, *Suara Timor Lorosa’e*, 10 February 2010.

“JSMP-HAK: Indultu Fo Salsinha Bazeia ba Lei”, *Suara Timor Lorosa’e*, 13 April 2010.

“Julgamento do atentado contra Ramos-Horta e Xanana na fase final”, *iOnline*, 11 February 2010.

“Investigasaun Ekipa Forensic Hetan Inbolku 91 Iha Residencia PM”, *Timor Post*, 29 February 2008.

“Kazu 11 Fevereiro Rezulta Husi Konspirasaun”, *Suara Timor Lorosa’e*, 3 March 2009.

“Konsidera Akuzasaun MP La Forte, Defensor Husu Tribunal Liberta Arguidus”, *Diario Nasional*, 12 February 2010, 1, 13.

“Kronologis Penembakan Presiden Ramos Horta”, *Suara Timor Lorosa’e*, 13 February 2008, 1, 11.

“Longuinhas: 'Atu Fasilita Investigasaun' AFP-PNTL Halo Rekonstusaun Iha Laulara”, *Diario Nasional*, 28 February 2008, 1, 11.

“Longuinhas: ‘Identifika Ona Supeitu 18’”, *Diario Nasional*, 14 February 2008, 1, 7.

Lusa, “President só terá sido atingido quando regressava a casa: Reinado morto quase uma hora antes de Ramos-Horta ser ferido”, *Público*, 11 February 2008.

Ministério da Justiça, *Justice Sector Strategic Plan for Timor-Leste 2011-2030* (approved 12 February 2010).

Murdoch, Lindsay, “Ramos-Horta braved rebels”, *Sydney Morning Herald*, 13 February 2008.

Murdoch, Lindsay, “Ramos-Horta names gunman”, *Sydney Morning Herald*, 13 March 2008.

Murdoch, Lindsay, “Dili investigator called to Canberra as evidence of execution mounts”, *Sydney Morning Herald*, 4 September 2008.

Murdoch, Lindsay, “Call for photos at Timor’s ‘plot’ trial”, *The Age*, 20 November 2009, 16.

Murdoch, Lindsay, “Angelita Pires acquitted of Timorese plot to kill”, *The Age*, 4 March 2010, 4.

Murdoch, Lindsay, “Timor verdicts provide more questions than answers”, *The Age*, 5 March 2010, 11.

Murdoch, Lindsay, “Attack on Timorese President unsolved”, *Sydney Morning Herald*, 5 March 2010, 13.

Murdoch, Lindsay, “President pardons rebels who shot him”, *Sydney Morning Herald*, 10 December 2010, 11.

Murdoch, Lindsay, “Timorese rebel demands back pay”, *Sydney Morning Herald*, 1 January 2011, 12.

“PGR Bolu Tan Testamunha Nain 4”, *Timor Post*, 21 February 2008, 1, 15.

“PGR: Osan-Mapa Iha Tain Mate Isin Alfredo Iha Uma Horta”, *Timor Post*, 26 February 2008, 1, 15.

Philpott, Simon, “Another go at Life: Dili, East Timor” (2007) 10(2) *Theory and Event* [online].

Pires, Angelita, “Statement by Ms Angelita Pires following her acquittal” (3 March 2010).

“PNTL dan UNPol Kejar Penembakan Ramos Horta: Ancaman Hukuman 25 Tahun”, *Suara Timor Lorosa’e*, 16 February 2008, 1, 12.

Powell, Sian, “Reinado’s last shot at relevance – Timor in crisis”, *The Australian*, 12 February 2008, 4.

“Posibilidade Grupus Salsinha Hetan Amnestia”, *Timor Post*, 23 February 2008.

“PR Horta Impata Prosesu 11 Feveiruru”, *Suara Timor Lorosa’e*, 12 February 2010.

“Prolonga Estado de Sitio: Aprovado ho 30 votus a favor, 14 abstensaun”, *Timor Post*, 15 February 2008, 1, 15.

“Ramos-Horta knowing attacker unconfirmed”, *AAP News*, 13 March 2008.

“Ramos-Horta welcomes assassination attempt trials, mulls pardon”, *AFP*, 5 March 2009.

Rapoza, Philip, *The Justice System of Timor-Leste: An Independent Comprehensive Needs Assessment* (2009).

Report of the United Nations Special Commission of Inquiry for Timor-Leste (2 October 2006).

“Reports on Court verdict in Timor subversion case”, *East Timor Law & Justice Bulletin*, 4 March 2010.

Roughneen, Simon, “East Timor: Who shot J R Horta?”, *Asia Times Online*, 4 December 2008.

Saturday Extra, “East Timor” (transcript), *ABC Radio National*, 16 February 2008.

Security Sector Reform Monitor (SSRM), *Timor-Leste* (January 2011, No. 3).

“Seidauk Iha Desizaun Difinitiva TR, Grupu Salsina Labele Hetan Indultu”, *Suara Timor Lorosa’e*, 22 April 2010.

“Suspect surrenders in East Timor”, *BBC News Online*, 2 March 2008.

“Timor accused fears for safety”, *Hobart Mercury*, 15 July 2009, 14.

“Timor president accuses UN troops: Jose Ramos-Horta says troops squandered opportunity to catch gunmen who shot him”, *Al-Jazeera*, 28 March 2008.

Toohey, Paul, “Guard’s gun didn’t kill rebel – AFP report will rock Dili trial of Reinado’s lover”, *The Australian*, 20 July 2009, 6.

“Tribunal Sei Fo Desizaun Todan Ba Arguidu 11 Febreiru”, *Suara Timor Lorosa’e*, 27 February 2008, 1, 11.

UN Division for Public Administration and Development Management (DPADM) and Department of Economic and Social Affairs (DESA), *Democratic Republic of Timor-Leste Public Administration Country Profile* (January 2005).

UN HRC, “General Comment 32 (Article 14) Right to Equality Before Courts and Tribunals and to Fair Trial”, UN Doc CCPR/C/GC/32, 23 August 2007.

UNMIT, *Text of UNMIT investigation into the shooting of Ramos-Horta* (14 September 2008).

UNMIT, *Periodic Report on Human Rights Developments in Timor-Leste: 1 July 2009 – 30 June 2010* (2010).

US Department of State Bureau of Democracy, Human Rights and Labor, *2008 Human Rights Reports: Timor-Leste* (25 February 2009).

“Vicente Guterres: Salsinha Rende, PN Sei Fo Amnestia”, *Diario Nasional*, 22 February 2008, 1, 11.

Wilson, Lauren, “East Timor President Jose Ramos Horta ‘forgives Alfredo Reinado’”, *The Australian*, 4 March 2008.