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CIVIL AND POLITICAL RIGHTS, INCLUDING QUESTIONS OF: INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE

REPORT OF THE SPECIAL RAPPORTEUR ON THE INDEPENDENCE OF JUDGES AND LAWYERS DATO' PARAM CUMARASWAMY, SUBMITTED IN ACCORDANCE WITH COMMISSION ON HUMAN RIGHTS RESOLUTION 2002/43

REPORT ON THE MISSION TO INDONESIA*
15-24 July 2002

***** The executive summary of this report is being circulated in all official languages. The report itself is contained in the annex to the executive summary and is being circulated in the language of submission only.

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Executive summary

The present report concerns a mission to Indonesia undertaken from 15 to 24 July 2002 by the Special Rapporteur on the independence of judges and lawyers.

The Special Rapporteur had received information concerning the state of the rule of law, the administration of justice and in particular the independence of the judiciary, with allegations of widespread and systematic corruption within the administration of justice affecting all actors, including judges, prosecutors, police and other court officials.

The Special Rapporteur also received information on the situation of the administration of justice in Aceh, Papua and Moluccas. His request for access to these conflict areas was refused by the Government on the ground that his security could not be guaranteed.

Throughout the mission the Special Rapporteur met a cross-section of all the actors in the administration of justice, including the National Law Commission and the National Human Rights commission, various NGOs working in support of capacity-building for the administration of justice, including the National Commission for the Protection of Children and the National Commission on Violence against Women. He also met the Chief Justice and some of the judges of the Supreme Court, the Association of Judges, the Attorney-General, the Ministers of Foreign Affairs and Justice and Human Rights and Komisi II of the House of Representatives (DPR). In addition, he met representatives of the donor community. He also met the judges and prosecutors of the Ad Hoc Human Rights Court for East Timor, in separate meetings.

In his report the Special Rapporteur also addresses issues related to the prosecutors, the legal profession, steps taken by the Government to reform, the Ad Hoc Human Rights Court for East Timor, and briefly, the situation in areas of conflict, children and women.

The Special Rapporteur's conclusions and recommendations can be found at paragraphs 78 to 106, and 107 to 119, respectively.

Annex

REPORT OF THE SPECIAL RAPPORTEUR ON THE INDEPENDENCE OF JUDGES AND LAWYERS DATO' PARAM CUMARASWAMY, SUBMITTED IN ACCORDANCE WITH COMMISSION ON HUMAN RIGHTS RESOLUTION 2002/43

REPORT ON THE MISSION TO INDONESIA

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Introduction

1. The present report concerns a mission to Indonesia undertaken from 15 to 24 July 2002 by the United Nations Special Rapporteur on the independence of judges and lawyers pursuant to his mandate in Commission on Human Rights resolution 1994/41 as renewed by resolutions 1997/23 and 2000/42. The mandate calls upon the Special Rapporteur, inter alia, to enquire into any substantial allegations transmitted to him and report his conclusions and recommendations thereon.

I. GENERAL BACKGROUND

2. The Special Rapporteur had received information concerning the state of the rule of law, the administration of justice and, in particular, the independence of the judiciary in Indonesia. The Special Rapporteur was informed that, since independence, the administration of justice had suffered much damage as it had been used by the executive as a tool to implement government policy. In turn, judicial power steadily eroded. The Special Rapporteur was informed that, in the current post-Soeharto era, the judiciary was no longer perceived as an instrument of government policy but rather as open to the highest bidder in a system in which the mechanisms of control and accountability are weak and ineffective at best and non-existent at worst. This has, the Special Rapporteur was informed, in turn served to create a mentality within certain segments of Indonesian society in which it is considered routine to attempt to bribe judges, where the office of the judge and the judiciary as an institution have completely lost their prestige and dignity, and where judges themselves have, over the years, lost their self-esteem.

II. CONSTITUTIONAL PROVISIONS CONCERNING THE ADMINISTRATION OF JUSTICE

3. The Constitution in force in Indonesia dates from 1945 and has been amended four times since 1998. The First Amendment altered the status and powers of the President. The Second Amendment includes Chapter XA on human rights; article 28D provides that each individual has the right to recognition and protection before the law, certainty of the law and the right to equality of treatment before the law. Article 28I protects the individual against retrospective application of laws. The Third Amendment enacted on 9 November 2001, inter alia, expands the powers of the Supreme Court and provides for the establishment of a Constitutional Court and Judicial Commission. The Fourth Amendment, adopted in August 2002, provides, inter alia, for direct election of the President and Vice-President.

4. There is no constitutional provision expressly guaranteeing the independence of the judiciary. There is also no express constitutional provision guaranteeing the right to a fair trial.

5. Article 24B deals with the Judicial Commission. Article 24B (1) characterizes the Judicial Commission as independent with the “authority to propose candidates for appointment as justices of the Supreme Court and shall possess further authority to maintain and ensure the honour, dignity and behaviour of judges”. The members of the Commission shall possess legal

knowledge and experience, and shall be persons of integrity with a personality that is not dishonourable, and are appointed to, and dismissed from, their position by the President with the approval of the DPR. The structure, aims and membership of the Commission is regulated by law.

6. Article 24C deals with the Constitutional Court. It has the power to try a case at the first and final levels, and shall have the final decision-making power in reviewing laws against the Constitution, determining disputes over the authority of State institutions, whose powers are given by the Constitution, deciding on the dissolution of political parties, disputes with respect to a general election, and with respect to the removal of the President. It is composed of nine persons selected by the President: three persons are proposed by the Supreme Court, three by the DPR, and three by the President.

7. Neither the Constitutional Court nor the Judicial Commission has been set up.

III. THE JUDICIARY

8. There are three main pieces of legislation dealing generally with the judiciary: Law 14/1970 concerning the Basic Principles of Judicial Power, Law 2/1986 concerning the General Judicial System, and Law 35/1999 on Amendment of Law 14/1970, which included a number of significant changes intended to bring about greater independence of the courts.

9. Article 1 of Law 14/1970 provides that the judiciary is the independent power of the State in administering justice to maintain law and justice based upon “Pancasila”, the five principles governing the Indonesian State and society. The five principles are: belief in the one and only God; a just and civilized humanity; the unity of Indonesia; democracy guided by the inner wisdom of deliberations of representatives; and social justice for all Indonesian people.

10. Article 4 (3) of Law 14/1970 provides that any interference in the exercise of the judicial function shall be prohibited except for cases referred to in the Constitution.

A. The court system

11. Article 10 of Law 14/1970 provides that the Supreme Court stands at the apex of the court system. Beneath the Supreme Court, there are four branches of the judiciary - General Courts of Justice, which include the High Courts and the District Courts (approximately 349 in total); Religious Courts of Justice, which include the Religious Court of Appeal and Religious District Courts (approximately 383 in total); Military Courts of Justice, which include the Military Court of Appeal (approximately 31 in total); and Administrative Courts of Justice, which include the Administrative Court of Appeal (approximately 27 in total). In addition, five new commercial chambers within the General Courts of Justice have been established, as has a new taxation court.

12. The Minister of Justice informed the Special Rapporteur that Indonesia requires approximately 7,000 judges for its 800 courts. Currently, there are approximately 3,500 judges, with 300 or so judges appointed to the bench each year. There are 51 justice positions on the Supreme Court, of which 19 are currently unfilled.

B. Court administration

13. Law 14/1970 provides that each branch of the judiciary is subject in organization, administration and finance to the ministry in which its jurisdiction is primarily concerned. This has the effect of placing the judicial system under "two roofs"; the judicial function is under the control of the judiciary and all administrative functions, including appointment, transfer and discipline, are managed by the respective ministry.

14. Many judges with whom the Special Rapporteur met cited the ultimate control vested in the Ministry of Justice as the reason why much-needed change to the judiciary could not be made by the judiciary itself. In addition, allegations were made relating to how control over the administration of the judiciary by the Ministry of Justice had, over the years, led to the deep politicization of the judiciary. These allegations were dismissed by the minister, who informed the Special Rapporteur that the role of his ministry vis-à-vis the judiciary was limited to that of administration and finance, and that the independence of the judiciary, as set out in the Constitution, was fully respected by his ministry.

15. As a step towards removing the potential for influence by the executive over the judiciary and to assist in making the judiciary independent, Law 35/1999 was promulgated to transfer, within five years, the organization, administration and financial management of the courts from the ministry to the Supreme Court. In this regard, the Special Rapporteur was informed by both the Director-General for the Administration of the Courts in the Ministry of Justice and by justices of the Supreme Court that the transfer of power is proceeding slowly; after three years regulations are currently being prepared to implement law 35/1999 and will be submitted to the House of Representatives (DPR) in 2003, with the intention that arrangements will be in place for the Supreme Court to take over the administration in 2004.

16. The Supreme Court and general courts are funded through the national budget, as coordinated by the Ministry of Justice. Religious and military courts are provided budgets through the Ministries of Religious Affairs and Defence. Law 31/1999 does not indicate how budgets after 2004 will be determined.

C. Appointment, transfer and discipline of judges

17. Article 31 of Law 14/1970 provides that judges are to be appointed and dismissed by the President. This provision is further amplified by the subsequent law 2/1980, which provides in article 31 that a judge is appointed and dismissed by the President on the proposal of the Ministry of Justice in consultation with the Chief Justice of the Supreme Court.

18. Law 2/1986 lists the qualifications required for appointment as a judge, which are to be: an Indonesian national, devoted to God Almighty, loyal to the Pancasila and the Constitution, a civil servant, a law graduate, to be dignified, honest, just and of good behaviour, and not to be a current or former member of the Communist Party.

19. After graduation from law school, judges undertake a one-year training programme currently provided by the Ministry of Justice. Those who pass this training, work for one to two years in district courts as court clerks before qualifying for the position of junior judge. The first assignment of a junior judge is usually to a small district court.

20. According to Law 40/1995, appointment to the Supreme Court requires five years' experience as a chief justice of an appellate-level court or 10 years' experience as a judge of an appellate-level court or 15 years' experience in the legal field, i.e. non-career judges. Article 24A (2) of the Constitution provides that the judge must have integrity and a personality that is not disgraceful; he/she must be fair, professional and possess experience in the legal aspects; and the appointment will be made by the Judicial Commission. Pending the establishment of the Judicial Commission, appointment to the Supreme Court follows a "fit and proper test" conducted by the DPR, which receives nominations from the DPR, the Supreme Court, civil society, and the Government. For the current 19 vacancies on the Supreme Court, 72 out of the 74 names under consideration by the DPR were proposed by the Supreme Court.

21. Proposals for transfer of judges originate from the Ministry of Justice, which is then approved by the Supreme Court. However, the final decision on transfer rests with the Ministry of Justice. Transfers are made for three reasons - to benefit the court, to benefit the judge and to benefit the judge's family. The Special Rapporteur was advised that, in 2001, approximately 750 judges were transferred, of whom 20 judges were transferred by the ministry as punishment for misconduct.

22. Article 20 of Law 2/1986 provides that a judge can be removed for (a) commission of a criminal act; (b) committing a disgraceful act; (c) continuously neglecting their duties; or (d) violation of their oath of office. An Inspector General, also located in the Ministry of Justice, receives complaints relating to the alleged misconduct of judges. Of the approximately 125 to 150 complaints received per year, the Special Rapporteur was advised that approximately 20 judges are found guilty of misconduct. The Director-General was unable to explain to the Special Rapporteur, however, what these cases of misconduct related to or the sanction for such misconduct.

23. Concern was repeatedly expressed to the Special Rapporteur that the Ministry of Justice exercises excessive power in the appointment, transfer and discipline of judges, increasing the likelihood of making judges beholden to the ministry. Specific concerns were also shared with the Special Rapporteur regarding the fit and proper test for appointment to the Supreme Court; inter alia, that there was insufficient inquiry into a candidate's track record and that subjective criteria are used for selection.

D. Accountability of judges

24. The Special Rapporteur was informed that there is very little formal substantive supervision of judges and no effective accountability mechanism. The Supreme Court has appointed a Deputy Chief Justice for supervision. However, concern was expressed that the Deputy Chief Justice has no full-time staff and is not fully familiar with the functions of the task required. The Special Rapporteur was also informed that though senior judges are required to supervise the work of junior judges, the former's heavy workload made that task difficult. This assessment was borne out during the Special Rapporteur's discussions with justices of the Supreme Court, one of whom stated that "what is required is more supervision in the process and integrity of judges and court officials. Our culture and habits are also not conducive" [to this supervision].

25. The Special Rapporteur was also advised that there is no systematic publication of court proceedings and decisions.

26. In addition to the concerns expressed over the lack of an effective accountability mechanism to oversee the conduct of judges, attention was focused on the civil-service status of judges. Prior to recent reforms, Indonesian judges were considered as civil servants. The Elucidation to Law 2/1986 makes it clear that Act 8/1974, Principles concerning Civil Servants, is applicable to judges. This required the Ministry of Justice to evaluate a judge's efficiency and effectiveness like other civil servants. Moreover, article 13 provides that the general supervision of judges as civil servants shall be conducted by the ministry. Notwithstanding the recent legal reforms whereby judges are no longer considered as civil servants, a number of judges informed the Special Rapporteur that, after 37 years of serving as a civil servant, the challenges of altering mindsets to that of an independent and impartial judge are significant.

E. Incidence of judicial corruption

27. The following incident was recounted to the Special Rapporteur by a former Director-General of Anti-Corruption Activities in the Office of the Attorney-General:

> We had arrested a suspect in connection with corruption over a pre-trial detention and had obtained a detention warrant to question the suspect further. The warrant was about to expire, so I went before a judge to request its extension. In order for the warrant to be extended, I gave the judge a bribe. I was reimbursed for my trouble from the official budget of the Office of the Attorney-General.

28. Many and varied interlocutors with whom the Special Rapporteur met - judges, prosecutors, senior lawyers, members of civil society, academics and government officials - referred to the problem of endemic and systematic corruption within the administration of justice, in particular, within the judiciary.

29. During the Special Rapporteur's mission, a number of reports were issued by various Indonesian organizations alleging widespread and systemic corruption within the administration of justice system.

30. In July 2002, an Indonesian NGO, Indonesian Corruption Watch (ICW), reported that corruption takes place at every step in the criminal and commercial legal processes. Corruption patterns cited in the criminal court include choosing a judge and negotiating the verdict with the judge. In civil proceedings, corruption is reported to take place by, inter alia, giving extra money to register the case and choosing a favourable judge. ICW also reported that a number of these practices, particularly the trading of verdicts, affect judges of the Supreme Court.

31. These allegations are supported by complaints received by the National Ombudsman Commission, which reported that in 2001, its second year of operation, 45 per cent of complaints received related to allegations of judicial corruption. A 2001 national survey on corruption, undertaken by the Partnership of Governance Reform, ranked the judiciary, along with the traffic police and the customs authority, as the most corrupt public institution in Indonesia. Judges and prosecutors were consistently ranked among the least respected of public officials.

32. However, most of the allegations of corruption are levelled at courts in the cities. Not many allegations were levelled at religious courts.

33. During the Special Rapporteur's mission, a number of high-profile, controversial court decisions, which had led to accusations of judicial corruption, continued to receive significant press coverage. This included the bankruptcy ruling by the Jakarta District Appellate Court in the case of Manulife Indonesia. Manulife did not pay a dividend for the financial year 1999. Manulife's shareholders had not declared a dividend for that year, but the court ruled that it had an unpaid debt obligation. Manulife appealed the case to the Supreme Court, which set aside the decision in early July 2002, allegedly following, inter alia, pressure from the country of nationality of the company. The Supreme Court and the Minister of Justice are investigating the decision-making process of the lower court, in particular, allegations that the judges took bribes before delivering such a controversial decision.

34. A number of reasons were proposed to the Special Rapporteur to explain the incidence of corruption within the judicial system. This included, primarily, the low wages paid to judges, who are paid only slightly higher than other civil servants. According to figures received from the Asian Development Bank, a newly graduated judge receives basic monthly pay of Rp 1,350,000 with further allowances making a total of Rp 2 million (US$ 200), with a judge of the high court earning a basic monthly salary of Rp 3,400,000 with allowances taking this to Rp 6 million (US$ 600). These figures are considerably less than the salaries enjoyed by the best private law firms.

35. The low salaries paid to judges also reflect the budget of the court system as a whole, which is considerably less than the total required. In 2001, the Ministry of Justice requested from the national budget Rp 396 billion for the routine court budget, including daily operational costs and salaries, and Rp 125 billion for the development budget, including the renovation and furnishing of court buildings. In reality, the DPR approved Rp 346 billion for the routine court budget, 87 per cent of the amount requested, and Rp 52 billion for the development budget, just over 40 per cent of the amount requested.

36. A number of Indonesian interlocutors described the practice of corruption as "traditional". The Minister of Justice identified the root cause of bribery in the following terms: "In Indonesia, it is difficult to act in a gentlemanly way and admit loss. So people try to do anything not to admit loss". To a proposal by the Special Rapporteur on how to remove corrupt judges, the Minister said, "I have had many people come in with suggestions as to how to improve. But we have our own way of doing things. I respect the suggestions of the international community but we must resolve our problems our way."

37. A number of senior lawyers referred to the double standard being applied by foreign companies operating in Indonesia. On the one hand, these companies want an environment of legal certainty in order to secure their investments; on the other hand, when it comes to their own cases, some companies are alleged to pressure judges and use unscrupulous lawyers in order to ensure a ruling in their favour. These concerns were echoed to the Special Rapporteur by representatives of the donor community who admitted that it was only now that the international community had itself been affected by the calamitous legal situation existing in Indonesia, and in particular, after it had been the victim of corrupt practices, that it had been forced to realize the severity of the situation.

IV. THE POLICE AND THE PUBLIC PROSECUTION SERVICE

38. As the Minister of Justice pointed out to the Special Rapporteur, corruption is not specific to the judiciary, but affects the Indonesian bureaucracy as a whole. The Special Rapporteur was repeatedly told that corruption plagues the police and the prosecution service. The Asian Development Bank survey for a Governance Audit of the Public Prosecution Service (PPS) carried out in 2000, notes that, "As in other public institutions in Indonesia, the incidence of corruption, collusion, and nepotism in the PPS is high. PPS may be especially vulnerable to such practices because its prominent role in law enforcement makes it the obvious institution to influence."

39. The Indonesian Judicial Monitoring Society (MAPPI) reported recently on its survey undertaken in April 2002 of 600 respondents, including judges, lawyers, academics, prosecutors, police and civil society. The survey cited allegations that police were bribed either to conceal evidence or not to detain suspects, and prosecutors were bribed either to report insufficient evidence to bring charges or that the facts do not constitute a crime.

40. In December 2002, the Indonesian media reported that KPKPN had informed the police that there were indications that the Attorney-General had provided KPKPN with false information relating to the extent of his wealth and that there were indications of corruption, following the giving by the Attorney-General to KPKPN of contradictory explanations regarding the source of his wealth. These media reports are only the latest in a series of reports alleging financial improprieties by the Attorney-General.

V. THE LEGAL PROFESSION

41. The Special Rapporteur was informed that there are no figures available on the number of practising lawyers. Membership of the seven bar associations is voluntary. There is no law applicable to the organization of the legal profession, though the Special Rapporteur was

informed that a draft bill on advocates regulating the profession has been before the DPR for the past year. Representatives of some bar associations told the Special Rapporteur that they would be supportive of an organized profession and of making membership mandatory, provided that their independence was not affected. A USAID-sponsored assessment of the bar associations conducted in 2001 notes, however, that "most legal-community leaders agree that unifying the profession will not be an easy task. Currently, there is no consensus on how to proceed and virtually no organized effort has begun to address the myriad of issues attendant to developing a unified system of licensing and discipline".

42. Each bar association has its own code of ethics. The seven bar associations, including the three largest, have adopted the Joint Code of Ethics, implementation of which, the Special Rapporteur was informed, is the responsibility of each bar association. This has the effect that, inter alia, lawyers expelled from one bar association are able to join others and continue to practise.

43. The Special Rapporteur learned that the national law curriculum currently applicable to all 28 public and 180 private law schools (not all of which are accredited) will shortly no longer be compulsory, following a recent decision of the Ministry of Education that each university is free to develop its own curriculum. Most law schools offer a curriculum which takes between 3.5 and 5 years to complete. International human rights law is not part of the curriculum; the University of Indonesia is currently designing a human rights component with the intention that it will be replicated by other universities in the country.

44. Law graduates can immediately be recruited to work in a private firm or company. To work as a trial lawyer, however, requires that law graduates take an entrance examination, conducted by the Ministry of Justice, in order to obtain a license to practise. Continuing legal education programmes for lawyers is non-existent.

45. The Special Rapporteur was informed about the practice of moonlighting where those without a licence practise in the name of someone with a licence.

46. The Special Rapporteur was repeatedly informed about the use of so-called "hanky panky" or "black sheep" lawyers who have built up their practices and reputations through corrupt practices, such as bribing judges, prosecutors and other court personnel. Indeed, many judges referred to the pressure put on them by such lawyers who, judges alleged, frequent judges' chambers before hearings in the absence of the other party so as to influence the judge's decision.

VI. STEPS TOWARDS REFORM

47. The Government, DPR and judiciary have embarked upon a number of judicial and legal reform programmes. The Government's programme for judicial reform is set out in the five-year National Development Plan and identified, inter alia, the following issues as the most problematic:

- The lack of independent, impartial, clean and professional courts due to government and other influences, as well as the lack of quality, professionalism and morality of the law enforcement apparatus (includes courts, police, prosecution);

- The lack of public confidence in the courts; and

- The large number of corruption, collusion, nepotism and human rights cases that are still outstanding.

48. In November 2001, the Government provided an update on its reform agenda to the 11th meeting of the Consultative Group on Indonesia (CGI), a coordinated approach to funding by bilateral and multilateral donors. The Minister of Justice listed a number of steps taken to combat corruption, including adoption of a law on corruption, collusion and nepotism, the settlement of human rights violations, and development of a law on the establishment of an Anti-Corruption Commission. The Special Rapporteur was informed, however, that notwithstanding these initiatives, the CGI considers that the Government's attention to reform of the justice sector has been sporadic and extremely slow.

49. Since the November 2001 meeting, the Coordinating Minister for Political and Security Affairs has attempted to bring together the key agencies in the justice sector, under the auspices of the Partnership for Governance Reform to develop an approach to reform in the sector.

50. The PPS has assumed additional responsibilities recently in connection with the Government's anti-corruption efforts. In May 2000, a joint investigating team (JIT), coordinated by the Attorney-General, was established by presidential decree to investigate and prosecute corruption, initially in the court system and subsequently in other areas as its capacity increased. However, the Supreme Court decided that the JIT was unlawful because it had not been established by law, as required by the law on the establishment of an Anti-Corruption Commission. However, it was the very absence of the existence of the Anti-Corruption Commission that encouraged the then Attorney-General to establish the JIT. This decision caused the CGI to note, in its November 2001 report, that the JIT was "outmanoeuvred by the judiciary at each stage of its brief life".

51. Other bodies supporting the process of judicial reform include the National Law Commission and the National Ombudsman Commission. Since its establishment in 2000, the National Law Commission has focused on developing a law reform programme. The results of a long process of research and consultation undertaken by 15 sectoral working groups are expected to be discussed by the Commission and other key partners in the near future, with a master plan for legislative reform to be adopted thereafter.

52. The National Ombudsmen Commission was established by presidential decree in 2000. Its main focus is on maladministration of the Government and the judiciary. In 2000, 35 per cent of the 1,723 complaints received related to the functioning of the courts. In 2001, 45 per cent of its 511 cases related to the courts. A draft law on the establishment of the Ombudsmen is currently before the DPR and provides the Ombudsmen with the power to investigate and make recommendations. The Special Rapporteur was informed that both institutions have been underfunded and have lacked political support.

53. A number of Indonesian NGOs, including the Indonesian Institute for Independent Judiciary and the Center for Indonesian Law and Policy Studies, have recently been formed to support legislative and judicial reform and are working in a collaborative way with the Ministry of Justice and the Supreme Court.

54. In December 2002, the DPR adopted the law establishing the Anti-Corruption Commission. The Commission will be composed of five members and will have full authority to both investigate all cases of corruption involving State officials and prosecute these officials in an ad hoc court. The Commission is authorized to take over existing corruption cases being investigated by the Police and Office of the Attorney-General. The relationship between the Commission and other existing structures designed to tackle corruption, such as the Ombudsmen, which is also seeking to be endowed with investigatory powers, was not clarified to the Special Rapporteur.

55. Foreign donors are also playing a key role in reform programmes. The Partnership for Governance Reform coordinates support of the international community in initiating a long-term process to improve governance in Indonesia in a durable way. The Partnership has so far disbursed $8-9 million to finance governance initiatives in government and civil society through more than 100 projects.

56. At the interim meeting of the CGI held in November 2002, the Government noted that "legal and judicial reform is an area in which progress is lagging". However, the Government went on to list three recent steps taken: (a) submission of the Anti-Terrorist Law to the President; (b) reorganizing the justice sector under the Supreme Court under a one-roof policy; and (c) Supreme Court reversal on appeal of a decision that was worrisome to investors.

57. In his meeting with a member of Komisi II of the DPR, whose portfolio includes justice-related matters, the Special Rapporteur was informed that a general campaign to reform all professional sectors of the administration of justice was required. It was also explained to the Special Rapporteur that the DPR's attention was focused on the 2004 parliamentary elections, and as there is no majority party in Parliament, all parties consider it necessary to build up coalitions with 2004 in mind. Hence, "it is not easy to rock the boat and make headway on judicial reform". The Special Rapporteur expressed the urgency and the highest priority the DPR should give for reform of the administration of justice to restore public confidence both domestically and internationally.

VII. THE AD HOC HUMAN RIGHTS COURTS FOR EAST TIMOR

58. In 2000, the Indonesian legislature created a permanent Human Rights Court as a special chamber of the General Courts. The law establishing the Human Rights Court, Law 26/2000, provides that the National Commission on Human Rights (Komnas HAM) is the sole body empowered to initiate and carry out the preliminary inquiry into allegations of gross human rights violations.

59. The Bench of the Human Rights Court is composed of two career judges and three ad hoc judges. The ad hoc judges are appointed to the Human Rights Court and the Court of Appeal by the President on the recommendation of the Chief Justice of the Supreme Court, and in the case of appeal to the Supreme Court, ad hoc judges are appointed by the President on the recommendation of the DPR. According to an old law, the ad hoc judges are to be selected from academia. In addition, the ad hoc judges serve for five years with the right to a one-time renewal of their tenure.

60. The Ad Hoc Human Rights Court for East Timor was created by presidential decree pursuant to a provision of Law 26/2000 authorizing the creation of ad hoc tribunals to try gross human rights abuses committed before the law was enacted. The presidential decree establishing the Ad Hoc Human Rights Court for East Timor provides for the investigation and prosecution of crimes that took place in April and September 1999 in the districts of Dili, Covalima and Liquica.

61. In March 2002, the court began hearing cases. A total of 18 defendants have been charged before the court in 12 separate trials. None of the defendants is accused of personally committing or commanding in the commission of crimes against humanity. All defendants are charged either as accomplices to the commission of crimes committed by others or on a theory of command responsibility: with failing to prevent, stop, or take steps to investigate and prosecute the commission of crimes against humanity committed by persons under their command or authority and directed against civilians. The indictments allege widespread or systematic acts of murder and persecution directed against a civilian population, and that the defendants failed to prevent their subordinates from carrying out such crimes. These charges carry minimum sentences of 10 years' imprisonment and maximum sentences of death. The defendants include officials from the military, the police and the civil administration.

62. The 12 trials are at different stages of completion. Decisions have been delivered in a number of trials: the former Governor of East Timor, Abilio Soares, and Eurico Guterres, leader of the Timorese Aitarak militia, were convicted and sentenced to 3 and 10 years' imprisonment respectively; 10 other defendants have been acquitted. The prosecution has lodged appeals against the acquittals.

63. Because of, inter alia, the restrictive manner in which the indictments were drawn up, the relatively low number of indictments issued, and because senior members of the TNI were not indicted, a number of interlocutors questioned the extent to which the prosecution had relied upon the apparently extensive information placed before it by the investigations of the National Commission on Human Rights and by the United Nations Transitional Administration in East Timor (UNTAET) into the events of 1999, whilst conducting their own investigations.

64. In order to clarify this matter, the Special Rapporteur discussed with the Attorney-General, inter alia, the investigation into the murder of Mr. Sander Thoenes, a Dutch journalist, who was killed in Dili on 22 September 1999. Investigation into Mr. Thoenes' murder had not led to charges being preferred by the Indonesian authorities, notwithstanding the receipt of considerable evidence provided by a joint UNTAET-Dutch investigation, which had, inter alia, identified a former member of Battalion 745 of the TNI as a suspect of the murder. The Special Rapporteur requested clarification as to whether the Attorney-General's

investigation had made use of the information provided by the UNTAET-Dutch investigation. The Attorney-General seemed uncertain of the extent to which his Office had made use of this information. The Attorney-General informed the Special Rapporteur that, in any event, the suspect identified by the UNTAET-Dutch investigation had given inconsistent testimony under cross-questioning from his Office and without 100 per cent certainty of his guilt an indictment against him could not be drawn up. The Special Rapporteur was subsequently apprised that under the Code of Criminal Procedure, the standard of evidence required for making an arrest is "sufficient preliminary proof" and that the same standard is assumed to govern the filing of formal charges as well.

65. The Special Rapporteur also learned that the DPR had adopted Witness Protection Regulations in connection with the functioning of the Court the day before the Courts began proceedings. The Special Rapporteur was provided with numerous examples of incidents demonstrating little understanding of the purpose behind the regulations. These included the case of two Timorese witnesses to the Court who were located in a safe house outside Jakarta whilst waiting to testify before the Court. The safe house had a sign attached to the front wall with the words "Protection House/Witnesses and Victims" in Bahasa Indonesia. Other examples recounted to the Special Rapporteur include the name of Timorese witnesses being relayed by loudspeaker in the Jakarta domestic terminal and the failure to grant secure passage to witnesses upon arrival at the ad hoc court. The Special Rapporteur also learned of allegations of witness intimidation in the courtroom, including the case of at least one Timorese witness who, having given evidence, then had to sit at the back of the courtroom less than two feet away from where the accused, against whom he/she was testifying, was sitting.

66. The Special Rapporteur was also informed of the generally hostile atmosphere pervading the courtroom, where one Timorese witness was questioned for five hours without break and without being provided water, and the failure to allow translators from Tetum into Bahasa Indonesia for apparently bureaucratic and inconsistent reasons.

67. The Special Rapporteur met with some of the judges of the Ad Hoc Human Rights Courts for East Timor. He also met separately with the prosecutors. The judges informed the Special Rapporteur that they had received very little specific training on the international standards and international practice relevant for the prosecution of gross violations of human rights and crimes against humanity.

68. During his meeting with prosecutors of the Ad Hoc Human Rights Court for East Timor, the prosecutors informed the Special Rapporteur that, in order to prove the indictments before the Court, about 100 Timorese witnesses would have to give evidence in court but they were not willing to come to Jakarta. This is reported to the Special Rapporteur as primarily due to Timorese concerns regarding the security provided to them in Indonesia and the financial implications of transporting and lodging Timorese witnesses in Jakarta. In order to limit the ill effects on the trials of the absence of Timorese witnesses, video-conferencing facilities are being considered, whereby Timorese witnesses will be able to testify in the Court from Dili. The Special Rapporteur was also advised that the prosecutors have not summoned United Nations witnesses, that is former UNAMET staff members, notwithstanding several offers.

VIII. THE JUDICIAL SYSTEM IN AREAS OF CONFLICT

69. The Special Rapporteur requested the Government for access to Aceh. The Special Rapporteur was not granted access. The Special Rapporteur received information on the judicial system from NGO sources but due to his inability to travel to these areas, it has not been possible to verify the information. For that reason and the required brevity of this report, with the limitation on the number of words, the Special Rapporteur regrets that he is unable to elaborate on the matters raised by the NGOs on the problems in these areas of conflict, namely Aceh, Papua and Moluccas, save to state that the concerns of the NGOs were that the administration of the justice in these areas have been adversely affected and in some districts courts do not function.

IX. OTHER ISSUES

A. Children

70. Seventy per cent of Indonesian children under 5 years of age are unregistered and do not have a birth certificate, according to a UNICEF-sponsored survey conducted in 2000. Instead, some children benefit from a parallel system of birth notification at the village level where a village birth notification is given, which can be accepted to meet some administrative requirements.

71. In this connection, article 7 of the Convention on the Rights of the Child expressly provides for children to be registered at birth. In addition to being a critical measure to secure the recognition of every person before the law, registration is an effective tool for national planning and budgeting.

72. The National Commission on Child Protection informed the Special Rapporteur that of the 4,000 juveniles who come before the courts, approximately 85 per cent are sentenced to imprisonment. In fact, the Government noted in its 2000 report that “it can be concluded that judges prefer to hand down prison sentences when sentencing children who have committed a crime”.

73. Though there are 14 juvenile correctional institutions and the Juvenile Justice Act 1997 provides for segregation between adults and juveniles, there are no implementing regulations. Further, the Government acknowledged in its 2000 report that given the limited space available, many juveniles are placed along with adult detainees both during pre-trial detention and sentencing stages. The recently adopted Child Protection Law, however, follows the Convention on the Rights of the Child and, inter alia, refers to sentencing as a last resort and encourages recourse to non-institutional alternatives.

74. The Child Protection Law also provides for the establishment of an independent commission for the protection of children within one year from the adoption of the law.

75. The Special Rapporteur was also informed of concerns regarding the apparent lack of sensitivity displayed towards children by those working with children in conflict with the law, including judges, prosecutors, and the police. The 2000 government report to the CRC refers to the inhumane or humiliating police treatment of children, including children being ordered to strip, their hair being cut and being forced to walk in a squatting position in public.

B. Women

76. Although Indonesia has ratified the Convention on the Elimination of All Forms of Discrimination against Women, NGOs alleged that the Government had not taken the necessary steps to fully implement the Convention, particularly with regard to the administration of justice.

77. The Special Rapporteur was also informed that NGOs have urged the DPR to eliminate the gender-based discriminatory provisions in several codes, including the Criminal Code, where legal definitions of crimes often do not reflect actual forms of violence against women. The Special Rapporteur was also referred to the Criminal Procedure Code which has certain outdated rules of evidence, including the requirement of two eyewitnesses to the crime for conviction for rape and other cases of sexual violence.

X. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

78. **The Special Rapporteur appreciates the willingness and openness of the Government and the various actors within the administration of justice to discuss issues and problems affecting their respective institutions and agencies. The discussions with the NGO community and civil society groups too were most constructive and informative.**

79. **When the Soeharto regime was overthrown, an opportunity arose for the review of the 1945 Constitution and the adoption of a new Constitution to meet the aspirations of the people for a democratic country under the rule of law, as happened in the Philippines in 1987. Unfortunately, this did not happen. The piecemeal amendments to the Constitution since 1998, and moreover some of these amendments yet to be implemented, are not satisfactory.**

80. **The Special Rapporteur notes that the Government has ratified a number of international human rights treaties in recent years, and welcomes the Government's commitment to ratify the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in the near future.**

81. **The independence of the judiciary is the cornerstone for the rule of law in any democratic society. The Special Rapporteur notes with extreme concern the lack of a culture of judicial independence in the country. For the first 40 years after independence, judicial power was seen as an extension of executive power. This has resulted in the judiciary being plagued with corrupt practices.**

82. **Ongoing reform efforts to transfer control over the judicial administration from the executive to the Supreme Court are proceeding slowly. In principle, implementation of this transfer of power and responsibility should be a significant step in the direction of judicial independence and accountability. Yet taking into account the backlog of cases before the Supreme Court - more than 8,000 - the slow pace of the transfer, and the continuing focus of DPR's attention on the 2004 general elections, it remains uncertain whether the Supreme Court will be in a position either organizationally or legally to assume all responsibilities by 2004.**

83. **The Special Rapporteur notes with particular concern the excessive influence of the Ministry of Justice over the appointment, transfer and discipline of judges.**

84. **The Special Rapporteur also finds that the practice of transferring judges for misconduct to other courts instead of bringing them to a more formal disciplinary process is inappropriate and harmful to the interests of the public and consumers of justice.**

85. **It is apparent to the Special Rapporteur, that a considerable change in the mindsets of judges is required in order for them to fully disengage from their former civil service mentality and accept and fully understand their new roles as responsible for ensuring an effective and functioning independent and impartial judicial system.**

86. **With regard to judicial corruption, the Special Rapporteur notes with surprise that, in spite of the widespread allegations of judicial corruption, statistics on prosecution or discipline for judicial corruption are unavailable. Though the Special Rapporteur appreciates that judicial corruption is difficult to detect, failure to investigate it effectively brings the Ministry of Justice and the Supreme Court into disrepute.**

87. **The vast majority of interlocutors with whom the Special Rapporteur discussed the matter admitted the prevalence of corruption within the judiciary. Supporting research undertaken by Indonesian organizations on the matter also supports these findings. Accordingly, the Special Rapporteur finds that concerns regarding allegation of widespread corruption are real. Though there is no doubt that there are some honest judges, the integrity of these judges is tainted by unabated and widespread judicial corruption.**

88. **While there is admission from all quarters, including the Government, of the very high incidence of corruption in the public sector and in particular in the administration of justice, and calls for reforms are heard loud and clear both domestically and internationally, the slow pace with which the Government and the DPR are addressing the issues has called into question the political will of these institutions to deal with the situation on an urgent and priority basis. The Special Rapporteur fully understands that in this process of transition, Indonesia is beset by a number of challenges and that identifying priorities is a perilous task. The Special Rapporteur is convinced, however, that public confidence in the Government and its administration of justice is seriously undermined; there is a risk that the public will resort to self-help and take justice into their**

own hands unless something is urgently done. If corruption is not arrested and excised, the negative impact on the flow of investments will continue and the rule of law in Indonesia will remain in jeopardy.

89. **The Special Rapporteur considers that it is essential to place the allegations of judicial corruption in the context of the administration of justice system as a whole. Corruption is not limited to the judiciary, instead it spreads as cancer in the entire system, the judiciary, police, prosecutors and Office of the Attorney-General.**

90. **The Special Rapporteur notes that an Anti-Corruption Commission is to be established with power to investigate and prosecute allegations of corruption by State officials. The Special Rapporteur notes that its very establishment testifies the failure of previous or existing structures and procedures to address corruption, including the Police, the Office of the Attorney-General, and the Ombudsmen. In this regard, given that the office of the Ombudsmen lacks political and financial support, that the Attorney-General is himself under suspicion for corruption, and that the police is generally regarded as an institution steeped in corrupt practices, the Special Rapporteur is convinced that more is required to make real, long-lasting headway in this battle than the mere establishment of another structure to investigate and prosecute corrupt practices.**

91. **Inadequate financial resources for the judiciary have also encouraged bribery and corruption, though the Special Rapporteur is of the view that low salaries alone do not contribute to the prevalence of corruption within the judicial system. Instead the incredible incidence of corruption reported seems, in part, a reflection of the institutional culture of corruption as an acceptable or, at the very least, tolerable practice of doing business.**

92. **The Special Rapporteur finds that the absence of publicly available information on court proceedings and decisions further fuels the lack of confidence with which the judiciary is held by the public at large. Corruption flourishes in a web of darkness and secrecy. By making judges publicly accountable for their conduct, the temptation to risk taking unsound decisions and follow unsound processes could be reduced.**

93. **An independent and organized legal profession is an integral part of the administration of justice and provides strength and support for the maintenance of an independent judiciary. Accordingly, the Special Rapporteur notes with disappointment that though there are at least seven bar associations, there is no law applicable for the organization of the legal profession in Indonesia. In the near future, there will no longer be a uniform system/syllabus for legal education. Though there is a uniform code of ethics adopted jointly by the seven bar associations, implementation varies with each bar association. There is no procedure to discipline lawyers. This means that there is no real procedure to seek accountability from the legal profession. The procedures for qualification and admission are not adequately provided for under the law; there are some who conduct legal practices without adequate qualification. The Special Rapporteur finds it quite amazing that during his mission and after, no one was able to inform him as to how many lawyers there are in Indonesia.**

94. **The lack of regulation has allowed the legal profession to breach its professional responsibilities owed to the court, the client and society and to seek to improperly influence the judge.**

95. **The lack of a professional framework entails that the legal profession is not in a position to advocate effectively for change in the administration of justice. Its potential as a voice for reform is drowned by a cacophony of competing interests of each bar association. The profession is generally perceived as self-centred and works for its own enrichment.**

96. **The judicial reform process that began in 1999 has been slow. There are a number of initiatives under way but it is unclear how they relate to each other. Whatever changes and reforms may have been undertaken by the Government and the judiciary, they are not seen in reality.**

97. **The Special Rapporteur notes the coordinating role of the Coordinating Minister for Political and Security Affairs and welcomes this coordinating initiative. The Special Rapporteur also welcomes the establishment of the National Law Commission and the Ombudsmen Commission, yet notes that in the second year of operation of the Ombudsmen Commission, the 65 per cent reduction in the number of complaints being lodged was apparently due to the lack of public confidence in the Commission.**

98. **With regard to the interest and contributions of the international community and funding agencies, the Special Rapporteur welcomes their involvement in the judicial reforms, in particular the financial commitment already made by these institutions and States. The Special Rapporteur notes that with the constraints on the material resources of the Indonesian Government, the funding from these institutions and States is imperative for the wide-ranging reforms needed.**

99. **Regarding the Ad Hoc Human Rights Court for East Timor, the Special Rapporteur is disappointed that, notwithstanding the concerns raised by many in connection with the temporal and geographic limitations on the jurisdiction of the court, these limitations continue to remain; accordingly, the court lacks jurisdiction to prosecute many serious crimes that took place in East Timor in the period from 1 January to 25 October 1999. This restriction amounts to a violation of the principle that prosecutions are to be undertaken in good faith and with due diligence.**

100. **The several acquittals before the Ad Hoc Human Rights Court for East Timor is not surprising. The insufficient investigations and the failure to produce material evidence contributed to such acquittals. The judges who had to base their decisions on the evidence before the court may not be faulted.**

101. **The instances recounted to the Special Rapporteur over the manner in which East Timorese witnesses were protected in Jakarta are an indication of the wholly unsatisfactory implementation of the witness protection measures.**

102. **The Special Rapporteur notes the refusal of the authorities to grant him access to Aceh to witness first-hand the functioning of the administration of justice system. The Special Rapporteur understands well the difficulties in having a transparent and effectively functioning justice system in areas of conflict. However, based upon the representations made to him, the Special Rapporteur finds that the people of Aceh, Papua and the Moluccas have no confidence in the administration of justice at a time when strong and courageous judges, prosecutors and lawyers are more needed than ever.**

103. **Harassment and intimidation of judges, prosecutors and lawyers, particularly those handling human rights-related cases, is a matter of grave concern. Based upon the information provided to the Special Rapporteur, the governmental authorities appear to have failed in their duty to protect these judges, prosecutors and lawyers in areas of conflict.**

104. **With regard to children, the Special Rapporteur is surprised to learn that in Indonesia some 70 per cent of children under 5 years do not have a birth certificate. The Special Rapporteur finds that the Government has not adequately discharged one of its most basic obligations. Failure to address this problem could lead to considerable ramifications in their later life with regard to their welfare and could result in serious long-term social problems.**

105. **With regard to women, the Special Rapporteur notes the legal, institutional and societal obstacles regarding access to justice by women. In this regard, the Special Rapporteur notes the inadequacy of certain legislation to deal with current crimes and the absurdity of requiring two witnesses, other than the perpetrator, to prove rape and other sexual crimes. The failure on the part of the Government and DPR to address the revision of antiquated legislation is a serious omission.**

106. **Further, the Special Rapporteur is distressed to learn that, notwithstanding the attention focussed on the issue of victim and witness protection, at both a domestic and international level, including through the visit to the country in 1998 of the Special Rapporteur on violence against women, its cause and consequences, there is no comprehensive mechanism to guarantee protection for witnesses and victims. In this regard, the Special Rapporteur welcomes the protection provided by certain NGOs to victims and witnesses, but this should not be regarded as a substitute for a State-funded programme.**

B. Recommendations

107. **In addition to reiterating the recommendations made by the Committee against Torture, and the recommendations of the Special Rapporteur on violence against women, the Working Group on Arbitrary Detention and the Representative of the Secretary-General on internally displaced persons, particularly those concerning the administration of justice, and those arising from the observations and conclusions herein, the Special Rapporteur makes his specific recommendations below.**

108. **With regard to constitutional provisions concerning the administration of justice:**

(a) The Constitution should be amended to provide a complete separate chapter for the provision of an independent judiciary and an impartial prosecutorial service providing for fair trial procedures in accordance with international standards; and

(b) Procedures for judicial appointments at all levels must be such as will ensure the appointment of persons who are best qualified for judicial office. In accordance with principle 10 of the Basic Principles on the Independence of the Judiciary, and article 12 of the Statement of Principles on the Independence of the Judiciary, any mode of appointment must safeguard against improper influences being taken into account so that only persons of competency, integrity and independence are appointed.

109. **With regard to transfer of the administration of judiciary:**

- **Implementation of Law 35/1999 should be speeded up so as to facilitate effective transfer from the Ministry of Justice to the Supreme Court by 2004. This requires, inter alia, sustained dynamic engagement by the Government, the DPR and the Supreme Court.**

110. **With regard to Judicial Commission:**

- **If the Constitution cannot be amended as recommended above, then the Judicial Commission provided under the Third Amendment to the Constitution should be established and made functional without delay. Its powers should be expanded to include powers to select and recommend candidates for appointments to the High Courts in addition to the Supreme Court. It should also have powers to discipline judges. A useful model for consideration is the Judicial and Bar Council in the Philippines Constitution.**

111. **With regard to judicial corruption:**

(a) The Special Rapporteur considers that the prevailing situation requires drastic, urgent and far-reaching action. The Chief Justice, supported by the Ministry of Justice, should as a matter of priority initiate both a short-term and a long-term strategy with processes to address complaints of judicial corruption;

(b) In the short term, and with the main objective of restoring public confidence in the system, the Chief Justice should be empowered to take leadership to deal with this matter supported by both the Supreme Court and the Ministry of Justice;

(c) As a first step the Chief Justice should make clear to all judges that judicial corruption needs to be addressed seriously and urgently. Accordingly, the Chief Justice should call upon all judges who had indulged in corrupt practices to own up and resign from their judicial positions within a prescribed time period, say six months, in which event no punitive or further action will be taken against them;

(d) In the event these judges fail to resign voluntarily within that time period, the Chief Justice should inform the judges that all allegations of judicial corruption or suspicions of judicial corruption will be investigated promptly and action taken;

(e) As a second step, a transitional judicial disciplinary tribunal should be established guaranteeing the right to due process for judges. Upon a finding of corruption by such disciplinary tribunal, the judge should be removed. Disciplinary proceedings before such a tribunal and a finding by that tribunal should be distinct from criminal proceedings before the ordinary criminal court and any finding by that court;

(f) The procedure outlined provides judges with the opportunity to deal with the situation themselves and allows corrupt judges to leave quietly or be investigated and removed after due process. It will protect the honest judges and will restore confidence in the system speedily;

(g) The fact that judges could not easily be appointed to replace the removed judges should not be used as an excuse not to adopt this recommendation. Concurrently the process of selection and appointment of new judges should be undertaken;

(h) Similar urgent procedures must be adopted to address corrupt practices in the prosecutorial and police services. Action against lawyers involved in such practices too must be urgently addressed;

(i) The establishment of the transitional disciplinary tribunal will require separate legislation and the DPR should attend to this need on an urgent basis. The body should be composed of the Chief Justice, a representative of the Ministry of Justice, senior lawyers and legal academics. The procedure should conform with the minimum standards provided in principles 17-20 of the Basic Principles on the Independence of the Judiciary. Being a transitional tribunal to deal with the current crisis of confidence in the judiciary and as a short-term measure time limit for its existence should be provided;

(j) As a long-term measure the Judicial Commission should handle all judicial disciplinary measures; and

(k) The DPR must give this matter urgent attention.

112. **A review of the salary scales of judges should be undertaken, drawing upon the comparative experiences of other States with similar socio-economic and cultural characteristics.**

113. **Publishing and disseminating court proceedings and decisions should be made a priority.**

114. **With regard to the legal profession:**

(a) The legal profession should be organized by legislation providing for a self-governing and regulating bar association. The independence of the profession should not be impinged upon. It is essential that a self-disciplining mechanism for the legal profession be established by law to enforce the code of ethics for the profession; and

(b) In the interim, the seven bar associations should seek to integrate their activities. In this regard, a useful model to emulate is the integrated bar association of the Philippines.

115. **The need for a holistic approach to reforms:**

(a) Reform should be holistic and the various phases coordinated. Addressing the judiciary per se will not be sufficient; the entire prosecutorial system and the police force, too, need to be addressed. A comprehensive master plan, encompassing the entire administration of justice system and identifying a coordinated structure needs to be prepared and implemented;

(b) The Government should substantially increase budget allocations to finance these reforms for the next 5 to 10 years to complement the assistance committed by international donors;

(c) Civil society should be encouraged to play an active role in the reform process to ensure that reform addresses public aspirations and rebuilds confidence of the public in the administration of justice system;

(d) The reformers within the system should be supported by the international community. The support of the international community to the reform process is crucial; it is essential that its support is channelled into the coordinated approach; and

(e) The effect of these reforms should measure up to the minimum set out in the Basic Principles on the Independence of the Judiciary; the Basic Principles on the Role of Lawyers; and the Guidelines on the Role of Lawyers.

116. **With regard to the Ad Hoc Human Rights Courts for East Timor:**

- **The Government is encouraged to develop a plan, with the assistance of the international community, to ensure that future prosecutions of gross human rights violations reflect international standards and practice. This plan should include, inter alia, review of Law 26/2000 to amend provisions impacting upon the effectiveness, independence and impartiality of the court; the competence**

and efficiency of the prosecution, the establishment of an effective witness- and victim-protection programme; and training, including the possibility of international mentors, for judges and prosecutors on the relevant international standards. This will serve to restore domestic and international confidence in the Government's commitment to bring those responsible for human rights violations to justice.

117. **With regard to the administration of justice in areas of conflict:**

(a) The Government should grant early and unimpeded access to areas of conflict to the relevant mechanisms of the Commission on Human Rights, and other national and international observers;

(b) The Government should ensure that there is a minimum standard of justice functioning in areas of conflict, including qualified court and legal personnel;

(c) The Government should provide adequate protection to judges, prosecutors, lawyers and human rights defenders against all forms of threat, harassment and intimidation. In this regard, the Government's attention is drawn to Principle 17 of the Basic Principles on the Role of Lawyers, which states:

> **Where the security of lawyers is threatened as a result of discharging their function they shall be adequately safeguarded by the authorities; and**

(d) Reports of threats, harassment and intimidation should be promptly and thoroughly investigated and the perpetrators brought to justice.

118. **With regard to children:**

(a) Development and adoption of a comprehensive and non-discriminatory Law on Civil Registration based on universal principles of human rights, providing for universal, mandatory and free registration, should be speeded up;

(b) All those in contact with children in conflict with the law should be urgently provided with training on sensitivity and knowledge of child rights and welfare; and

(c) Guidelines for the newly adopted Child Protection Law, in accordance with international standards regarding juvenile justice should be formulated. An independent, effective and fully resourced commission for the protection of children; should be established by the law.

119. **With regard to women:**

(a) The Government must proactively and consistently include women in the entire process of judicial and legal reform, so as to incorporate the principle of equality of men and women in the legal system, abolish discriminatory laws and adopt appropriate

laws prohibiting discrimination against women. Consideration should be given to benefiting from technical assistance from donors with experience in this regard;

(b) The Government should allocate resources to ensure there is specialized assistance in terms of support and rehabilitation for women victims of violence, including the establishment of a witness-protection unit within the police, an increase in women desks at police stations, and hospital based and community based centres;

(c) The Government should provide gender-sensitivity training to all officials working in the administration of justice.
