



United Nations Integrated Mission in Timor-Leste

Human Rights and Transitional Justice Section

**Report on human rights developments in Timor-Leste
August 2006 – August 2007¹**

TABLE of CONTENTS	Page
<i>Executive Summary</i>	2
I. Introduction	3
II. The framework for the promotion and protection of human rights in Timor-Leste	
I.1. Current legislative developments	4
II.2. Specialized offices within the Timor-Leste Government	6
II.3. The Office of the Provedor for Human Rights and Justice	7
II.4. Civil society organizations	8
III. The current human rights situation in Timor-Leste	
III.1. Economic, social and cultural rights	
<i>The general socio-economic situation</i>	10
<i>The situation of internally displaced persons (IDPs)</i>	11
III.2. Right to vote and freedom of expression	12
III.3. Sexual- and gender-based violence	14
III.4. Law enforcement and the armed forces	
<i>Police vetting</i>	15
<i>Recent allegations of human rights violations by PNTL</i>	16
<i>The internal accountability mechanism of PNTL</i>	17
<i>The functioning of the Timorese armed forces</i>	18
<i>The performance of UNMIT Police and the international security forces</i>	19
III.5. Access to justice	
<i>The court system</i>	21
<i>Due process and legal remedy</i>	22
<i>Prisons and police detention centers</i>	24
III.6. Transitional justice	
<i>Crimes committed in 2006</i>	25
<i>Crimes committed between 1974 and 1999</i>	27
IV. Summary of recommendations	29

Executive Summary

Since August 2006, important progress on the human rights situation in Timor-Leste has been achieved. With the assistance of police of the United Nations Integrated Mission in Timor-Leste (UNMIT) and the international security forces (ISF), the security situation has largely been brought under control, although occasional spikes of violence still occur as was the case in August 2007. In three peaceful election rounds widely regarded as free and fair, the Timorese chose a new president and new parliament. The Timor-Leste Office of the Provedor for Human Rights and Justice (PDHJ) expanded its monitoring and investigative activities, and several national prosecutors, judges and public defenders were sworn in, thus enhancing the capacity of the judiciary. In accordance with the recommendations of the United Nations Independent Special Commission of Inquiry for Timor-Leste (CoI), judicial processes were initiated against former members of the Government of Timor-Leste and national military and police involved in the 2006 crisis. UNMIT re-established the Serious Crimes Investigation Team to investigate outstanding cases of serious human rights violations committed in 1999. The first IDPs have moved from crowded camps to transitional shelters and the districts. In the meantime, the Government submitted its first treaty report on the Convention of the Rights of the Child (CRC) and is finalizing its first report on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). President Jose Ramos-Horta and government officials have re-affirmed Timor-Leste's commitment to human rights and democratic governance.

In spite of these significant developments, however, important human rights challenges remain. The alarmingly high number of internally displaced persons who still live in makeshift camps and the absence of progress towards durable solutions are of concern. Gender-based violence is common and a draft domestic violence law has been pending for several years. The Human Rights and Transitional Justice Section (HRTJS) has found that violations of human rights by state actors still occur and that there is an urgent need to strengthen internal accountability mechanisms, such as the national police's Ethics and Discipline Office (EDO). Effective access to justice is constrained as the judicial system remains weak, particularly in the districts. A considerable backlog of pending cases further hampers the work of the courts, impacting negatively on the right of victims to legal remedy. No legal mechanisms are in place to address property disputes, such as a law on land and property rights, which is also a serious obstacle to resolving internal displacement. Serious cases of political bias

compromising the impartiality of the police force were noted. There were initiatives for the adoption of amnesty legislation in relation to crimes committed during the period April 2006 to April 2007 including the 2006 crisis, which risked fostering impunity. Meanwhile, no progress has been made on implementing the recommendations of the 2005 report of the Commission of Reception, Truth and Reconciliation (CAVR) on human rights violations between 1974 and 1999, whereas the Commission on Truth and Friendship between Timor-Leste and Indonesia continued functioning on the basis of terms of reference which provide for the possibility of recommending amnesties that are incompatible with international law.

The 4th Constitutional Government of Timor-Leste was inaugurated on 8 August 2007. The tasks lying ahead of it are formidable. With the active support of the international community, Timor-Leste is slowly but steadily progressing beyond the political and security crisis of April/May 2006, though considerable effort is required to address the underlying causes of the crisis and to ameliorate the consequences thereof. Much remains to be done to fully achieve institutional stability and responsibility, and to regain public confidence in state institutions. The recent violent reactions to the formation of the new government, involving the burning of around 300 homes in the eastern districts as well as attacks on government, UN and church property, should serve as a stark reminder of the fragility of the situation and the challenge of building a culture of democracy and the rule of law in a young, developing country that went through several traumatic episodes of violence. The ultimate aim of the country's leaders and the Timorese people of a peaceful and prosperous democracy demands further progress, in particular in combating poverty, in reforming the security sector and in strengthening respect for the rule of law. The facts, the analysis and the recommendations contained in this report are aimed to assist all those involved in promoting human rights and justice in the country.

I. Introduction

In response to the crisis and the ensuing institutional breakdown that shook Timor-Leste in 2006, the United Nations Security Council established the United Nations Integrated Mission in Timor-Leste (UNMIT) through resolution 1704 of 25 August 2006. Besides being tasked with assisting Timor-Leste in the areas of elections, democratic governance, security sector reform and law enforcement, UNMIT is mandated "to assist in further strengthening the national institutional and societal capacity and

mechanisms for the monitoring, promoting and protecting of human rights and for promoting justice and reconciliation, including for women and children, and to observe and report on the human rights situation”².

One year into the new UN mission in Timor-Leste, this UNMIT report aims to highlight the human rights achievements in the country since the 2006 crisis and to point at existing shortcomings.³ Timor-Leste is a young democracy in which its citizens enjoy such fundamental human rights as freedom of speech, including to criticize the government, freedom of assembly, freedom of religion and freedom to engage in economic activity. This report focuses, however, on areas in which challenges remain. The overview provided is not exhaustive. Chapter two of the report looks at the framework for the promotion and protection of human rights in the country. Chapter three describes current human rights developments in Timor-Leste, while chapter four provides a summary of policy recommendations to both public institutions and civil society actors.

II. The framework for the promotion and protection of human rights in Timor-Leste

II.1. Current legislative developments

Due to significant impediments in the proper functioning of public institutions in Dili, Timor-Leste’s National Parliament enacted only a few laws and amendments in the covered period, most being elections-related. The new National Parliament was inaugurated on 30 July 2007. HRTJS hopes that its members will establish a culture of active debate, including consultations with the public, that they will raise human rights concerns in relation to government policies and decisions, and that they will take legislative and other initiatives towards the realization of human rights, including social and economic rights.

The National Parliament needs to ensure that Timor-Leste’s legislation is in compliance with international human rights standards as enshrined in the Timor-Leste Constitution.⁴ The broad material scope of amnesty legislation (the “Law on Truth and Clemency Measures”), adopted by the outgoing Parliament on 4 June 2007, could have represented a major setback in this regard.⁵ Though it is positive that the law in its final version did no longer cover grave crimes committed in and before

1999, there were concerns that the law, if promulgated by the President, would seriously undermine ongoing investigations and prosecutions related to the crisis in 2006. Judicial action had been recommended by the UN Independent Special Commission of Inquiry, as an essential building block for the rule of law and the restoration of public confidence in state institutions. Following a referral by the President, the Court of Appeal declared the law unconstitutional on 17 August 2007.⁶ It is positive to note that the President's Office in July 2007 engaged in talks with NGOs, several of whom had strongly criticized the law, regarding possible alternatives. Any new initiatives should benefit from thorough parliamentary debate, be compatible with international human rights standards, and take into account the views and interests of the victims.

HRTJS welcomes the drafting of a witness protection law by the Ministry of Justice. Timor-Leste does not yet have a witness protection system in place that allows the courts to provide victims and witnesses with adequate state protection. It is necessary to legislate on the matter, not only in relation to the serious crimes committed during the 2006 crisis, but also regarding common ordinary crimes, such as the widespread burning of houses, which occurred from April to June in Ermera district and in August 2007 in Viqueque district. The lack of witness protection legislation and respective protection mechanisms hampers the ability of the police to arrest perpetrators and to carry out investigations, as many victims and witnesses reportedly refrain from testifying fearing retaliation by accused persons. The law should be brought before the National Parliament and, after being debated by its members in consultation with relevant institutions and civil society representatives, enacted promptly.

Other priorities for the protection of human rights are the adoption of the draft law on domestic violence, the drafting of legislation on juvenile justice, as well as legislation concerning land and property rights, regulating, inter alia, property registration and the resolution of property disputes. There is broad agreement that such legislation is also a crucial element for resolving the problem of internal displacement in an orderly and peaceful manner.

HRTJS encourages the President of the Republic to promulgate the draft Penal Code (PC) as soon as possible. With the Timor-Leste Criminal Procedure Code already in force since 2006, the country will have its own modern criminal law system, replacing the Indonesian Penal Code and UNTAET Regulations which remain in force as of today. Before the enactment of the draft Penal Code, a

renewed debate and review of certain provisions of the draft is needed, in particular regarding criminal defamation as this poses a potentially serious threat to freedom of expression. In addition, the definition of rape may be too narrow to protect women's rights to personal integrity, while further consultation might be needed in particular on the issue of abortion.

II.2. Specialized offices within the Timor-Leste Government

The Office of the Advisor on Human Rights to the Prime Minister (Advisor) established during UNTAET was tasked with strengthening human rights redress mechanisms in Timor-Leste through designing strategies and policies, and to review draft legislation from a human rights perspective. In 2006/2007 the Advisor continued to coordinate the working group on the development of a National Human Rights Action Plan. Human resources constraints have hampered the finalization of this plan. The Advisor was actively involved in the Treaty Reporting Team of the Ministry of Foreign Affairs which on 1 March 2007 submitted its first treaty implementation report to the UN Committee on the Rights of the Child. The Office of the Advisor was also involved in the establishment of a National Commission for the Child.

The Advisor closely cooperated with Human Rights Focal Points Officers (Focal Points) in the ministries and district administrations, who are in charge of promoting and disseminating human rights standards in their institutions and to report to the Advisor in Dili. HRTJS noted that the Focal Points lack clear mandates and institutional support to fulfil their functions accordingly. This applies in particular to district Focal Points, who at the same time carry out the function of Deputy District Administrator. At times, the set up results in conflicts of interest with superiors. The Timor-Leste Government should strengthen the Focal Points in their functions within their institutions of assignment and to provide them with adequate funding to effectively promote human rights.

In the new Government structure, the functions of the Advisor have been transferred from the Prime Minister's Office to the Ministry of Justice.⁷ UNMIT is concerned about this development since the promotion of human rights extends beyond the justice sector, and the workload of the Ministry of Justice is already enormous. The HRTJS recommends that the transfer of the human rights advisor

function is revisited by the Government and that, wherever it is located, it is provided with the resources and stature for it to have genuine impact on policy and executive decisions.

The Office for the Promotion of Equality (OPE), situated in the Prime Minister's Office, has been coordinating training initiatives on gender-based violence for the Timorese national police (Policia Nacional de Timor-Leste - PNTL) in early 2006, but shifted its focus to the IDP situation after the crisis. OPE and the Ministry of Foreign Affairs prepared the draft State Party report on the implementation of the Convention on the Elimination of Discrimination against Women.⁸ Due to limited resources the OPE was unable to make contributions in the field of legislative review, such as the draft Law on Domestic Violence. In the new Government, the OPE has been upgraded to the level of a Secretary of State for the Promotion of Equality.

II.3. The Office of the Provedor for Human Rights and Justice

Since its establishment in June 2005, and despite the unexpected additional tasks that emerged from the 2006 crisis, the Office of the Provedor for Human Rights and Justice (PDHJ) has made notable steps forward. Mandated to investigate complaints of human rights violations, maladministration and corruption in Timor-Leste, and to carry out monitoring, advocacy and promotional activities, the PDHJ currently consists of more than 40 staff and is assisted by three international advisors, including one HRTJS staff. The PDHJ Complaints Unit has received more than 250 complaints to date, 70 of these being human rights cases. By August 2007, the PDHJ Human Rights Division had made recommendations in 23 human rights-related cases to competent authorities, including PNTL, ISF and UNMIT Police, to investigate complaints against members of their respective institutions. Positive also is the Provedor's decision to establish an Advisory Council with a membership drawn from a variety of interest groups in Timorese society.⁹

With the recruitment of more staff and increased funding in 2006, the PDHJ has begun to carry out human rights monitoring activities in the country, and, to a lesser extent, promotional and advocacy work. A close and productive relationship is developing between human rights NGOs and the PDHJ. Since the beginning of the crisis, joint teams of PDHJ staff and members of the non-governmental Human Rights Monitoring Network (RMDH) have monitored the IDP situation and detention centres.

NGO members often work as ad-hoc monitors in the districts, where the Provedoria does not yet have a permanent presence. The HRTJS welcomes this cooperation and hopes that it will be reinforced on the basis of a formal agreement between the Provedor and the NGOs. This could help the latter to carry out more regular monitoring for the PDHJ, including of state institutions that are currently off-limits for NGOs, such as some of the country's prisons and police detention centres.

HRTJS noticed that the population in the districts would welcome a static PDHJ presence at the regional level. To file a complaint with the PDHJ, complainants from the districts need to travel to Dili, inhibiting many people to come forward with allegations. The fact that in 2006, nearly 70% of complaints were lodged by Dili residents seems to prove this point. A permanent deployment of PDHJ staff to the regions, however, would also demand further strengthening of their capacities, in particular in investigating human rights abuses, as most staff still lack investigative expertise. Long-term training and recruitment of additional personnel is needed, combined with the required logistical back-up. A joint capacity building project with the PDHJ by UNDP/OHCHR commenced in early 2007 and has so far provided for training for PDHJ staff and selected NGOs on human rights principles, monitoring and civic education. HRTJS hopes that the Timor-Leste Government will support the expansion of PDHJ activities in accordance with the 2007-2008 PDHJ Budget. Moreover, the Provedoria, which currently needs approval of every item of expenditure from the Minister of Finance, should be given greater financial autonomy. This would enhance the institution's independence and efficient functioning.

More attention should be paid to the implementation of PDHJ recommendations. PDHJ reports should be discussed in National Parliament, which has not happened to date. There are no clear mechanisms in place yet on the side of the government, the judiciary and the parliament on how to deal with PDHJ recommendations. The Office of the PDHJ, on the other hand, could initiate follow-up meetings with the recipients of its recommendations.

II.4. Civil society organizations

The important work of the vibrant and increasingly professional non-governmental human rights groups in Timor-Leste has not been affected by last year's crisis. On the contrary, the activities of the Human Rights Monitoring Network (RMDH), which comprises ten NGOs and closely cooperates with

the PDHJ, contributed to effectively monitor the humanitarian and security situation and to raise awareness about the fate of those affected by the crisis. This includes continued advocacy to bring those responsible to justice and to achieve state recognition and compensation for victims and their relatives. The HRTJS encourages members of RMDH to further strengthen their network in order to ensure that through their joint efforts, they can continue to contribute to the promotion and protection of human rights. More recently, cooperation between five NGOs and the HRTJS has intensified and resulted in the entering of information on allegations of human rights violations in a national database system assisting NGO partners to keep a record of complaints, conduct analysis and engage in advocacy on issues of concern.

Several NGOs such as Asosiasaun HAK, Fokupers, Pradet, and the Victim Support Service of the Judicial System Monitoring Program (JSMP) continued to provide *pro bono* legal aid and victim support. These groups have gained the respect and trust of wide sectors of the Timorese population, who often approach them first to speak out on human rights abuses. It is hoped that in the near future more human rights NGOs will become active in the districts, in order to provide legal aid and to promote human rights in the regions. The increased awareness among NGOs to monitor and promote economic and social rights is a positive development that needs continued support. Civil society organizations in Timor-Leste should receive all the necessary technical and financial assistance from their international partners to further increase their capacities in these efforts.

There have been frictions between the Timor-Leste Government and human rights NGOs in the past. Authorities at times accused NGOs of political bias and there was insufficient dialogue. In this context, the NGO Forum (FONGTIL) initiative to draft a Code of Conduct for national NGOs is an important step to ensure the political neutrality of civil society groups. This will further strengthen the vital role of NGOs as impartial and respected watchdogs of democracy and the rule of law in Timor-Leste. The dialogue between the new President of the Republic, José Ramos-Horta, and NGOs at a seminar on “Strengthening Relations between NGOs and the State in National Development” in July 2007 is a positive development. The President stated that he would meet with NGOs every three months.

III. The current human rights situation in Timor-Leste

III.1. Economic, social and cultural rights

The general socio-economic situation

The 2006 crisis in Timor-Leste has to be understood in the context of the economic and social circumstances of the country. All levels of human development define Timor-Leste as one of the world's least developed nations and the poorest in Asia.¹⁰ Half of the population lacks safe drinking water, 60 of 1000 infants born alive die before their first birthday, and life expectancy is only 55.5 years. More than 40% of the population lives on 55 cents per day and only 57% is literate. Alarming high youth unemployment was a major contributing factor to the outbreak of violence in 2006. The youth unemployment rate staggers at 50%. Three quarters of the population engage in subsistence agriculture but food security is threatened by drought and low productivity. An estimated 45% of children in Timor-Leste under the age of five are chronically malnourished. In rural areas, approximately 30% of children between 7-12 years of age are not receiving education. According to an International Labour Organisation survey of 2006, child labour is prevalent in the agricultural sector, street and market vending as well as domestic work undermining the right of many children to attend school.

HRTJS recognizes the intention of the Timor-Leste Government to make determined efforts to combat poverty and youth unemployment, as expressed in the Government's Program and the International Compact for Timor-Leste.¹¹ The situation shows a clear link between poverty, frustration and instability. There is an urgent need to develop social safety nets for support to the poor and vulnerable. Public works and cash transfer programs would be some of the measures that could safeguard economic and social rights and stimulate the economy.¹² The lack of access to basic services, however, is profoundly affected by the absence of a regulatory and legal framework through which citizens can claim their rights. A draft labour code has not been approved to date, while more efforts need to be undertaken to discuss and adopt a comprehensive framework on land and property rights. The displacement of at least 10% of the population during the 2006 crisis underlines the critical socio-economic conditions in Timor-Leste, and further aggravated the situation by igniting new conflicts

between IDPs who are receiving services, and poor communities that are not benefiting from humanitarian assistance. HRTJS recommends that the Timor-Leste Government initiates the drafting of a report on implementation of the International Covenant on Social, Economic and Cultural Rights, for submission to the relevant UN treaty monitoring committee. The reporting process and the ensuing recommendations by international experts should assist in a structured, rights-based approach to the alleviation of poverty and provide a framework for the further mobilization of international support.

The situation of internally displaced persons

The violence sparked during the 2006 crisis resulted in the internal displacement of more than a hundred thousand persons who moved to IDP camps scattered around the country, or to host families. Since April 2006 around 5,300 houses were destroyed or damaged in the violence. A slight decrease of the IDP population staying in camps has been noted since then, although with renewed violence linked to gang fighting in the beginning of 2007, more people arrived in the camps. Many more houses were destroyed or damaged during disturbances in May-June and in August, leading to new displacement in Ermera and Viqueque districts. The living conditions in the IDP camps in Dili and the districts are of concern. One year after the crisis many tents and tarpaulins are in need of replacement. Water and sanitation needs improvement while a number of camps remain vulnerable to flooding and landslides.

Pending the creation of conditions conducive to voluntary return or relocation, in safety and dignity, there has been some progress in providing transitional shelter. The proximity of one of the most problematic IDP camps in Dili, located on the premises of the National Hospital, to public health facilities, and its poor living conditions and lack of water and sanitation is causing major public health threats. In July 2007, a six-month dialogue between the receiving community and IDPs living in the hospital, as well as the provision of a static police post resulted in the voluntary movement of 95 out of almost 400 families from the IDP camp to a newly-built transitional shelter. The identification of suitable sites for the construction of additional transitional shelters is urgently required, as the current capacity of transitional units is only at around 10% of the IDPs remaining in camps in Dili.

The Timor-Leste Government and humanitarian agencies agree that assistance programs have to be designed with a medium- and long-term perspective. Concerns about security, destroyed or damaged

homes and potential land- and property disputes are serious obstacles to solutions for many if not most of the displaced. These obstacles require a comprehensive, humanitarian strategy that is compatible with human rights principles, broadly supported by all concerned (particularly political leaders, the IDPs and concerned communities), set in a realistic time frame and well-coordinated. With a view to assisting the Government, the UN Country Team initiated an expert mission in July and September 2007 to recommend concrete steps towards durable solutions for the IDPs, including in relation to the complex question of land and property rights. Meanwhile, a sustainable mechanism is needed to assist those vulnerable to food insecurity amongst the displaced as well other segments of the population, without creating further dependencies. The humanitarian community in Timor-Leste is discussing methods of targeted food distribution, in consultation with the Government. Within the camps, the protection of women and children through coordinated prevention and response procedures requires close attention. In July 2007, the HRTJS/OHCHR took over, from UNHCR, the lead in protection coordination until the end of 2007. Tensions resulting in violence between local and IDP communities, as occurred for example in Metinaro in August 2007, and the risk of political manipulation of the IDP situation continue to be of major concern.

III.2. Right to vote and freedom of expression

In April and May, and in June 2007, presidential and parliamentary elections were held in Timor-Leste, leading to a peaceful change of the government. Based on the Section's observations and information received from national and international observers, HRTJS concludes that the elections were held in an environment largely free from violence and intimidation, with broad participation of the population. Countrywide and well attended campaigning in the run-up to all three election rounds showed that freedom of expression is guaranteed in Timor-Leste. Media coverage, though generally limited in its outreach, was balanced and all presidential candidates and political parties were able to voice their opinions in public events and through the media without interference of the state.

Some human rights concerns related to the right to information, the right to vote, security and freedom from intimidation. HRTJS noted that voter and civic education was limited in remote areas, as there was insufficient coordination with local authorities and, as a result, people frequently failed to attend the training sessions. As a result, people were often unaware of the roles and powers of the president,

the government, the parliament, and their rights as citizens. HRTJS welcomes that over 500 detainees and patients in the country's main hospitals who had their right to vote denied in both Presidential Election rounds, took part in the Parliamentary elections as the Technical Secretariat for Electoral Administration (STAE), based on an amendment of the Election Law, provided mobile polling stations to these institutions.

In the run-up to the elections, several analysts were concerned about threats against voters. While a few incidents of voter intimidation and vote-buying were reported, in particular during door-to-door campaigning and through verbal threats and financial offers coming from local party leaders, community chiefs and gangs, no cases of systematic or widespread intimidation were documented. However, sporadic outbursts of low-level violence, in particular during the campaign periods, resulted in property damage and injury. Rock throwing attacks on election convoys and during rallies occurred especially during the first round of the presidential election campaign. Some parties refrained from campaigning in certain areas, fearing attacks from supporters of other parties. In general the PNTL, UNMIT Police, and ISF managed to prevent any further escalations, with the notable exception of two fatal shootings, both allegedly by PNTL officers, after a party rally in the eastern district of Viqueque in early June. Notwithstanding these two serious incidents, the security situation improved considerably during the parliamentary election campaign. In a Political Party Accord, brokered by UNMIT, the political parties committed themselves to condemning and investigating violence. The presence of security forces was reinforced in certain "hotspots", and attempts were made to ensure that party rallies no longer took place in close proximity to each other.

Some instances of lack of impartiality and neutrality among public servants were reported during the election period. In Viqueque district, the PNTL District Commander was suspended shortly before the Parliamentary Election campaign period and submitted to a disciplinary investigation in relation to some incidents of violence during the Presidential Election period. In a number of public statements, a spokesperson of the National Electoral Commission (CNE) showed apparent bias in favour of as well as against specific parties and candidates. In all, there were however only few and isolated reports on preferential treatment of candidates or parties by public servants.¹³

III.3. Sexual- and gender-based violence

Sexual- and gender-based violence (SGBV) remains one of the major human rights concerns in the country. In addition, child abuse which includes sexual violence, physical and psychological abuse as well as neglect, is reportedly a major challenge in Timor-Leste. HRTJS recognizes that continued efforts by the Timor-Leste Government, civil society organizations, the media, and UN and international agencies have, over the years, contributed to raise awareness on SGBV in Timor-Leste. Experts and women's groups agree that there have been slight improvements in the institutional approach towards domestic violence. Prosecutors, judges, government officials and PNTL officers have continuously received training on this issue. The Vulnerable Persons Unit (VPU) of the PNTL is responsible for receiving and investigating allegations of gender-based violence.

Women increasingly report abuses to the police. In some districts, cases of domestic violence constituted more than half of the complaints filed with the police in 2005. Many civil society groups in Timor-Leste are active in supporting women victims of SGBV. Groups such as Fokupers, Pradet and JSMP provide counselling, legal assistance, shelter in safe houses and escorts to judicial hearings. Some women NGOs, together with human rights monitoring groups, are currently monitoring the situation of women in IDP camps and provide trainings for camp managers on how to report and deal with cases of SGBV. Fokupers released a report in August 2007 about violence against women committed in 2005-6, based on 172 cases, including 114 cases of domestic violence and 48 of sexual violence. The report expresses as one of its main concerns that the formal justice system did not deal effectively with many of these cases.

As the national and Dili district VPU ceased to function in 2006 as the result of the crisis, it proved to be difficult to obtain reliable updated figures on SGBV cases. VPUs in the districts were particularly hampered by lack of resources and institutional support. Due to the general constraints faced by the police and the justice system in Timor-Leste, lengthy delays often occurred in the investigation of rape cases. There are legal gaps that need to be filled in order to prosecute SGBV in accordance with international standards. The still applicable Indonesian Penal Code, for example, does not consider spousal rape a crime. The enactment of the Domestic Violence Law could help to overcome many of these obstacles, as it would provide specific legal definitions and clear procedural guidelines on how to

deal with SGBV crimes and how to support victims. The draft law is currently pending with the National Parliament.

More information needs to be gathered regarding how traditional dispute resolution mechanisms deal with cases of violence against women and children, and particularly, whether these processes duly respect women's rights. While there appears to be acknowledgement of the value of traditional justice, including for disputes relating to minor crimes only, it is important that the authorities, in consultation with civil society and traditional leaders, decide on the role of traditional justice mechanisms and their relation with the formal justice system.

III.4. Law enforcement and the armed forces

Police vetting

The political crisis in 2006 led to the disintegration of the Dili District PNTL and to a general breakdown of security in the capital. During the April and May events, PNTL officers were involved in attacks in the capital, while other PNTL officers were killed in confrontations with the military and armed groups. Integrity and accountability concerns, however, had arisen already before the crisis, as there were reports of PNTL officers being involved in human rights violations, corruption, illegal weapons distribution, sexual abuse and various disciplinary problems. In many cases, in the absence of effective accountability mechanisms, the crimes and misconduct attributed to police officers did not result in criminal charges or disciplinary sanctions.

Based on Government Resolution 3/2006 of 22 August 2006, and on the Supplemental Policing Arrangement of 1 December 2006¹⁴, UNMIT and the Timor-Leste Government agreed on steps to take to reform, restructure and rebuild the PNTL with the overall aim to restore public confidence in the police and to make the institution transparent and accountable. One central element in these efforts is the so-called "screening process" that started in September 2006. It aims to ensure that each of the around 3,000 PNTL officers in Timor-Leste, including special units of the police¹⁵, is checked in relation to his or her integrity, in particular for crimes or misconduct committed in the past. After the screening, officers need to go through renewed training and a six-month UNMIT Police mentoring

program. Those who meet all the criteria become eligible for “final certification”. Since the beginning of the PNTL vetting, HRTJS and other actors provided UNMIT Police and the Ministry of Interior with information and advice. In doing so, HRTJS aims to ensure a process that is effective and ensures respect for due process standards, including the right of the concerned police officer to appeal an adverse decision.

Substantial progress has meanwhile been achieved, with the provisional certification of some 1200 police officers. The vetting began in Dili where it is in an advanced stage, while the process is now also under way for the PNTL officers in the districts, who have continued to work there, under the supervision of UNMIT Police. As of 20 August 2007, UNMIT Police information concerning PNTL officers based in Dili suggests that 56 persons required further investigation due to allegations of criminal acts or human rights violations, whereas 76 officers who completed integrity inquiries were referred for a decision on suitability. As part of the vetting, all issued PNTL firearms have to be properly accounted. By July 2007, the whereabouts of approximately 20 modern weapons, including pistols and long-barreled rifles, were still unknown. The illegal circulation of unaccounted PNTL firearms in the country is of concern in view of the overall volatile security situation.

Recent allegations of human rights violations by PNTL

HRTJS human rights officers in Dili and in the regions have noted with concern that human rights violations continue to be committed by individual PNTL officers. Since August 2006, the HRTJS has recorded several cases of cruel, inhuman and degrading treatment or punishment of persons during their arrest, in detention or during interrogation. In some cases, victims needed medical treatment. On 25 May 2007, HRTJS officers had to ask the PNTL in Baucau to bring a detainee to hospital immediately, after finding out that the victim had been severely beaten and had remained unconscious for one hour while in police detention. No cases of torture were documented by the Section.¹⁶ HRTJS reports of alleged excessive use of force include the shooting and beating of one civilian by PNTL officers after a minor row between members of the local community in Fohorem sub-district, Covalima district on 7 April 2007, which resulted in serious injury.

Arrests without warrant, though permitted under certain circumstances, still occur and in many instances appeared to have been unlawful. Detainees interviewed by HRTJS staff reported that they were not informed by the police about the reason of arrest, nor about their rights while in detention. In general, the police respect the 72-hour detention limit within which an arrested person must be brought before a judge or released. HRTJS also received several reports of excessive firearm use by PNTL officers. Police often draw their weapons and issue warning shots in situations where no lethal threat is imminent, sometimes resulting in injury and death. On 22 March 2007, during a gang fight in Dili two off-duty PNTL officers fired shots in the air and into the crowd, killing one male and wounding one. Both PNTL suspects were detained but subsequently released by the judge on the ground that the men might have acted in self-defence. The investigation however continued and had not concluded by August 2007. In two separate incidents on 3 June 2007, PNTL officers were allegedly responsible for two murders and one serious gunshot injury of civilians after campaign rallies in Viqueque district. In relation to one of these incidents, a PNTL officer was arrested soon after the incident in a major police operation, which also helped to stabilize the situation in the area.¹⁷ This sends a strong signal to other criminals/police officers who might be involved in criminal activities.

The internal accountability mechanism of PNTL

The PNTL Ethics and Disciplinary Office (EDO), formerly known as the Professional Ethics Office (PEO), an internal body dealing with police misconduct has throughout its existence been hampered by lack of resources, inadequate investigative expertise and the fact that many cases are absorbed by the traditional justice mechanisms. This has resulted in lack of accountability for many violations committed by PNTL officers. In 2005, EDO offices were established in the districts which improved the flow of investigations, but conflicts have arisen when district EDO officers are assigned to investigate their close colleagues and superiors. Moreover, allegations lodged with district EDO offices were often not referred to the national level as required.

A Police Institutional Oversight Mechanism Subgroup operated from early 2005 until the end of UNMISSET's mandate in May 2005. It was comprised of staff from EDO, UNMISSET Police, UNMISSET Human Rights Unit and the Inspectorate of the Ministry of Interior. It helped EDO to carry out its mandate and to dispense with a large backlog of cases. The reactivation of this mechanism by

UNMIT and the Timor-Leste Government should be considered to strengthen internal accountability within PNTL.

The functioning of the Timorese armed forces

The dismissal of more than a third of the military's personnel for disciplinary reasons in March 2006 triggered last year's violence. During the crisis, the Timorese armed forces, the F-FDTL (Falintil – Forças de Defesa de Timor-Leste) suffered from deadly attacks by certain F-FDTL elements, PNTL members and other armed groups, while some of its members were allegedly involved in the illegal transfer of weapons to former combatants and in several killings of police personnel and civilians. The allegations include the killing of eight PNTL officers in Dili on 25 May 2006 which incident also resulted in serious injuries to 27 Timorese police officers as well as two UNOTIL police training advisers. The fact that F-FDTL soldiers allegedly involved in criminal acts are being brought to justice is an important positive development, in line with the CoI recommendations which must be implemented in an effective, comprehensive and expeditious manner. The prosecution of police as well as army personnel avoids public perception of favouritism of one or the other security force and is essential for the building of a culture of accountability and respect for the rule of law.

As with the PNTL, there have been concerns about weak discipline and human rights violations in the ranks of F-FDTL long before the crisis. There were regular reports of illegal use of firearms, cruel and degrading treatment of civilians and arbitrary arrests. Several new cases of F-FDTL abuses have been recorded since the establishment of UNMIT in August 2006. A serious incident happened on 17 March 2007, when members of the military allegedly detained and ill-treated four civilians in Dili, before handing them over to UNMIT Police. During separate interviews with the victims, investigators from UNMIT Police and human rights officers from HRTJS were able to note marks from beatings with rifle butts and kicks with boots on some of the victims' bodies. In another incident, four F-FDTL soldiers were involved in misconduct, including the mistreatment of a security guard, and then resisted arrest by UNMIT Police. They were however immediately placed under detention by their superiors. An internal disciplinary investigation concluded that the soldiers had violated military discipline and they were detained for 21 days. A criminal investigation commenced but had not concluded by August 2007.

Incidents like unjustified warning shots, firearm threats against civilians and UNMIT Police, and verbal and physical harassment of civilians, sometimes under the influence of alcohol, have been reported in Dili since the deployment of F-FDTL members to provide static security to sensitive locations in the capital. However, HRTJS has noted a decrease in the number of reported violations since May 2007. Of great importance in this regard is the commitment of the Timor-Leste Government and, particularly, of the F-FDTL's General Commander to turn the F-FDTL into a modern, professional force which operates within the rule of law and respects human rights. The deployment of the military for internal security, which is normally a police task, should be reserved for exceptional circumstances only, under clear civilian authority and oversight, and only be undertaken in accordance with the Constitution and the provisions of relevant laws.

As part of UNMIT's mandate to assist the Timor-Leste Government with its efforts to review and strengthen the capacity of the security sector, the HRTJS, together with the Ministry of Defence and the International Committee of the Red Cross (ICRC), initiated in early July 2007 a human rights training program for F-FDTL senior commanders which, inter alia, aims to include human rights in the curricula of the military academy. Another important part of F-FDTL strengthening is the development of an effective internal accountability mechanism. Moreover, enhanced cooperation between F-FDTL, the Office of the Provedor and other human rights actors would help to promote a culture of accountability and respect for human rights in the armed forces.

The performance of UNMIT Police and international security forces (ISF)

As a response to the events in April and May 2006, and to ensure peaceful elections, more than a thousand international troops and 1,608 UNMIT Police are providing security and maintenance of law and order in Timor-Leste.¹⁸ The presence of UNMIT Police, supported by the international security forces (ISF), has helped to largely quell civil unrest in the country. The Memorandum of Understanding of 26 January 2007 between the Timor-Leste Government, UNMIT and Australia as the lead nation for the ISF, outlines the roles of the different security forces in the management and stabilization of the security environment in Timor-Leste. HRTJS is aware of the multiple challenges

faced by UNMIT Police and the ISF, ranging from gang violence and political disturbances in Dili and the districts, to threats by an armed group of military police deserters led by Alfredo Reinado.

There were two main incidents in which the ISF resorted to the use of lethal force. On 23 February 2007, two persons were fatally injured at an IDP site near Dili airport during ISF action. An investigation was carried out by the Prosecutor's Office, but no conclusions had been reached as of August 2007. There were concerns that the ISF was not fully cooperating with the criminal investigation. The Australian army did, however, promptly initiate an investigation under its own military justice procedures, the outcome of which is still pending. On 4 March, five persons were shot dead in an armed confrontation involving the ISF when the latter tried but failed to arrest Reinado. The Prosecutor-General informs that the Prosecution Service, at his direction, thoroughly investigated the incident, that the investigation found "that there were no criminal legal consequences arising from the actions of the ISF members involved," and that "evidence gained clearly showed that ISF members returned fire in self defence only when first fired upon." There have been some allegations of excessive use of force by ISF personnel during operations, which have not been substantiated by ISF disciplinary investigations. According to the ISF, three soldiers were, however, convicted of service offences under the Australian Defence Force Discipline Act and fined and/or reprimanded for the unlawful confiscation of Fretilin flags in Baucau in August 2007. The ISF command pledged to conduct disciplinary investigations into allegations brought to its attention. It is recommended that the ISF shares the outcome of any such investigations with the Timor-Leste authorities and UNMIT. HRTJS welcomes the fact that human rights officers are granted access to the ISF detention centre.

Allegations of excessive use of force and cruel and degrading treatment have been raised against UNMIT Police officers. HRTJS has recorded six cases of alleged excessive use of force by UNMIT Police in Dili since October 2006. On 8 June 2007, the Provedor sent a letter containing recommendations on five cases of alleged human rights violations involving police officers to the UNMIT Police Commissioner. The cases include incidents of illegal arrest, excessive use of force and physical assault that reportedly occurred in Dili between September 2006 and April 2007. UNMIT Police stated that it would cooperate with the PDHJ, by investigating the allegations. It has to be noted that there has been improvement in the carrying out of police arrests in Dili during the second quarter of 2007, after UNMIT Police officers proceeded to strictly apply the provisions outlined in the

Timorese Criminal Procedure Code. This resulted in a notable decrease of unlawful arrests, in particular during situations that did not fulfill the requirements of a criminal offence or did not constitute an arrest in *flagrante delicto*.

III.5. Access to justice

The court system

Most observers agree that there have been improvements in the functioning of the court system since the crisis. During 2006 and the first half of 2007, the Court of Appeal and the district courts had to rely on international staff serving both as primary judges and prosecutors and as mentors for national probationary staff who assisted them. In June 2007, the President of the Court of Appeal inaugurated 27 national judges, prosecutors and public defenders, after they received their diplomas from the Legal Training Centre (LTC), funded through the United Nations Development Programme (UNDP) in the context of its Justice System Programme. A second group, of 15 Timorese nationals, is expected to graduate from the LTC by the end of 2007. This is an important boost to the justice system in Timor-Leste. At the same time, the Timor-Leste Government and international donors need to continue and increase their support to the efforts of the Timorese judiciary and the UNDP Justice System Programme, both financially and with additional human resources.

Since mid-2006 and throughout the first half of 2007, two international judges and two international prosecutors and their national counterparts were assigned to the district courts in Dili and Baucau. The courts in Suai and Oecusse operate with one international prosecutor and one international judge each, with Timorese counterparts. While the courts in Baucau and Dili held regular hearings in the first half of 2007, HRTJS observed that this was not the case in the Suai and Oecusse. The continued functioning of district courts was hampered as all judicial personnel were living in Dili. The complexity of cases related to the 2006 crisis and the increase in criminal cases due to incidents of violence in Dili in the first half of 2007 placed an additional burden on the work of prosecutors originally assigned for other tasks. Due to these factors, the backlog at the Dili district Prosecution Office had risen from 1658 in January 2007 to 2413 cases, at the end of July 2007.¹⁹ A further increase is expected as cases investigated by the Commission of Inquiry are being followed up and

investigations into serious violations of human rights in 1999 are concluded by UNMIT's Serious Crimes Investigation Team and submitted for prosecution.

With the inauguration of the Timorese judges, prosecutors and public defenders, more regular trials, hearings and investigations should take place in the districts. For this end, legal staff has to be based permanently in their region of assignment. The taking up of residence of judges, prosecutors and public defenders in the districts should be supported through the provision of housing, transport and staff security in the districts. Based on an action plan developed by the Timorese authorities and UNDP, deployment should start in October. More attention should also be paid to the adequate equipping of courts and the offices of court clerks, prosecutors and public defenders in the regions. This includes an effective registry and case management system to improve the work flow, as well as water and sanitation facilities, vehicles, 24-hour power supply, security, telephone landlines, and internet.

The fact that case documents and court hearings in the same case are often written and held in three different languages (Portuguese, Tetum, Indonesian), places an additional burden on the justice sector. Most files have to be translated first for international judges and prosecutors to work with them, thus delaying progress on many cases. Due also to a decrease in the number of interpreters, translation delays may currently take five to eight months. Hopefully, the training of additional interpreters will soon ameliorate the situation. HRTJS also noted that the overwhelming number of cases heard by the courts relate to criminal, rather than civil matters, which are often referred to the traditional system. Civil cases should, however, receive equal attention by the courts, in particular those related to economic and social rights.

Due process and legal remedy

HRTJS acknowledges that judges and prosecutors have increased their visits to the districts since the second half of 2006, in particular to the eastern region. The irregular functioning of the court system however, has over the time contributed to impunity in the districts. Unable to bring suspects before a judge when needed, the police was regularly forced to release them after 72 hours. Often, the PNTL was simply unable to transport suspects, due to a lack of vehicles. In some cases, suspects were

released from detention, but while waiting to be brought before a court, remained under police supervision. In Oecusse, the PNTL command, while acting in good faith, established a “safe house” on the premises of the district police headquarters for suspects who preferred to remain under police surveillance after their release, as they feared retaliation from their communities.

HRTJS officers noted that hearings are often postponed in the district courts, in particular in Suai and Oecusse. This is partly caused by the tardiness or non-appearance of witnesses or victims, who are hindered by long distances or lack of available transport. On the other hand, judicial personnel arrived late or missed scheduled hearings, as some of them were also overburdened given their training schedules at the Legal Training Centre in Dili. Due to the lack of a permanent presence of judicial personnel in the districts, civil and minor criminal cases were often referred to the traditional system (adat). While the settlement of disputes through traditional means can help to alleviate the court system, human rights-abiding guidelines on the use of adat should be developed.

The permanent relocation of judges, prosecutors and public defenders to the districts, as well as better logistical support for courts and the district PNTL, including additional vehicles, would bring with it more accountability and access to justice to the population in the regions. Another option is the increased use of mobile trials, as sometimes applied by the Suai court. In two cases, the Suai court transferred hearings to Maliana, as most of the affected parties lived there. Relevant UNMIT police and national police also need additional training in the handling of judicial matters. HRTJS was informed that notifications of defendants and witnesses by the court as well as the prosecutors are not always promptly delivered by the court administration and the national police.

On the defendant’s side, access to legal aid continues to remain of concern in Timor-Leste. With an average of four international public defenders and seven national probationary public defenders available for all the courts in the country in 2006 and the first half of 2007, many defendants had to rely on support from private lawyers from local NGOs, who are not always available in particular in the districts, and whose legal knowledge and experience was sometimes limited. A law regulating the status and profession of private lawyers has been pending for several years now and needs attention from the new Parliament. This is even more urgent as this law is expected to deal with the training of

lawyers, and would pave the way for much needed support from the Ministry of Justice and international donors for training programmes, including to *pro bono* lawyers.

Another major problem faced by the legal system is the backlog of pending cases, which by late 2006 amounted to around three thousand cases in Dili and the district courts. HRTJS recognizes the progress of the prosecutors in dealing with the caseload since then. While many cases have been closed and others were processed, from the districts hundreds of cases are waiting for translation or notifications to be delivered to defendants and witnesses concerning further steps in the judicial procedure. Frequently, HRTJS officers in Dili and the districts are approached by victims of human rights violations who are still seeking legal redress for their cases, which often date back to 2004 or even 2003.

Prisons and police detention centers

In general, the conditions in the prisons in Timor-Leste are in compliance with international standards. The total prison population reached around 280 people by August 2007 and in none of the prisons the number of inmates exceeded its capacity limits. While the three correction facilities in Gleno, Baucau and Dili generally provide adequate water and sanitation facilities, there is a need for physical rehabilitation of some parts of the prisons. Power supply, if needed by generator, is guaranteed. All three prisons provide medical service through nurses based in the prisons, and prisoners are able to engage in limited recreational and vocational activities, such as sports and carpentry work. However, HRTJS has received some allegations of mistreatment of detainees by prison guards occurring during the first 72 hours of imprisonment. In some of the instances, detainees did not wish to formally complain, fearing retaliation. The Ministry of Justice should give strict instructions to the prison management that such behaviour is unacceptable and that disciplinary action will be taken.

Concerns relate to insufficient security measures in prisons. Guards are poorly trained and do not count on static police support. There were two escapes from Becora prison during the reporting period. In one single incident in August 2006, 57 inmates, including Alfredo Reinado, fled from Becora prison in Dili. Eleven prison guards were subjected to a criminal investigation but this investigation had not been concluded by August 2007. Another five prisoners escaped from Becora prison on 17 February 2007. HRTJS participated in commissions established by the Ministry of Justice to investigate both

escapes and made recommendations including the suspension of prison guards, the translation and dissemination of prison regulations, and setting up police posts near the prisons. As the trials of persons accused of involvement in last year's crisis proceed and more high profile persons might be detained in Timor-Leste's prisons, security at prisons is requiring urgent review and action. The new UNDP project to improve prison management in the country is an important step.

Of concern also is the detention of juveniles in Timor-Leste. There is no legislation to regulate the status of underage suspects while, under the current legal framework, the minimum age for criminal responsibility is not clearly established as required under the Convention of the Rights of the Child. The Ministry of Justice should finalize juvenile justice legislation as soon as possible, and forward it to Parliament for discussion and enactment. The Ministry of Justice, in close cooperation with the Ministry of Health, should also consider the establishment of special facilities for mentally ill persons, as the detention of these inmates together with common prisoners is not only in breach of international standards, but also denies the patients the psychiatric care needed.

HRTJS human rights officers noted that the conditions of detention cells in some of Timor-Leste's police stations are not in compliance with international standards. Concerns include the lack of access to adequate water and sanitation facilities, bedding, and lack of food. In one police cell observed by HRTJS, detainees had to defecate on the cell floor, which was already littered with garbage. PNTL officers in charge argued that they would not clean the cell as this teaches criminals a lesson. PNTL commanders in Dili and the districts have to ensure that all police cells are maintained in humane conditions, in accordance with international principles for the treatment of prisoners whose human dignity must be fully safeguarded.

III.6. Transitional justice

Crimes committed in 2006

The October 2006 report of the UN Independent Special Commission of Inquiry (CoI), which was mandated to "establish the facts and circumstances relevant to incidents that took place" during the April and May 2006 crisis, recommended the prosecution of more than 60 individuals allegedly

involved in criminal acts.²⁰ Considering resource constraints, there have been significant achievements by the judicial system in following up on these recommendations. From its observations, the HRTJS concludes that the trials have so far largely been in compliance with international legal standards, and respected the rights of the defendants.

In May 2007, the Court of Appeal upheld the conviction handed down by the Dili District Court of the former Minister of Interior, Rogerio Lobato, for manslaughter and the distribution of weapons, and the conviction of two co-defendants. In March 2007, Mr. Lobato was sentenced to seven and a half years in prison.²¹ In June, the trial was held of the former PNTL Deputy Commander of Dili District and three co-defendants accused of attempted manslaughter and illegal possession of weapon in relation to the armed attack on the house of the F-FDTL General Commander on 24-25 May 2006.²²

Also in June, 11 F-FDTL members and one PNTL sub-inspector were indicted for the shooting of unarmed PNTL officers on 25 May 2006 that led to the death of 8 police officers. Another 13 investigations are currently being carried out by the Prosecutor-General's Office. HRTJS welcomes that the Timor-Leste Government has also recognized the suffering of the victims. To date, more than 250 relatives of those who died, the injured and those who lost small businesses have received financial compensation from the Government. A memorial for 11 PNTL officers killed during the crisis was inaugurated by the President of the Republic at the site of the 25 May massacre exactly one year later. However, the Government has not yet established a special pension regime for F-FDTL and PNTL widows as mandated by Government Resolution 9/2006 on Assistance to Victims of the Crisis. Moreover, no financial compensation has yet been granted to relatives of petitioners who died during the crisis.

The progress made in establishing accountability for crimes committed during the crisis deserves much more publicity, to counter the still prevailing public perception that criminal justice is either not functioning or is only meted out to the poor.

Besides resource constraints, a number of factors impede the work of the Office of the Prosecutor-General. These are the absence of a witness protection law, which prevents victims and witnesses from testifying, the lack of a dedicated team of investigators²³ and forensic experts, and the need for ballistic

tests to be performed abroad due to the unavailability of national facilities. Further prioritization of investigations and prosecutions should assist in processing CoI cases, based on such factors as gravity of the offence, degree of responsibility, impact and access to evidence. As mentioned earlier, there were concerns that the draft Truth and Clemency Law could prevent new prosecutions and might even result in the release of those already convicted. HRTJS welcomes that the law was not promulgated by President Ramos-Horta following the recent ruling of the Court of Appeal by which it was declared unconstitutional.

Crimes committed between 1974 and 1999

Security Council resolution 1704 (2006) mandates UNMIT to assist the Office of the Prosecutor-General of Timor-Leste, through the provision of a team of experienced investigative personnel, to resume investigative functions of the former Serious Crimes Unit (SCU), with a view to completing investigations into outstanding cases of serious human rights violations committed in the country in 1999. The re-establishment of the investigative arm of the SCU is in line with the recommendations in the Secretary-General's report on justice and reconciliation for Timor-Leste of 26 July 2006.²⁴ By the time the SCU ceased its investigations in November 2004, it had filed 95 indictments against 391 persons. While 84 people were convicted to prison terms in Timor-Leste, 290 of those indicted by the SCU remain at large in Indonesia. There are 186 murder cases remaining for which no one has been indicted yet, and a total of 469 cases were not investigated.²⁵ It is to be expected that the completion of investigations into human rights violations that occurred in 1999 will be an important contribution to recording the truth of past events and to providing sound evidence for future indictments and prosecution of perpetrators.

In June 2007, the presidents of Indonesia and Timor-Leste extended the mandate of the bilateral Commission of Truth and Friendship (CTF) until January 2008. The CTF was inaugurated in Denpasar, Indonesia, on 1 August 2005 to address human rights violations committed in Timor-Leste in 1999. While having put hopes into this process, the UN and national and international human rights groups raised concerns regarding the CTF's terms of reference, which allow for recommending amnesty for serious crimes such as war crimes and crimes against humanity. In addition, observers have criticized the CTF for insufficiently cross-examining or questioning individuals who were

allegedly involved in or bear responsibility for the 1999 violence, some of whom are reported to have made misleading statements before it. In response to an invitation for certain UN staff and former staff to provide testimony at a CTF hearing, the UN Secretary-General reiterated that the UN would not cooperate with the Commission unless its terms of reference are revised to comply with international human rights standards. The Secretary-General also publicly expressed that the United Nations stands unequivocally by the exemplary work of UNAMET during the course of the popular consultation in 1999 and throughout the course of the mission's mandate.

To date, Timor-Leste's National Parliament has not yet discussed the final report of the Commission for Reception, Truth and Reconciliation (CAVR), which it received in October 2005. The "Chega!" report ("No more, stop, enough!") contains important and detailed recommendations to the Government and the international community on schemes of reparation and public recognition of the victims of human rights violations that occurred between 1974 and 1999. It also provides policy guidelines on how to promote human rights in Timor-Leste and on how to use CAVR mechanisms like the Community Reconciliation Procedures for future conflict resolution needs. HRTJS notes that in the July 2006 report, the Secretary-General emphasized the need for the Timor-Leste Government to implement the CAVR recommendations.

The efforts of the CAVR during its almost five years of operation from 2001 to 2005 constitute a major contribution to drawing up a historical record of the past. The implementation of its recommendations can help foster a democratic culture based on the rule of law in Timor-Leste. Documenting the hardships in the struggle of the people of Timor-Leste for independence, democracy and national identity, the "Chega" report could have an important unifying effect in Timorese society and also help to overcome the wounds of the more recent past. It is therefore hoped that the newly-constituted Parliament will debate and disseminate the report and initiate action on its implementation. In the same vein, HRTJS also calls upon the Timor-Leste Government and the international donor community to continue its support of the work of the Post-CAVR Technical Secretariat, which is tasked with disseminating the CAVR final report, and maintaining the CAVR archives and memorial site in Dili.

IV. Summary of recommendations

*To the **President of the Republic**: Promulgate, after its partial review by the National Parliament or the Government, the new Penal Code as soon as possible.*

*To the **National Parliament**: Debate and adopt laws concerning Land and Property Rights, Witness Protection, Domestic Violence, and the Status and Profession of Private Lawyers; Discuss the CAVR final report and task the Timor-Leste Government with implementing CAVR recommendations.*

*To the **Government**: Adopt a comprehensive strategy for durable solutions for IDPs (including security, housing and access to food), that is compatible with international standards and has a realistic time frame; Revisit its decision to abolish the Office of the Advisor on Human Rights to the Prime Minister; Consult more regularly and further empower the Human Rights Focal Point Officers in district administrations and ministries; Provide the Office of the Provedor with the required budget to strengthen and expand its activities; Initiate the drafting of a report on the implementation of the International Covenant on Social, Economic and Cultural Rights; Continue financial and logistical support to the Post-CAVR Technical Secretariat.*

*To the **Ministry of Justice**: Permanently relocate judicial personnel to the districts and ensure staff security, as well as adequate living and working conditions for them; Finalize draft legislation on Juvenile Justice and consider setting up a special detention facility for juvenile detainees; Speed up translation efforts in the courts and prosecutor offices; Improve prison management in Timor-Leste, in particular regarding security in detention facilities and the treatment of inmates by guards; Establish guidelines on how formal judiciary and traditional mechanisms can cooperate in a transparent and human rights-abiding way; In cooperation with the **Ministry of Health**, establish special facilities for detainees who suffer from mental health problems.*

*To the **Secretariat of State for Security**: Strengthen the capacities of the PNTL Ethics and Discipline Office (EDO) and the PNTL Vulnerable Persons Unit (VPU), in particular in the districts; Ensure accountability for police officers involved in human rights violations and breaches of discipline;*

Reactivate the Police Institutional Oversight Mechanism Subgroup in cooperation with PNTL, UNMIT and UNMIT Police.

*To the **Secretariat of State for Defence**: Ensure respect for human rights by F-FDTL personnel through training and accountability for abuses; Strengthen the internal disciplinary mechanisms of the military and ensure cooperation with criminal investigations by the judicial system;*

*To the **Ministry of Social Solidarity**: Continue food aid and other support to IDPs who are in need as well as other vulnerable persons, including in the districts; Ensure that effective procedures are in place for people to apply for (continued) food assistance and social safety nets; Finalize the draft Labour Code and forward it to the Council of Ministers;*

*To the **Judiciary**: Ensure criminal responsibility for crimes committed in April-May 2006 in line with the recommendations contained in the report of the United Nations Independent Special Commission of Inquiry for Timor-Leste; For the Prosecutor-General's Office, adopt a prosecutorial strategy that prioritizes cases based on gravity, impact and evidence; Encourage the lodging of civil cases in the courts;*

*To the **Office of the Provedor for Human Rights and Justice (PDHJ)**: Carry out more regular monitoring, in particular in the districts; Establish cooperation arrangements with human rights monitoring NGOs; Open regional PDHJ offices as soon as the capacities of PDHJ staff and the allocated PDHJ budget permit;*

*To **civil society organizations**: Sign and enact the NGO Forum Code of Conduct for NGOs; Enhance legal aid and victim support activities, in particular in the districts; Strengthen the Human Rights Monitoring Network (RMDH); Continue to enter alleged cases of human rights violations into the joint Human Rights Database;*

*To the **international donor community**: Continue assisting the Timor-Leste authorities, through technical and other forms of cooperation, especially in the justice sector, security sector reform and assistance to IDPs.*

NOTES

¹ Upon receipt of additional information, this is a second, corrected version of the report. The corrections concern the last section of Chapter III.4. This version has been published on the UNMIT website on 14 December 2007, to replace the original version which was published on 8 November 2007.

² UN Security Council resolution 1704 (2006), 25 August 2006. In accordance with this mandate, the Human Rights and Transitional Justice Section (HRTJS) of UNMIT is engaged in capacity building programs, while its human rights officers monitor and report on the human rights situation in the country. The Section is furthermore engaged in supporting security sector reform including the screening process of the national police, in promoting transitional justice for crimes committed between 1974 and 1999 and in 2006, and in strengthening civil society organizations including in the area of economic, social and cultural rights. The Chief of HRTJS reports to the Special Representative of the Secretary-General in Timor-Leste, as well as to the UN High Commissioner for Human Rights.

³ The report is issued by UNMIT and has been drafted primarily by the Human Rights and Transitional Justice Section.

⁴ According to Section 9 of the Constitution of Timor-Leste, international conventions, treaties and agreements ratified by Timor-Leste are part of domestic law. Any laws and rules contrary to the provisions of such international treaties are deemed invalid by the Constitution. By August 2007, the country was a State party to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Elimination of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CPMW). Timor-Leste has also ratified the 1949 Geneva Conventions and the two 1977 Additional Protocols, the 1951 Convention relating to the Status of Refugees and the 1967 Protocol, as well as the Rome Statute of the International Criminal Court. HRTJS is offering human rights training for Parliamentarians who are members of Committees A (constitutional affairs, rights, freedoms and guarantees), B (foreign affairs, defence and national security) and H (youth, sport, employment and professional training) including on human rights treaties and monitoring.

⁵ According to the proposed law, attempted manslaughter, serious physical assault, arson attacks and weapon charges would be amnestied. In addition, *all* crimes (including manslaughter) committed by negligence or with *dolus eventualis* (indirect intent) would be eligible for amnesty. The law included a transitory provision by which ongoing investigations had to cease, thus impacting directly on Timor-Leste's obligation under applicable international human rights law to provide an effective remedy against serious violations of human rights, in particular by investigating and prosecuting violations of the right to life.

⁶ In the view of the Court of Appeal, acting as Supreme Court, the limited timeframe for amnesty or pardon (crimes committed between 20 April 2006 and 30 April 2007) resulted in a breach of the principle of equality contained in article 16 of the Constitution, as those having committed such crimes before 20 April 2006 would not be able to apply for an amnesty or pardon.

⁷ Article 22.2 of the Organic Law of the IV Constitutional Government, promulgated on 29 August 07.

⁸ It was submitted and discussed by the Council of Ministers during the previous Government but had not yet been approved and thus remains pending with the current Government.

⁹ In light of the principle of pluralism contained in GA Resolution A/RES/48/134 of 20 December 1993 (the Paris Principles on National Human Rights Institutions).

¹⁰ Unless stated otherwise, figures used in this chapter are from *The Human Development Report 2006* (UNDP) and the East Timor United Nations Development Assistance Framework (2003-2005).

¹¹ The International Compact for Timor-Leste has recently been discussed in the Council of Ministers and is expected to be formally agreed and launched later this year.

¹² Such measures are recommended in the recent *Economic and Social Development Brief* (August 2007) prepared by the World Bank and the Asian Development Bank, for the attention of the Timor-Leste Government, pages 3 and 16. This and other reports have noted the Government's difficulties with budget execution, with the Government being unable to spend the resources at its disposal due to insufficient capacity and cumbersome, over-centralized systems.

¹³ Most of the incidents on the election days themselves, such as missing or pre-marked ballot papers, underage voters and other cases alike can be ascribed to logistical problems rather than deliberate attempts to change the course of the vote. All observers, including the Electoral Observer Mission of the European Union, the Observer Mission from Lusophone countries (CPLP) and other bilateral missions from Indonesia, Japan, South Africa, New Zealand, as well as the largest national observer group KOMEG, agreed in their final statements that the elections had largely been conducted successfully

with some noting that there was improvement from election round to election round in the professionalism of officials from the STAE, the CNE, as well as of national polling staff and party agents.

¹⁴ Full title: “Arrangement on the restoration and maintenance of public security in Timor-Leste and on assistance to the reform, restructuring and rebuilding of the Timorese National Police (PNTL) and the Ministry of Interior – Supplemental to the Agreement between the United Nations and the Democratic Republic of Timor-Leste on the Status of the United Nations Integrated Mission in Timor-Leste (UNMIT)”

¹⁵ The Rapid Intervention Unit (UIR), the Border Patrol Unit (BPU) and the Police Reserve Unit (PRU).

¹⁶ Torture is an aggravated form of cruel, inhuman or degrading treatment. For a definition, see art. 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

¹⁷ On 17 August 2007, the Baucau District Court sentenced the PNTL officer to a prison term of six years for manslaughter. However, the Court of Appeal on 21 September ordered a re-trial as the judgement by the Baucau Court had not clarified the factual basis for the decision nor had it substantiated the proven and unproven facts (as required in art.278.7 of the Decree Law 13/2005 Approving the Criminal Procedure Code)

¹⁸ The figure dates from August 2007, i.e. the end of the period covered by the report.

¹⁹ UNDP: *Strengthening the Justice System in Timor-Leste; Semi-Annual Progress Report*, August 2007.

²⁰ See *Report of the United Nations Independent Special Commission of Inquiry for Timor-Leste*, 2 October 2006, Geneva.

²¹ Mr. Lobato was allowed, by a court decision, to temporarily leave the country on 9 August 2007 for the purpose of undergoing medical treatment abroad.

²² On 8 August 2007 the Dili District Court acquitted the former Dili Deputy Police Commander of attempted manslaughter, but convicted him for weapons offences and theft to a 4 year prison term. The three co-accused were convicted to one and a half year prison sentences for weapons offences. On 27 September 2007, the Court of Appeal issued a ruling on the appeal of the case, holding the trial process to be null and void on the ground that the panel of judges of the Dili District Court had not been constituted in accordance with applicable laws and regulations. The case will need to be re-tried.

²³ However, with the support of UNMIT Police, a Prosecutor Support Unit was established in late 2006, which also assists the international prosecutors with investigations into the CoI cases.

²⁴ Report of the Secretary-General on justice and reconciliation for Timor-Leste of 26 July 2006 (S/2006/580).

²⁵ Ibid.