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**ADVISORY SERVICES AND TECHNICAL COOPERATION
IN THE FIELD OF HUMAN RIGHTS**

**Report of the United Nations High Commissioner for Human Rights
on technical cooperation in the field of human rights in Timor-Leste**

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Summary

The present report is submitted pursuant to paragraph 7 of the statement of the Chairperson of the Commission on Human Rights at its sixtieth session, requesting the High Commissioner for Human Rights to report to the Commission at its sixty-first session on technical cooperation in the field of human rights in Timor-Leste.

The Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Human Rights Unit of the United Nations Mission of Support in East Timor (UNMISSET) together are implementing a two-year technical cooperation project with the Government of Timor-Leste, which started in June 2003.

There was considerable progress on the human rights situation in Timor-Leste during 2004, but there remain significant human rights challenges. The Commission for Reception, Truth and Reconciliation (CAVR) successfully completed its work and has initiated the preparation of its final report. The law establishing a national human rights institution, the Office of Provedor for Human Rights and Justice, was promulgated. However, the Parliament has not yet appointed a person to the position of Provedor. Reports of alleged human rights violations by the police increased. Mechanisms for accountability were neither clear nor adequate. The justice system remains weak, unable to deliver formal accountability for human rights violations. Access to justice also remains unaddressed.

The Serious Crimes Unit (SCU), is expected to complete by May 2005 all trials relating to crimes committed in 1999, as mandated by Security Council resolutions 1543 (2004) and 1573 (2004). SCU has focused on 10 priority cases and 5 widespread patterns of violence. Despite the concerted efforts of SCU, it may not be possible for the Serious Crimes process to fully respond to the desire for justice of all those affected by the violence in 1999 within the limited time and resources that remain available.

OHCHR and HRU provided human rights training to law-enforcement and prison officials, as well as civil society and non-governmental organizations (NGOs). Technical assistance continued to be provided to CAVR. A technical adviser on human rights treaty reporting was appointed to assist the Government in the preparation of its reports under international human rights instruments to which Timor-Leste is a party.

There is a clear need for further human rights technical assistance and advisory services to strengthen State institutions and civil society capacities for promotion and protection of human rights, and to ensure their sustainability, after the May 2005 withdrawal of UNMISSET. OHCHR's technical cooperation should therefore be continued beyond this date. Upon completion of the current project, a new project should be designed to continue current advisory and capacity-building efforts. To this end, the international community is requested to provide adequate resources to fund the continuation of a technical cooperation programme between OHCHR and the Government of Timor-Leste.

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
I. CAPACITY-BUILDING	1 - 28	4
A. The justice system	1 - 8	4
B. Prisons	9 - 12	5
C. Polisia Nasional Timor-Leste (PNTL)	13 - 19	6
D. Força Defesa Timor-Leste (F-FDTL)	20	7
E. Provedor de Direitos Humanos e Justica	21 - 22	7
F. Intolerance	23 - 25	8
G. Accession to international human rights instruments.....	26 - 27	9
II. CIVIL SOCIETY	28 - 35	9
III. TRANSITIONAL JUSTICE	36 - 48	10
A. The Commission for Reception, Truth and Reconciliation (CAVR)	36 - 39	10
B. Status of investigations and prosecutions of serious crimes committed in Timor-Leste in 1999	40 - 44	11
C. Ad Hoc Human Rights Tribunal	45 - 48	12
IV. PROTECTION OF WOMEN, CHILDREN AND OTHER VULNERABLE GROUPS	49 - 60	13
A. Women	49 - 52	13
B. Children	53 - 54	13
C. Refugees and illegal immigrants	55 - 56	14
D. Refugees from the then East Timor in West Timor	57	14
E. Separated Timorese children	58 - 59	14
F. Religious minorities	60	15
V. TECHNICAL COOPERATION PROJECT	61 - 70	15
VI. RECOMMENDATIONS	71 - 78	17

I. CAPACITY-BUILDING

A. The justice system

1. The judiciary in Timor-Leste continues to face the challenges identified in the last report of the High Commissioner for Human Rights (E/CN.4/2004/107), including lack of human resources, lack of effective case management and the diversion of cases from the formal justice system to local dispute-resolution methods. Developments during 2004 include those at the structural level, draft laws related to the judiciary, training and evaluation of court actors, and appointment of international judicial officers at the district court level.

2. Drafts are currently under development of the Penal Code, the Criminal and Civil Procedure Codes, the Organic Law of the Office of Public Prosecutor, the Public Defenders' Organic Law and the Law on Lawyers - all of which form the core of a sustainable judicial system. The majority are expected to be passed by mid-2005. The Prime Minister has requested Parliament to delegate authority to the Council of Ministers to pass Decree Laws on the draft Penal Code and the Criminal and Civil Procedure Code. There are concerns in relation to the implications of this request, since there has been limited consultation with civil society in drafting them. Their importance as the foundation laws governing when individuals can be deprived of their liberty and what acts constitute criminal offences justifies their being given close scrutiny by Parliament.

3. Capacity-building of court actors continued. The training in Portugal for Timorese court actors was suspended. The Minister of Justice, with the support of the United Nations Development Programme (UNDP), has instead planned for a 2½-year training programme for judicial actors commencing in 2005. One of the challenges it will face is that the training will be conducted in Portuguese - one of Timor-Leste's two official languages. However, 80 per cent of court actors have limited Portuguese-language skills. Participants have been offered one-month intensive Portuguese courses, which seems insufficient to develop sufficient language skills to follow a detailed legal training programme. While recognizing that Portuguese is an official language, it is important that the objective of capacity-building programmes not be undermined because of language differences.

4. Pursuant to the applicable legislation, all public prosecutors and public defenders as well as all judges, with the exception of international judges in Timor-Leste, are on probation. Court actors have to be evaluated prior to obtaining permanent positions. In view of the need for independence of the judiciary, this evaluation process must be transparent and fair. Evaluation of probationary judges, which began in April, is not yet completed. The evaluation of probationary public defenders and prosecutors which began in November is expected to be completed by the end of 2004. Consequently, the number of permanent court actors in 2005 is not yet certain.

5. In September 2004, four international judges/mentors were deployed in district courts. They are supported by international clerks and one international public prosecutor. They train Timorese court actors and act as court officials in district courts. Timorese judges' participation in training from September to December for the preparation of the 2½-year training programme

resulted in redistribution of 80 per cent of cases to four international judges. This provoked resentment on the part of some Timorese court actors. Nevertheless, the internationals will contribute to the capacity-building and the strengthening of the judicial system.

6. Lack of material and human resources in courts continues. Lack of material and human resources prevent courts in Baucau, Suai and Oecussi from functioning for most of the year. The budget for the courts for 2004-2005 is marginally lower than the previous budget. On a positive note, the court budget for 2004-2005 is separated from the budget of the Minister of Justice, to reinforce the independence of judiciary.

7. In February, the Superior Council of Judicial Magistrates adopted a directive on official languages. A limit of seven months was fixed for all court documents to be written in the official languages, Tetum and Portuguese. This directive, which by implication prevents the use of Indonesian in court documents, has elicited strong reactions from different actors in the judicial system, since it obliges them to use languages that are not used by most actors. The short deadline for the implementation of the directive on official languages could have an impact on the effective delivery of justice.

8. The Court of Appeal functioned during 2004. The case management of the Court was strengthened, enabling it to reduce its backlog. Interlocutory appeals of pre-trial detention orders and substitute restrictive measures constituted two thirds of the cases decided by the Court in 2004. The Court issued decisions on the limits of investigating judges' authority, repeatedly confirming that investigating judges do not have the authority to order deportation or any other measure of sanction. In June 2004, the Court reversed a detention order issued by an investigating judge on the basis that the pre-trial detention hearing had not been held within the requisite 72 hours, underlining the importance of complying with the legal time limits.

B. Prisons

9. The Human Rights Unit (HRU) continued to monitor prison conditions. The Ministry of Justice has not yet responded to reports of human rights abuses submitted in 2003. No permanent mechanism has been established to investigate allegations of mistreatment and assaults by prison guards, even three years after the enactment of the United Nations Transitional Administration in East Timor (UNTAET) Regulation 2001/23 on the Establishment of Prison Services in East Timor, section 9 of which called for the establishment of a penal institution oversight team with responsibility to undertake regular monitoring visits and to investigate allegations of mistreatment.

10. Some human rights non-governmental organizations (NGOs) have been denied access to prisons. In the absence of specific provisions under the existing UNTAET regulations, it is at the authorities' discretion to grant or deny access.

11. The Ministry of Justice has prepared a draft Prisons Bill for consideration by Parliament which gives prison managers a discretionary authority to grant NGOs access to prisons. Hopefully, the draft will include a system of "official visitors" for effective independent monitoring (rather than a discretionary system of access), and an external oversight mechanism to deal with human rights complaints.

12. HRU conducted a one-week training programme for prison officials and distributed training manuals and human rights pocket cards to the prison staff. OHCHR supported the training of prison guards in prison management and humane treatment of prisoners.

C. Polisia Nasional Timor-Leste (PNTL)

13. During 2004, the Government took steps to strengthen the legislative framework for the police. The organic structure of the Ministry of the Interior places the Ministry as the State organ responsible for leading, executing and coordinating actions intended to maintain public order, security and peace, protect people and assets, and defend the national economy. The Organic Law on the Polisia Nasional Timor-Leste provides the legal framework for PNTL and other offices related to maintenance of law and order.

14. The Disciplinary Regulation of PNTL replaces the UNTAET Code of Conduct. The Disciplinary Regulation underlines the necessity for PNTL to cultivate a sense of personal dignity and commitment to training to guarantee the professionalism and prestige of the institution.

15. Fifteen standard operating procedures (SOPs) were prepared in areas including community policing, handling of child abuse cases; handling at-risk children; juvenile procedures; preliminary investigation of crime; investigation and reporting of traffic accidents; use of force; search and seizure; death notification; bomb threats; improvised explosive devices and unexploded ordnance; court duties; police vehicle operation; repatriation escort procedures and training. It is expected that SOPs will be developed in the area of the treatment of vulnerable persons, including persons with mental illness, and victims of gender-based violence.

16. There continues to be a high number of reports of PNTL misconduct, including assaults, arbitrary arrest and detention, use of excessive force and ill-treatment during arrest and detention, and rape. According to PNTL figures, 2004 marked an increase in alleged cases of mistreatment and abuse of power by PNTL. Cases of alleged political interference in the work of PNTL by high-ranking government officials have also been reported. They include orders for disbanding of peaceful demonstrations and the unlawful arrest and detention of suspects. In June, nine police officers were charged with rape, three of whom were remanded in custody, and six others were conditionally released. In July, PNTL ill-treated several persons who had staged a peaceful demonstration in Dili, which was broadcast on national television. In October and November, PNTL in Baucau illegally arrested and detained a large number of people reportedly on the Minister of the Interior's orders following a fatal bus crash. The main suspect was shot in the leg by PNTL officers. HRU was denied access to the detainees. Some detainees later alleged ill-treatment in police custody. In November, following their resignation from PNTL, two police officers were arbitrarily arrested and detained for three days.

17. Despite the new Disciplinary Regulation and the Organic Law for the Police, accountability mechanisms remain unclear and inadequate. The result is an emerging pattern of impunity for PNTL abuses. The Professional Ethics Office (PEO) of PNTL is increasingly unable to investigate cases of misconduct due to lack of resources for field work and at times political interference. For unclear reasons, some cases are dealt with by PEO, while others, sometimes cases with particular sensitivity, are investigated by the Ministry of the Interior. A number of allegations of criminal acts are addressed through the administrative process only and

are not subject to any criminal processes. Delays are reported in investigations and decisions on disciplinary action. Disciplinary actions are not always in proportion to misconduct. Of the cases monitored by HRU, only one officer was dismissed. Public comments in October attributed to President Gusmão that “if needed” the police can “beat” suspects have raised concerns. The political will at the highest levels of the leadership of Timor-Leste is essential to address the human rights violations and abuses of power by PNTL.

18. In August, in accordance with article 11 of the Decree Law on the Organic Structure of the Ministry of the Interior, an Inspectorate was created. This body has disciplinary competence over all structures and institutions subordinate to the Ministry of the Interior, including PNTL. The role that the Inspectorate will play is still unclear. At present, it formulates recommendations to the PNTL General Commander/Minister of the Interior based on the PEO investigations. Independence of the Inspectorates’ members must be ensured. The Disciplinary Regulation is not at present available in a language accessible to PNTL personnel and therefore the authorities continue to use the previous Code of Conduct. There continues to be a need for further PNTL training to ensure compliance with international human rights standards and practices that have been supported by the political leadership of Timor-Leste.

19. HRU conducted training sessions for PNTL, including members of the special units: the Rapid Intervention Unit, the Vulnerable Persons Unit, the Border Patrol Unit and the Police Reserve Unit, as well as Immigration Officers. HRU provided briefings for United Nations police (UNPOL) technical advisers. It has also finalized a manual on training human rights trainers, which will be used by the Police Training Academy.

D. Força Defesa Timor-Leste (F-FDTL)

20. HRU continued to monitor alleged human rights violations by F-FDTL, and the administrative and judicial procedures for handling such violations. Cases of alleged assaults by F-FDTL, including assaults against PNTL officers, were reported. In January, following a private dispute between an F-FDTL soldier and some civilians, a number of F-FDTL soldiers stormed a police station and a hospital, fired shots, destroyed property, took 10 PNTL officers hostage and detained them at an F-FDTL base. Three separate inquiries were established to investigate the incident. However, prosecution of the soldiers involved has stalled. Despite efforts by UNTAET to establish an internal administrative procedure for handling such misconduct, and assistance from UNMISSET in the same area, such a mechanism does not yet exist.

E. Provedor de Direitos Humanos e Justica

21. In May 2004, the law establishing the Office of the Provedor for Human Rights and Justice was adopted and promulgated. In addition to performing the functions of a classic Ombudsperson - in terms of looking at maladministration, the Provedor is responsible for promoting and protecting human rights and acting as an anti-corruption body. It has the power to act on complaints received about public bodies, including the police and military, as well as private bodies performing public functions and managing public funds or assets. According to its mandate, it has the power to review legislation to ensure compliance with the Constitution and international human rights standards, to intervene in court cases, to make recommendations

concerning the ratification of international human rights instruments, and to conduct public campaigns on human rights. It will also have jurisdiction to consider human rights violations committed by police.

22. The Constitution requires that the Provedor be elected by an absolute majority of the members of Parliament. In August and October, Parliament held nominating and voting rounds. None of the candidates received a majority in either round. It is important that the Provedor be elected as soon as possible.

F. Intolerance

23. Limitations on freedom of expression or speech and political interference in the work of PNTL were reported. Dozens of members of political and social movements were arrested in early 2004 on charges of rebellion under articles of the Indonesian Criminal Code, which prohibits peaceful opposition to the Government. Some of those arrested were also accused of recognized criminal offences, including extortion and assault. None of those arrested has yet been tried for rebellion. In July, a leader of a political party was arrested before his party's demonstration for criticizing the Prime Minister. The court charged him with expressing hatred against the Government. In July 2004, PNTL broke up a peaceful protest of veterans calling for government reform and for attention to the situation of veterans. Thirty-one persons were arrested and held for more than 30 hours for "public disturbance". Excessive force was also used by PNTL in trying to disperse the protesters. In a separate case, two men are facing criminal charges for raising an Indonesian flag in September.

24. Cases of political interference in the process of law enforcement were reported. In June, in a case of alleged rape by members of PNTL, the accused were re-arrested, despite the fact that the investigating judge of the Dili Court had ordered their conditional release. In July, 24 members of an opposition political movement were arrested, reportedly for interfering with the process of election and census registration. An investigating judge released all of those arrested, calling the arrests unlawful since they were not based on court warrants.

25. Parliament adopted the Law on Freedom of Assembly and Demonstration. It modified the draft to allow for demonstrations to be held 100 metres from government buildings rather than the highly restrictive 500 metres originally proposed in the Council of Ministers' draft. The Act contains broad prohibitions on activities which aim to challenge the constitutional order and offend the honour and reputation of the Head of State and other high officials of State organs. The breadth of this wording could lead to political manipulation, and its abuse to suppress political speech. Clarity is also lacking as regards the powers and procedures for authorities called upon to review notifications and impose conditions on demonstrations. It had also been suggested that it would be desirable to include a specific provision to highlight that any powers of intervention were themselves limited by a requirement to be respectful of human rights principles; for example, by incorporating clear limitations on the use of force by law-enforcement officials. The Constitution of Timor-Leste itself contains broad protections of the rights to demonstrate and to assemble (without notification). In a new democracy such as Timor-Leste, it is important that particular care be taken to safeguard the right of peaceful assembly, given its centrality in protecting the democratic State.

G. Accession to international human rights instruments

26. In the past two years, the Government has demonstrated a remarkable commitment to progressively realizing the full implementation of human rights standards through the ratification of the seven core international human rights instruments, without reservation. According to the Constitution, the international provisions are incorporated in domestic law, and any rules contrary to these provisions are deemed invalid.

27. The Government is now under the obligation to submit reports on the ratified instruments. This is an onerous task and could divert resources necessary to implement the very rights the Government has committed itself to protect. In March, the Minister for Foreign Affairs and Cooperation agreed to pilot draft guidelines prepared by OHCHR under which Timor-Leste will be the first Government to develop treaty reports in one coordinated process. The planning phase of this process is largely complete and the Government has embarked on the difficult tasks of gathering data and report drafting. The Ministry for Foreign Affairs and Cooperation has responsibility for overall coordination of the reporting process, and is working in collaboration with the Prime Minister's advisers on human rights and the promotion of equality. In addition to OHCHR and HRU, the United Nations Children's Fund (UNICEF), the United Nations Development Fund for Women (UNIFEM), UNDP and the United Nations Population Fund (UNFPA) have also provided significant technical and financial support to the process. A draft common core document will be presented to OHCHR in April 2005. The treaty-specific documents are expected to be presented from May 2005 onwards. The Government has made significant efforts to encourage the participation of NGOs and representatives of the 13 districts in this process.

II. CIVIL SOCIETY

28. Civil society plays an active role in promoting human rights. HRU has supported a number of local NGOs with a view to strengthening their capacity to disseminate information to local communities. In 2004, with OHCHR funding, HRU disbursed 58 micro-grants to local NGOs, the majority of which are active in promoting women's, children's and vulnerable groups' rights.

29. OHCHR also funded fellowships to Malaysia for two human rights NGO staff, and contributed funding to a study tour to New Zealand by a human rights lawyer.

30. OHCHR also funded two national workshops, on the National Human Rights Action Plan and on data collection for treaty reporting and economic, social and cultural rights, organized by the Office of the Human Rights Adviser to the Prime Minister.

31. Four human rights seminars were conducted for 66 members of Parliament on the principles of good governance and human rights analysis of draft legislation. HRU also conducted teacher training workshops for 250 teachers on child rights and physical punishment as a form of discipline in schools.

32. Through funding from OHCHR, the HRU national human rights radio programme broadcast 55 one-hour programmes on human rights issues such as violations by States parties and domestic violence and sexual exploitation for commercial purposes. Two community radio stations in two districts broadcast 52 programmes on similar human rights issues.

33. Two thousand copies in Tetum, the language spoken by the majority of Timorese, of each of the five comic books on the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Universal Declaration of Human Rights are being printed for distribution to civil society, NGOs, schools and public officials.

34. Four training sessions were conducted for groups, including school students and teachers, on the question of torture, gender-based violence, child rights and economic, social and cultural rights. HRU regularly shares information and conducts joint training activities with NGOs.

35. Collaboration between NGOs and civil society on legislative development is often limited and needs to be further promoted.

III. TRANSITIONAL JUSTICE

A. The Commission for Reception, Truth and Reconciliation (CAVR)

36. CAVR completed its activities in communities across the country in April. In October, Parliament granted it a six-month extension; the deadline for the submission of the final report and closure of CAVR is now 7 July 2005.

37. From January to March, CAVR conducted 104 community reconciliation hearings for 660 deponents. Many communities requested that this process be continued at a later stage. Over the Commission's lifetime, a total of 1,404 deponents who had harmed their communities during the conflict completed community reconciliation hearings. In relation to the truth-seeking part of the Commission's mandate, a total of 7,824 statements were also taken. The Urgent Reparations Programme of the Commission was finalized, and 705 people received grants of US\$ 200 each, funded by the Trust Fund for East Timor. Three final healing workshops for survivors of severe human rights violations were conducted by CAVR, and two national thematic hearings were conducted in March 2004, on "The international community and self-determination", and on "Children and conflict".

38. From March to July, the Commission's quantitative and statistical research, conducted in relation to the death toll during the conflict, was finalized and the drafting of the Commission's final report was initiated. Statistical analysis of research material continued until December. The final report will consist of about 2,000 pages, published in three languages: Portuguese, Indonesian and English. The national commissioners aim to make practical and extensive recommendations for future action to protect human rights in Timor-Leste.

39. The President of Timor-Leste has requested the national commissioners to prepare detailed plans for a follow-on institution to CAVR with a focus on conflict prevention and reconciliation.

B. Status of investigations and prosecutions of serious crimes committed in Timor-Leste in 1999

40. The Serious Crimes Unit (SCU) was established in 2000 and has exclusive jurisdiction within Timor-Leste for the investigation and prosecution of all serious crimes (genocide, war crimes, crimes against humanity, murder, sexual offences and torture) committed between 1 January and 25 October 1999. Special panels of the district court, comprising international and Timorese judges, were established to hear cases. A separate Defence Lawyers' Unit was established to increase the resources available to persons accused of serious crimes. Pursuant to Security Council resolution 1543 (2004), investigations were completed by the end of 2004. The special panels of the district court are expected to complete all trials and other activities before the withdrawal of UNMISSET in May 2005. While the Serious Crimes process has convicted many of those responsible for serious crimes, jurisdictional limitations and the time frame established by the Security Council has limited its ability to fully meet Timorese aspirations for justice.

41. SCU reports that, of the 1,500 murders reported in 1999, several hundred could not be investigated. To date, 95 indictments have been issued and 391 persons accused, of whom 81 are in Timor-Leste and subject to the court's jurisdiction; 303 of the accused, including 55 Indonesians, are outside Timor-Leste. Seventy-four were convicted of crimes against humanity and murder. Indictments were issued for all 10 priority cases identified in 2000 and 2001; however, prosecution of a number of them was not possible due to the absence of those indicted from Timor-Leste.

42. Cognizant of the need to complete all trials by May 2005, SCU has refrained from filing indictments which would be likely to result in additional trials. In a number of cases treated in the community reconciliation hearings of CAVR, the public is nonetheless expecting prosecution. In 84 cases, perpetrators have confessed to committing serious crimes and the General Prosecutor has stated that it was inappropriate to go through a community reconciliation hearing and that the case should instead be prosecuted. Resources are unavailable for the investigation and prosecution of all of these cases. An SCU report released in September states that in 52 of the 84 cases indictments were unlikely.

43. At the same time, all the units of the Serious Crimes process in East Timor, namely the Serious Crimes Unit, the special panels and the Defence Lawyers Unit, are intensifying efforts to maximize results. Despite mandatory training for Timorese judicial staff, the special panels have extended the working hours for trial hearings, and have commenced conducting trials in a second courtroom.

44. SCU is compiling its investigative and prosecutorial work for access by national or other appropriate authorities after the withdrawal of UNMISSET in May 2005. This requires particular attention to the confidentiality of sensitive witness information and the storing of material in such a way as to be accessible for future use, including prosecutions.

C. Ad Hoc Human Rights Tribunal

45. No progress has been made in relation to the prosecution of persons in Indonesia. As noted in the last report of the High Commissioner (E/CN.4/2004/107), the outcomes of the initial trials were disappointing: of the trials at first instance, 12 persons were acquitted and 6 convicted. At the appellate proceedings, all but one of the convictions were overturned, including that of the highest-ranking military commander, Major Adam Damiri, and the former Governor of East Timor, Abilio Osorio Soares. Mr. Damiri's conviction for having failed to prevent troops under his command and effective control from committing grave human rights violations was reportedly overturned by the Court of Appeal on the basis of insufficient evidence. Mr. Soares' conviction was reportedly overturned by the Supreme Court on the grounds that he could not be held responsible for actions that took place while the Indonesian military was in charge. At present, an ethnic Timorese, Eurico Guterres, is the only person who remains convicted. He remains free pending the Supreme Court's decision on his appeal. No other indictments have been issued.

46. In mid-December, the Timorese Prime Minister announced that Timor-Leste and Indonesia had agreed on the establishment of a "Truth and Friendship" commission, which would look into the violence of the events of 1999. The terms of reference of the Commission are to be formulated by the Ministers for Foreign Affairs of Indonesia and Timor-Leste.

47. It is a positive development that Security Council members and, more generally, the international governmental and NGO communities have stressed the importance of providing accountability for the events of 1999. The Secretary-General has also stated his commitment to look at options for providing such accountability. Serious consideration should be given to assessing what will be the most effective mechanism for providing, in the long term, accountability and the end to impunity. As recognized by the International Commission of Inquiry (see A/54/726) requested by the Commission on Human Rights at its fourth special session in 1999 (resolution S-4/1), the United Nations bears special responsibility for ensuring justice for the Timorese.

48. Attention must continue to be paid in the national context to the dialogue concerning justice and accountability. In May 2004, a draft law on amnesties presented to Parliament was withdrawn because it would have assigned the power to grant amnesties to the President and not to Parliament. There are indications that the Government remains interested in the topic of amnesties and commutations of sentences. In May 2004, the President granted a pardon to one prisoner and commuted the sentences of 31, 7 of whom had been convicted of serious crimes. The prisoners had reportedly displayed good behaviour and/or agreed to follow professional training. The sentences of three prisoners, who were sentenced to 33 years' imprisonment for serious crimes, were reduced to 25 years, purportedly to bring them into line with the maximum period under the Criminal Code. The majority of those whose sentences were reduced had been convicted of murder (13) and rape (10).

IV. PROTECTION OF WOMEN, CHILDREN AND OTHER VULNERABLE GROUPS

A. Women

49. Psychological and physical violence against women and girls remains a serious problem in Timor-Leste. Alleged cases of domestic violence, rape, attempted rape and sexual assault are regularly reported. Draft domestic violence legislation has not yet been adopted.

50. Access to justice for women who are victims of violence continues to be a problem. HRU and the NGO Judicial System Monitoring Programme (JSMP) conducted a study on access to justice for women victims. The study highlighted the need for more specialized legal assistance for women. During a workshop there was support for the creation of a new organization or a specialized unit within JSMP to improve access to justice for women.

51. In May, the NGO Family Health International published a report on HIV, sexually transmitted infections and high-risk behaviour, mentioning that while HIV rates were still relatively low in Timor-Leste, there were significant levels of high-risk behaviour. High rates of extramarital sex were noted, mainly with commercial sex workers.

52. In October, the Alola Foundation, a Timorese NGO, released the report "Trafficking in East Timor: a look into the newest nation's sex industry 2004". The report stated that, as of June 2004, there were 358 sex workers in Dili, 248 women and 110 men, and 100 of the women were Timorese; others came from Indonesia, China, Thailand, the Philippines and Australia. It estimated that 115 women, including girls below the age of 18, were potential victims of trafficking. Physical confinement, forced prostitution and control of the victims, including confiscation of their passports, were also reported. To date, none of the traffickers had been convicted. The report also alleged that PNTL officers provided protection to prostitutes in return for money and sex and that PNTL officers had demanded sex in return for visas at the border with Indonesia. The report highlighted the need for undertaking further studies and a review of the laws, before undertaking legislative and policy measures.

B. Children

53. Current government projects include development of a relevant SOP for the police, technical advice on policy and legislation protecting children, capacity-building for the police, government officials and NGOs, and development of a National Children's Commission that will coordinate programmes and policies for children and monitor the implementation of the Convention on the Rights of the Child.

54. Under current legislation, minors between the ages of 12 and 16 may only be prosecuted for offences of "murder, rape, or a violent crime in which serious injury is inflicted". PNTL officers often ignore this provision and detain juveniles for alleged involvement in minor offences. A 15-year-old girl was brought to a PNTL station by a nun who suspected her of involvement in prostitution. The girl was illegally detained for three days, without any records

being kept of her detention and without any investigation being conducted. A 10-year-old boy was detained by PNTL for 24 hours for alleged involvement in a minor incident of theft in Dili. Through wider dissemination of the law among PNTL officers and the development of policies and legislation protecting children, PNTL will hopefully refer such cases to government social workers for action.

C. Refugees and illegal immigrants

55. In November and December 2004, 245 Indonesian Muslims, living since September 1999 in the compound of the main mosque in Dili, were deported to West Timor, Indonesia. The Government, acting in accordance with the provisions of the Immigration and Asylum Law, deported the people in a peaceful manner. The deportees were received by the Indonesian authorities at the border with Indonesian West Timor. The majority had been living in Timor-Leste since before September 1999. Their residence at the mosque compound had been a long-standing and sensitive issue, in particular for Timorese Muslims who felt excluded from the mosque although they were able to go to the mosque for prayers. The Indonesian Muslims argued that they were forced to live in the mosque because their houses had been illegally occupied after the violence in 1999, and because the authorities could not guarantee their security outside the mosque. Attempts to relocate them, including to outside Dili, had not succeeded.

56. In early April, in accordance with the Immigration and Asylum Law, PNTL had conducted an immigration operation at the mosque and had concluded that the group was residing in the country illegally. The residents were illegally placed under house arrest for more than a week. Following criticism of this unlawful house arrest, a government task force was established to resolve both the status of the group and their occupation of the mosque. In May, the Government passed a decree law on the "Regularization of Foreigners in the National Territory". Despite repeated extensions of the deadline for individuals to apply to regularize their status, the group at the mosque refused to do so, arguing that they should be granted Timorese citizenship automatically.

D. Refugees from the then East Timor in West Timor

57. The Office of the United Nations High Commissioner for Refugees (UNHCR) estimates that there are still some 28,000 East Timorese who have not returned to Timor-Leste. This represents 10 per cent of those who fled or were forced to flee the violence in 1999. UNHCR also estimates that, of those remaining in Indonesia, many have chosen to do so. UNHCR continues to assist this group by assuring access to nationality rights, shelter, school and water projects. As of 15 November 2004, 248 people had returned during the year. In March, one case of assault against a returnee in Aileu district was reported, and three men were indicted in connection with this incident.

E. Separated Timorese children

58. According to UNHCR, 111 East Timorese children remain separated from their parents without clear parental consent: 73 of them are in Indonesia, with parents in Timor-Leste; conversely, 10 are in Timor-Leste, with parents in Indonesia. The whereabouts of 28 children are unknown. In partnership with the Timorese Red Cross and the Jesuit Refugee Service, and in

cooperation with the Indonesian and Timorese authorities, UNHCR has been the lead agency in family reunification. At the end of 2004, pending cases will be handed over to the two Governments for settlement.

59. The Government of Timor-Leste considers that there are between 2,000 and 2,500 Timorese children separated from their parents, who are either in Indonesia or Timor-Leste. The Government considers that, despite the fact that in the vast majority of these cases UNHCR concludes that there is parental consent, the best solution for the children is to be reunited with their parents. On 11 December, the Governments of Timor-Leste and Indonesia signed a memorandum of understanding for cooperation with a view to protecting the rights of Timorese children separated from their parents.

F. Religious minorities

60. Religious minorities are recognized and protected under the Constitution. Some incidents of interreligious tensions were reported and adequately dealt with by the authorities. In May, police patrolled outside the Protestant Assembly of God Church in Aileu district, since a minister had received two death threat letters. In June, police arrested six suspects in relation to the damaging and burning of a Protestant church under construction in Ainaro district.

V. TECHNICAL COOPERATION PROJECT

61. With a view to developing appropriate resources for legal aid when required, OHCHR and HRU initiated a project to assess the existing community needs for legal assistance and counselling programmes, and identify possible responses.

62. HRU conducted two training sessions for prison officials, focusing on the provisions of the international human rights instruments, the Standard Minimum Rules for the Treatment of Prisoners, and the Constitution and national legislation.

63. Twenty training sessions were conducted in Dili and districts for PNTL staff and special units, including the Police Reserve Unit, the Rapid Intervention Unit, the Border Patrol Unit and the Vulnerable Persons Unit. The focus was on policing in a democratic State, use-of-force SOPs on arrest and detention, and the role of police in protecting women's and vulnerable groups' rights. HRU revised and updated a human rights training manual for use by the Police Training Academy.

64. A technical adviser on human rights treaty reporting has been appointed to work with the Ministry for Foreign Affairs and Cooperation for the preparation of the required reports. The adviser established a five-phase framework for treaty reporting. Work has begun on data gathering for the treaty reporting. An extensive training course, including workshops, seminars, and one to one meetings with officials took place before the launch of the data gathering and report drafting process. Briefings on human rights and treaty reporting for government focal points in all ministries and agencies were provided prior to collecting information on the human rights situation. A three-day workshop on treaty reporting was organized by the Ministry for Foreign Affairs, UNMISSET and United Nations agencies.

65. Assistance continued to be given to the Prime Minister's Human Rights Adviser in developing a National Human Rights Action Plan (NHRAP) and conducting a pilot human rights training programme for primary school teachers in a district. A project for base-line data collection in seven districts was also initiated. The data collection was part of raising the public's human rights awareness and increasing its participation in the preparation of a NHRAP.

66. A human rights curriculum for the national universities was introduced to faculty members and students. Micro-grants were awarded to NGOs to conduct human rights programmes in districts.

67. In collaboration with a youth organization, high school teachers in some districts were provided with training sessions on human rights, children's rights and prevention of torture. Twenty-five young people were also provided training on human rights and the prevention of torture. Comic books on the Universal Declaration of Human Rights, the Convention against Torture and the International Covenant on Civil and Political Rights were distributed to teachers and youth groups in the districts.

68. HRU provided support to CAVR for conducting legal research to support the findings of the Commission, for completing the database, and for writing some parts of the draft final report of the Commission.

69. A human rights seminar was conducted for members of Parliament. The Specialist Committee of Parliament for dealing with oversight of rights and liberties held a further session on analysing draft legislation from the human rights perspective. Financial support was given to a two-day seminar organized by the Government on economic, social and cultural rights and poverty elimination and for an analytical study on a rights-based approach to the National Development Plan. A mapping project on access to justice and plans for increasing women's and vulnerable groups' access to justice was completed. One-day training was conducted for 38 high school teachers and students on children's rights and physical punishment as a form of discipline.

70. In 2005, the OHCHR and HRU technical cooperation project with the Government will continue in the following areas:

(a) Technical assistance for the implementation of international human rights instruments and their reporting obligations as well as related support for civil society;

(b) Technical assistance to CAVR on transitional justice, completing its research programme and consolidating its findings;

(c) Human rights training and materials for judicial officers and law enforcement officials, with a view to strengthening the justice system's human rights capacity;

(d) Human rights training and materials for incorporation in the police training curriculum, with a view to strengthening law enforcement officials' human rights capacity;

(e) Human rights training, procurement, translation and reproduction of materials for the national human rights institution, the Provedor;

- (f) Human rights training for national institutions such as Parliament;
- (g) Training on human rights advocacy, fellowships, procurement, translation, reproduction and dissemination of human rights educational and promotional materials, with a view to strengthening civil society's expertise and sustainability.

VI. RECOMMENDATIONS

71. The High Commissioner urges the international community to continue to provide adequate resources to fund the continuation of the technical cooperation programme between OHCHR and the Government of Timor-Leste to assist, inter alia, the strengthening of the judiciary, the Office of the Provedor for Human Rights and Justice, the capacity of law-enforcement officials and civil society.

72. While congratulating the Government for having initiated the treaty-reporting process, the High Commissioner reiterates the importance of ensuring that current or future legislation is consistent with the provisions of the international human rights instruments to which Timor-Leste is a party.

73. While welcoming the promulgation in May 2004 of the law establishing the Office of Provedor for Human Rights and Justice, the High Commissioner recommends an expeditious appointment of the Provedor.

74. The High Commissioner urges the Government to establish a system of official visitors of prisons for effective independent monitoring of conditions of detention. The High Commissioner also recommends the establishment of an external oversight mechanism to deal with complaints about human rights abuses in detention.

75. While welcoming the adoption of the Disciplinary Regulation of the National Police, the High Commissioner is concerned about reports alleging misconduct on the part of PNTL members, and urges the Government to address human rights violations by PNTL, inter alia, through:

- Reviewing the composition of the Inspectorate established under the Disciplinary Regulation to ensure its independence; and**
- Strengthening the Professional Ethics Office (PEO) by developing coordinated disciplinary and criminal investigation processes and providing adequate resources, including personnel.**

76. While welcoming the efforts of the PNTL Vulnerable Persons Unit to respond to reports of violence against women, the High Commissioner notes with concern that the draft law on domestic violence has not yet been adopted and that access to justice for women victims of violence continues to be a problem, and urges the Government, in cooperation with NGOs, to provide more specialized legal assistance to women and strengthen their access to justice.

77. While welcoming the close cooperation between the Governments of Timor-Leste and Indonesia regarding reunification of Timorese families separated during the conflict in 1999, the High Commissioner encourages both Governments to expedite the process of reuniting children who are still separated with their families.

78. While welcoming the successful completion of the CAVR community reconciliation hearings, truth-seeking hearings and the urgent reparations programme, the High Commissioner suggests that, in its final report, CAVR formulate recommendations on how to achieve long-term peace, stability and reconciliation, and encourages the Government to implement those recommendations with a view to preventing a recurrence of serious crimes and human rights violations.
