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**QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND
FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD**

Situation of human rights in Timor-Leste

Report of the United Nations High Commissioner for Human Rights

* In accordance with General Assembly resolution 53/208 B, paragraph 8, the reason for the late submission of this document is to include the most up-to-date information possible.

Executive summary

The High Commissioner knows from first-hand experience the difficulties inherent in developing effective, credible and sustainable state institutions from ruin. The independent State of the Democratic Republic of Timor-Leste is less than one year old. As a newly independent State with a brutalized past, the Government faces many priorities. Its task is daunting.

The Government should be congratulated for the human rights progress made on a number of fronts, including accession to the principle international human rights instruments; ongoing development of a national human rights institution *Provedor de Direitos Humanos e Justica* the (*Provedor* for Human Rights and Justice) and the functioning of the Commission on Reception, Truth and Reconciliation.

It is perhaps because the people of Timor-Leste have set an example for the world in their determined and principled long struggle for freedom that the United Nations now calls upon the Government to take the necessary steps to lead the Timorese in developing a society and culture in which real freedom can be enjoyed by all. It is in the spirit of solidarity with the newest member of the United Nations family of nations that the High Commissioner, an old friend and supporter of the Timorese, highlights in this report areas of ongoing human rights concern and proposes recommendations to assist the Government and donors in addressing these concerns.

Serious concerns exist surrounding the serious crimes that occurred in 1999 that will not be investigated and prosecuted before the withdrawal of the United Nations Mission of Support in East Timor (UNMISSET), on 31 May 2004; the slow progress in establishing an effective and accountable system of justice; weaknesses in the development of a credible, professional and impartial police service; the potential of the national defence force to become involved in internal law enforcement activities; and the very serious and entrenched social problem of violence against women, in particular domestic violence.

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Introduction

1. During the consideration of item 9 of its agenda, the Chairperson of the Commission on Human Rights at its 58th session made a statement on the situation of human rights in East Timor (E/2002/23-E/CN.4/2002/200 para.2 58) in which the Commission decided to keep the matters raised in the statement under consideration and requested the High Commissioner to report to the Commission at its fifty-ninth session. The present report is submitted in accordance with that request.
2. The Democratic Republic of Timor-Leste became independent on 19 May 2002 and became a Member of the United Nations on 27 September 2003.

I. THE HUMAN RIGHTS SITUATION IN TIMOR-LESTE AND RELATED ACTIVITIES*

A. Capacity-building

1. The justice system

3. Access to justice continues to present one of the most significant challenges to the protection of human rights in Timor-Leste. Progress by the Government in establishing an effective and accountable system of justice remains slow and limited. The slow functioning of the judicial system in turn negatively impacts upon the performance of the police force and the prison service. In addition, the inability to deliver justice promptly encourages continued recourse to traditional dispute mechanisms, which have often proven to be discriminatory, particularly against women and vulnerable groups, and not reflective of international human rights standards.

4. There are currently 22 judges, 9 public defenders and 8 prosecutors who handle matters, outside the jurisdiction of the Serious Crime Unit (SCU) as well as a Prosecutor General and Deputy Prosecutor General. A lack of personnel and training continue to result in delays in the administration of justice. Compulsory training for Timor-Leste's judges, prosecutors and public defenders brought the court system to a virtual standstill between mid-September and mid-November 2002. No detention review hearings or other urgent matters were dealt with during this period, except on extremely ad hoc basis. Only three prosecutors are assigned permanently to Dili District Court, although that jurisdiction deals with the majority of criminal matters in Timor-Leste.

5. In the districts, the courts are not yet fully operational. The Suai District Court began partially functioning in late November 2002. Baucau District Court usually sits for no more than two or three days per week, with judicial personnel routinely away in the capital occupied with administrative matters or training. In Oecussi district, the court hears interlocutory matters before the investigating judge but has yet to conduct a single trial and the prosecutor has filed only a handful of indictments out of more than 150 cases.

6. Since December 2001, Timor-Leste has been without a functioning Court of Appeal, due to the lack of international judges. As a consequence, suspects have been effectively denied access to the right to appeal. As at the date of writing, 39 appeals were pending before the Court of Appeal, including 8 appeals from decisions of the Special Panel for Serious Crimes (SP).

7. All parts of the ordinary crimes judicial system continue to lack effective and efficient case management. There remain long delays in issuing indictments and listing matters for trial. As at the beginning of February 2003, there were approximately 320 detainees in Timor-Leste's three prisons. Of the 215 detainees in Dili's Becora prison, only 61 had been sentenced and 75 were being held on expired detention orders. Of the 14 pre-trial inmates in Baucau Prison, 9 were being held on expired detention orders. Many pre-trial detainees are held for long periods before they come to trial, including some for relatively minor, non-violent crimes.

* Much of the information upon which this section is based has been provided by the United Nations Mission of Support in Timor-Leste (UNMISSET).

8. The practice of prosecutors in the ordinary crimes jurisdiction to divert serious criminal matters, including assault and rape, from the formal justice system to traditional law, or *adat*, continues to raise human rights concerns for both the victims and alleged perpetrators of crimes, and this practice is contrary to instructions from the Deputy Prosecutor General for Ordinary Crimes. This is especially common in cases of gender-based violence, where the prosecution office has on many occasions reportedly encouraged a mediated settlement between the alleged perpetrator and the victim's family, rather than pursue a formal process.

9. The Government, with the support of the United Nations Development Programme, is in the process of developing a number of projects to address weaknesses in the justice system following a joint assessment mission that took place in November 2002.

2. Prisons

10. Becora prison, with approximately 215 prisoners, is the largest prison in Timor-Leste, Gleno has approximately 80 prisoners, whilst Baucau has approximately 20 prisoners. These numbers include both pre-trial detainees and convicted prisoners. Ten of these detainees are juveniles. UNMISSET continues to conduct regular prison visits and provide human rights training for prison officials.

11. Following the March and June 2002 demonstrations in Becora prison, precipitated by frustration with the slow pace of the administration of justice and poor conditions within the prison, in August 2002, 181 prisoners escaped from the prison in an apparently well-planned and coordinated operation. Following their escape, a large number of the prisoners held a peaceful protest march along the main road through Becora and presented a list of grievances to the Government. The grievances included delays in bringing pre-trial detainees before magistrates (including the failure to hold scheduled review hearings and the failure to implement release orders issued by magistrates) and prison conditions (including the poor quality of food and limited recreation time). A number of government officials met with the demonstrators to negotiate their return to prison, and at the date of writing, 15 prisoners remained at large. During the demonstration, the Minister for Internal Administration conducted negotiations with the detainees, notwithstanding that the Ministry of Justice has jurisdiction over the penitentiary system. Shortly after the break-out, the Vice-Minister for Justice met with the detainees and agreed to organized detention review hearings for each detainee. This has not yet happened.

12. There has been an increase in reported cases of assault within the prison system, including allegations of assault by prison guards and other detainees. While the number of reported assaults by prison guards remains low, no procedures have yet been established for investigating allegations of assault by prison guards. The regulation establishing the prisons provides for the establishment of a penal institution oversight team with responsibility to receive and investigate allegations of assault. There are currently no indications that this oversight team will be established soon.

13. In October 2002, a joint UNDP-donors corrections programming mission took place to evaluate the prisons service and its plans for future development. The report of the mission recommended, inter alia, that no new prisons should be built and, instead, that attention be initially focused on addressing unlawful detention in prisons.

3. Policia Nasional Timor-Leste (PNTL)

14. PNTL, formerly known as the Timor-Leste Police Service (TLPS), still falls under the executive control of the United Nations, though handover from the United Nations Civilian Police (UNPOL) for routine policing matters to PNTL has already taken place in Ermera, Ainaro, Aileu, Same and Manatutu. Handover to PNTL has also taken place of the Rapid Intervention Unit, formerly the Special Police Unit (SPU), in Dili and Baucau. In accordance with the current time frame, full executive control will be vested in the Timor-Leste authorities in January 2004.

15. A number of serious incidents have taken place recently, in which inexperienced police with limited training appear to have resorted to the excessive use of force in response to crisis situations. On 25 November 2002, several hundred people stoned and attempted to enter the Baucau Police Headquarters to protest against police recruitment procedures. Police and their property were the apparent target of the attack. PNTL, which did not have the equipment to use tear gas, instead fired warning shots to disperse the crowd. During the course of the attack, one protester was critically injured by a gunshot wound fired by a PNTL officer and died in hospital the following day. An investigation is under way to establish the precise sequence of events on that day.

16. On 3 December 2002, Dili high school students protested against police who had arrested a student while he was in class: they burned two police motorcycles and one car. SPU was deployed and fired a large number of warning shots. The following day, students, who had been promised an audience with parliamentarians to air their grievances arising from the previous day, became angry when the meeting did not take place. A group attacked the Parliament building and Police Headquarters. Tear gas was used and shots fired. The protest accelerated into a major civil disturbance in which several locations were looted, burnt down or otherwise attacked, including the Prime Minister's residence and properties owned by relatives of the Prime Minister, Comoro police station, Dili mosque and foreign-owned businesses. By the day's end, two people had died from gunshot wounds whilst 15 others had been hospitalized with gunshot wounds. Seventy-seven persons were arrested in the aftermath of the incidents, of whom all but 10 have since been released uncharged. Two of the 10 were charged with burglary and murder and 8 were charged with arson and looting. Allegations were also made that some of those detained by the police had been beaten at the time of their arrest and afterwards while in detention. A number of police were injured during the riots.

17. The events that took place in November in Baucau and in December in Dili are the subject of separate ongoing government and UNPOL investigations. A parliamentary inquiry was also conducted. The allegations against PNTL and UNPOL for misconduct and excessive use of force are still being investigated by the Professional Standards Unit (PSU) of UNPOL. Several PNTL officers have been suspended pending the outcome of the investigation.

18. The events in both Baucau and Dili have raised serious concerns in relation to the alleged excessive use of force by PNTL and the failure of PNTL to use proportionate force in response to rioting. These events have also raised serious concerns about the effectiveness of the institutional capacity-building and training carried out to establish the Timorese police force under successive mandates established by the Security Council.

19. Other complaints relating to police conduct that have been received by UNMISSET concern allegations of partial policing, the use of traditional justice mechanisms to resolve complaints of police misconduct, and the exertion of pressure upon complainants to withdraw complaints against police. The draft PNTL Code of Conduct, which was presented to the Minister for Internal Administration in December 2002, makes reference to some of the issues raised by these incidents.

20. A joint police needs assessment mission took place in November 2002. Though the final report of the mission is still pending, preliminary recommendations include the overall strengthening of PNTL management capacity through improvements in the UNPOL-PNTL training and management structure, review and standardization of training and operational guidelines, and the need for consideration of both internal and external complaints mechanisms as a means of building public confidence in the institution.

4. Timor-Leste Defence Force (F-FDTL)

21. The F-FDTL leadership and the Government have recognized the importance of human rights considerations to the development of F-FDTL and have been receptive to UNMISSET on human rights issues, including the possibility of training in this area in coordination with the Office of Defence Force Development. This is a particularly positive sign as the human rights challenges facing the new defence force have emerged more starkly since independence.

22. Incidents of F-FDTL misconduct against civilians have been reported and have increased in the months immediately following independence. The reports have included allegations of rape, assault - including against returnees and the elderly - and destruction of property. At least two of these incidents involved senior officers of F-FDTL. Long delays and other difficulties in the justice system, combined with insufficient internal oversight mechanisms within F-FDTL, have resulted in few soldiers having been fully investigated or, where appropriate, held accountable for misconduct and breaches of criminal law.

23. During late 2002, tension between F-FDTL and PNTL emerged publicly with a number of incidents in which F-FDTL officers attempted to interfere in police investigations involving their members, in some instances using a show of force or weapons. The most public demonstration of tension between PNTL and FDTL occurred on 8 November when F-FDTL officers attacked and seriously assaulted two PNTL officers in the centre of Dili resulting in a tense stand-off between a large number of F-FDTL recruits and members of PNTL.

24. Though PNTL is responsible for all law enforcement activities, the question of F-FDTL developing a stronger internal presence and role in law enforcement activities in response to perceived security threats has recently been raised. The potential for F-FDTL to intervene in law enforcement activities is increased not only because of the difficulties faced by PNTL, but also because it is probable that the Timorese population have a higher level of respect for and confidence in the effectiveness of F-FDTL authority based on the historical legacy of the revered status of the former guerilla fighters of Falantel, and mistrust of the police. The risks and associated pitfalls of the exercise of police powers by F-FDTL, either by default or design, without competent and appropriate PNTL direction was clearly demonstrated by the events that took place in Ermera district in January 2003.

25. During the first week of January 2003, at least five people were killed and three wounded in Ermera allegedly by former militia members who illegally crossed into Timor-Leste from West Timor. In response to these events, the United Nations Peacekeeping Force (UNPKF) agreed to give defence responsibility in the district to F-FDTL from 6 to 17 January 2003, later extended till 14 February. F-FDTL detained over 90 individuals including some juveniles, reportedly linked to the killings or for alleged involvement in criminal matters. All detainees were handed over by F-FDTL to PNTL and 39 of them were subsequently detained in prison, in overcrowded conditions, pending a court hearing. The detainees, including juveniles, were detained for several days beyond the 72-hour limit prescribed by law, and when brought before a judge, only three detainees were charged, all of whom were conditionally released.

26. The violations of the detainees' rights in this chain of events highlight concerns regarding the role of the military in law enforcement. The violations also identify the need for clarity in future cases of military aid to civilian power in order to ensure that search, seizure, arrest and detention are conducted lawfully. For instance, at the time that the detainees were handed over to PNTL, F-FDTL reportedly did not provide PNTL with the evidence to support a warrantless arrest and detention. It is important to bear in mind, however, that the response of F-FDTL and PNTL to the attacks in Atsabe unfolded in the context of a tense, uncertain and rapidly evolving situation.

27. Subsequently, F-FDTL, various senior members of the Government and the Prosecutor's Office denied that F-FDTL, the Prosecutor's Office and PNTL had violated international human rights standards. Moreover, human rights groups, who had criticized the conduct of F-FDTL and the illegal detention of the 39 suspects, were accused by the Government and the Commander of F-FDTL in the media of ignoring the rights of the dead victims and the rights of the Ermera community.

5. The *Provedor* for Human Rights and Justice

28. The Working Group on the establishment of the *Provedor*, composed of the Human Rights Adviser to the Prime Minister, representatives of the judiciary, non-governmental organizations and UNMISSET, continues to consult widely, both within and outside Timor-Leste, on the framework for this important national institution. It is expected that the *Provedor* will be tasked with safeguarding and promoting human rights, ensuring the transparency and accountability of public administration and opposing corruption, in addition to its broader human rights mandate. Strong support for the establishment of the *Provedor* has been received from the Government and in November 2002, a detailed policy paper, forming the basis of the enabling legislation, was approved by the Council of Ministers. It is expected that the statute will be passed by Parliament in early 2003.

6. Accession to the international human rights instruments

29. On 10 December 2002, international Human Rights Day, the National Assembly approved accession by Timor-Leste to the core international human rights instruments. Later that day, the instruments of accession were signed by the President. The following instruments were acceded to: the International Covenant on Civil and Political Rights and its Second Optional Protocol; the International Covenant on Economic, Social and Cultural Rights; the International Convention

on the Elimination of All Forms of Racial Discrimination; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol; the Convention on the Rights of the Child; and its Optional Protocols on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography. The National Assembly has also approved accession to the Convention relating to the Status of Refugees.

B. The Commission for Reception, Truth and Reconciliation

30. The Commission on Reception, Truth and Reconciliation, known by its Portuguese acronym CAVR, formally commenced its programme of work on 7 April 2002. It is now fully operational with teams in all 13 districts implementing the programme of truth-seeking, conducting community reconciliation procedures and holding community discussions to ascertain the impact of years of violence upon communities. In addition, the national office has a busy programme of national hearings with a focus on restoring the dignity of victims of human rights violations, and examining specific themes or events. With National and Regional Commissioners and national and district staff, CAVR has 240 personnel to complete its mandate by April 2004.

31. Community reconciliation is a key element of the CAVR mandate, with the aim of assisting with the reintegration of offenders into their communities. This is especially aimed at those who are alleged to have committed offences in their communities during 1999, in particular low-level militia. It is applied for less serious crimes such as intimidation, house burning, property destruction and assault. By the end of January 2003, the Commission had conducted hearings in 10 of the 13 districts and 203 deponents had voluntarily provided statements to CAVR, with hearings being completed for 103 of these deponents. There is a Right degree of willingness on the part of perpetrators to submit to these hearings, and community leadership and participation at hearings have been active. Hearings have ranged from simple events involving one alleged perpetrator to large-scale cultural events where multiple alleged perpetrators have submitted to the process, such as in Nitibe, Oecussi, where 31 alleged perpetrators participated in a single hearing.

32. These hearings link a community process to the formal justice system. Once a deponent has voluntarily made a statement, it is sent to the Office of the General Prosecutor who vets the statement to ensure it is appropriate for a community procedure. If a hearing goes ahead, but further accusations are made of serious crimes, then the case can be referred back to the Prosecutor. This has occurred in one hearing. At the close of a hearing the Reconciliation Agreement is sent to the courts for approval and formalization into a court order, after which the deponent is granted immunity from any further legal action. Given the difficulties already faced by the Serious Crimes Unit and the Serious Crimes Panel, it is unclear, however, as to whether the serious crimes referred by CAVR to the Prosecutor could be taken up.

C. Protection of vulnerable groups

1. Women

33. Significant gains for Timorese women have been achieved in the public sector: women now make up more than 20 per cent of the PNTL and of 88 people elected to the National Parliament, 20 are women, a percentage that would rival most legislatures. In December 2002, 27 women, the first female cadets, were amongst the 260 graduates from the F-FTDL training centre. There remains, however, under-representation of women in the civil service at 27 per cent. In April 2002, the Office of the Adviser on Promotion of Equality reported that roughly half of all primary school pupils are female. This figure decreases with age, however, and women make up only 25 per cent of students enrolled at the University of Timor-Leste between October 2001 and February 2002. Female enrolments in the technical and vocational education sector are also low.

34. Violence against women remains a very serious and entrenched social problem in Timor-Leste. Common crimes against women include domestic violence, rape, attempted rape, sexual assault and forced marriage. Lack of experience and education on gender-based crimes commonly results in women victims of violence receiving inadequate medical care and forensic examination, as well as inadequate prosecution of the crimes committed against them. Services for women and child victims of violence remain insufficient in Dili and largely non-existent elsewhere

35. There is as yet no nationwide data collection mechanism available on cases concerning violence against women. Accordingly, statistical information on the problem is incomplete and remains largely anecdotal. From January to the end of August 2002, 574 offences against women were reported to the police, compared with 504 cases for the entire year of 2001. Forty to fifty per cent of all crimes reported to the police and the prosecution concern domestic violence against women.

36. It is noteworthy that of the cases reported to PNTL, approximately 60 per cent were resolved through mediation or traditional law. In many cases, prosecutors diverted allegations from the formal justice process to traditional law processes, even in cases where the victim had been seriously injured or had received death threats. Prosecutors appear to have accepted local dispute resolution as the basis for closing or halting investigations, including those for the crime of rape. The possibility that cases might be resolved locally has also been used as justification for halting the formal investigation process.

37. Existing legislation does not adequately provide for the protection of women, especially against domestic violence. A workshop to draft legislation to combat domestic violence took place in November 2002, opened by the Prime Minister. Participants from Government and civil society examined the draft law and put forward a number of recommendations. A policy paper on the proposed law was approved by the Council of Ministers in February 2003. Work on the draft law will now begin. .

2. East Timorese in West Timor

38. As at 31 December 2002, approximately 28,000 East Timorese remained in Indonesia, according to figures of the Office of the United Nations High Commissioner for Refugees (UNHCR). The high figure of 28,000 returns to Timor-Leste between March and the end of August 2002, plummeted to a mere 168 persons for the months of September and October 2002.

39. In a small number of cases, returnees have been subjected to assaults and discriminatory treatment in their villages. Generally, however, returnees are reluctant to report such incidents to the police as they fear further recrimination. Even where such cases are reported to police, they are commonly referred back to traditional reconciliation processes, often at the request of the victim.

40. Approximately 3,150 East Timorese families are expected to opt for resettlement in Indonesia, including in Sumba, Flores and Kalimantan. Authorities in West Timor intend to accelerate the resettlement programme during 2003. UNHCR plans to support the local settlement of 550 of these families during 2003.

Separated Timorese children

41. Approximately 750 East Timorese children remain separated from their parents in either Timor-Leste or Indonesia, since the 1999 violence. As at 31 December 2002, UNHCR reported that there have been 2,209 successful family reunifications.

42. Of those who remain separated, approximately 150 children are in Timor-Leste with parents in Indonesia. Approximately 600 children are in Indonesia, separated from their parents who are in Timor-Leste. UNHCR, as the lead United Nations agency on this issue, continues to work closely with the Indonesian and Timorese Governments to support their efforts to locate the separated children and facilitate family reunifications. This is a time-consuming, labour-intensive and frustrating process as both individual caretakers and caretaker organizations are often reluctant to allow the children to be reunified with their parents. Their reluctance stems from a number of reasons, not least because the ability of a number of organizations to sustain their charitable status and funding is dependent upon the presence of children. In other cases, it is not easy to assess the best interest of the child, especially when the caretakers provide proper care, affection and education, while the parents live in remote areas and extremely poor conditions. In some of these cases, the parents have agreed to leave their child with the caretakers but have maintained regular contacts with both the caretakers and the child.

4. Religious minorities

43. The most disturbing recent violence against Muslims in Timor-Leste occurred during the breakdown of law and order in Dili on 4 December when the Dili mosque compound was specifically targeted by rioters. Eight homes and two vehicles in the mosque compound were burnt although the mosque itself was not burnt. A number of youths reportedly entered the mosque and threatened those inside. The mosque compound continues to be guarded by members of the UNPKF.

44. There were no reports of harassment of Muslim communities after the October 2002 bombing in Bali, although the level of anxiety amongst Muslims, particularly those staying at the Dili mosque, is reportedly high.

II. STATUS OF INVESTIGATIONS AND PROSECUTIONS OF SERIOUS CRIMES COMMITTED IN 1999

45. As the High Commissioner has reported earlier, the Serious Crimes Unit (SCU) was established in Timor-Leste in 2000 and is responsible for the investigation and prosecution of all serious crimes (including genocide, war crimes, crimes against humanity, murder, sexual offences and torture) that took place in the then East Timor between 1 January 1999 and 25 October 1999. Early in its existence, a prosecutorial strategy was drawn up by SCU whereby it was decided to concentrate resources initially on the prosecution of 10 priority cases relating to incidents that took place during that period, in the lead up to and following the popular consultation held on 30 August 1999.

46. As at the time of writing, a total of 50 indictments had been issued, including indictments relating to 7 of the 10 priority cases. It is expected that investigations will be completed and indictments lodged in relation to all 10 priority cases during 2003. A total of 170 individuals have been charged; 145 suspects are alleged to have committed crimes against humanity, including murder, sexual offences, torture, inhumane acts, persecution, deportation and unlawful imprisonment. On 24 February 2003, the Deputy General Prosecutor for Serious Crimes filed an indictment against six former Indonesian senior military commanders as well as the former Governor of East Timor. All the accused are charged with crimes against humanity for murder, deportation and persecution, while six are specifically charged with participating in the establishment of violent militia groups and cooperating in a policy of funding, arming, training and directing the militia.

47. The Special Panel for Serious Crimes (SP), a panel of the Dili District Court of composed of two international judges and one Timorese judge, had, as at the date of writing, convicted 32 accused, including 13 accused in relation to three of the priority cases. Sentences ranged from 12 months for manslaughter committed by a juvenile in mitigating circumstances to 33 years and 4 months for multiple crimes against humanity committed by several former militia leaders. Ten appeals are currently pending before the Court of Appeal, which, as noted in paragraph 4, has not been in session for more than 12 months.

48. SCU and SP have thus far been funded through the United Nations peacekeeping missions in Timor-Leste, formerly the United Nations Transitional Administration in East Timor (UNTAET) and currently UNMISSET, with additional support provided by UNDP and donors. The significance of the priority case list increases as the end of the UNMISSET mandate, 31 May 2004, draws closer. Although many cases have already been finalized, hearings for all 10 priority cases may not take place before 31 May 2004. Further, there remain a number of other serious crimes alleged to have taken place in 1999, including murder and crimes against humanity, that do not fall within the priority case list and which have yet to be investigated. In addition, there are other potential cases of crimes against humanity that occurred before 1 January 1999 and which do not fall within SCU jurisdiction. UNMISSET has recently

increased resources to the SCU, the SP and the defence team with a view to progressing as far as possible on the 10 priority cases before its withdrawal.

49. Prosecutions of serious crimes have suffered delays beyond the control of the SCU and the SP, attributable to, inter alia, the lack of a sufficient number of international judges to allow two panels to function simultaneously.

50. At present, 98 of the 170 individuals indicted by the SCU are believed to be at large in Indonesia. As the High Commissioner has reported earlier, the Republic of Indonesia and UNTAET signed, in April 2000, a memorandum of understanding (MoU) regarding cooperation in legal, judicial and human rights-related matters. The MoU has, to date, not been ratified by the Indonesian Parliament. In 2000, requests for documentation were made by the SP to the Indonesian Attorney-General. In 2001, requests to execute arrest warrants issued by the SP were forwarded to the Attorney-General by the SCU. In 2002, requests for questioning of persons of interest were delivered to the Attorney-General by the SCU. In the absence of implementation of the terms of the MoU, these requests were made upon the basis of the principle of reciprocity, and the Government of Timor-Leste offered to extradite to Indonesia those persons who had been indicted in Indonesia. To date, the Government of Indonesia has not provided the documentation, executed the arrest warrants, or facilitated the witness interviews.

51. In March 2002, Indonesia also commenced prosecution of the serious human rights violations that took place in the then East Timor in 1999. For part of the process, the United Nations has observed the trial through the deployment of an international trial observer to the proceedings. Eighteen defendants have been accused of crimes against humanity before the Ad Hoc Human Rights Court for Timor-Leste. These charges carry minimum sentences of 10 years' imprisonment and a maximum sentence of death. As at the date of writing, decisions had been delivered in the trials of 15 of the 18 defendants: 11 defendants were acquitted and 4 defendants were convicted. Those convicted are Abilio Soares, former Governor of East Timor, sentenced to three years' imprisonment; Eurico Guterres, former Commander of the Aitarak militia and former Deputy Commander of PPI (Forces to Defend Integration), sentenced to 10 years' imprisonment; Lieutenant Colonel Soedjarwo, former Dili Military Commander, sentenced to five years' imprisonment; and Hulman Gultom, former Dili police chief, sentenced to three years' imprisonment. All four are free pending appeals. The three remaining trials are expected to be concluded during March 2003.

52. Considerable public comment has been made on the proceedings before the Court, including in the report to the Commission on Human Rights of the Special Rapporteur on the independence of judges and lawyers following his mission to Jakarta in July 2002, (E/CN.4/2003/65/Add.2). A number of serious flaws in the process already identified by informed observers deserve particular attention: these include the limited geographical and temporal jurisdiction of the Court; the lack of experienced prosecutors and judges; the intimidating and, at times, hostile, courtroom treatment of Timorese witnesses by some judges, prosecutors and defence counsel; the causes and consequences of non-attendance of Timorese witnesses at the proceedings; and the lightness of the sentences imposed, which bear no reasonable relationship to the gravity of the offences committed.

53. Three main areas of concern have been identified by observers thus far. The first is the allegedly insufficient investigations undertaken by the Office of the Attorney-General into the gross human rights violations that took place in the then East Timor in 1999. The report of the inquiry by the Indonesian Commission of Investigation into Human Rights Violations in East Timor (KPP-HAM) of 31 January 2000 concluded that gross human rights violations were committed in East Timor between January and October 1999. Moreover, KPP-HAM concluded that the massive and widespread attacks against civilians were not simply the result of the inability of the security forces to protect the population, but instead were a conscious and planned effort. KPP-HAM found evidence that the military, the police and the civil administration had close ties to the militia groups that committed much of the violence, and that the military and the civil administration were involved in the creation, support, arming and training of the militias. Accordingly, the report recommended that the Attorney-General investigate persons suspected of committing gross human rights violations including, but not limited to, 22 named individuals, among them high-level military personnel in Jakarta.

54. KPP-HAM report documented serious human rights abuses that were committed in all of Timor-Leste's 13 districts, and provides substantial information on victims, perpetrators, incidents and sources. The SCU also provided files to the Attorney-General regarding the violations that took place in 1999. Subsequently, the Attorney-General charged 18 suspects. Of the 22 suspects named by KPP-HAM, only 8 were charged. Accordingly, taking into account, first, that voluminous information had been placed before the Attorney-General by, amongst others, KPP-HAM and the SCU relating to gross human rights violations that took place in East Timor in 1999; second, that only a limited number of indictments were issued; and third, that high-level military personnel were not indicted, observers have stated that the prosecution did not conduct a systematic and thorough investigation with the intention of gathering evidence to establish proof of the charges.

55. The second area of concern highlighted by observers is the weaknesses relating to the indictments themselves. Specifically, none of the defendants, with the exception of Eurico Guterres, is accused of personally committing or commanding the commission of crimes against humanity. Instead, all defendants are charged either as accomplices to the commission of crimes committed by others, or on a theory of command responsibility. Nor do the indictments allege an organized or coordinated effort on the part of the security forces or civil administration to commit serious human rights violations. This supposition is contradicted by the findings of KPP-HAM and the International Commission of Inquiry in Timor-Leste, and by judgements delivered by SP. Observers have accordingly commented that the failure to put before the court evidence that portrays the killings and other human rights violations as part of a widespread or systematic pattern of violence seriously undermines the strength of the prosecution's case and jeopardizes the integrity and credibility of the trial process.

56. The third area of particular concern to the High Commissioner are the Witness Protection Regulations, which were adopted by the Indonesian Parliament the day before the Court commenced hearings. The manner of implementation of these Regulations has raised serious doubts as to whether the purpose of witness protection has been understood by those responsible for guaranteeing protection. For instance, while large numbers of police have been present at the court to protect witnesses, this has not prevented suspects from approaching witnesses. On one occasion, Eurico Guterres was able to approach and speak to a Timorese witness in a waiting

room, initially unhindered by police. Several witnesses from Timor-Leste have refused to testify in person before the Court because they were not confident that their security could be guaranteed. Other witnesses have refused to return to Jakarta to testify a second time because of their perceived ill-treatment at their initial court appearance. This further weakened the prosecution's case.

III. TECHNICAL COOPERATION BETWEEN THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS AND THE GOVERNMENT OF TIMOR-LESTE

57. In October 2002, a programme of technical cooperation to continue the strengthening of Timorese capacity to promote and protect human rights was agreed by the Government of Timor-Leste, UNMISSET and the Office of the High Commissioner for Human Rights (OHCHR). Over the next two years, the programme will provide technical cooperation in the following areas:

- (a) Support for implementation of the principal international human rights instruments;
- (b) Support for the functioning of the Commission on Reception, Truth and Reconciliation;
- (c) Human rights training and skills building for the administration of justice professionals;
- (d) Human rights training and skills building for civil society;
- (e) Support for the establishment and functioning of the *Provedor* for Human Rights and Justice; and
- (f) The development of legislation to ensure conformity with international human rights standards.

IV. RECOMMENDATIONS FOR ONGOING AND FUTURE KEY AREAS OF WORK TO PROMOTE AND PROTECT HUMAN RIGHTS IN TIMOR-LESTE

58. The High Commissioner commends the Government on the steps it has taken thus far to develop a nation where human rights are respected and observed. It is perhaps because the people of Timor-Leste have set an example to the world in their determined and principled long struggle for freedom that the United Nations now calls upon the Government to continue to take the steps necessary to lead the Timorese in developing a society and culture in which real freedom can be enjoyed by all. It is in the spirit of solidarity with the newest member of the United Nations family of nations that the High Commissioner, an old friend and supporter of the Timorese, has highlighted in this report areas of ongoing human rights concern and now proposes recommendations to assist the Government and donors to address these concerns.

59. The High Commissioner warmly congratulates the people and Government of Timor-Leste on accession to the principal international human rights instruments. The High Commissioner pays particular tribute in securing this achievement to key Government leaders, members of the National Assembly and the civil society, which participated actively.

60. The High Commissioner welcomes the ongoing steps to establish the *Provedor* for Human Rights and Justice, and notes with appreciation the Government's commitment to establish a sustainable and effective national institution to promote and protect human rights. At this stage of development, the High Commissioner recalls the importance of enshrining the relevant international human rights standards in the enabling legislation and to ensure the conformity of the institution with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles, General Assembly resolution 48/134).

61. The High Commissioner congratulates the Commission on Reception, Truth and Reconciliation on the commencement of its operations. The role of the Commission in understanding, recording and acknowledging the past is crucial. The High Commissioner applauds the Timorese for their bravery in reliving traumatic experiences. The High Commissioner is grateful to the international community for its generous support to the Commission thus far and requests it to make good its commitment to fund the Commission's operations in totality.

62. The High Commissioner recalls from first-hand experience the difficulties inherent in establishing a functioning justice system from ruin, and notes the incremental steps taken thus far by the Government of Timor-Leste. However, it is essential that all concerned parties, in particular the Government and donors, commit over the long-term to the development of a society where the rule of law prevails. The administration of justice is central to this goal. As a means of supporting the Government's efforts, the High Commissioner would like to propose that the following areas receive priority attention:

- (a) The development of a long-term training plan for judges, prosecutors, public defenders and other court officials, including emphasis on on-the-job training;**
- (b) The urgent need to ensure that all authorities observe the legal procedures for pre-trial detention and conditional release;**
- (c) Guidelines for the police, prosecutors, judges and community leaders clarifying which matters are to be directed to the formal criminal justice process and which matters may be more appropriately dealt with through the traditional justice system;**
- (d) A comprehensive review of all applicable law in Timor-Leste to identify gaps and ensure consistency of law with international human rights standards;**
- (e) The need to enable access to justice and for necessary assistance or measures to be taken to ensure the functioning of district courts; and**

- (f) The strengthening of efforts to increase public awareness of the formal criminal justice system and of rights within the system.**

63. With regard to the penitentiary system, the High Commissioner calls upon the Government and the international community to proceed with the prompt, coherent and comprehensive implementation of the recommendations of the joint UNDP-donors corrections programming mission.

64. Events since the High Commissioner last reported highlight serious problems in relation to policing in Timor-Leste. These problems need to be addressed immediately and comprehensively in order to ensure the development of a credible, professional and impartial police service with the capacity and understanding to uphold law and order in a manner consistent with international human rights standards.

65. The High Commissioner underlines the importance that, with the ongoing downsizing of UNPOL, it is essential that a plan to address the many problems faced by the PNTL urgently be put in place. In this regard, the High Commissioner endorses the preliminary recommendations of the joint police needs assessment mission, specifically, that regarding the review and standardization of training and operational guidelines. It is essential that the PNTL training curriculum fully integrate international human rights standards and that PNTL officers develop the necessary skills to implement these standards, including training in the use of force and firearms in accordance with international standards in which restraint, the proportionate use of force and the identification of threats are emphasized. The High Commissioner also endorses the recommendation that an effective oversight and accountability mechanism be established urgently to investigate and determine complaints against the PNTL.

66. In relation to the Baucau and Dili incidents that took place from 18 November to 4 December, it is recommended that both UNMISSET and the Government of Timor-Leste ensure that there is a full record of the events and that those individuals whose conduct warrants it are held accountable. The High Commissioner recommends that there be an independent review of the investigations into the conduct of the police, including UNPOL, and also that lessons learned from these incidents be implemented in order to avoid their repetition. Such a review would be an important step forward in addressing some of the issues raised by the recent events in Timor-Leste. The High Commissioner calls upon the international community to continue to give its full support to the Government's efforts to strengthen capacity-building in this area.

67. The Government of Timor-Leste faces unique difficulties in developing a defence force with limited resources and within a limited time frame. Ongoing support from the international community to ensure that the F-FDTL develops as a professional and accountable defence force will be crucial to human rights protection in Timor-Leste. The incidents that took place in January 2003 placed an enormous burden on the nascent defence and police forces of Timor-Leste, leading to procedural violations of the law that constituted human rights violations. In the context of Security Council resolution 1410 (2002), which gives ultimate responsibility for security and law enforcement in Timor-Leste to UNMISSET, it is important to ensure that UNPOL and UNPKF are in a position to

support and assist F-FDTL and PNTL to respond to similar situations in a manner which ensures respect for human rights.

68. It is essential that F-FDTL and PNTL receive sufficient training and institutional support to allow them to perform their constitutionally distinct roles. Military assistance by F-FDTL to civilian law enforcement must be limited to what is absolutely unavoidable in the circumstances, in accordance with international human rights standards.

69. In connection with the Ermera incidents of January 2003, it is a source of concern that certain quarters of Government, F-FDTL and the media sought to criticize certain human rights NGOs because they publicly denounced the violations that resulted from the unlawful detentions. The Government, F-FDTL and the Timorese people well recall the historic and crucial role that human rights organizations played in the long struggle for Timorese independence. Their continuing role as watchdogs of government conduct was confirmed in the joint communiqué on human rights signed by the Government, these organizations and the former High Commissioner in August 2002, in which all committed to the exercise by these organizations of their "proper role of promoting and monitoring compliance with international human rights obligations".

70. The High Commissioner is disturbed to note the increasing reports of violence against women, particularly domestic violence. It is essential that leaders within the Government, members of the National Assembly and the community take and be seen to take steps immediately to remedy this social evil. Of particular relevance are, inter alia, the prompt adoption of legislation to combat domestic violence that incorporates the provisions of the Convention on the Elimination of All Forms of Discrimination against women increasing public awareness activities aimed at preventing domestic violence, the delivery of gender-sensitization training to those who work with women as victims, and the provision of psychological counselling services and other medical treatment.

71. The High Commissioner is very concerned to note that more than three years after the conflict in Timor-Leste, some 750 Timorese children continue to remain separated from their families. The High Commissioner understands that family reunification is a complex, laborious process, and commends the work of the international community, in particular UNHCR, UNICEF and their implementing partners, the International Committee, the Jesuit Refugee Service and the East Timorese Red Cross, to support the efforts of the Governments of Timor-Leste and Indonesia. However, the High Commissioner is concerned that caretakers can continue to frustrate this process. Accordingly, the High Commissioner again calls upon the Government of Indonesia and relevant donors to exert all possible pressure on these institutions and individuals to reunite the children with their families.

72. The High Commissioner recalls the Timorese people's desire to seek justice for the serious crimes that took place in both in 1999 and earlier. Accordingly, while the High Commissioner welcomes the recent progress made by the Special Panel for serious crimes in Timor-Leste, the High Commissioner is concerned that the 10 priority cases and others yet to be investigated will not be completed before the end of the mandate of the Serious Crimes Unit on 31 May 2004, notwithstanding the increased resources provided by

UNMISSET to support this process. It is essential that an assessment of the steps to be taken after 31 May 2004 to complete this process be undertaken promptly by the Government, in consultation with donors and UNMISSET.

73. The High Commissioner recalls that Security Council in resolution 1410 (2002), stressed the critical importance of cooperation between the Governments of Indonesia and Timor-Leste, as well as cooperation with UNMISSET, inter alia by ensuring that those responsible for serious crimes committed in 1999 are brought to justice. This echoes earlier resolutions (1272 (1999) and 1338 (2001)) calling for effective and appropriate justice in these cases. The High Commissioner is concerned by apparent shortfalls in this process thus far and stresses the importance of all parties redoubling their efforts to ensure that the spirit and terms of resolution 1410 (2002) are fully implemented.
