

# COMMON CORE DOCUMENT

Matters common to the:

- *International Covenant on Civil and Political Rights (ICCPR);*
- *International Covenant on Economic, Social and Cultural Rights (CESCR);*
- *Convention Against Torture (CAT);*
- *Convention on the Elimination of Racial Discrimination (CERD);*
- *Convention on the Elimination of Discrimination Against Women (CEDAW);*
- *Convention on the Rights of the Child (CRC); and*
- *Convention on the Rights of Migrant Workers and their Families (CMW)*

# **I GENERAL FACTUAL AND STATISTICAL INFORMATION ON TIMOR-LESTE**

## ***A DEMOGRAPHIC, ECONOMIC, SOCIAL AND CULTURAL CHARACTERISTICS***

### **Demographic Overview**

1. Despite significant achievements, Timor-Leste is still among the world's poorest countries. In 2001, 40 % of the population was living on less than US\$1 per day and 20 % were below the national poverty line. Poverty was greater in larger households, at lower education levels, and where the household farm was the main source of income. Inequality was high, especially between urban and rural areas, and tended to increase from East to West.
2. Although Timor-Leste is a small country with just on one million people, population is growing rapidly and the fertility rate is perhaps the highest in the world. Life expectancy is low, and infant mortality high, particularly outside Dili District. Utilization rates for health services are low, school repetition and dropout rates are high.
3. Infrastructure and institutional and administrative capacity are limited, and the private sector faces significant legal and other constraints and high costs. Increasing petroleum production and high oil prices have facilitated increases in public expenditure. However, the oil sector is unlikely to support large-scale employment. Growth in non-oil activities will be the key to increasing employment opportunities. The urban poor, particularly youth, face growing unemployment, while the rural poor face food insecurities and lack of social and economic infrastructure. Poverty is likely to increase in the medium term due to sluggish growth, and rapid population growth.

### **Data Collation**

4. Data collation for the development of the Government's initial human rights treaty reports has proven difficult and frustrating. While an increasing amount of data are now available, due to Census 2004, the availability of more specific human rights data and indicators is limited. Where available, the Reporting Team found that data was inconsistent and unreliable, and that different sources often produced different data for the same indicators. These reports have sought to reconcile any statistical inconsistencies but readers are cautioned to take note of the difficulties experienced when interpreting attached data.

5. The National Statistics Office (NSO) has primary responsibility for Government data collection, though its technical capacity is limited. The number of permanent staff is small, few have qualifications in statistics, and the agency lacks budget for independent data collection. The NSO is heavily dependent on donor assistance for both financial and technical support, and many data collection exercises to date have been initiated and supported by international agencies. All international data gathering exercises have included a substantial element of capacity building.
6. The Ministry of Planning and Finance has in place a monitoring framework for national development planning, the central focus of which is poverty reduction. As this monitoring framework requires regular and accurate statistical collation and assessment the Ministry and UN agencies are working to develop and implement a development information system (Devinfo) to enable disaggregated statistical data collation across all areas of development. In the interim, reliable data on many important aspects of development, particularly that of more vulnerable groups including children, disabled and elderly remains unavailable.

## ***B GENERAL CONSTITUTIONAL, POLITICAL AND LEGAL STRUCTURE***

### **Political History**

7. It is difficult to comprehend the vast challenges confronting this newly independent State today without consideration of the nuances of the nation's past. And indeed, the Constitutional, political and legal structure of Timor-Leste is the culmination of a textured and complex past involving traditional rule overlaid with the influence of centuries of colonisation and occupation.

### *Portuguese colonization*

8. Portuguese traders arrived in Timor in 1515, marking the beginning of what was to be more than four centuries of colonisation Timor-Leste. The arrival of the Portuguese in Timor-Leste was met with strong resistance by the Timorese people with several rebellion wars erupting in different parts of the territory. Rebel attacks on Portuguese settlements were so persistent that they led Wallace, the English traveller who visited Timor in mid 19 century, to conclude that: 'Timor will for many years to come remain in its present state of chronic insurrection and misgovernment'.<sup>1</sup> Although sporadic, local in nature, and often triggered by issues that were not of national resonance, these rebellions were the precursors to the national liberation movement of the 1970s<sup>2</sup>.

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1 Cited in John G. Taylor, 2001, "Indonesia's Forgotten War: The Hidden History of East Timor", Zed Books, London.

2 See Geoffrey C. Gunn, 1999, "Timor Loro Sae: 500 Anos", Livros do Oriente, Macau.

9. The Portuguese colonial authority responded to local resistance with threats and coercion to maintain its presence in the territory, also exiling resistance leaders. Such strategies, along with various other forms of exploitation, were characteristic of the period. In the 1960s, when many countries began decolonization of their territories, the Portuguese Government maintained a repressive approach to its own colonies, including Timor-Leste. Political activities were banned and critics continued to be exiled to other Portuguese colonies in Africa until the early 1970s.
10. Economically, the Portuguese colonisation of Timor-Leste has been described as one of neglect and underdevelopment. None of the mineral or fishing resources of the country were exploited, a mark of inefficiency on the part of the Portuguese administration. Every adult Timorese male was, however, required to pay head tax and *sucos*<sup>3</sup> were required to supply men for manual work. People who failed to pay head tax were often subjected to severe physical punishment and then forced to work for the government in the government owned coffee plantations, among other places.

### *Decolonization*

11. In the early 1960s, the Portuguese Government began expand to expand educational opportunities in Timor-Leste, creating a cadre of native educated elite. These elite Timorese went on to form the nationalist anti-colonial movement in the late 1960s. However, the changes in education policy were not accompanied by political reform in terms of the status of the colonies. It was not until the “Flower Revolution” in Portugal 1974, led by the *Movimento das Forças Armada* (Movement of the Armed Forces – MFA) and the overthrow of the Caetano regime on 25 April 1974 that a new political climate emerged.
12. The new regime in Portugal almost immediately renewed the government’s commitment to General Assembly Resolution 1514 (XV) of 14 December 1960 on the ‘*Granting of Independence to Colonial Countries and Peoples*’, and started the process of decolonisation.
13. Changes quickly began to take place in Timor-Leste as political parties began to form around three key manifestos: association with Portugal, independence, and integration with Indonesia. The two predominant of these parties, União Democrática Timorese (UDT – Timorese Democratic Union)<sup>4</sup> and Associação Social Democrática Timorense (ASDT) (which later transformed into Fretilin -

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3 Suco is a population unit, usually consisting of 3 to 4 Aldeia (hamlets).

4 UDT’s early political programs included democratization, income redistribution, human rights, and self-determination for the Timorese people that was oriented towards a federation with Portugal with an intermediate stage for the attainment of independence.

Frente Revolucionária de Timor-Leste Independente)<sup>5</sup> were formed in May 1974 and formed an alliance later that year. They were soon followed by minority parties, among them: the Associação Popular Democrática de Timor-Leste (APODETI)<sup>6</sup>, *Klibur Oan Timor Ass'wain* (KOTA)<sup>7</sup>, *Partido Trabalhista* (Labour Party) and the *Associação Democrática para a Integração de Timor-Leste na Australia* (ADILTA).

14. In July 1974 the Portuguese Government adopted a new Constitution that affirmed the right of the colonies to self-determination and included an option for independence. A year later, in 1975, a law was passed allowing the formation of a transitional government to prepare for national elections in Timor-Leste, with a view to end Portuguese colonisation of the territory in 1978.
15. The Indonesian Government's response to the decolonisation of Timor-Leste was confusing. Indonesia's then Foreign Minister, Adam Malik, gave assurances in June 1974 that Indonesia would respect the right of Timorese to self-determination and that Indonesia had no territorial interest over Timor-Leste. However, it was evident that a BAKIN<sup>8</sup> led destabilisation campaign, known as *Operasi Komodo* (Operation Komodo) was already underway. *Operasi Komodo* succeeded in splitting the alliance formed between Fretilin and UDT by using anti-communist propaganda and disseminating false allegations that Fretilin planned to stage a military coup.
16. Politically immature, and consumed by Jakarta's propaganda, UDT staged a coup against the Portuguese Administration in Timor-Leste on 11 August 1975. On 20 August 1975, Fretilin retaliated with the support of Timorese officers within the Portuguese Army, lurching the country into civil war. In the wake of the violence, the Portuguese Governor and his administration in Timor-Leste abandoned the decolonisation process and escaped to nearby Atauro Island. The Portuguese Government then refused to re-engage in the decolonisation process knowing that an Indonesian invasion was imminent.
17. On 28 November 1975 Fretilin unilaterally declared Timor-Leste independent. A cable to Portugal from, Francisco Xavier do Amaral, the first appointed President of the Democratic Republic of Timor-Leste, made clear that this declaration was necessary because of both Indonesian aggression but also the disinterest of the Portuguese Government in the decolonization process. In

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5 Fretilin based its ideology on the universal doctrines of socialism and democracy, the party's first manifesto called for the rejection of colonialism immediate participation of Timorese in the administration and local government, an end of racial discrimination, a struggle against corruption, and good relations with neighbouring countries.

6 Founded on 27 May 1974, advocated for an autonomous integration with Indonesia. This party later became the stalking horse for Indonesian interests in Timor-Leste.

7 Founded by several liurais who claimed to be the descendents of Timorese kings, this party stood for the restoration of traditional monarchy.

8 Badan Koordinasi Intelijen Negara – the Indonesia's state intelligence coordinating body.

exemplary solidarity with Portugal, however, Portuguese flags continued to be flown and the Central Government Building was not taken over - even the black Mercedes of the Portuguese governor was not touched.

18. In the short period during which Fretilin had *de facto* control over the territory, it restored the administration of the State was restored, though still under the Portuguese flag. Fretilin's administration was referred to as 'responsible and moderate' by several foreign delegations who visited the territory around that time<sup>9</sup>. It's manual and policy program for reconstruction and development of strong principles of social justice with the aim to ensure progressive and total destruction of exploitation of man by man (*destruição progressiva e total da exploração do homem pelo homem*)<sup>10</sup>. Fretilin devised and implemented people-centred policies throughout the territory in four priority areas; agriculture, culture, education, and health service for the attainment of true independence of the people of Timor-Leste. Specific programs included adult literacy, communal farms, land reform, the establishment of cooperatives, and health centres.

#### *Indonesian invasion and subsequent occupation*

19. Overwhelmed by Fretilin's force in August 1975, leaders of UDT, APODETI, KOTA and Trabalhista parties sought refuge across the border in Indonesia, providing a perfect conduit for Indonesia's military plans. The fleeing political leaders, who were in need of shelter and food, were made to sign a document, declaring the integration of Timor-Leste with Indonesia. This declaration, named the *Balibo Declaration*, was signed in Balibo on 30 November 1975. Some signatories later revealed that the declaration was prepared in Bali, Indonesia and that they were forced to sign it at gun-point at the Penida View Hotel in Bali.
20. Around the same time, the Indonesian military operation along the border with Timor-Leste intensified and the military conceived *Operasi Seroja* (Operation Lotus) for the full invasion of Timor-Leste. On 7 December 1975, against the will of the Timorese people, Indonesia launched a combined land and sea military invasion of Timor-Leste. On 31 May 1976, the Indonesian Government convened a so-called Provincial People's Assembly consisting of 28 members hand-picked primarily from among pro-integrationist followers of APODETI. This was quickly followed by the Indonesian President's promulgation of Law 7/1976 on 17 July 1976, which provided for the integration of Timor-Leste as Indonesia's 27<sup>th</sup> province, although the Government of Portugal never relinquished its authority as Administering Power of the territory.

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9 See John G. Taylor, 1001, *Indonesia's Forgotten War: The Hidden History of East Timor*, Zed Books, London.

10 *Manual e Programa Política da Fretilin*, Departamento de Orientação Política e Ideologia, Fretilin, 1975. See Richard W. Franke, *East Timor: The Hidden War*, East Timor Defense Committee, New York, 1976.

21. As the invading forces advanced and took control of key towns, Fretilin leaders and the population evacuated and formed *bases de apoio* (support bases) in the areas controlled by the Armed Forces<sup>11</sup> for the Liberation of Timor-Leste (*Forças Armadas de Libertação Nacional de Timor-Leste* – FALINTIL). Fretilin continued to implement its administrative programs in the *bases de apoio*.
22. Despite its important initiatives, Fretilin's administration following the declaration of independence and in the liberated support bases was not free from criticism. Allegations were made of human rights abuses including torture and summary execution of persons charged with treason or collaboration with occupying forces.
23. Following the invasion the human rights situation rapidly deteriorated. The occupation was characterised by systematic and gross human rights violations against the Timorese population: mass killings, forced relocations, disappearances, expatriation, restriction of movement, forced labour, arbitrary arrest and detention, and political incrimination. Among the bloodiest events were the bombing of the Matebian region that caused tens of thousands of civilian casualties, the Kraras massacre in Viqueque district 1983 where the adult male members of the entire village were executed leaving only women and children behind, and the Santa Cruz Massacre in Dili in 1991.
24. It has sometimes been overlooked that during the occupation women also suffered degrading treatment at the hands of the occupying forces and their proxies, and also played an active role in the resistance movement. Abuses against women included rape, sexual harassment, sexual slavery to Indonesian troops and forced marriage to Indonesian soldiers. Women who had or were presumed to have links with the resistance were especially at risk. Forced family planning was also introduced, particularly for the wives of civil servants<sup>12</sup>.
25. Human rights violations committed during the Indonesian occupation have been the subject of recent investigations and hearings by the Commission on Reception, Truth and Reconciliation (CAVR). Further detail is provided on this in the section on the work of the CAVR and also in the CEDAW Treaty Specific Document.

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11 Also referred to as liberated zones. As the Indonesian military stepped up pressure, it was becoming more difficult to defend these pocket areas. More and more of these areas fell into enemy's control. In 1978, with the annihilation of the resistance base in mount Matebian, the resistance's military strategy was changed to guerrilla warfare.

12 There was a rule in Indonesia that only the first three children of a civil servant may benefit from the family support scheme for civil servants. This encouraged most civil servants to have only three children in the hope that they can have that benefit.

### *Struggle for independence*

26. Timorese resisted the integration of Timor-Leste into Indonesia through its armed wing, Falintil, but progressed to the use of both urban clandestine political tactics and international diplomacy. In 1985, the resistance movement was reorganised with the formation of the *Revolutionary Council of National Resistance* (Conselho Revolucionário da Resistência Nacional – CRRN). One short year later, and under the leadership of Kay Rala Xanana Gusmão, CRRN was transformed into the National Council of Maubere Resistance (Conselho Nacional de Resistência Maubere – CNRM), an umbrella body aimed to consolidate all Timorese social and political forces towards the struggle for independence. The structure of CNRM was divided into three fronts, Armed Front, Diplomatic Front and Clandestine Front. FALINTIL was declared a national non partisan force and José Ramos-Horta was appointed Special Representative of CNRM overseas.
27. In 1992, CNRM proposed a three-phase peace plan, outlining a strategy for the peaceful solution of the case to Timor-Leste. This plan was to be implemented under the auspices of the UN and included: demilitarization; release of political prisoners; legalization of political parties of all outlooks; and, the realization of a referendum to vote on the options of independence which were either free association with the former colonial power or integration into another independent state. The Special Representative of CNRM, José Ramos-Horta subsequently presented this to various international fora and organisations, including the European Parliament and US Council on Foreign Relations.
28. By this time, the Timorese struggle for independence has gained greater international attention due to the publicisation of atrocities carried out at Santa Cruz in 1991. But, the Santa Cruz massacre was not the only event that sharpened international focus towards East Timor. The campaign to end human rights violations and secure a peaceful resolution had gained further traction following the capture of resistance leader Xanana Gusmão, and the award of the 1996 Nobel Peace Prize to José Ramos-Horta, and the Bishop of Dili, Mgr. Carlos Filipe Ximenes Belo for their efforts at promoting peaceful settlement of the Timorese cause.
29. Strategically and organisationally the Timorese resistance underwent many changes during the 24 year struggle. These changes were necessary in order for the struggle to be more effective, and for the resistance's structure to better accommodate all different Timorese social and political groupings of the struggle. In April 1998, through the first National Convention of Timorese Overseas, CNRM was transformed to *Conselho Nacional da Resistência Timorense* (CNRT). One of the considerations for this change in name was that

the term *Maubere*<sup>13</sup> was more indicative of an ideological tendency, and that maintaining it would exclude some components of the Timorese society from the national structure of the resistance.

### *Political change*

30. Throughout Indonesia's occupation of Timor-Leste, the annexation of the territory was portrayed by the Indonesian Government as a manifestation of Timorese self-determination. Indonesian diplomats often argued that Indonesia had intervened to stop the civil war and to prevent bloodshed. Direct accounts of various actors and declassification of secret documents<sup>14</sup> have since revealed that the invasion was carried out with full support of Western powers and was perceived as a means to combat any possible communist expansion following defeat of the United States in the Vietnam War.
31. Whilst tacitly supported by a few States, the Indonesian Government faced international condemnation following the invasion. Officially, the UN never recognised Timor-Leste's annexation and from 1975 the UN General Assembly and Security Council passed numerous resolutions condemning the military invasion and calling for the withdrawal of Indonesia troops from Timor-Leste<sup>15</sup>. In 1982, the General Assembly passed Resolution 37/30 23 of November 1982, which requested that the Secretary-General initiate consultations with directly affected parties to explore avenues for a comprehensive resolution, giving rise to a catalogue of tripartite discussions between Portugal and Indonesia under the auspices of the Secretary General. Nevertheless, years of diplomatic discussion failed to yield a significant shift in Indonesian policy on the issue.
32. It was not until 1998, shaken by economic crisis and internal pressure for political reform, that Jakarta moderated its position and informed the Secretary General and Portugal that it was willing to allow Timor-Leste broad autonomy. This was certainly a significant gesture though it presented only an interim option for the Timorese resistance leadership who were intent on a transition to independence. Then in January 1999 Indonesian President, B. J. Habibie announced that Indonesia was willing to hold a popular consultation with the people of Timor-Leste on Indonesia's proposal to grant the territory the status of Special Autonomous Region within the Unitary Republic of Indonesia. Although independence was not an explicit option on which Timorese were to be consulted, it was clearly the alternative, if the autonomy proposal was rejected. On 5<sup>th</sup> May 1999, the parties (Portugal, Indonesia, and the UN) signed

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13 *Maubere* was a derogatory term used by the Portuguese to refer to Timorese who were uneducated, illiterate and regarded as uncivilized. In 1975 Fretilin used it as a dignifying term for the people of Timor-Leste.

14 The National Security Archive, "East Timor Revisited: Ford, Kissinger and the Indonesian Invasion" (<http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB62/>) document 4, pp 9, 10.

15 Resolution 384 (1975) and 389 (1976) called on States to respect the territorial integrity of East Timor and the people's right to self-determination. It also called on Indonesia to withdraw without delay all of its forces from the territory.

an agreement for popular consultation with East Timorese through a direct ballot and the United Nations Assistance Mission for East Timor (UNAMET) was borne to give effect to such modalities on the ground. Indonesian police retained responsibility for the maintenance of law and order during the popular consultation.

33. In Indonesia, the offer for popular consultation on independence by the Habibie Government was met with significant opposition in some sectors. As arrangements were being made in Timor-Leste for the popular consultation the numbers of paramilitary groups burgeoned. Groups that had once been part of *Operasi Komodo* and *Operasi Seroja*, as well as new ones, flourished by employing aggressive recruitment campaigns of intimidation, and death threats<sup>16</sup>. These groups, whose members included Indonesian Army, civilian hard-liners, disaffected youth and forced recruits, initiated a campaign of terror across the territory that was apparently intended to disrupt the process, to encourage people to vote pro-autonomy and to punish pro-independence supporters<sup>17</sup>. Many people were forced to flee their homes and seek refuge in the Falintil controlled areas throughout the territory, while others fled overseas.
34. Besides paramilitary groups, which were gathered under the umbrella organisation *Pasukan Pro-Integrasi* (PPI, Pro-Integration Forces) new pro-Indonesian civilian organizations were formed. These included *Barisan Rakyat Timor-Timur* (BRTT – East Timor People Front) and *Forum Perdamaian, Demokrasi dan Keadilan* (FPDK – Peace, Democracy and Justice Forum), among others. These organizations conducted extensive propaganda campaigns to disorientate Timorese<sup>18</sup>. Despite these campaigns of propaganda and violence in the lead up to the referendum, the conviction of the Timorese people remained. On ballot day, 30 August 1999, more than 95 percent of around 450,000 registered voters visited the ballot booths.
35. On 4 September the result was announced with an overwhelming 78.5 percent of voters advocating a transition to independence and rejecting autonomy with Indonesia. Despite accusations of bias and voting irregularities, the UN Electoral Commission<sup>19</sup> declared the result valid and a true reflection of the wish of the people of Timor-Leste.
36. Following the announcement of the result, Indonesian armed forces and their backed militia groups responded quickly with the launch of a violent and

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16 Three-monthly Human Rights Report of Yayasan HAK, January – March 1999. By April 1999, around 20 paramilitary groups, old and new ones, were operating in Timor-Leste.

17 Reports of the Committee for a Free and Fair Ballot, 1999.

18 See Timor Lorosae: Sebuah Tragedi Kemanusiaan, Yayasan HAK and FORTILOS.

19 An Electoral Commission of three members (Judge Johann Kriegler of the South African constitutional court, Patrick Bradely, the Chief Electoral Officer for Northern Ireland, and Bong Seuk Sohn, a member of Korea's National Election Commission) was formed to oversee the realization of the ballot and to rule on the validity of the results of the ballot.

systematic campaign of killings, torture, arson, and massive forced displacement of the population. Up to 250,000 civilians were forced to flee to West Timor and other parts of Indonesia, whilst the rest escaped to safe places within Timor-Leste. Overall, it is estimated that around 75 percent of the country's infrastructure was destroyed<sup>20</sup> and around 630 people had been killed between January and October 1999<sup>21</sup>. It was not until 15 September, following agreement with the Indonesian Government that the Security Council authorised the deployment of a multi-national force<sup>22</sup>. On 20 September 1999, the first contingent of the Australian-led International Forces for East Timor (Interfet) arrived in the capital Dili, Timor-Leste, to undertake the mission of restoring peace and security, protecting and supporting UNAMET in carrying out its tasks (within force capabilities), and to facilitate humanitarian assistance operations.

#### *UN Administration – Transition to full independence*

37. The deployment of Interfet was followed by the establishment of the United Nations Transitional Administration in East Timor (UNTAET)<sup>23</sup> to administer the territory in a transitional phase towards full independence. According to the resolution, UNTAET was charged with executive, legislative and judicative powers and was mandated to support the development of conditions for Timorese self-government. As part of this mandate, UNTAET established the National Consultative Council, a quasi-legislative body comprised of Timorese and expatriate members. This interim legislature was later transformed into the National Council, chaired by the former resistance leader, Kay Rala Xanana Gusmão.
38. The executive function of the two-year UN Administration was divided into three phases. The first phase of approximately six months duration saw the formation of a Cabinet, comprised only of expatriates under the authority of the Special Representative of the Secretary General (SRSG) with general division of technical aspects of the administration among the Cabinet members. By July 2000 the Cabinet was expanded to include five East Timorese with portfolio allocations that were to form the basis for the ministries of the first elected Government of Timor-Leste. Although still under the office of the SRSG, a full East Timorese Cabinet, called the East Timor Transitional Administration (ETTA), was formed following the Constituent Assembly elections and was headed by a Timorese Chief Minister.

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20 The UN and World Bank Joint Assessment Mission sent to Timor-Leste in November 1999.

21 The UN estimated that about 630 people were killed. However, Yayasan HAK, one of the country's human rights NGOs, believes that around 688 people were killed in Timor-Leste between January and October 1999.

22 SC Resolution 1246 unanimously adopted, 15 September 1999.

23 Resolution 1272 (1999) of 25 October 1999 refers.

39. On 30 August 2001, two years after the popular consultation on independence, more than 91 per cent of Timor-Leste's eligible voters went to the polls again, this time to elect an 88-member Constituent Assembly tasked with writing and adopting a new Constitution, establishing the framework for future elections and a transition to full independence. The Constituent Assembly and a new East Timorese Government governed Timor-Leste during the remaining transitional period before it became an independent sovereign State. By 9 February 2002, the Constituent Assembly had approved a draft of the country's first Constitution.
40. Although some argued that it could have been based on a more extensive public consultation, drafting of the Constitution was a participatory exercise. The population was enthusiastic and engaged with the process through workshops and consultation meetings in the capital, districts and sub-districts. Many civil society organisations, including the Catholic Church, the NGOs' Working Group on the Constitution, and women's rights advocacy groups gave submissions and comments on the draft Constitution to the Constituent Assembly. A coalition of women's rights advocacy organisations submitted a ten-point Women's Charter for consideration of the Assembly. Although not all views could be included in the final draft, the Constitution of Timor-Leste is considered comprehensive, particularly with regards to the recognition and protection of fundamental human rights and freedoms.

### **General Constitutional Structure**

41. The Constitution of the Democratic Republic of Timor-Leste provides the blueprint for the principles and structure of the nation. All institutions of State owe their existence to and derive their mandates and responsibilities from this Constitutional framework.
42. In signing the Constitution, the members of the Constituent Assembly solemnly reaffirmed their determination to fight all forms of tyranny, oppression, social, cultural or religious domination and segregation, to defend national independence, to respect and guarantee human rights and the fundamental rights of citizens, to ensure the principle of the separation of powers in the organization of the State, and to establish the essential rules of multi-party democracy, with a view to building a just and prosperous nation and developing a society of solidarity and fraternity<sup>24</sup>.
43. The Constitution clearly asserts that the Republic is a democratic, sovereign, and unitary State based on the rule of law, separation of powers, the will of the people and respect for the dignity of the human person<sup>25</sup>. It establishes important objectives to guide the different organs of State and sets out detailed

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24 Preamble, CRDTL.

25 Article 1 CRDTL.

provisions regarding the fundamental rights of citizens and other persons<sup>26</sup>. Among those objectives of the State are included obligations to defend and guarantee the sovereignty of the country<sup>27</sup>; to guarantee and promote fundamental rights of citizens<sup>28</sup>; political democracy and public participation<sup>29</sup>; to promote the building of a society based on social justice<sup>30</sup>; and to promote and guarantee effective equality of opportunities between men and women<sup>31</sup>.

44. The principles and objectives of the State are further bolstered by a range of specific constitutional provisions which are grouped in the following broad parts:
- Part I - the fundamental principles and objectives of the State;
  - Part II - the fundamental rights, duties liberties and guarantees afforded the individuals that the State has committed to protect;
  - Part III - the organization of political power; economic and financial organization of the State;
  - Part IV – economic and financial organization;
  - Part V – national defense and security;
  - Part VI – guarantee and revision of the Constitution; and
  - Part VII - final and transitional provisions as well as those for the revision of the Constitution.
45. The Constitution clearly provides for a range of civil, political, economic, social and cultural rights such as: the right to life, to personal freedom, security and integrity, to honour and privacy, protection of the family, freedoms of speech, assembly and association; freedom of movement, freedom of conscience, religion and worship, social and economic rights including rights to work and to strike, the right to private property, to health, housing, education and culture. It includes the right to a clean environment and cultural rights (intellectual property) and affords special recognition to the rights of vulnerable groups including children, youth and disabled citizens.
46. The Constitution may be revised six years after the date of enforcement or last review. It is incumbent on Members of Parliament and the parliamentary groups to initiate constitutional revision<sup>32</sup>. Matters of: national independence and unity of the State; rights freedoms and guarantees of citizens; the separation of powers; independence of the courts; the multi-party system and right of democratic opposition; free, universal, direct secret and regular ballot, cannot be

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26 Chapter II, CRDTL

27 Article 6(a), CRDTL

28 Article 6(b), CRDTL

29 Article 6(c), CRDTL

30 Article 6(e), CRDTL

31 Article 6(j), CRDTL

32 Article 154, CRDTL.

revised<sup>33</sup>. And no action may be taken to revise the Constitution during a state of siege or state of emergency<sup>34</sup>.

## **Political Structure**

47. The Constitution states that political power rests with the people and is exercised through universal, free, equal, direct, secret and periodic suffrage in accordance with the terms of the Constitution<sup>35</sup>.
48. Timor-Leste is a semi-presidential system in which the organs of sovereignty comprise the President of the Republic, the National Parliament, the Government and the Courts<sup>36</sup>. The principles of separation, including those between the State and the Church, and interdependence of powers established in the Constitution<sup>37</sup> are observed in the functions exercised by the organs of sovereignty. The President and National Parliament are to be directly elected and protection is provided for the independence of the judiciary.
49. The President of the Republic, as head of state and Supreme Commander of the Defence Force, is the symbol and guarantor of national independence, unity of the State, and of the smooth functioning of democratic institutions. S/he is directly elected by the people and occupies a privileged place in his/her ability to dissolve the National Parliament, dismiss the Government, and remove the Prime Minister from office in specific cases<sup>38</sup>.
50. The Constitution makes provisions for a Council of State to assist the President to exercise his Constitutional competencies<sup>39</sup>. This Council came into being on 17 May 2005. Existing members of the Council include the President of the National Parliament, the Prime Minister, leaders of opposition political parties and a member of civil society.

## *Parliament*

51. Parliament is an organ of sovereignty. It embodies the electorate and is established to determine the law and budget of the State, to endow government with democratic legitimacy, and to hold the government to account. The

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33 Article 156, CRDTL.

34 Article 157, CRDTL.

35 Article 62, CRDTL.

36 Article 67, CRDTL.

37 Article 69, CRDTL.

38 The National Parliament can be dissolved, upon consultation with political parties that sit in Parliament and the Council of State, in cases of serious institutional crisis preventing the formation of a government or the approval of a State budget, lasting more than sixty days (article 86(f) refers); Government can be dismissed and the Prime Minister removed, after the National Parliament has rejected his or her program after two consecutive times (article 86(g) refers).

39 Article 90, CRDTL.

constitutional design of Timor-Leste effectively asserts that there can be no sustainable democracy, transparency or accountability without a well-functioning parliament.

52. As an organ of sovereignty, the National Parliament is vested with legislative supervisory and political decision-making powers<sup>40</sup> with competence to make laws on, among others<sup>41</sup>:
  - Citizenship;
  - Rights freedoms and guarantees;
  - Electoral law and referendum;
  - Defense and security;
  - Suspension of Constitutional guarantees;
  - Declaration of a state of siege and state of emergency; and
  - Granting of amnesty
53. Article 96 also enables Parliament to authorize the Government to make laws on a non-exhaustive list of issues including:
  - Definition of crimes, sentences, security measures and respective prerequisites;
  - Definition of civil and criminal procedure;
  - General rules and regulations for the public service, the status of civil servants and the responsibility of the State.
54. The Organic Law and Rules of Procedure for the National Parliament provide that Parliament shall comprise a Speaker, Plenary, Parliamentary benches, a Conference of the Representatives of the Parliamentary Benches, a Bureau, and a Standing Committee. Appointed in accordance with the Organic Law of the National Parliament<sup>42</sup>, seven Parliamentary Committees also exist to consider a variety of issues including Constitutional affairs; Rights, Liberties and Guarantees; Education; and Economy and Finance. These parliamentary committees play a key role in guiding the development of laws.
55. In the transitional period after Independence, the 88 members of the Constituent Assembly became the first Parliament of the country, for a five-year term that expires in 2007. According to Article 93(2) of the Constitution the National Parliament shall make up a minimum of 52 and a maximum of 65 members. This more limited membership is expected to take effect following the next Parliamentary elections in 2007.
56. Of the current 88 parliamentary members, 23 are women, an important reflection of the prominence of women in political participation.

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40 Article 92, CRDTL.

41 Article 95, CRDTL.

42 Law no. 4 of 2002 enacted on 7 August 2002.

## *Government*

57. The Government, comprised of the Prime Minister, Ministers, and Secretaries of State<sup>43</sup>, is the organ of sovereignty responsible for conducting and executing general national policy. It is also the supreme organ of Public Administration<sup>44</sup>. It is accountable to the President of the Republic and to the National Parliament in the conduct and execution of domestic and foreign policy in accordance with the Constitution and the law<sup>45</sup>.
58. The Prime Minister is head of the executive. S/he is designated by the political party/parties that enjoy a parliamentary majority and is then appointed by the President after consultation with all political parties in Parliament. It is the responsibility of the Prime Minister to lead and guide the general policy of the Government and to coordinate the activities of all ministers. All ministers are responsible for the implementation of those policies defined for their respective ministries.
59. During Indonesian military occupation, very few Timorese held senior positions in the local administration or the opportunity to participate in government itself. The majority of government positions, including technical and senior and middle-level management, were held by Indonesians, some 7,000 of whom fled Timor-Leste in the chaos of 1999 leaving a substantial vacuum in the public service.
60. From 25 October 1999, the UN Transitional Administration in East Timor, an integrated multidimensional peacekeeping operation, became fully responsible for the administration of Timor during its transition to independence. Resolution 1272 mandated UNTAET to:
- provide security and maintain law and order throughout the territory of East Timor;
  - to establish an effective administration;
  - to assist in the development of civil and social services;
  - to ensure the coordination and delivery of humanitarian assistance, rehabilitation of humanitarian assistance, rehabilitation and development assistance; to support capacity-building for self-government; and,
  - to assist in the establishment of conditions for sustainable development.
61. Many regulations were adopted by the UNTAET Administration, some of which continue to be in force today. Efforts were also made during UNTAET to organize the national administration in accordance with the anticipated Timorese structure and to ensure engagement of Timorese in decision-making

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43 Article 104, CRDTL.

44 Article 103, CRDTL.

45 Article 107, CRDTL.

processes. In December 1999, the National Consultative Council (NCC) was established. This was followed in 2001 by the election of the Constituent Assembly and swearing in of a 24-member all-East Timorese Council of Ministers for the Second Transitional Government. The new Council of Ministers replaced the Transitional Cabinet that had been created in 2000. The Constituent Assembly and the new East Timorese Government were to govern East Timor during the remaining transitional period before its independence as a democratic and Sovereign State.

62. Following the restoration of independence in May 2002, Timor-Leste assumed responsibility for most aspects of Government. Extensive support has also been provided by successive UN Missions and donor partners. UNMISSET provided support in the areas of security from external threats and stability, maintaining public order and strengthening the PNTL, as well as public administration and the promotion of democracy and justice. The transfer of responsibilities for security and defense from UNMISSET on 20 May 2004 completed the full transfer of responsibility. Since that time the elected Government has retained full responsibility for comprehensive public sector management and good governance across the public sector<sup>46</sup>.
63. From very modest beginnings, there has been significant progress in building the structures, policies and procedures for effective government. This is characterized for example by: the introduction of a Civil Service Act which defines the roles and responsibilities of civil servants; the introduction of organic laws that provide the mandates for individual ministries and agencies; the recruitment of civil servants; the provision of capacity-building for civil servants as service providers; planning and budgeting; as well as in control and oversight mechanisms for public finance and public procurement<sup>47</sup>.
64. Timor-Leste's civil service comprising public servants, police, defense personnel and other categories of employees has full a complement of almost 18,000 people, including 17,175 permanent staff and 651 temporary staff. This includes 12,034 permanent civil servants, two-thirds of which are teachers and medical personnel. The other large complements of staff are the police and defense forces which, combined, number more than 4,000 personnel. However, limited budgetary resources have severely constrained the numbers of civil servants recruited into positions associated with production-related services, justice and basic infrastructure. In these areas there is a perception that the quality of services are poor due to too few people and those people that are available not having the requisite skills and insufficient training to gain those skills.

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46 Sector Investment Program, Public Sector Management, April 2005 p1.

47 Sector Investment Program, Public Sector Management, April 2005 piv.

### *Administrative Structure and Local Government*

65. The nation is divided into 13 districts that are further divided into 65 sub-districts. The sub-district is the lowest level of government administration, and is managed by a Sub-district Coordinator.
66. The enclave of Oecusse Ambeno and the Island of Ataúro are intended to enjoy special administrative and economic treatment under Article 5(3) of the Constitution. This has been the subject of much discussion during 2005 though measures to give practical effect to the distinction have yet to be decided.
67. The Constitution affirms that the State is to respect decentralization of public administration<sup>48</sup>. To this end, the Government of Timor-Leste, specifically the Ministry of State Administration as the coordinating ministry, has embarked on a pivotal pilot model of local governance with a view to full decentralization of both fiscal and policy management to a local level. The Government considers decentralization to be very important for Timor-Leste because it will enable the people to more effectively express their views on local development and it will give them more capacity to influence the means by which their local development needs are addressed.
68. The Government's goal for local government is straightforward: to strengthen the capacity of relevant national government staff – as well as locally elected leaders – to deliver efficient and effective services to citizens; to contribute to the development of a viable, efficient, and accountable local public administration, and to strengthen mechanisms that support great involvement of communities in local affairs and programs.
69. In trying to meet this goal, however, the Government faces several challenges, including: legitimizing local leaders, providing resources to these leaders for their affairs as well as local development funds for larger scale development projects, and increasing human resource capacity of local governments to manage an increasingly complex environment<sup>49</sup>. In order for a decentralized government system to work well, there must be sufficient capacity present at both national and local levels, to ensure that any funds released to the local level are managed in a transparent and accountable manner. This capacity does not currently exist in all parts of the country. There is much to be done to prepare local government administrations for full decentralization. Among other initiatives already undertaken to strengthen local government was a 5-day fiscal decentralization course conducted by the inter-ministerial working group on decentralisation to strengthen the capacity of relevant actors to ensure transparent, accountable and effective management of funds at a local level.

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48 Article 5(1), CRDTL.

49 Sector Investment Program: Local Government and Civil Society Sector, P.V, April 2005.

With these small but essential steps, the Government has been able to inch closer to the much longer term goal of complete fiscal and policy decentralization.

## **Legal Framework**

70. The sources of law in Timor-Leste, in order of applicability, are:
  - The Constitution of the Democratic Republic of Timor-Leste (RDTL);
  - The laws of RDTL (passed either by the National Parliament or the Government);
  - The Regulations, Decrees and Executive Orders made during UNTAET;
  - The ‘laws that applied in East Timor prior to 25 October 1999’, continue to apply provided they do not conflict with international obligations and human rights standards pursuant to UNTAET Regulation 1999/1 and as endorsed by s.165 of the Constitution and RDTL law 2/2002 on the interpretation of applicable law post-independence in which Parliament confirmed that this is to be taken as Indonesian Law.
  
71. The multidimensional history of Timor-Leste has had an enormous impact on the country’s current legal framework. Influenced by Portuguese colonization, post independence international advisory assistance, Indonesian occupation as well as UN transitional administration, the legal framework of Timor-Leste is a complex, hybrid system of laws and regulations, the most prominent components being - Portuguese, Indonesian International Law, and UNTAET Regulations
  
72. This combination of laws has caused some confusion as to applicable laws which, compounded by the inexperience of Timorese judges and lack of resources has and compromised the rule of law and the administration of justice.
  
73. Inconsistency in early Court of Appeal decisions as to whether Indonesian or Portuguese law applied to similar fact cases is a particular case in point<sup>50</sup>. Legislation intended to clarify the applicability of Indonesian laws was approved by Parliament on 6 October 2003 and promulgated on 20 November 2003 (Parliamentary law 10/2003). Nevertheless, some are of the view that general understanding as to the applicability of different laws remains low. The Government proposes to resolve this confusion with the passage of new RDTL laws across all areas of public life, though while in process, such extensive legislative transition will take significant time to complete.

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50 Please refer to Section I below, and cases, *Armandos dos Santos v Prosecutor General*, Court of Appeal (15 July 2003); *The Public Prosecutor v. Joao Sarmento and Domingos Mendonca*, Special Panel for Serious Crimes (24 July 2003), Case No.18a/2001; *The Public Prosecutor v. Paulino de Jesus*, Court of Appeal (4 November 2004).

## *Courts*

74. The Government of Timor-Leste recognizes the importance of a functioning judicial and legal system as integral to a functioning democracy, long-term political stability, and public confidence in the administration of the State. Since justice delayed is justice denied, the Government has the responsibility to ensure that citizens have access to a judicial system that is not only fair, but is also accountable and transparent<sup>51</sup>. This is the determination of the Government and yet the creation of a strong justice sector remains perhaps the greatest challenge facing the Government in the immediate future.
75. The Constitution of Timor-Leste affirms the independence of the judiciary, subject only to the Constitution and the law<sup>52</sup>. It also guarantees to every individual access to the courts to defend their legally protected rights and interests regardless of economic means. Justice shall not be denied for insufficient economic means<sup>53</sup>. Court decisions shall be binding and prevail over the decisions of any other authority<sup>54</sup>.
76. Article 123 of the Constitution specifies the categories of courts in Timor-Leste which includes the Supreme Court and other courts of law, the High Administrative, Tax and Audit Court, military courts, the possibility of a Maritime and an Arbitration Court. The Supreme Court of Justice, intended as the highest court of law and the guarantor of a uniform enforcement of the law, has not yet been established and its creation will be deferred until such time as the existing institutions are functioning effectively<sup>55</sup>. In the absence of an existing Supreme Court of Justice, the Court of Appeal is vested with the jurisdiction to hear appeals of final judgments rendered by any District Court in Timor-Leste, and enjoys all powers of the Supreme Court. The High Administrative, Tax and Audit Courts will monitor the lawfulness of public expenditure and audit State accounts. These courts have not yet been established.
77. Of the courts that are currently in existence, these are plagued by institutional setbacks that compromise meaningful access to justice. Indeed, access to justice continues to present one of the most significant challenges to the full enjoyment of human rights in Timor-Leste.
78. In late 1999, following the departure of Indonesian authorities, Timor-Leste was confronted with the reality that:

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51 Timor-Leste: Sector Investment Program, Rights, Justice and Equality, April 2005, p1.

52 Article 119, CRDTL.

53 Article 26, CRDTL.

54 Article 188, CRDTL.

55 Timor-Leste: Sector Investment Program, Rights, Justice and Equality, April 2005, p12.

- extremely limited numbers of legally trained persons were available to carry out judicial functions (only 70 Timorese were legally trained, the majority of whom were trained in Indonesia);
  - much critical court documentation had been destroyed (except that held by the church);
  - there was extensive damage to infrastructure including court houses, police stations, prosecutors offices and detention facilities; and
  - there was a lack of capacity to develop new legislation.
79. Despite attempts by UNTAET to address these substantial deficiencies Timor-Leste inherited a barely functioning legal system that was plagued by systemic weaknesses. There is a shortage of qualified legal and judicial personnel and the district courts only function sporadically.
80. Inexperience and limited resources have manifested themselves in inconsistent court rulings, a backlog of cases, poor transfer of cases between courts, limited access to information, and weak and inefficient administration.
81. Among the causes of this judicial predicament was a UN administrative decision in early 2000 to immediately establish an all Timorese judiciary that was to be supported by international mentors and ad hoc training for judges, prosecutors and court clerks. The practical reality was that Timorese court actors worked for three years with little international assistance to support and strengthen their skills.
82. On 20 January 2005 it was announced that all Timorese judge, prosecutor and public defender had failed their written exams and thus would not be eligible for conversion of their appointments from probationary to career judges. Five of the twenty-two judges were, however, authorized by the Superior Council of the Judiciary to continue exercising their functions to allow the Serious Crimes and National Electoral Commission processes to be completed. Other than this, the majority of national judges have ceased to exercise their judicial functions. At the time of writing, Timor-Leste still relies heavily on international judges to decide both criminal and civil cases. The employment of international legal professionals has proved particularly valuable for redressing some of the inadequacies in the functioning of the courts including a reduction in the backlog of cases, the functioning of district courts, and more consistent rulings.
83. Nevertheless, while the situation has recently improved, the national judicial system has historically suffered from significant setbacks that have had a considerable impact on the ability of ordinary Timorese to access justice and, in particular, the ability of Timorese women to adequately seek redress before the court, as elaborated in the CEDAW Specific Document. It will be critical to ensure that a future transfer of full responsibility back to national court actors is carefully managed so that the obstacles of meaningful access to justice do not re-emerge.

84. Twenty jurists successfully completed the preliminary phase of the training program and will continue with advanced training. By 2007 this post-graduate training program is expected to have produced a cadre of qualified national professionals who will be able to take over more of the functions currently carried out by international advisers. In the interim the development of trained Timorese court officials and the delivery of efficient judicial administration services will require continued international support.
85. As at October 2005, international advisory assistance consisted of eight international judges, five prosecutors, seven public defenders and five court clerks. Portuguese, Tetum, Bahasa Indonesia and English are the working languages of all courts in Timor-Leste.<sup>56</sup>

#### *Superior Council for the Judiciary*

86. The Constitution provides for a Superior Council for the Judiciary (SCJ), established in June 2003. The SCJ is the managerial and disciplinary body responsible for administering the courts. It is also responsible for appointing, assigning, transferring and promoting judges.<sup>57</sup> The Statute of Judicial Magistrates regulates the organization and the operations of the SCJ, providing a mechanism to prevent judicial management being used to compromise the independence of the judiciary. Deliberations of SCJ are to be published in the Gazette, although this measure has not yet been implemented.
87. Due to limited human resources, the SCJ's current composition is transitional and comprises five Timorese jurists, including the President of the Court of Appeal as Chair, Vice-Minister of Justice, and a prosecutor. The SCJ is to be supported by a secretariat headed by a judicial secretary, who is responsible for executing the decisions, and judicial and accounting inspectors, as well as inspection secretaries to carry out evaluations of judges. These inspectors have not yet been appointed. In fact, many key staff positions of the SCJ have not yet been filled.

#### *Office of the Prosecutor General*

88. The Office of the Prosecutor General is a constitutionally independent organ tasked with investigation and prosecution of criminal cases and state defense in civil litigation. Article 132 of the Constitution states that public prosecutors are responsible for: representing the State; taking criminal action; defending democratic legality; ensuring the defense of persons underage, absent or disabled; and promoting enforcement of the law. Various constitutional provisions affirm the independence and autonomy of public prosecutors

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<sup>56</sup> Section 35, UNTAET Regulation No 11 of 2000.

<sup>57</sup> Article 128, CRDTL.

providing also that public prosecutors should be governed by their own Statute. Note also that the Provedor is tasked with the pivotal function of protecting the rights of the suspect or the victim, and ensuring justice.

89. Established as a separate entity with powers delegated by Parliament, the Office of the Prosecutor General is the highest authority in public prosecution, headed by the Prosecutor General who in turn is appointed by the President of the Republic<sup>58</sup>. The Office consists of three units: (i) the Executive Office of the Prosecutor General; (ii) the Ordinary Crimes Unit; and, (iii) the National Central Bureau and Interpol<sup>59</sup>. A Serious Crimes Unit also previously existed but was dissolved in May 2005. Ten national prosecutors, appointed by the Government, are currently scheduled for training.
90. In September 2005, the law to establish a Superior Council for the Public Prosecution, an oversight and disciplinary body, was passed. The Council is currently in the process of formation.

#### *Public Defence Service*

91. The right to legal representation regardless of economic means is the basis for the Public defenders Office. According to the Organic Law of the Ministry of Justice, the Public defenders Office *“is the body, under the Ministry of Justice, that has technical autonomy and is responsible for providing full and free juridical, judicial and extrajudicial assistance to underprivileged citizens”*.
92. As with judges and public defenders, in mid 2005, Claudio Ximenes Chief of the Court of Appeal, announced that none of the Timorese prosecutors and public defenders who have been undergoing training had passed their latest evaluations. Those public defenders will continue to attend training at the Centre until Mid 2007 at which point the team of international public defenders will step down to be substituted with national public defenders. The Organic Law for Public Defense is not yet in place but, when it is, it will fill the current institutional gap in the defense service framework and will create the Superior Council for the Public Defense Service, a supreme oversight and disciplinary body for public defenders.
93. Both the Office of the Prosecutor General and the Public Defense Service have already developed personnel and case management systems, as well as Annual Action Plans and corresponding work plans as a means to strengthen their respective Offices.

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58 World Bank, “Governance - Strengthening the Justice Sector”, December 2005.

59 Article 133, CRDTL.

### *Judicial Training Centre*

94. A Judicial Training Centre (JTC) was established by Decree Law 6/2004 in September 2004 to respond in part to the evident gap in the judicial sector. Falling under the responsibility of the Ministry of Justice and functioning with a degree of autonomy, the JTC is mandated to conduct training for judges, prosecutors, public defenders, court clerks, prison officials, investigators and other administrators of justice as well as national trainers in law, justice and public administration<sup>60</sup>.
95. The JTC has a central role in consolidating and strengthening judicial institutions through building the professional capacity of court actors. It provides a 30-month training program for professional career candidates including judges, prosecutors and public defenders<sup>61</sup>. 30 months of training is considered essential for the candidates to acquire and develop the human, ethical, and technical-judicial knowledge necessary to carry out various judicial functions<sup>62</sup>. Options for a career within the judiciary will largely be available to those who respond successfully to the rigorous training delivered by the JTC and the consequent evaluation of candidates' interest and performance.
96. While the results of the 2004 and 2005 evaluations of the then trainee judges, prosecutors and defenders were of concern, they allowed the heads of the sector of justice to know how many qualified career judges, prosecutors and public defenders the country already had, and to plan accordingly, the necessary training of those judges, prosecutors and public defenders who were not considered ready to be appointed to career positions.
97. The current training for 35 national court actors will finish in mid-2006, at which point they will enter a one-year probationary period during which they will work under the mentoring of an international professional. Of this group of 35 candidates, ten are women, with five judges, two prosecutors and three defense lawyers. Training for 36 national court clerks, court administrators, and public prosecution service officers also occurred between August 2005 and March 2006 to support judicial administration.
98. A new intake of trainees at the JTC is expected began in early 2006. Given the need for ongoing investment in training through the JTC, the training program will be strengthened through an external evaluation in mid 2006 as part of an

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60 "Enhancing the Justice System to Guarantee the Democratic Rule of Law - Strengthening the Justice System in Timor-Leste", Annex 19 to UNDP Timor-Leste Program Package Strengthening the Justice System, July 2003, p.9.

61 Decree Law 15/2004 refers.

62 The structure adopted for the traineeship consists of a general theoretical component for the various administrators of justice and two stages of specific training for each of the professional careers: judicial magistracy, public prosecution and public defense magistracy.

overall justice system program evaluation. The National University of Timor-Leste has also launched a law program with assistance from Portugal. Almost 300 individuals have applied for this program.

### *Serious Crimes Processes*

99. A Special Panel for Serious Crimes (“Special Panel”) was established in June by UNTAET Regulation 2000/15 to deal with the following offences committed between 1 January 1999 and 25 October 1999:
- Genocide
  - War crimes
  - Crimes against humanity
  - Murder
  - Sexual offences
  - Torture
100. It was conferred with universal jurisdiction to deal with the above offences irrespective of where, by and against whom the offences were committed. The Regulation that established the Special Panel was almost a direct reproduction of the substantive provisions of the Rome Statute. The establishment of ‘Special Panels’ with exclusive jurisdictions over serious criminal offences does not preclude the jurisdiction of an international tribunal for Timor-Leste over such offences, should such a tribunal be established<sup>63</sup>.
101. Due to resources and time constraints, the Special Crimes Unit decided in 2001 to focus primarily on 10 ‘priority’ cases, and other cases of crimes against humanity. A number of factors were taken into consideration in choosing these ‘priority’ cases, including the severity of the crimes, their political significance, the number and category of victims, and the availability of evidence.<sup>64</sup> The cases chosen were intended to demonstrate a systematic pattern of murder, torture and rape committed against the Timorese people. A number of other cases of rape as a crime against humanity were indicted.
102. In the course of its work, the Special Panel for Serious Crimes handed down two decisions with findings of rape. In one case, decided in 2002, a Timorese male was convicted under Indonesian criminal law for raping a woman in Dili in September 1999 while serving in the Indonesian military. He was sentenced to four years imprisonment.<sup>65</sup> The second case, decided in 2003, was the only instance in which the Serious Crimes Panel tried and convicted a defendant for rape as a crime against humanity. In this particular case, the defendant received a sentence of nine years for three rapes, which became twelve years when

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<sup>63</sup> Section 10(4) of UNTAET Regulation 2000/11

<sup>64</sup> ‘Justice Abandoned? An Assessment of the Serious Crimes Process in East Timor’ by Megan Hirst and Howard Varney, published by the International Centre for Transitional Justice (June 2005), pp7-8.

<sup>65</sup> Special Panels Case No. 14/2001.

combined with sentences for other crimes<sup>66</sup>. In a third case, a defendant was indicted on a charge of raping a woman in West Timor in 1999.<sup>67</sup> A year later, the Special Panel decided that it had no jurisdiction to hear the case as the alleged crime took place outside the territory of Timor-Leste.

103. While 87 accused were brought to trial at the Special Panels, overall, 303 accused persons were included in indictments which have been issued but have not come before the court due to the absence of the accused from Timor-Leste.<sup>68</sup> In fact, perhaps the greatest weakness of the serious crimes process was the lack of extradition power to extradite those responsible for the most heinous of crimes. An extradition agreement between UNTAET and the GOU of April 2000 was signed by the UN Transitional Administrator and the Indonesian Attorney-General but was subsequently not ratified by the Indonesian Parliament.
104. Instead what has been evident is that 87 Timorese nationals, predominantly former militia commanders or members but including also former Timorese soldiers in the Indonesian military, faced trial. Of those, 85 were convicted and sentenced to various terms of imprisonment. Those guilty of the most serious crimes have not and likely cannot ever be brought to justice.

#### *Commission for Reception, Truth and Reconciliation*

105. The East Timorese Commission for Reception, Truth and Reconciliations (CAVR<sup>69</sup>) was created on 7 February 2002<sup>70</sup>. The Commission was an independent national institution, not subject to the control or direction of any member of Cabinet. The initial decision for its establishment was made by the CNRT (Conselho Nacional Resistência Timorese), followed by a series of district visits across East Timor and developed by a committee, consisting of representatives of CNRT, East Timorese NGOs, UNHCR and the UNTAET, following a series of district visits across East and West Timor to garner public opinion on the proposal.
106. The CAVR was mandated to look seek the truth regarding past human rights violations committed in East Timor between 25 April 1974 and 25 October 1999, to conduct community reconciliation, healing of victims, and to write a final report with recommendations.

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<sup>66</sup> Special Panels Case No. 4c/2001, one of three cases referred to as 'The Lolotoe Case'.

<sup>67</sup> Special Panels Case No. 11/2000, 'The Leonardus Kasa' Case.

<sup>68</sup> The overwhelming majority of those defendants are Timorese who are presumably now in West Timor. A much smaller numbers consists of Indonesian nationals who may be in West Timor but who are more likely to be elsewhere in Indonesia.

<sup>69</sup> The term CAVR means "Comissão Acoelhamento Verdade Reconciliação".

<sup>70</sup> UNTAET Regulation 2001/10 refers.

107. Seeking the truth was undertaken through a comprehensive program of statement taking, research and public hearings. These activities were categorized into the following broad themes:
- Political imprisonment
  - Women and conflict
  - Forced displacement and famine
  - Party conflict
  - Massacres and illegal executions
  - International actors
  - Children and conflict
108. A Community Reconciliation Procedure (CRP), to allow perpetrators of less serious politically motivated harmful acts to participate in a village-based program of restorative justice, was another significant element of the CAVR mandate. These CRPs depended upon community participation, with the objective to allow victims and the community to provide personal inputs and perpetrators to undertake “acts of reconciliation” as an alternative to the formal justice system and threats of imprisonment. Initiatives to heal victims through sub-district level hearings, follow-up visits and other restorative activities were also undertaken.
109. Of all the statements that were taken during the CAVR inquiry, approximately one fifth were from women who were either victims or witnesses to human rights violations. Given the varied experience of women in the conflict, a special research team on women’s issues and a national public hearing on women in the conflict were established. One of the national women’s NGOs, ‘Fokupers’ has repeatedly called for a reparations program, which would specifically focus on women victims of the conflict. These issues will be examined in greater depth in the CEDAW Specific Document.
110. The CAVR delivered its report to the President on October 31, 2005, marking the end of more than three years of intensive work, during which more than 7,000 victims gave testimony on human rights violations committed in East Timor between April 1974 and October 1999. The President has since presented this report to the Secretary General.
111. The CAVR final report found that between 1974 and 1999:
- At least 102,800 Timorese are estimated to have been killed or to have died of hunger and illness directly attributable to the Indonesian occupation. This estimate is the most accurate and scientifically rigorous ever made for Timor-Leste, and is based on the CAVR database, a retrospective mortality survey, and a census of public graveyards.
  - A vast majority (85%) of the human rights violations directly reported to the Commission were committed by Indonesian security forces acting alone or through auxiliaries.

- Violations were "massive, widespread and systematic." Indonesian forces used starvation as a weapon of war, committed arbitrary executions, and routinely inflicted horrific torture on anyone suspected of sympathizing with pro-independence forces. This included organized sexual enslavement and sexual torture of Timorese women.
  - The Indonesian government and the highest commanders of the Indonesian army violated international humanitarian law by targeting civilians; conducting indiscriminate military attacks, some involving the use of banned weapons like napalm; and pillaging and unnecessarily destroying civilian property.
  - Approximately 10% of reported violations were committed by pro-independence forces led by the Front for an Independent East Timor (FRETILIN). In contrast with the Indonesian forces, however, FRETILIN leaders have accepted responsibility for the violations they committed and cooperated with the commission.
  - The crimes committed in 1999 constituted a systematic campaign orchestrated at the highest levels of the Indonesian government.
  - The report details the names and command responsibilities of key Indonesian military leaders who had jurisdiction over areas of Timor-Leste where massive atrocities were committed. This includes high-ranking officials such as General Wiranto, Minister of Defense and Chief of the Armed Forces in 1999. A UN-established tribunal in Timor-Leste requested General Wiranto's arrest in 2004.
  - The UN consistently failed to take effective action to stop the Indonesian occupation and accompanying atrocities. The permanent members of the UN Security Council, and some non-permanent members, put their economic and strategic interests ahead of the purposes and principles of the UN.
112. Alongside these findings of fact, there are many detailed recommendations that will receive more detailed consideration by Timorese and the political leadership, though the Government is not in agreement with some of those recommendations including a proposal for reparations by the international community and the establishment of an International Tribunal.
113. Recommendations aside, the CAVR process has made an important contribution to establishing the truth and reconciling our past and will always serve as a reminder that there can never be a recurrence of political violence.

*Commission of Truth and Friendship*<sup>71</sup>

114. Underscoring the importance of resolving matters pertaining to the events of 1999, the leaders of the Government of the Republic of Indonesia and the Democratic Republic of Timor-Leste met in Tampaksiring, Bali on 14 December 2004 to establish a Commission of Truth and Friendship (CTF).
115. This Commission is tasked to establish the conclusive truth in regard to events prior to and immediately after the popular consultation in 1999, with a view to promote reconciliation and friendship, and to ensure the non-recurrence of similar events.
116. The Commission comprises ten members and six alternate members (eight from Indonesia and eight from Timor-Leste) chosen among persons of high standing and competence drawn mainly from legal and human rights fields, academia, religious and community leaders. Two out of the eight members from Timor-Leste are women, thus recognizing the significant role Timorese women play in the process of reconciliation.
117. As stated in its terms of reference, the CTF constitutes a new and unique experience whereby two countries, with a recent shared history, agree with courage and vision to look at the past as a lesson and to embrace the future with optimism. Despite the challenges that lie ahead, the Commission is committed to work in the service of everlasting peace between the two nations.
118. The Commission is mandated to:
  - Reveal the factual truth of the nature, causes, and the extent of reported violations of human rights that occurred in the period leading up to and immediately following the popular consultation in Timor-Leste in August 1999:
    - (a) review all the existing materials documented by the Indonesian National Commission of Inquiry on Human Rights Violations in East Timor in 1999 (KPP HAM) and the Ad-hoc Human Rights Court on East Timor, as well as the Special Panels for Serious Crimes, and the Commission of Reception, Truth and Reconciliation in Timor-Leste;
    - (b) examine and establish the truth concerning reported human rights violations including patterns of behavior, documented by the relevant Indonesian institutions and the Special Panels for Serious Crimes (as contained in its indictment letters) with a view to recommend follow-up measures in the context of promoting reconciliation and friendship among peoples of the two countries.

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71 Information derived from <http://ctf-ri-tl.org>

Issue a report, to be made available to the public, in Bahasa Indonesia, Tetum and English, and translated into Portuguese, establishing the shared historical record of the reported human rights violations that took place in the period leading up to and immediately following the popular consultation in Timor-Leste in August 1999.

Devise ways and means as well as recommend appropriate measures to heal the wounds of the past, to rehabilitate and restore human dignity, *inter alia*:

- (c) recommend amnesty for those involved in human rights violations who cooperate fully in revealing the truth;
- (d) recommend rehabilitation measures for those wrongly accused of human rights violations;
- (e) recommend ways to promote reconciliation between peoples based on customs and religious values;
- (f) recommend innovative people-to-people contacts and cooperation to further enhance peace and stability.

119. In completing these tasks, the Commission is to be guided by the following principles:

- The relevant principles contained in the relevant law<sup>72</sup>.
- In the exercise of its mandate, the CTF shall bear in mind the complexity of the transitional situation in 1999, aiming at further strengthening of reconciliation and friendship between the two countries and peoples.
- Based on the spirit of a forward looking and reconciliatory approach, the CTF process will not lead to prosecution and will emphasize institutional responsibilities.
- Further promoting friendship and cooperation between governments and peoples of the two countries, and promoting intra and inter-communal reconciliation to heal the wounds of the past.
- Does not prejudice against the ongoing judicial process with regard to reported cases of human rights violations in Timor-Leste in 1999, nor does it recommend the establishment of any other judicial body.
- Movement and access to relevant information, as well as a right to interview those considered to hold relevant information is also guaranteed by the Commission's Terms of Reference<sup>73</sup>.

120. The Commission commenced operation in August 2005 and will operate for one year, with possible extension for one further year. Among its initial tasks has been a study of the substantial issues and documents about human rights violations that were received from the Serious crimes Unit, as well as documents from other sources. Based on these documents the Commission has

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72 Indonesian Law no.27/2004 on the Commission of Truth and Reconciliation and the Timor-Leste Law no.10/2001 on the Commission of Reception, Truth and Reconciliation (CAVR).

73 Section 19, Terms of Reference for the Commission of Truth and Friendship Established by the Republic of Indonesia and the Democratic Republic of Timor-Leste.

begun planning for public hearings and interviews with members of Indonesian Army Forces (TNI) regarding alleged serious crimes in Timor-Leste have also been sought.

121. Several Timorese NGOs have commented on the establishment of the Truth and Friendship Commission and how this could possibly affect women seeking redress for crimes committed against them during the period of Indonesian occupation. This will be explored in greater detail in the CEDAW treaty specific document.

## **II GENERAL FRAMEWORK FOR THE PROTECTION AND PROMOTION OF HUMAN RIGHTS**

### ***C. ACCEPTANCE OF HUMAN RIGHTS NORMS***

122. Please refer to **Annex 2** for information on the ratification of the seven core human rights treaties and their accompanying protocols. **Annex 3** refers to additional treaties to which Timor-Leste is a party. There are currently no regional human rights treaties in the Asia Pacific to which Timor-Leste can become party though, in mid 2005, Timor-Leste became a member of the *Asean Regional Forum*<sup>74</sup> and hopes to join *ASEAN*<sup>75</sup> within the next five years. Timor-Leste would be supportive of any regional human rights treaties, should such treaties come into existence in this region. Timor-Leste also regularly participates in the annual meetings of the Office of the High Commissioner for Human Rights for regional governments to enhance regional cooperation in the protection and promotion of human rights.

### ***D. GENERAL LEGAL FRAMEWORK FOR PROTECTION OF HUMAN RIGHTS***

#### **Domestic application of rights**

123. According to the terms of Article 9 of the Constitution, all international conventions, treaties and agreements to which Timor-Leste is a party are part of the domestic law of the State. This naturally includes the core human rights treaties. Any rules that are contrary to the provisions of such international treaties are deemed invalid by the Constitution. The incorporation of human rights treaties into the domestic law of Timor-Leste is an important step towards the full implementation of international human rights standards.

124. Article 23 of the Constitution expressly provides that fundamental rights enshrined in the Constitution shall not exclude any other rights provided for by the law and shall be interpreted in accordance with the Universal Declaration of Human Rights.

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<sup>74</sup> An organization that pledges to promote peace and security in the region through dialogue and cooperation.

<sup>75</sup> The ASEAN Declaration states that the aims and purposes of the Association are: (i) to accelerate regional economic growth, social progress and cultural development through joint endeavours in the spirit of equality and partnership in order to strengthen the foundation for a prosperous and peaceful community of Southeast Asian nations, and (ii) to promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries in the region and adherence to the principles of the United Nations Charter.

125. Whilst, as a general principle, rights apply to all individuals in Timor-Leste, some rights apply only to citizens. This category of rights applicable only to citizens is broader than those set out in the core international human rights treaties. They include:

- equality before the law<sup>76</sup>;
- the right of senior persons to protection by the State<sup>77</sup>;
- equal rights and protection for disabled person<sup>78</sup>;
- right of East Timorese citizens living overseas to enjoy protection by the State<sup>79</sup>;
- right to present complaints to the Ombudsman (Provedor)<sup>80</sup>;
- right to disobey and resist illegal orders that affect their fundamental rights and guarantees<sup>81</sup>;
- right to access personal data stored in computer system<sup>82</sup>;
- rights to petition, political participation, and to vote<sup>83</sup>;
- right and duty to defend sovereignty of the State<sup>84</sup>;
- right to work<sup>85</sup>; and
- right to education and culture<sup>86</sup>.

126. This distinction between citizens and non-citizens is drawn because of the nature and extent of the protections provided and the reciprocal obligations that such rights impose on the State. They are protections and obligations of such nature that they should be applicable only to those persons with a direct and enduring relationship to the State, persons who contribute to and are integrally linked to the State.

127. Section 3 of the Constitution clearly states that the following individuals are original citizens of Timor-Leste, provided they are born in the territory and are children of;

- a father or mother born in Timor-Leste;
- incognito parents, stateless parents or parents of unknown nationality;
- a foreign father or mother who, being over seventeen years of age, declares his/her will to become East Timorese nationals.
- Children born in a foreign country but with an East Timorese mother or father, are also citizens of Timor-Leste, section J(A) of this Document on the *Right to Nationality* refers.

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76 Article 16(1) CDRTL.

77 Article 20(1) CDRTL.

78 Article 21(1) CRDTL.

79 Article 22 CRDTL.

80 Article 27(2) CRDTL.

81 Article 28(1) CRDTL.

82 Article 38(1) CRDTL.

83 Articles 46-48 CRDTL.

84 Article 49 CRDTL.

85 Article 50(1) CRDTL.

86 Article 59 CRDTL.

128. Alongside Constitutional provisions, the protection and promotion of human rights finds further form in the vast legislative program of the State.
129. A series of new laws designed to establish critical democratic institutions and to safeguard procedural and administrative guarantees are already in force. These include: *the Statute of the Office of the Ombudsman for Human Rights and Justice*<sup>87</sup>; *the Organic Law for the PNTL, which establishes the Professional Ethic Office*<sup>88</sup>; *the Organic Law on the F-FDTL*<sup>89</sup>, *UNTAET Regulation on the Establishment of a Legal Aid Service in Timor-Leste*; *UNTAET Regulation on the Establishment of the Commission for Reception, Truth and Reconciliation*<sup>90</sup>; *and the Laws on Political Parties*<sup>91</sup> *and the Election of Suco Chiefs and Suco Councils*.
130. A Criminal and a Civil Procedure Code, Health Law and other key pieces of legislation were also recently passed giving effect to or working to protect important procedural guarantees and substantive rights including the right to health and the right to vote. Additional pieces of legislation that are currently being prepared, will in many respects serve to augment the rights protective legislative framework still further. Among them: a *Domestic Violence Law*; *Education Bills*, a *Civil Code*, *revised Employment Laws*, and a *Children's Code*. Much of this legislation is now in draft form.
131. Following the passage of these and other critical laws, the challenge will be to ensure effective socialization of these legislative regimes to enable practical realisation of the objectives that they are designed to achieve.
132. Alongside the Constitutional and legislative framework, the Government has committed to a vast array of development initiatives aimed at strengthening the justice sector, reducing poverty and food insecurity, and improving health and education, among other key priorities.
133. The Government's path towards development remains an incipient one guided by a National Development Plan (NDP). The key priorities of the National Development Plan are to:
- Reduce poverty in all sectors and regions of the nation; and
  - Promote economic growth to support poverty reduction, the attainment of sustainable livelihoods, and improved well-being.

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87 Law No. 7/2004 of 26 May 2004.

88 Section 13 refers.

89 Decree Law No 7/2004.

90 UNTAET Regulation No 2001/10.

91 Law 3/2004 refers.

134. The Government has made a concerted effort to strengthen links between policy formulation and programs to achieve the national goals and objectives set out in the National Development Plan (NDP), improve capacities to translate these objectives into annual budgetary allocations, and strengthen capacities to give clear guidance to development partners regarding priorities for assistance. Sector Investment Programs (SIP), which were launched in August 2003, are another step in building capacities for well-articulated sector frameworks that link policies, programs and expenditures for the medium-term and that provide guidance on expenditure priorities both within and across sectors.
135. Overall, the development agenda for the Government is vast and ambitious. The Sector Investment Programs and Annual Action Plans which articulate the policies, programs and expenditures of this agenda clearly make out the Government's commitment to human rights as they do much to progress a diversity of the Government's civil, political, economic, social and cultural rights obligations. Programs designed to ensure transparent and due process in the administration of justice, free education for all primary school-aged children by 2015 and increased access for those in most remote regions of the country; a reduction in the current high crude death rates, a significant increase in access to basic health services throughout the country; as well as greater access to clean and safe drinking water and sanitation for both urban and rural families are among just some of the specific examples of the Government's rights based policy visions. A detailed account of the nature of such programs is set out in various parts of this Common Core as well as the various Treaty Specific Documents for consideration. This issue is also discussed further in Section E below, "*Human Rights and Development*".
136. As within legislation, the difficult challenge ahead is to move beyond a policy framework and give practical effect to the ambitious development goals that the Government has set.

### **Limits on rights**

137. Section 24 of the Constitution provides that restrictions of rights, freedoms and guarantees can only be imposed by law in order to safeguard other constitutionally protected rights or interests and in cases clearly provided for in the Constitution. Any such restrictions must be general and abstract and cannot undermine the essential scope and content of the Constitutional provisions including the rights protected therein. Limitations on rights also cannot have historical application.
138. In accordance with this defined scope of restrictions, the following limitations have been applied:

(a) *Limit on right of foreigners to own land*

139. Article 54(4) of the Constitution of Timor-Leste itself provides that only national citizens have the right to ownership of land thus limiting the right of foreigners in Timor-Leste to own private property. This limitation was employed to ensure that Timorese can retain purchasing power in respect of Timor-Leste land. Further it ensures that those individuals capable of owning, administering, and disposing of land are those with an enduring relationship with the State of Timor-Leste who are bound by all of the duties and responsibilities that citizenship entails.

(b) *Limit on the Rights of Foreigners to Participate in Political Affairs*

140. Section 11 of the Immigration and Asylum Act Law No. 9/2003 specifies a range of limitations on the nature of activities that may be conducted by foreigners. Primarily foreigners are prohibited from engaging in political activities that interfere with the affairs of the State as such matters are deemed appropriately undertaken by individuals that have an enduring relationship who and are subject to the rights and obligations that citizenship entails. This limitation accords with the Constitutional right and obligation of citizens and only citizens to participate in the political life of the nation<sup>92</sup>. Further limitations on foreign ownership of majority shares in national generalist media companies and domestic commercial airlines are also imposed to promote national ownership of these services.

(c) *Limit on the Right to Freedom of Peaceful Assembly and Demonstration*

141. In December 2004, Parliament adopted the Law on Freedom of Assembly and Demonstration designed to allow Timorese citizens the right to assemble and demonstrate peacefully while, at the same time, preserving law and order and safeguarding demonstrators against third parties who seek to prevent or obstruct the exercise of this right. Accordingly the law contains specific limits on the time and place in which demonstrations may take place, as well as broad provisions that limit prejudices to the Constitutional order or offences to the honour and reputation of the State. Such limitations are imposed to ensure respect for Constitutional rights to personal freedom and security and freedom of movement are retained<sup>93</sup>.

142. On 9 May 2005, the Court of Appeal deemed the limits to curb prejudices to the constitutional order and offences to the honour and reputation of the State to be unconstitutional. Clarity was also sought regarding the powers and procedures for authorities called upon to review notifications of assemblies and

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92 Articles 46-47 and 63 CRDTL refer.

93 Articles 30 and 44 CRDTL refer.

demonstrations and to impose conditions. Following this determination, the President returned the Bill to the National Parliament on 18 July with a request for a “reformulation of the statute in accordance with the decisions of the Court of Appeal. On 18 July, Parliament passed the Bill eliminating two sub-articles that were determined to be unconstitutional by the Court of Appeal. Importantly also the law provides that any decision of the authorities under this law may be appealed to the courts. A revised version of this law was ultimately promulgated coming into effect January 2006.

### **The Penal Code**

143. Section 96 of the Constitution the National Parliament authorized the Government to prepare and approve a Penal Code that would criminalize defamation and thereby limit the right to freedom of expression.

The Council of Ministers subsequently considered and approved a draft Code that accorded with this parliamentary authorization but this Code was not promulgated by the President due to heavy civil society criticism of its criminal defamation provisions. Informal discussions did, however, take place between the President and the Prime Minister with a view to reducing the penalty for defamation from that of imprisonment to a fine. A compromise was not reached and no modifications were realized within the timeframe available to the President for promulgation or otherwise of the Code before him (section 88 of the Constitution refers). An extension was issued but an emerging political and social crisis in the country has meant that the Penal Code had not yet been amended.

At the time of writing, the Penal Code still requires revision and it remains unclear whether defamation will continue to be subject to a criminal penalty, fine or otherwise. What is widely recognized is that this Code must be passed in the short-term future as many other forthcoming laws (for example, laws on Domestic Violence, Juvenile Justice, Community Service and Custody) depend on the existence of this Code for implementation. It is also anticipated that the passage of this Penal Code will address existing confusion as to current applicable criminal provisions in Timor-Leste.

### **State of Emergency**

144. Article 25 of the Constitution provides that a state of emergency “can only be declared in the case of effective or impending aggression by a foreign force; serious disturbance or threat of serious disturbance to the democratic constitutional order; and public disaster”. It is incumbent on the President to declare state of siege or the state of emergency following authorization of the National Parliament and consultation with the Council of State, the Government

and the Supreme Council of Defense and Security<sup>94</sup>. Fortunately, a state of emergency has not been declared since independence. This means that the specific situations that may ultimately be captured by this provision are not yet clear.

145. Suspension of fundamental rights and freedoms can only take place if a state of siege or a state of emergency has been declared by the President, as provided for by the Constitution. Such suspension of rights may only last for 30 days, with the possibility for renewal where strictly necessary, and there is an obligation on the authorities to restore constitutional normality as soon as possible.
146. Importantly, the following rights cannot be suspended under any circumstance:<sup>95</sup>
  - right to life
  - physical integrity
  - citizenship
  - non-retroactivity of criminal law
  - defense in a criminal case
  - freedom of conscience and religion
  - the right not to be subjected to torture, slavery and servitude
  - the right not to be subjected to cruel, inhuman or degrading treatment or punishment
  - guarantee of non-discrimination
147. With the exception of the right to be recognized as a person before the law, all rights considered non-derogable in the range of core human rights treaties are also non-derogable according to the Constitution of the Republic.
148. In accordance with Article 126 of the Constitution<sup>96</sup>, the Supreme Court, the functions of which are currently being carried out by the Court of Appeal, has the competence to review the necessity of State action in imposing a state of emergency or state of siege, and the exercise of the powers of State authorities to ensure compliance with the Constitution
149. There are no other occasions in which rights can be suspended or the authorities are empowered to use extraordinary powers.

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94 Section 85(g), CRDTL.

95 Article 25(5) CRDTL.

96 Article 126(a) states that “it is incumbent upon the Supreme Court of Justice, on legal and constitutional matters to review and declare the unconstitutionality and illegality of normative and legislative acts by the organs of State”.

## ***E. GENERAL FRAMEWORK FOR THE PROMOTION OF HUMAN RIGHTS***

### **National Institutions for Human Rights Protection and Promotion**

150. According to article 48 of the Constitution every citizen has the right to submit, individually or jointly with others, petitions, complaints and claims to organs of sovereignty or any authority for the purpose of defending his or her rights, the Constitution, the law or general interests. To that end, two specific institutions, (a) the Office of the Provedor for Justice and Human Rights (Ombudsman), and (b) Supreme Court (currently Court of Appeal), which has the legal jurisdiction to hear complaints of human rights violations, are the institutions where such defense may be sought<sup>97</sup>.
151. In addition, a number of specialized Government agencies have been established with the responsibility, within the limits of their competence, of promoting, protecting and publicizing human rights. These agencies are: (c) the Office of the Advisor on Human Rights to the Prime Minister; (d) the Office of the Advisor to the Prime Minister on the Promotion of Equality, (e) key line ministries including Health, Education and Culture, Labour and Community Reinsertion, and Justice, (f) the Veteran's Commission; and (g) the Emergency Food Aid and Relief Committee.
- (a) *Office of the Ombudsman for Human Rights and Justice (Provedor de Direitos Humanos e Justiça)*
152. Article 27 of Timor-Leste's Constitution provides for the creation of an Office of the Ombudsman for Human Rights and Justice, commonly referred to as the "Provedor", a key institution to promote and protect human rights in Timor-Leste. This Constitutional provision was brought into effect by the Statute of the Office of the Ombudsman for Human Rights and Justice Law No. 7/2004, which established this Office as: an independent oversight mechanism responsible to examine and find solutions to citizens complaints of abuse of public powers (including PNTL and F-FDTL); to certify the conformity of acts with the law; to prevent injustice and to initiate the process to remedy injustice<sup>98</sup>.
153. As part of these broad responsibilities the Office of the Provedor is vested with wide powers:
- to investigate violations of fundamental human rights, freedoms and guarantees, abuse of power, mal-administration, illegality, manifest injustice and lack of due process, as well as instances of nepotism, collusion,

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97 Article 126 CRDTL refers.

98 Section 5, Statute of the Office of the Ombudsman for Human Rights and Justice, Law No. 7/2004 of 26 May 2004.

- influence peddling and corruption;
  - to oversee the functioning of public authorities, notably the Government, its agencies and private entities fulfilling public functions and services and may conduct inquiries into systematic or widespread violations of human rights, mal-administration or corruption;
  - 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;
  - to request the Supreme Court of Justice to review the unconstitutionality by omission of any legislative measures as deemed necessary to enable implementation of the Constitution;<sup>99</sup>
154. Any individual may submit complaints concerning acts or omissions on the part of public bodies to the Provedor, which shall undertake a review, without power of decision, and forward to the competent authorities the recommendations deemed appropriate to prevent or redress illegality or injustice<sup>100</sup>. On the latter, the Provedor is also mandated to mediate and conciliate between the complainant and the agency affected.
155. Another major component of the Provedor's mandate is public outreach and promotion of human rights and good governance. The governing legislation specifically stipulates that the Provedor shall keep the public informed of its existence and mandate. This legislation also includes a number of other important safeguards, such as making it an offence to knowingly hinder the Office of the Provedor in the fulfillment of its functions, as well as provisions for financial transparency of the Office. The staff of 18 will necessarily include district outreach personnel.
156. According to art 34 of its governing law, the Office of the Provedor is to report annually to the National Parliament on the performance of his or her functions. It is also mandated to coordinate and cooperate with other similar institutions in the discharge of its functions, and where circumstances so require, the Provedor may decide to address the public directly; to issue communiqués or to publish information on his/her opinions, recommendations and reports on specific cases or on his/her activity.
157. The current Provedor was elected on 29 March 2005, in accordance with the Constitutional requirement of election of the Provedor by the National Parliament through absolute majority votes<sup>101</sup>. In June 2005, the Provedor was sworn into office by the National Parliament. Two deputy provedors – one on human rights and one on anti-corruption and maladministration – were selected

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99 Article 151, CRDTL.

100 Section 27, Law No. 7/2004 of 26 May 2004

101 Section 27(3), Statute of the Office of the Ombudsman for Human Rights and Justice, Law No. 7/2004 of 26 May 2004.

by the Provedor and also sworn into office by the National Parliament shortly thereafter. Priorities in the establishment phase of the Provedor's Office are the recruitment of staff, training, development of a strategic plan; and establishing a complaint handling system.

158. The current budget provides for only 12 substantive staff, in addition to the Provedor and Deputy Provedor. These posts are currently being filled. This allocation however is clearly inadequate for the Provedor to properly carry out the tasks required of the Office, and a more extensive budgetary bid has been made for the 06/07 budget which has recently been approved by the Council of Ministers and is not due for Parliamentary consideration. Induction training in combating corruption and human rights was conducted in 2005 and induction training for maladministration was conducted in January 2006. Once staff are in place intensive training will be conducted.
159. Priority will be given to the Office of the Provedor as part of the overall program of support to human rights institutions proposed by the Government. The Office is to be strengthened to enable it to fully investigate all reported cases of corruption and embezzlement of public assets and related infringements, including as necessary, the Public Prosecutor. This is a critical task if public trust in the sector is to be enhanced.
160. Cooperation from key government departments and agencies – including the Offices of the Prosecutor-General and the Inspector General, the Prime Minister, OPE, PNTL, and F-FDTL – are also critical to the success of the Provedor's Office in tackling human rights violations, maladministration and corruption. The Office is therefore planning to develop MOUs over the next year to guide working relations with key agencies. An NGO network is also planned. Regional offices are fundamental to ensure accessibility of the Provedor to the public. The Provedor plans to open two such offices by 2008.
161. Following discussions with the World Bank and USAID, programs of support for the Office of the Provedor in the amount of \$850,000 are now under implementation. This current World Bank project will run until the end of 2006. Other multilateral and bilateral support is currently being sought and it is clear that the Office will need substantial support for some time. As noted above, the Government will also need to greatly increase the state budget allocation to the Office of the Provedor in order for the Office to fulfill its mandated tasks.

*(b) Supreme Court / Court of Appeal*

162. The Supreme Court is charged with the powers to review and declare the unconstitutionality and illegality of normative and legislative acts by the organs of the State<sup>102</sup>. In the absence of the Supreme Court, the Court of Appeal is

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102 Article 126 CRDTL

tasked with this responsibility.

### **Role of Specialized Government Agencies<sup>103</sup>**

163. Given the importance that the Government attaches to the promotion of human rights and gender equality, special offices have been established within the executive branch of government to help shape policies and programs in these areas. These include the Office of the Advisor to the Prime Minister on the Promotion of Equality (OPE) and the Office of the Human Rights Advisor to the Prime Minister, both of which report directly to the Prime Minister.

#### *(c) Office of the Advisor on Human Rights to the Prime Minister*

164. The Office of the Advisor on Human Rights to the Prime Minister (GADH) functions under the direct authority of the Prime Minister. The Office was created to develop institutional good governance and human rights policies for the Government. It is tasked to promote, implement and strengthen human rights redress mechanisms around the country through the establishment of strategies, programs and policies. To this end, the Office undertakes reviews of the draft legislation, policies and programs of the Government from a human rights perspective. The GADH advises on the setting-up and functioning of human rights institutions in the country, reviews curricula, and provides necessary guidance on human rights training to public sector officials and civil society. It advises the Government on ratification of human rights conventions and assists in the fulfillment by Timor-Leste of its obligations derived from the international human rights treaties. The Office liaises with various offices including the Office of Inspector General to promote the institutional mechanisms for redress of grievances and prepares periodic reports, containing statistical information and analysis on human rights.

165. The Office of the Human Rights Adviser to the Prime Minister is responsible for advising, recommending and assessing problems and questions related to human rights, good governance and public administration matters. The Office supports the definition of educational and training programs related to human rights and good governance and is expected to maintain close working relations with various other agencies of Government and the donor community in matters related to human rights and governance.

166. During 2005, the Office implemented the following four core programs<sup>104</sup>:

167. *Coordination and Development of the National Human Rights Action Plan*

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103 Timor-Leste: Sector Investment Program, Rights, Justice and Equality, April 2005, p18.

104 Report of Activities to the Prime Minister (First semester, 2005)

- Following the directions of the Prime Minister, the Office of the Advisor has been appointed as the coordinator for the promotion and elaboration of the National Human Rights Action Plan for Timor-Leste (NHRAP). To this end, the Office is coordinating a working group on the NHRAP and has conducted different seminars and socialization campaigns since 2004.

168. *Implementation of International Treaties by the Government*

- Following the recommendations of the consultative seminar on the ‘Development of Action Plans’, in January 2004, the Prime Minister requested each Ministry, Secretary of State and district authorities to appoint a person as a Human Rights Focal Point Officer (HRFPO) with the responsibility to work on all matters related to human rights and good governance.<sup>105</sup>
- Subsequently, all ministries, secretaries of states, and districts appointed a Human Rights Focal Point who is in charge of promoting and disseminating human rights standards into their government agencies; to ensure the input of their respective agencies in the treaty body reporting process; and, to provide information to the Office of the Advisor on Human Rights concerning human rights issues that should have the particular attention by the Office.
- In order to consolidate the work of the HRFPO, the Office of the Advisor has delivered ongoing training and support, and it has conducted regular meetings in different districts (Manatuto, Manufahi, Ainaro and Baucau) to discuss the human rights situation in these communities as related to the human rights issues of priority identified by NHRAP (health, education, security, infrastructure, agriculture and justice).

169. *Representation of Timor-Leste in International Conferences*

- The Office of the Advisor on Human Rights has been invited to participate in several regional seminars and conferences during last years. However, the Office was never able to attend the Human Rights Commission meeting in Geneva due to lack of funds and support.

170. *Informing the Prime Minister in human rights related issues.*

- The Office of the Advisor produces periodical reports to inform the Prime Minister on human rights situations on districts, especially in the areas outlined in the NHRAP and any issues of special attention like disciplinary sanctions for members of the PNTL, freedom of expression, justice and taxes. The Office has also produced analysis of the compatibility of laws and regulations with human rights and was involved in drafting the legislation for the establishment of the Ombudsman Office.
- This Office and its mandate were added to Government only in FY2003/04. The budget allocated to this office for the FY 2004/2005 was \$20,000.

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<sup>105</sup> Presentation to the Swiss Government for Focal Points 2005.

(d) *Office of the Advisor to the Prime Minister on the Promotion of Equality (OPE)*

171. Through successful lobbying by the network of women's NGOs and, in particular, as a result of the First National Women's Congress of 2000, the Government of Timor-Leste demonstrated its commitment to realizing equality between women and men by establishing the Office for the Promotion of Equality (OPE) in September 2001. The OPE is an advisory body that answers directly to the Prime Minister.<sup>106</sup> At the time of writing, the OPE does not have its own organic law. However, its strategic planning activities in October 2005 (supported by UNIFEM) identified the need to draft this law as a priority. At present, the Advisor on the Promotion of Equality does not have a seat on the Council of Ministers.
172. The mandate of the OPE is to, *inter alia*, develop appropriate strategies and methodologies to mainstream a gender-sensitive perspective in all government policies and programmes. It is also responsible for promoting the increased participation of women, both as active agents and beneficiaries of the development process, through the establishment of effective relationships with relevant branches of Government, NGOs, women's organizations, the media, research, academic and educational institutions, as well as the private sector.
173. The OPE is also responsible for the promotion of a gender-sensitive perspective in all law reform initiatives. However, due to the limited financial and human resources, it has yet to make a substantive contribution to the field of legislative review.
174. The OPE does not have the mandate to address human rights violations on the basis of sex and gender. However, it has been instrumental in recording experiences of women during the Indonesian occupation, through publications such as 'Written in Blood', which has also been translated into Tetum.
175. Since July 2004, the OPE has been implementing the following four core programmes:
- Gender mainstreaming in all sectors of Government
  - Promoting a culture of equality in Timor-Leste
  - Strengthening national capacity to address gender-based violence
  - Supporting the empowerment of women.
176. These programmes will be discussed in further detail in the latter section on '*Gender Mainstreaming*' and also in the CEDAW Treaty Specific Document.

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106 Art. 8 of the Decree Law No. 3/2005 on the Restructuring of the First Constitutional Government

177. In addition to the Advisor on the Promotion of Equality, five national staff and one international advisor are based in the OPE. Since 2001, UNFPA has been supporting the OPE's programme on strengthening national capacity to address gender based violence. The existing team comprises of two national staff and one international project manager.
178. The budget allocated to the OPE was USD 65, 000 for the FY 2005/2006 and it is expected that this will rise to USD 69,000 (not yet approved) in the FY 2006/2007.

(e) *National Commission of the Rights of the Child (CNDC)*

179. In February 2005, the Prime Minister of Timor-Leste, Dr. Mari Alkatiri decreed:
180. *"A National Commission of the Rights of the Child (CNDC) shall be created, operating under my direct dependency."*
181. The Advisory Board for this National Commission will be composed of the Ministers of Foreign Affairs and Cooperation; Planning and Finance; Education and Culture; Health; Justice; Labour and Community Reinsertion; the Adviser on Human Rights to the Prime Minister; the Prosecutor General; a representative of a Religious Faith, a representative of a non-governmental organization and a child representative.
182. The Advisory Board, at its first meeting, shall decide on the make-up of the Secretariat of the National Commission, which shall include representatives of government agencies and civil society, as well as children. During this meeting, the Board shall also select the National Commissioner for the Rights of the Child, based upon a competitive selection process to ensure that the National Commissioner possesses sufficient experience and skills to coordinate the activities of the CNDC, proven integrity, and a solid knowledge of the principles of human rights in general and of the rights of the child in particular. S/he must also be known for his or her standing in the community and possess a high level of independence and impartiality.
183. The National Commission of the Rights of the Child shall have the express mission of:
  - supporting the process for the implementation of the Code of the Rights of the Child;
  - advising the Government and relevant State authorities on the application of the Code of the Rights of the Child and other legislation or measures related to the rights of the child;
  - promoting the application of the Code of the Rights of the Child and other legislation or measures related to the rights of the child;

- alerting the Government to situations affecting children or their rights requiring urgent or special attention;
- ensuring that all government action, and the actions of all public authorities, have the higher interest of the child as a fundamental concern;
- coordinating the action of the various governmental departments, and of the public authorities at the various district, sub-district and *suco* levels, in matters affecting children;
- monitoring trends in the realities of the country insofar as they affect children and their rights;
- promoting the public interest and sensitising civil society to children and their rights; and
- coordinating international cooperation in this field.

## **Government Ministries**

184. While all government ministries contribute in some way to rights promotion, the following key line ministries have a specific mandate in areas of rights promotion:

### **Ministry of Education and Culture**

185. The Ministry of Education and Culture is the governmental department responsible for designing, executing, coordinating and assessing policies for the areas of education and culture as well as for the areas of science and technology. Among its specific responsibilities, the Ministry is mandated to ensure the protection of childhood, literacy and teaching and to protect rights relating to artistic and literary creation<sup>107</sup>.

### **Ministry of Health**

186. The Health Ministry is the governmental department responsible for designing, executing, coordinating and assessing the policies in the areas of health and pharmaceutical activities. The objective of the Ministry is to ensure people access to healthcare through the establishment, regulation and development of a health system based on real needs and consistent with the resources available, placing special emphasis on the equity of the system and giving priority to the most vulnerable groups by promoting, whenever possible, the active participation of civil society<sup>108</sup>.

### **Ministry of Justice**

187. The Ministry of Justice is responsible for designing, executing, coordinating and assessing policies for the areas of justice and law including specifically

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<sup>107</sup> Section 25(1)(b) and (e) of the Decree Law on the Restructuring of the First Constitutional Government No 3/2005.

<sup>108</sup> Section 2 Organic Structure of the Ministry of Health, Decree Law No 5/2003.

proposing the necessary legislative reforms to ensure coherence and effectiveness of the legal system. Other responsibilities include: to establish and guarantee adequate mechanisms for assuring the citizenship rights of the Timorese and to promote the dissemination of such rights<sup>109</sup>; to regulate and managing the prison system, the services of social reintegration and the public defenders service<sup>110</sup>; to ensure mechanisms for legal aid and assistance for the most disadvantaged citizens<sup>111</sup>.

### **Ministry of Labour and Community Reinsertion**

188. The Ministry of Labour and Community Reinsertion is responsible for designing, executing, coordinating and assessing policies for the areas of labour, employment, and community reinsertions. It is specifically mandated to:
- propose policies and draft regulations for the areas of work and employment, safety, hygiene, and health in the workplace, and for the establishment of a minimum wage;
  - design and implement social security systems for workers;
  - ensure the insertion of veterans and former combatants into the community;
  - encourage the hiring of Timorese workers overseas as well as regulating and encouraging the work of foreigners in Timor-Leste.
189. According to the draft Organic Law for the Ministry, it is also responsible to promote national, cultural and multi-racial understanding of indigenous populations; refugees and internally displaced persons; and migrant workers.
190. Through the program, RESPECT (Recovery, Employment and Stability Program for Ex Combatants and Communities in Timor-Leste), which has been support by the Japanese Government and UNDP, the Veterans' Division of the Ministry strives to work towards the improvement of living conditions of, *inter alia*, the elderly, widows, orphaned persons and victims of war. It has also supported an initiative of the Commission for Former Combatants and the Commission for the Veterans of Falintil to collect data on the number of veterans in the country through a series of district visits. Please see below.
191. The Veteran's Division is also currently providing humanitarian aid in the form of, *inter alia*, housing, food, sleeping mats, kitchen utensils, rice, sugar, fishing nets and a boat, is extending financial assistance to support small projects and conducts vocational training for veterans and former combatants. This training is currently provided in the areas of electrical skills and carpentry. It has been said that, despite these efforts, greater attention still needs to be given to female

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109 Section 2(1)(c) Organic Structure of the Ministry of Justice, Decree Law No 3/2003.

110 Section 27(1)(d) Decree Law No. 3/2005.

111 Section 2(1)(g) Organic Structure of the Ministry of Justice, Decree Law No 3/2003.

veterans and how they can benefit from government support.<sup>112</sup> Indeed, one national women's NGO has stated that to date women have not benefited equally from these humanitarian efforts.<sup>113</sup>

### **Secretariat of State for Youth and Sports**

192. The Secretariat of State for Youth and Sports is the governmental department responsible for designing, executing, coordinating and assessing the policies for the areas of welfare promotion and youth development, physical education and sports, as defined and approved by the Council of Ministers.

### **Human Rights Focal Points and Gender Focal Points**

193. As referred above, in 2004, Human Rights Focal Points across Government and the districts were also appointed to ensure the input of their respective agencies in the human rights treaty reporting and National Action Plan processes. The Focal Points are responsible to gather data for the treaty reports and National Human Rights Action Plan and to integrate rights into their respective portfolio areas. These Focal Points were appointed on a “*Train the Trainer*” basis with a view to enhance human rights awareness and thereby strengthen the capacity of government officials to monitor human rights. The District Focal Points provided the key liaison mechanism used to socialize the reporting process and to gather data and encourage community participation at the local level.

194. In the same year, the Office for the Promotion of Equality designated a series of Gender Focal Points in the specific line ministries as well as the districts. The Gender Focal Points are tasked to arrange district level training on women's rights and women's issues. They have also been instrumental in organizing the Women's National Congresses in 2000 and 2004.

#### *(f) Veteran's Commission*

195. During the 24 years of resistance, many people made their contributions to the armed struggle, either as part of the Falintil (Forças Armadas de Libertação Nacional de Timor-Leste, Armed Forces of National Liberation of Timor-Leste) or pro-independence militia units formed between 1975 and 1979. Their involvement in the armed resistance has, today, left many of them in an unfavourable condition. Not only in terms of their limited capacity to continue to contribute to nation building but, more particularly, in terms of their limited capacity to care for themselves and for their families. Having spent long periods in the jungle, many former combatants are not equipped with the social skills necessary to secure employment or basic subsistence. This is particularly true of those who chose not to pursue a military career with the new defence force.

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112 L. Cattleya, 'Gender Equality': Contribution for CSP I Report: First Half of the FY 2005/2006

113 Ibid.

Many others are living with physical impairments. The struggle has also left the country with thousands of widows and orphans from fallen combatants.

196. *In order to pay proper respect and appreciation, and to guide the formulation of policies that could provide adequate support to those former combatants and their families, the President, through Presidential Dispatch No. 01/Set/2002 of 9<sup>th</sup> September 2002, established the Commission for Former Combatants (a Comissão para os Assuntos de Antigos Combatentes – CAAC) and the Commission for the Veterans of Falintil (a Comissão para os Assuntos dos Veteranos das Falintil – CAVF). The objectives of these Commissions were to identify and establish criteria for the classification of former combatant and veterans of Falintil, and to recommend options for policies to address the needs of these veterans.*
197. Through the distribution of questionnaires and public consultation, these Commissions have now registered over 37,000 veterans and former combatants, among whom 22,000 are still living. Disaggregated by sex this data suggests that approximately 30 percent of those registered are women.<sup>114</sup>
198. Originally, women were not classified as veteran combatants. However, OPE and UNIFEM raised this issue publicly on UN Day in 2004, emphasizing that the non-inclusion of women on the combatants' list possibly contravened paragraph 13 of SC Resolution 1325 to 'encourage all those involved in the planning for disarmament, demobilization and reintegration to consider the different needs of female and male ex-combatants and to take into account the needs of their dependants'. As a result, women were included on this list and may now be entitled to any benefits to be afforded by the Government.
199. The Commissions completed their work and submitted a final report to the President in June 2004, who then presented the report to the Parliament and the Government to inform the formulation of laws and policies on veterans issues. After a long debate, the Parliament finally approved Law no. ... /2006, March 2006 on the issue of Veterans and Former Combatants.

(g) *Emergency Food Aid and Distribution Team*

200. Timor-Leste has been producing less food than required for consumption by the population<sup>115</sup> due to adverse climatic conditions resulting in widespread food insecurity. This lack of availability of and accessibility to food has had significant negative impact on the nutrition and health status of people (especially children, women and the elderly) as it can cause immune systems to weaken making people targets of sickness and diseases. Timor-Leste is among those Asian countries most vulnerable to malnutrition with very high rates of stunting, wasting and underweight among children under five years<sup>116</sup>.

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114 L. Cattleya, 'Gender Equality': Contribution for CSP I Report: First Half of the FY 2005/2006

115 Information provided by the Ministry of Labour and Community Reinsertion October 2005.

116 Demographic Health Survey (2004) and MICS (2002).

201. In 2005, after a World Food Program vulnerability study to analyse the three dimensions of food security: production of food; access to food; and food utilization and nutrition, Dr. Prime Minister Mari Alkatiri established an Emergency Food Aid Team to undertake emergency measures of food relief to alleviate food shortages experienced by the Timorese population.
202. This team consists of government departments including the Ministries of Labour and Community Reinsertion (Chair), Interior, Agriculture, Forest and Fisheries, Health, Transport Public Works, Telecommunication, Planning and Finance, Public Administration, Defense and FFDTL. Agencies including WFP, IOM, FAO and GTZ, and civil society organizations such as CVTL-ICIR, Oxfam International, Care International, and Concern Worldwide are also part of this team. A district level team consisting of District Administrators, Social Service Officers, District Development Officers and various other representative groups has also been established.
203. Two immediate priorities for the team has been the provision of food aid relief support for 150,000 people following erratic climatic conditions in Timor-Leste in early 2005 and the reduction of the negative impact of food shortages on health and well-being of vulnerable groups in need.

*(h) PNTL complaints referral mechanisms*

204. Section 2 of the Organic Law for the Ministry of Interior requires the Ministry to ensure the correct relationship between the PNTL and the community. This mandate is administered through two complaints and investigative mechanisms:

## **Professional Ethics Office (PEO)**

205. The PEO works under the direct supervision of the Police Commander and is tasked to undertake inquiries, investigations and disciplinary processes in respect of complaints against PNTL Officers, as determined by the PNTL Commander<sup>117</sup>. The District Commanders/PEO are empowered to dispose of cases where punishment would not exceed suspension of staff for more than two months. PEO headquarters is in Dili with 13 branch offices also operating, one in each district.

## **Office of the Inspectorate, Ministry of Interior**

206. Established in September 2004 the Inspectorate has disciplinary competence over all structures and institutions subordinate to the Ministry of the Interior

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117 Section 13, Organic Law for the Ministry of the Interior Law No 3/2004

(MINT) which also includes PNTL<sup>118</sup>. The Inspectorate comprises five members representing different offices with one member from the Office of the Adviser on Human Rights to the Prime Minister. Any individual or organization may submit a complaint against/relating to PNTL staff or any other member of the Ministry to this Inspectorate.

## **Human Rights in Parliament**

207. The National Parliament, the only representative body in the nation, plays an important role as guardian of rights and freedoms in the development of the legislative framework of Timor-Leste. It possesses the specific competence to make laws on rights, freedoms and guarantees as well as laws for the realization of important rights such as education, health and social security<sup>119</sup>. Parliament is empowered to ratify international treaties and conventions and indeed ratified the seven core human rights treaties and optional protocols to which Timor-Leste is now party, following endorsement of these by the Government<sup>120</sup>.
208. Of the range of parliamentary standing committees, Parliamentary Committee A on “*Constitutional Affairs, Rights, Liberties and Guarantees*” is mandated to: discuss and issue opinions on draft laws, as well as to propose amendments and treaties submitted to Parliament; consider petitions to Parliament; collect information on political and administrative problems falling within the scope of the Committee, and hold public hearings with civil society entities on matters within the specific scope of its competence.<sup>121</sup> In April 2005, this Committee established a Sub-Commission on Human Rights to undertake reviews of legislation for compliance with the Government’s human rights obligations and to receive complaints from the public. This Sub-Commission is yet to come into full operational effect.
209. To date, the Parliament has not played a significant role in the promotion of gender equality. Although there is almost 26 percent representation of women in Parliament, among the highest levels in the Asian region, women representatives have not been able to exercise their influence on the decision-making process and not to the benefit of women. In 2004, a proposal to establish a ‘Commission for Matters relating to Gender, Equality and Children’ was put forward and later rejected in Parliament, as no agreement could be reached on the nature and functions of such a Commission, nor was it clear from the outset how its functions would differ from those of the OPE.
210. Similarly, women MPs were not able to come together on the divorce law nor have they introduced bills on gender equality issues. However, the OPE is keen

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118 Section 11, Organic Law for the Ministry of the Interior Law No 3/2004

119 Article 95(2)(l) and (m) respectively, CRDTL.

120 Article 95(3)(f) CRDTL.

121 Section 34, Rules of Procedure of the National Parliament.

to further explore ways in which Parliament can assist in its work and has been conducting training activities with women MPs to prepare them for the discussion on the forthcoming law on domestic violence. Also, in 2005, the Advisor on the Promotion of Equality met with a member of the European Parliament with a view to identifying ways in which the OPE can effectively raise issues relating to women's rights in Parliament.

211. At present, women members of Parliament have no formal mechanisms of consultation with women's organizations on matters affecting women's rights. In an attempt to build good partnership and cooperation between women MPs and civil society, several women's NGOs have encouraged women parliamentarians to become members of their organizations to support them in their lobbying on women's issues. There are currently six women MPs who are members of one national women's NGO, Fokupers, two of whom are on its board.
212. Overall the Constitution and rules of procedure for the Parliament provide a strong legal basis to enable parliament to check and balance government legislative and policy development, with a view to prevent violations of individual rights and freedoms. Nevertheless, given the incipient nature of the institution, much work is yet to be done to realize this function. Training and support will continue to be provided to strengthen Parliament and enable it to conduct sound human rights and gender analyses and to consolidate itself as the institutional check and balance on Government laws and policies as envisaged by the Constitution.
213. Notably, the Provedor for Human Rights and Justice is legally required to report annually to the National Parliament on the performance of his or her activities, initiatives, statistics and results. These reports shall make recommendations concerning reforms and other measures, whether legal, political or administrative, which could be taken to achieve the objectives of the Office, prevent or redress human rights violations and promote fairness, integrity, transparency, responsibility and accountability in public administration<sup>122</sup>. This may also prove a valuable mechanism to inform parliamentary activities around the promotion and protection of rights in Timor-Leste.

### **Publication of Human Rights Instruments**

214. The Government views information dissemination about human rights instruments an integral part of individual and community empowerment on rights, and the Office of the Adviser on Human Rights to the Prime Minister and the Office for the Promotion of Equality have been particularly active in this regard. Distribution of information and materials on human rights treaties have and will continue to form a necessary part of all activities of the Office of the

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<sup>122</sup> Section 46, Statute of the Office of the Ombudsman for Human Rights And Justice, Law No 7/2004.

Human Rights Adviser to the Prime Minister. The Working Group for the development of the National Human Rights Action Plan has also played an important role in raising awareness and generating discussion about the nature and content of these rights as part of their programs of work including government training, community discussions. While the treaty report development process has also stimulated broad circulation of translated copies of relevant treaties and has done much to raise awareness their provisions.

215. The Office for the Promotion of Equality, with the support of Ireland Aid, has made efforts to distribute the CEDAW Convention and the OP-CEDAW distributing 3000 illustrative booklets or popular versions of both to all gender focal points, district administrators, local schools, and civil society organisations, including women's organisations both in Dili and in the districts, and Church representatives.
216. Currently, the OPE is collaborating with UNIFEM CEDAW SEA Programme to produce a publication on the CEDAW Convention, its Optional Protocol, selected General Recommendations and related documents on women's rights. The primary target groups for this publication are institutions working directly on human rights issues, such as the Office of the Advisor to the Prime Minister on Human Rights, Office of the Provedor, Parliamentary Commission A, members of the judiciary and legal profession, PNTL, gender and human rights focal points in specific line ministries as well as civil society. The expected publication date for this volume is late 2006. Publications will be available in four languages, Tetum, Portuguese, Bahasa Indonesian and English.
217. While many of the human rights instruments have been translated and distributed, difficulties in translating technical terms and human rights concepts, as well as limited resources, have limited the capacity of the Government to translate all human rights treaties into Tetum or other local languages of Timor-Leste.
218. *At the time of writing, no media campaign had been launched to inform the public of the existence of any of the individual complaints mechanisms under the core human rights treaties to which the Government is a party.*

#### *Illustrative material*

219. Low levels of literacy and the significant population of children in Timor-Leste, suggest that illustrative publications may present a more effective means by which to convey human rights information to the public as compared with written texts. Again, the Offices of the Human Rights Adviser to the Prime Minister and Promotion of Equality have taken the lead on initiatives to develop illustrative material within the limited constraints of their respective budgets. The Ministry of Education and Youth and CARE International also publish the monthly magazine for children, *Lafaek*. Free for children throughout all

districts, this magazine has good nationwide coverage, via schools and is well-regarded by children, especially for its colourful and entertaining style and stories, and range of important information and messages on child rights.

220. Timor-Leste has also enjoyed significant support from international and non-governmental organizations (NGOs), community based organizations (CBOs), and UN Agencies in its task of information dissemination on human rights instruments. Copies of various international human rights instruments, including the UDHR, CRC, and CEDAW are now translated into Tetum and have been distributed to the public in Dili and in the districts along with Bahasa Indonesia, and in some cases Portuguese translations of the same materials<sup>123</sup>. Human rights pamphlets, leaflets, handbooks<sup>124</sup>, training and other materials<sup>125</sup> have also been produced and widely distributed in prominent languages<sup>126</sup> to educate people about the relevance of these human rights instruments in their day-to-day lives. Comic books<sup>127</sup>, photographic materials, pamphlets, posters and school books are among the more colourful materials distributed.
221. Overall, the collective initiatives of civil society, UN Agencies and others have focused significant attention on informing the public of the existence and the practical effect of the rights and freedoms contained in the various human rights instruments.
222. All of these activities aside, the Government is still aware that knowledge and information about relevant human rights instruments remains limited due to educational, literacy, linguistic, and geographical constraints<sup>128</sup>. It is also evident that there is particularly limited public knowledge of the existence of individual complaints mechanisms for alleged human rights violations<sup>129</sup>. This is not a situation that will change overnight, raising awareness comprehensively

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123 These documents were produced and distributed in cooperation between the UNMISSET Human Rights Unit and several NGOs, with the support of UNDP, UNICEF, and the Office of the High Commissioner for Human Rights.

124 For example, in 2003 the UNMISSET Human Rights Unit published pocket cards and a training manual for prison staff.

125 UN agencies have been particularly active in the distribution of materials that promoted a diverse range of human rights messages including:

- 5000 t-shirts with Human Rights messages to commemorate International Human Rights Day and May 20th celebrations:
- International Human Rights Day leaflets with key messages from UDHR.
- \* 57 CD's of 1hr Radio Programs on a wide variety of topics relating to human rights (including human rights in policing, violence against women, child rights, sexual exploitation, social, cultural, economic rights etc.

126 Most often Tetum and Bahasa Indonesia.

127 In 2004, UNMISSET HRU produced 14,000 copies of picture books in Bahasa Indonesia and Tetum on the UDHR, ICCPR, CRC, CAT. The comic format was specifically designed to make information about human rights standards accessible and understandable. These comic books were distributed all districts targeting police, teachers, administrators, school children, women, youth groups and the general public. Human rights educators such as teachers, youth leaders, Church leaders and community leaders were provided with these comics to distribute to their communities. Primary schools also received this material as a means to introduce human rights to children at an early age.

128 Reflected in the submissions of all regions covered in regional focus groups conducted between April - July 2005.

129 Individual complaints mechanisms were rarely mentioned in the context of national and district discussions on the Government's human rights violations and remedies for those violations.

throughout the country will require a long-term multi-dimensional approach to which the Government is committed but will continue to struggle to deliver in the immediate future.

### **Human Rights Training and Education**

223. An extensive range of Government officials, Parliamentarians, police, teachers, judicial actors and other key public figures as well as a myriad of NGOs have received comprehensive education and training on human rights. The Office of the Human Rights Adviser to the Prime Minister has focused considerable attention on training officials from Government institutions on the broadest range of rights, whereas the Office for the Promotion of Equality has also carried out training on CEDAW and gender issues as detailed further below in the section on *Gender Mainstreaming*. In relation to the CEDAW Convention, to date, the OPE has assisted in the organization of training for its own staff, NGOs, Government officials in addition to the PNTL. As Government capacity increases, State human rights institutions including the OPE, OHRAPM, and the Office of the Provedor are expected to increasingly respond to the human rights training needs across a variety of sectors in the country.

224. Some of those training programs provided to date are detailed below.

#### *Government officials*

225. In April 2004, the Office of the Human Rights Adviser to the Prime Minister and Ministry of Foreign Affairs, with the support of UNDP, UNICEF, UNFPA and the Human Rights Unit of UNMISSET conducted a week long training program for the national human rights focal points to educate those officials about the human rights treaties to which the Government is party, as well as methods of information gathering and cross-sectoral engagement in the protection and promotion of human rights. This training was further supplemented by four national workshops conducted between mid 2004 and late 2005 on: economic, social and cultural rights; the launch of the treaty reporting program; civil and political rights; and the role of civil society in Timor-Leste.

226. In 2004/2005, the Department of Social Services, with the support of UNICEF, UNMISSET has held several training sessions for up to 45 DSS staff, Child Protection Network members and in some cases district and sub-district administrators and NGOs on the CRC, child rights including specifically the girl-child, and CRC reporting which was also assisted by the Foreign Ministry.

227. In March 2003, the OPE supported by UNICEF organized training on the CEDAW Convention for its own staff and several representatives from women's NGOs such as Fokupers, Caucus and the IRC. In total, 12 participants received initial training on the history and background to CEDAW; discrimination towards women; State obligations and special measures to

accelerate *de facto* equality between women and men; the OP-CEDAW as well as state party and shadow reporting.

228. In April 2005, the OPE funded by UNDP HURIST, organized ministerial workshops, to introduce gender and human rights focal points from nine government ministries to the CEDAW treaty reporting process and Convention. This training was further supplemented in July 2005 by socialization workshops for individual ministries on the CEDAW principles of non-discrimination and substantive equality in addition to seven dialogues on substantive areas of the Convention. District gender and human rights focal points from Government, in addition to NGOs and civil society, received similar instruction during this period. This training is described further in the section on *Non-Governmental Organizations* below.

#### *Advanced human rights training for Parliamentarians*

229. In terms of training for Parliamentarians, it is understood that the UNMISSET HRU and UNDP were most active. During 2004, four human rights seminars were conducted for 66 members of parliament on the principles of good governance and human rights analysis of draft legislation. This was also followed by a series of workshops on civil, political, economic, social and cultural rights as well as human rights analysis of legislation for 55 National Parliament Members in April 2004. In March 2005 another program for Committee A of the Parliament was conducted jointly by HRU and UNDP focusing on the parliament's role in treaty reporting, strengthening institutional mechanisms for human rights, and gender analysis of budget proposals. One outcome of this particular program was the establishment of the Sub-Commission on Human Rights within Committee A, which it is understood can also receive complaints from the public. It is unclear if any complaints have been filed or any specific actions taken.
230. Recognising the need to strengthen Parliament to ensure effective operation on matters within its competence, the Government of Timor-Leste advocated the placement of a UNOTIL Human Rights Officer to train and build the capacity of parliamentarians on the protection and promotion of rights specifically in its role of human rights analysis of draft legislation. At the time of writing, this position had not yet been filled.

#### *Training of law enforcement and legal actors*

231. In accordance with the clear need to strengthen the PNTL, particularly in matters of conduct and compliance with principles of human rights, the Government has taken strenuous efforts to support further education and training for members of the police. In July 2005, the Government launched a comprehensive training manual for the police with significant support from UNMISSET.

232. The PNTL In-Service Training Unit, in collaboration with the Office for the Promotion of Equality, UNFPA, UNICEF, UNPOL Technical and the Human Rights Unit of successive UN Missions, has also implemented many programs to educate law enforcement officers on the rights of suspects, respect for victims, and measures to enhance the behaviour and discipline of officers within the force. In May 2005, the OPE supported by UNFPA provided training for 50 Police Academy Cadets on the CEDAW Convention as part of larger training on domestic violence.
233. Human rights and gender awareness training has been provided to the Vulnerable People's Unit (VPU), Border Patrol Unit (BPU), Rapid Intervention Unit (UIR: *Unidade Intervensaun Rapido*), Police Reserve Unit (PRU) Community Policing Unit (CPU), the Strategic Planning Unit and police officers at district levels. By May 2005, 15 human rights training programs (including two 'Train the Trainer' programs) for new PNTL recruits, and four separate trainings each for CPU and UIR, three for the Vulnerable Persons Unit (VPU) and two for BPU had been conducted both in Dili and the districts<sup>130</sup>.
234. Whilst still in its infancy the Judicial Training Centre also conducts one-day training on international human rights law as part of its training program for Judges, Prosecutors, and Public defenders as do UN Agencies and Advocats Sans Frontiers. The latter organizations have also undertaken workshops with private lawyers on key issues such as child and women's rights and the rights of persons in detention.

#### *Non Governmental Organizations*

235. NGO representatives are always invited and have often benefited from human rights trainings and workshops conducted by government offices, both nationally and in the districts. Indeed, NGO and government agencies such as PNTL sometimes collaborate to provide staff training.
236. The Government has a particularly strong relationship with NGOs in this regard as evidenced by NGO active participation in activities for the development of the National Plan of Action and human rights related trainings and activities conducted by the OPE.
237. In recent years, the OPE, has conducted extensive outreach, CEDAW awareness-raising, and basic gender awareness training for local government. NGOs and women's organizations such as OPMT, OMT, Fokupers, Caucus, Rede Feto, JSMP, FKSH, the Alola Foundation and Terras e Propriedades (Land and Property) as well as leaders from Church groups, *Chefes do Suco*, youth and community groups, UN Agencies, the PNTL and representatives

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130 Human Rights Unit, UNMISSET Submission 30 May 2005.

from the media. Much of this training has been delivered in collaboration with the UNIFEM CEDAW SEA Programme.

238. The primary intention of these workshops has been to bring together key stakeholders working towards the realization of gender equality in Timor Leste, to 'brainstorm' current issues relating to discrimination against women, as well as to identify strategies to achieve the *de facto* realization of women's rights.
239. The level of interest and participation of both women and men in these CEDAW initiatives has been high and has often yielded considered input and feedback from participants, which has been incorporated in the government reports.
240. All participants have consistently called upon the OPE to provide further training on the CEDAW Convention, particularly at the district and sub-district levels. Further information on these trainings is provided in the CEDAW Specific Document.
241. The Human Rights Unit of successive UN Missions has also conducted as many as 35 human rights capacity building programs for NGOs and the Media as well as government agencies at the national and district levels. Most of the programs were funded by the OHCHR Technical Cooperation Project and have a series of national programs on Training of Trainers in 2003-2005 that focused specifically on the rights of the child, women and persons suffering from mental health problems for human rights defenders from all districts. The objective of these trainings has been to create a nationwide human resource base for human rights as well as training, monitoring human rights and setting up of a human rights database.

#### *Human Rights in Schools*

242. Human rights education is a component of both teacher training and school curricula. However, although human rights is a component of the junior high school curricula that should be delivered once a week for one hour, currently only teachers have received training.
243. In 2002, the Ministry of Education and Youth established a teacher training centre that includes a three-part training program to cover: methodology paths, physics and chemistry, and social issues. Training is delivered in collaboration with key civil society organizations including UNICEF, the Human Rights Unit of the UN Missions, Timor-Aid and others. The Human Rights Unit of UNMISSET, for example, conducted 6 teacher-training workshops for 300 teachers in 9 districts on child rights and physical punishment as a form of discipline in schools. The Unit also conducted four-training sessions for groups including school students and teachers on the question of torture, gender-based violence, child rights and economic, social and cultural rights.

244. *The issue of child rights has also been specifically incorporated into the '100 Friendly Schools' project implemented by the Ministry of Education and Youth with the support of UNICEF, specifically involving District Superintendents and primary school teachers.*
245. *The Government has yet to elaborate the human rights component of the school curriculum but has recently turned its attention to this activity. It is hoped that, with the support of a UN Human Rights Officer that such program can be elaborated before the end of 2006.*

### *Gender Awareness Education*

246. *On gender-awareness education, the OPE is working alongside the Ministry of Education, Culture, Youth and Sport to include gender and civic education in the school curriculum. The OPE regularly distributes its information bulletin (1000 bulletins every quarter) to schools and universities and is currently working in conjunction with UNDP to produce a manual for teachers, specifically to increase awareness of gender issues. The Office also distributes brochures, pamphlets and posters on gender equality to all districts, sub-districts and virtually all schools, though some schools have not yet received these materials due to the financial limitations of the Office to publish the requisite amount of materials.*
247. *The OPE has also conducted gender awareness education, on an ad-hoc basis, at the request of schools for students in the Baucau, Lautem and Venilale districts at pre-secondary and secondary levels. This training has mainly taken the form of 'question and answer' sessions.*
248. *In 2005, UNIFEM, under its CEDAW SEA Programmed, created the 'CEDAW Performing Arts Group Project', whereby a group of 12 young people called 'Kuda Talin' studied the CEDAW Convention and developed a repertoire of dances and drama sketches to explain its substantive articles to both literate and non-literate audiences in urban and rural areas of the country. The training of this group took place in a space without walls, so many local families have had the opportunity to watch performances on subjects such as domestic violence. Often, the spectators responded to the domestic violence dance with laughter, in large part because they felt uncomfortable with the topic. To date, the main recipients of these performances have been children, youth groups and local communities in addition to members of the PNTL. The OPE plans to use this performance group at further trainings on CEDAW.*
249. *Various educational activities have been proposed to raise teacher and student awareness of human rights principles. As these are currently more ad hoc as opposed to systematic, institutionalized activities, detailed information on the nature, extent and success of human rights education programs provided to teachers including the emphasis placed on specific issues such as gender, racial and religious tolerance, or the rights of disabled persons, is currently unknown. It is hoped that more concrete information will be available in coming reports.*

## Media and Public Information Campaigns

250. The combined effects of — historical under-development of physical media infrastructure; geographical isolation of many communities (whether for print media distribution, or radio/ TV reception); comparative lack of broadcasting skills; high rates of illiteracy; the effects of poverty within the household and its role in limiting access to media services; and, the absence of a legal framework to regulate the media — have presented significant obstacles to information dissemination mechanisms and media institutions in Timor-Leste.
251. Nevertheless, despite the challenges, media and public information Institutions are plentiful in Timor-Leste with radio and print media providing an essential means of communication for the nation. According to an Asia Foundation Report of 2001, the most widely accessible medium is radio to which 60 percent of people listen. The dominant languages of communication in the media are Tetum and Bahasa Indonesia: between 76 percent and 99 percent of the audience can understand these languages, where Portuguese ranks a distant third (18 percent -23 percent) and English last (4 percent -6 percent)<sup>131</sup>.
252. The key challenges for future development of the media in Timor-Leste are many:
- economic viability within a very difficult economy;
  - overcoming continued gaps, in technical expertise, know-how and equipment maintenance;
  - practising accurate and balanced analytical reporting on political events and processes including reporting on government accountability, Parliament, and the judicial system;
  - ensuring that national news reaches the districts and regional news with national import makes its way back to the Capital;<sup>132</sup> and
  - the exercise of freedom of speech within the context of proposed new penal provisions on defamation, particularly as related to political and religious leaders and government authorities.
253. Radio and television operations in Timor-Leste are supervised by the National Broadcasting Committee, whose membership includes government representatives, media professionals, and representatives of civil society.

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131 UNDP Timor-Leste, Human Development Report, 2006, p46.

132 Internews Final Evaluation Report, April 2005.

254. A state owned television, Televisaun Timor-Leste (TVTL) and one state owned radio station, Radio Timor-Leste (RTL), currently operate in Timor-Leste, both of which were initially operated by the Office of Public Information, UNTAET and subsequently handed over to the Government on independence. These institutions now operate under the Directorate of Radio and Television, Timor-Leste<sup>133</sup>. Although only eight percent of people live in household that have their own TV sets, more than one-fifth of the population – in Dili and surrounding *sucos* – have access to TVTL<sup>134</sup>.
255. During the UN Administration, Radio UNTAET was broadcast in four languages - English, Tetum, Portuguese and Indonesian. This continued for sometime after the hand over but today it broadcasts in Tetum and Portuguese with the news also broadcast in Bahasa Indonesia. TVTL, on the other hand, is only broadcast in Tetum, and more recently Portuguese, and is received in limited areas. It does not reach all districts though, even if it did, the intermittent nature of electricity in most parts of the country would likely undermine the practical enjoyment of this form of media. Although RTL has considerably wider reception, it is also not received in many remote villages across the country<sup>135</sup>.

### *Independent media*

256. Following the popular consultation in 1999, there was only one radio station with broadcasting capacity in Timor-Leste, Radio Timor Kmanek (RTK). The infrastructure for all other radio stations was destroyed. RTK was run by the Catholic Church and enjoyed wide reception throughout the country, including in the enclave of Oecusse.
257. Since 2000, and in addition to the state-run radio, many new independent radio stations have been established. There are now 18 radio stations in Timor-Leste – 1 national broadcaster - RTL, and 17 community radio stations, 6 in Dili and 11 in the districts. Among those, based in Dili, are:
- *Radio Falintil, Vôz da Esperança* - privately owned, reliant on donor funding with news, public information, entertainment and advertisements as among its programs. It broadcasts in Tetum, Portuguese and Bahasa Indonesia.
  - *Radio RAMKABIAN* - established with the assistance of Australian NGO, APHEDA. This started as a mobile station, broadcasting mainly in the areas where other Dili-based radio stations cannot be received. It produces news,

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133 This Directorate is part of the Public Broadcasting Service, which is an independent statutory body that responds to the Parliament.

134 Asia Foundation, “*East Timor National Survey of Voter Knowledge*”, (2001), p58.

135 The districts of Baucau, Manatuto and Lospalos noted the inability of RTL reception in remote villages.

information packages from NGOs, and entertainment in Dili to be broadcast to remote areas. It sometimes relays national news produced by RTL. RAMKABIAN broadcasts mainly in Tetum, although sometimes transmit news in local dialects where deemed necessary.

- *Radio Loriko Lian* – began as a mobile station run by a consortium of NGOs and youth organisations. It was established to disseminate NGO information to the population in remote areas. However, due to funding shortages, it is currently broadcasting from Dili, and is received only in the capital. At the time of writing, the UNIFEM CEDAW SEA Programme was providing support to this station to develop a two-part documentary on CEDAW.
- *Radio Klibur*; broadcast from Dili with limited reception elsewhere in Timor-Leste.
- *Radio Voice*; run by the Christian Church primarily broadcasting religious teachings.

258. Most of these new radio stations were established with donor funding and are reliant on this funding for continued operation.

259. Community radio stations across the country broadcast a range of social programs. The 'Timor Murak' was established in September 2003 by a group of small voluntary radio stations and has a particular focus on the rights of adolescent girls and a community based research (involving three community radio stations). '*Labarik Nia Lian*' ('Voices of Children') has three stations and conducts research seeking to identify local issues affecting children. Various radio broadcasts of drama, talk shows and interviews have also been launched in Bobonaro, Liquiça and Lospalos in 2004. Community radio has very limited coverage but is broadcast both in local languages as well as Tetum.

260. Community radio is heavily reliant on donor assistance for survival. In 2001, the World Bank's Community Empowerment Project (CEP) and USAID established twelve community radio stations. Regrettably, due to various problems, most often related to financial shortcomings, most of these community radios have now ceased operations and only five CEP funded radio stations are currently in operation, Lospalos, Liquiça (Radio Tokodede), Viqueque, Maliana, and Oecusse.

### *Print media*

261. Print media in Timor-Leste has experienced its highs and lows. It began to flourish in early 2000. While some of these publications existed during Indonesian time, many of them were new. There has been a further increase in print media in Timor-Leste. Despite limited readership, there are now a considerable number of newspapers, bulletins, tabloids and journals published

on daily, weekly and monthly bases. Among the most prominent publications are: Timor Post, Suara Timor Lorosa'e (STL), Diario, and Diario Tempo. Publications cover a broad range of issues though politics and governance are predominant features.

262. Most newspapers are multilingual publications – often published in Tetum, Portuguese, Bahasa Indonesia and English. Few are published in only one language. Around 30% of the population has access to newspapers and 23% to magazines and newsletters<sup>136</sup>.
263. As with mass media, new print media organisations relied on donor funds for their operations, as limited readership and a lack of purchasing power on the part of the population meant that the print media agencies could not raise sufficient funds to support themselves. Donor funding was and continues to be required to cover journalists' salaries, printing and distribution of publications. Though it can be said also that, although the proportion of donor funding allocated to media development is decreasing, a considerable amount of donor funds are still pledged to the media<sup>137</sup>. Recently declining donor support has revealed that a significant proportion of mass and print media in Timor-Leste is not yet financially self-sustaining and risk closure of operations with the cessation of donor funds.
264. In January 2005, Internews in Timor-Leste organised a media review planning workshop that brought together 70 representatives of media and NGOs. The purpose of this workshop was to identify most of the critical areas for the development of media institutions as well as to identify strategies to build the role of media as an effective institution in a post conflict and newly developing democratic country. Media representatives in Timor-Leste identified a number of key themes that posed a risk to media institution in the country. Overall, it was determined that the media sector required: maturity as well as strengthened financial viability and technical competency to ensure their long-term sustainability; institutional development; media monitoring; media law; and, capacity to operate within an enabling environment<sup>138</sup>.

### *Media and human rights*

265. Almost all radio stations, television and print media dedicate specific time and space to the dissemination of information and debate of human rights issues. Many NGOs invariably signed agreements with the media to facilitate the publication of their human rights programs.

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136 Asia Foundation, "East Timor National Survey of Voter Knowledge", (2001), p58.

137 Example: in 2004, the Finnish Embassy in Jakarta (accredited for TL) allocated 24,000 euro to support Suara Timor Lorosa'e.

138 Internews Final Evaluation Report, April 2005.

266. Due to the high illiteracy rate electronic media plays an important role in reaching the public. Electronic coverage can be problematic due to the intermittent electricity supply but, overall, it is evident that people rely on community radio and the diligence of the local government and civil society to disseminate information, including information on human rights.
267. *Programs published both in print media as well as electronic media cover a broad range of human rights issues pertinent to the Timorese context such as child and women's rights, freedom of expression, procedural guarantees, political participation, and the vast and diverse aspects of poverty reduction – a particularly topical matter for a majority of East Timorese.*
268. Among the radio media, RTK and RTL dedicate a considerable amount of airtime to regularly cover women and children's issues. Funding from OHCHR and UNMISSET PIO has also enabled the HRU of UNMISSET/UNOTIL to deliver approximately 100 one-hour programs on human rights issues such as rights of women, violence against women including domestic violence and sexual exploitation for commercial purposes, child protection, and human rights in policing. The Office of Promotion of Equality, supported by the Gender Affairs Unit of UNMISSET, also took part in a series of debates on the role of women in *suco* elections in 2005, which were broadcast by RTL.
269. *In 2003, the OPE also carried out an initial two-day training workshop with the Media Monitoring Unit (MMU) of Internews, a news agency based in Dili, on media and gender and, in particular, on how women's rights could be better addressed in the media. The OPE asked the MMU to undertake an analysis of the way in which women are portrayed in Dili's leading newspapers and radio stations. Using a specific monitoring template, they analyzed stories from two newspapers and two Dili-based stations over a two-week period. The results from the analysis of the radio programs and print media demonstrated that there were few stories about women in the media and where these stories did appear, they did not give voice to a wide cross-section of women, who were more often than not portrayed as victims or in stereotypical roles.<sup>139</sup> This media treatment of women is discussed further in the CEDAW Specific Document.*
270. As a follow on from this initial gender training given by the OPE, journalists from Internews subsequently undertook a project in 2005 commissioned by the Office entitled 'Feto Buka Dalen', a national radio series outlining the progress and challenges of women in Timor Leste since independence. In all, 12 twenty-minute programs were produced on areas covered by the CEDAW Convention such as health, education, employment and women's access to justice, including an introductory program on CEDAW and treaty reporting. Women from all walks of life were interviewed on their knowledge and experience of these issues and these programs were broadcast in Tetum by 16 community radio stations in four regions, Viqueque, Los Palos, Maliana and Alieu.

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139 Internews Media Monitors Deliver on Gender Balance' (2004)

271. An evaluation of this project yielded interesting feedback. Of 400 survey participants, 289 (72 percent) actually listened to the program. Of these 289 listeners, 159 (55 percent) listened to all the programs, 211 (73 percent) found the information clear and easy to understand, and 257 (89 percent) asked for the program to continue. Of the comments received on the programs, just over one fifth of those surveyed said the programs “improved education for the community”, “encouraged women to be independent”, that the sources used were “credible and knowledgeable about gender issues”, and would “encourage women to participate in the country’s development”.
272. *The OPE has been very active in using the media to promote gender and women’s rights, in addition to raising awareness about violence against women. For example the Office supports an annual competition called ‘Buka Hatene’ or ‘Search for Knowledge’ started in 2003, whereby secondary school children participate in a televised quiz on gender issues and the winning team presented with the ‘Micato Cup’ named after the current Advisor to the Prime Minister on the Promotion of Equality.*
273. *At the time of writing, the OPE, in conjunction with the UNIFEM CEDAW SEA Programme plans to provide support to one of the community radio stations, Radio Loriko Lian, to develop a two-part documentary on CEDAW. This will include interviews with the community on areas covered in the Convention and will include a recording of a performance of the CEDAW dance group. This documentary will then be broadcast throughout Timor Leste, thus increasing the awareness of CEDAW at a grass roots level.*
274. As mentioned above, some NGOs are active in the publication of human rights materials. For example: “*Lafaek*”, a Ministry of Education/Care International publication on the rights of children and “*Babadok*”, a monthly newsletter produced by Fokupers, a national women’s NGO. Currently, there are considerably fewer publications of materials on the rights of other vulnerable groups including refugees, elderly or disabled persons though there is a general openness on the part of the media to engage with vulnerable and minority groups.

## **Civil Society**

275. Timor-Leste has a long history of citizens’ participation in political life. Indeed, the struggle for independence was sustained largely through the mobilization of an active and critical mass of Timorese.
276. International intervention during the crisis in late 1999, the political transition to full Timorese self-governance, and current development processes in the country have, in many cases, clearly benefited from the active participation of civil society. In the period following independence, there was a rapid growth of NGOs in Timor-Leste with several hundred civic organisations<sup>140</sup> having

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140 As at December 2002, 366 national and 128 international NGOs were registered with NGO Forum.

registered with Timor-Leste's NGO Forum. Registration was, however, not founded upon any specific set of criteria and many civic organisations were able to register irrespective of their nature and function. As registration was unregulated, the flood of registration resulted in an increase of NGOs without a specific focus. This unregulated flood of the civil society sector has undermined the once privileged position that NGOs previously enjoyed. Historically, civil society comprised a cohesive and committed membership of youth, church related, and women's organisations that collectively played three distinct functions: charity, advocacy and community development.

277. Despite the initial flood after independence, the number of NGOs in operation in Timor-Leste since 2002 has declined in the past three years. As of December 2005, 316 national NGOs and 77 international NGOs are defined as being active in Timor-Leste. The declining number of NGOs are said to be caused by lack of financial stability, change of focus from non-profit to profitable organisations, change of leadership following recruitment to the civil service, policies of UN agencies, lack of donor support and management issues<sup>141</sup>. Nevertheless, NGOs are active all over the country including on the island of Atauro.
278. A new law on civil society organisations, Law 2005/5 on Non-Profit-Making Corporate Bodies, entered into force in 2005 and requires entities to register themselves as civil society organisations though many NGOs have yet to register.

#### *Civil society activities*

279. Civil society in Timor-Leste has adopted a wealth of functions and activities throughout the country. In the formative years of the newly independent nation, civil society was especially active in civic education for the elections of the Constituent Assembly in 2001 and Presidential elections in 2002, as well as in the provision of comments and recommendations on the draft Constitution and draft regulations formulated by the UN Transitional Administration.
280. Currently, civil society has taken on a broader development focus. International NGOs tend to operate in areas of: food security; nutrition; community rehabilitation; education; human rights; vocational training; English language; youth activities; advocacy; medicine; legal aid; water and sanitation; gender awareness; conflict transformation and teaching tolerance; community-based health care; income generation activities; land use planning, and others<sup>142</sup>. National NGOs are most prominent in areas such as: agriculture, education, health, economy, water and sanitation, children, and media<sup>143</sup>, highlighting the

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141 NGO Forum January – December 2005 Report. During the NGO Forum Annual General Meeting 2005, a survey of active NGOs was conducted and efforts undertaken to identify the reasons for disbandment.

142 "Timor-Leste: Local Government and Civil Society Sector Investment Program", April 2005, p6.

143 "Timor-Leste: Local Government and Civil Society Sector Investment Program", April 2005, p5.

significant reliance of the national population on international assistance and support.

281. NGOs have and continue to play an important role in monitoring and reporting human rights violations in Timor-Leste, with human rights NGOs working in almost all areas where there is potential for human rights violations. They monitor court proceedings, police conduct, and less often monitor prison conditions, as well as contributing research to policy and program development in Timor-Leste.
282. Methods of NGO intervention range from service delivery, monitoring, advocacy and assistance in policy and program formation to the implementation of development activities at the grass roots level. In contrast to local government which is still struggling to establish operational capacity, civil society organizations have played an active role in local service provision in a range of areas with about 10 percent of the donor-funded development and technical assistance that has been received by Timor-Leste – equal to about \$80 million – channeled through NGOs, primarily for programs aimed at local groups and communities<sup>144</sup>.

#### *Women's civil society organizations*

#### 283. National Congresses

In recent years, women's regional and national congresses have played an important role in bringing together women to discuss a wide range of issues affecting their daily lives. In June 2000, the First National Women's Congress took place in Dili, with over 500 women from all over Timor-Leste in attendance. At this Congress, a Plan of Action was adopted, which recommended, *inter alia*, that women should participate in national institutions and the national decision-making processes; training programmes to encourage women's participation in political life should be conducted; a policy of a minimum 30% representation of women in the transitional government should be adopted; and, that discrimination against women is a major problem in Timor-Leste and therefore campaigns highlighting this issue should be carried out. The Second Women's Congress in 2004 also made similar recommendations in that women continued to be under-represented in political life and that further capacity building for women is needed. The women participating in the 2004 Congress called for a 50 percent representation in Government.

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144 "Timor-Leste: Local Government and Civil Society Sector Investment Program", April 2005, piv.

## 284. Women's NGOs

The Rede Feto Timor Lorosae or 'women's network in Timor-Leste' was founded in March 2000 as an 'umbrella' organization for some 15 women's organizations, mostly based in the capital. This organization and other women's groups advocate on behalf of Timorese women in areas such as literacy, gender-based violence, health care, development of skills and economic empowerment in addition to participation in public life. These organizations have been successful in both awareness-raising activities on the issues that affect women in the country and campaigning on various legislation, such as the introduction of a new domestic violence law and the development of the national Penal Code.

### *Relations between Government and Civil Society*

285. The Government believes that NGOs play an important role in national life and their contribution to national development is very much recognised. The Government understands the value of non-intervention and respect for the independence of civil society organisations, enabling so far as possible, the necessary conditions for this to occur.

286. There are many examples of strong and collaborative alliances between Government and civil society, managed through cooperative planning and service delivery, consultations, workshops and meetings on issues of mutual interest. This is particularly true at local government level where partnerships are often forged in fields such as health care<sup>145</sup>, education<sup>146</sup>, water and sanitation<sup>147</sup>, and reconstruction. As outlined earlier in this document, the OPE has enjoyed a good working relationship with women's organizations as illustrated by its collaboration with the women's network, Rede Feto, in their campaign to ensure the recognition of women as resistance veterans.

287. Not surprisingly Government and NGOs have found it difficult to collaborate in some areas due to differences in priorities or approach. For example, the State perceives emphasis on strengthening and consolidating State institutions as critical in the early stages of development, a perspective not necessary shared by NGOs. Conceived from a tradition of civic political participation under oppression, civil society organisations in Timor-Leste, on occasion take a confrontational approach towards the State<sup>148</sup>. They argue that the State is

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145 For example, Baucau, Ermera and Dili evidenced particularly strong partnerships in area of health service, working with Caritas Australia, Congregations Sister CIY and Alola Foundation.

146 For example, Manatuto and Oecusse districts evidenced strong partnerships in field of education and language training.

147 Covalima was one example in which local government has developed a strong relationship with CWSSP.

148 An important feature of the relationship between civil society and those occupying positions of authority in various branches of the government structure is that both share the same history, the struggle for independence. This history has provided a great opportunity for critical cooperation and common progress. However, it also presents a particular challenge in the dynamic between civil society organisations and the state. Whilst, at one point in the country's history, they fought side by side against a common enemy, the current

failing to respond to social concerns with a disproportionate focus on institutional strengthening and a non-participatory approach to development.

288. The Government considers has been active in consulting civil society and the public on legislative and policy proposals including for example, the development of the Constitution, Timor Sea legislation<sup>149</sup>, the Civil Service Act<sup>150</sup> and the Immoveable Property Law<sup>151</sup>, a point affirmed during regional workshops for the development of these reports. The Government is also reluctant to respond to complaints that it views as clearly unsubstantiated, as often occurs with allegations of corruption.
289. While cognisant of the important role of civil society and NGOs in Timor-Leste, the Government would like to see increased transparency and accountability on the part of NGOs themselves. Indeed, the Government is of the view that some NGOs do not try to coordinate with other agencies, particularly government departments nor do they sufficiently disclose the scope of their activities and the use that they make of the funds received<sup>152</sup>. To this end, the Government welcomes and is supportive of any measures to strengthen the effectiveness of civil society and NGO advocacy in rights implementation through, for example, improved monitoring and reporting mechanisms. That said, the Government recognises also that the ability for NGO initiatives to be effective, for example: in areas of development or countering and deterring human rights violations also depends upon the willingness of the Government to engage with civil society and the effective functioning of the relevant state apparatus<sup>153</sup>.

## Human Rights and Development

290. Drawn in 2002, Timor-Leste's first National Development Plan (NDP) provides a five-year road map for the development of the country with a vision for the next twenty years. The vision of the people of Timor-Leste to the year 2020 ('Vision 2020'), captured through the countrywide consultation with civil society, has strong links to the Millennium Development Goals (MDGs) and the Millennium Declaration. The NDP internalized most of the MDGs in its overall and sectoral objectives. The twin objectives of the NDP – to reduce poverty in

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reality is different such that, civil society now represents a check and balance as compared with previously collaborative relationships. Differing priorities dictate diverging paths in development and on occasion result in conflicting interests.

149 During the formulation of Petroleum Revenue Act, the Timor Sea Office within the Prime Minister's Office conducted a broad consultation, not only involving civil society organisations, but also the community at large. Further submissions were then invited from civil society organisations working in the relevant areas.

150 Law number 8/2004 on the Statute of the Civil Service

151 Law No. 1/2003 Juridical Regime for Real Estate.

152 "Timor-Leste: Local Government and Civil Society Sector Investment Program", April 2005, p7. The need for NGOs to be more focused and work more collaboratively with Government and specifically police to ensure the right of victims and suspects to privacy was also reflect in Oecusse, Covalima, and Manatuto during regional focus group discussions conducted between March and July 2005.

153 NGOs such as JSMP, Yayasan Hak, Network for Human Rights Monitoring have echoed concerns about the ineffectiveness of the judiciary and weaknesses in the oversight mechanisms for the police for example.

all sectors and regions of the nation, and promote economic growth that is equitable and sustainable, improving the health, education, and well being of everyone in Timor-Leste – resonate in many ways the MDGs and human development. The Government has made a concerted effort to strengthen links between policy formulation and programmes to achieve Goal 1, i.e. poverty reduction, improve capacities to translate these objectives into annual budgetary allocations, and strengthen capacities to give clear guidance to Development Partners regarding priorities for assistance. The Government of Timor-Leste and the United Nations Country Team organized the first MDG Workshop in Dili in March 2003 where the Prime Minister launched a popular version of the Poverty Assessment entitled Timor-Leste: The Way We Are Now. This was the outcome of the first national Poverty Assessment carried out in close co-operation with four development partners – the World Bank, the Asian Development Bank, UNDP and JICA.

291. The vision of Timor-Leste to 2020 is a stable, responsible, democratic nation based on the rule of law and free from corruption. It will be a prosperous society characterized by a vibrant traditional culture in which everyone shall enjoy adequate food, shelter and clothing. Living standards, services, production and employment will have increased in all sectors and income will be fairly distributed. People will be literate, knowledgeable, skilled and able to live long, productive and healthy lives. Communities will live in safety without discrimination and people will enjoy opportunities to actively participate in economic, social and political development that promotes social equality and national unity.
292. Alongside these over-riding objectives, the NDP proposes a series of corollary goals and development targets (quantitative and qualitative indicators) to advance Timor-Leste's development vision in the next 5 years. Among those goals, and whilst all inter-connected, the following accord directly with the nation's human rights commitments:<sup>154</sup>
- improving the education, health and nutritional status of the people of Timor-Leste;
  - promoting gender equality and the empowerment of women;
  - improving the economic, social and cultural well being of individuals, families and communities in Timor-Leste;
  - ensuring equal opportunities to obtain work and effective utilization of labour;
  - reduce poverty for all in a regionally balanced manner;
  - establishing a social safety net to reduce the burden on those in society who are unable to work/help themselves;
  - developing and administering an effective, accessible and impartial system of justice, which is prompt and transparent, and in conformity with the positive values and cultural heritage of Timor-Leste;

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<sup>154</sup> National Development Plan 2002, para 2.13-2.14.

- strengthening an already robust civil society;
  - enhancing the participation of citizens in public and national affairs; and
  - fostering a culture of respect for human rights (particularly for women, children and other vulnerable groups, including the poor) and the rule of law;
  - fostering a robust multiparty democratic system complete with robust check and balances, separation of powers.
293. The attainment of each of these goals and visions must be premised on principles of participation, non-discrimination and equality, gender equality, integration of vulnerable groups, rule of law and democracy; as well as respect for, and preservation of, the values and culture of the various groups comprising East Timorese society cultural, religious or otherwise.
294. Throughout the NDP, one can see the five core principles of a rights-based approach to development planning - accountability, participation, non-discrimination and attention to vulnerable groups, interdependence and universality.
295. The inclusive and participatory extent of the process to prepare the Plan is unique, particularly for an incipient developing country such as this. It is processes such as this that are essential to building confidence and capacity among East Timorese, Government officials, civil society organisations and communities. For Timor-Leste the NDP, belongs to them reflecting their values, needs, ideas, aspirations and priorities.
296. The Government has made concerted efforts to meet the gender specific MDGs, including goal three: to promote gender equality and empower women, and goal five: to improve maternal health. Two prominent examples are in the areas of education and health. For instance, the Ministry of Education is currently compiling sex-disaggregated data on enrolment, dropout and completion rates in schools and is already implementing the National Reproductive Health Strategy. Although the remaining gender specific MDGs are yet to be engendered and sufficiently adapted to reflect local needs, the Advisor to the Prime Minister on the Promotion of Equality has taken a permanent seat on each of the Sector Working Groups to ensure that gender is mainstreamed in the development and implementation of the SIPs.

#### *Rights-based indicators for development*

297. Drawing much from the MDGs, the NDP and its goals envision a rights-based approach to development to be guided and measured by a distinct set of development indicators. The key development indicators identified in the NDP are directly associated to those presented in the global MDGs, thus demonstrating a desire to harmonise the NDP with Timor-Leste's commitment to the MDGs. It also implies that successful implementation of the NDP means

successful fulfilment of the MDGs. Many of these indicators and benchmarks correspond directly also with the Government's human rights obligations thereby creating the necessary framework for rights-based development and the progressive realization of economic, social and cultural rights to be measured.

298. Designed to measure progress towards the realisation of the nation's goals, the development indicators are grouped according to four key areas: economic, social, security, and empowerment. Importantly, gender equality is woven throughout.
299. Economic indicators include the incidence of poverty, income growth (aggregate and per capita GDP), inequality in income distribution, labour force participation and employment. Social indicators include food availability, access to and use of education, health, access to safe drinking water and basic sanitation. Rates of primary schooling completion, adult literacy, walking distance to nearest primary school, life expectancy, maternal and infant mortality, walking distance to nearest housing facility, and housing provision are specific examples of measures to be taken. Security indicators include personal and food security as well as security from shocks and disasters. Empowerment indicators include the number of voluntary people's associations and group participation, voting in elections; rates of youth participation in social/cultural organizations, as well as indicators of gender equity and empowerment of women identified through level of representation in key institutions<sup>155</sup>. (Annex 2.1 of the NDP refers)

#### *Sector Investment Programs and Annual Action Plans*

300. Importantly the NDP must not be viewed in isolation and continues to be subject to revision and improvement. The NDP must be read with its complementary components which currently include Sector Investment Programs (SIPs) and Annual Action Plans (AAPs). Where the NDP is found wanting of specificity or the prescription necessary to ensure fulfilment of the Government's human rights commitments, these can for the most part be found in the package of SIPs and AAPs annually reviewed by the Government of Timor-Leste. The SIPs present the Government's medium term strategies for the realisation of the goals and visions of the NDP, whereas the AAPs are the annual budget plans for the execution of the SIPs. The SIPs provide the Government and the donor community with a clearly articulated set of priorities and development programmes for each sector and contribute toward achieving the MDGs. In order to best identify priorities in each respective SIP, the Government has established 'Sector Working Groups', of which 3 participants are permanent members, namely, the Office of Promotion of Equality, the Ministry of Foreign Affairs and Cooperation and the Ministry of Finance and Planning.

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<sup>155</sup> National Development Plan 2002, para 2.16 and Annex 2.1 refer.

301. Practical mechanisms for improved education service delivery and progress towards improved health standards in Timor-Leste are among the most prominent rights-based features of the SIPs package. Specifically, for example, the right to education is to be realised through free basic education by 2015<sup>156</sup>, easier access to education through establishment of one primary school in each *suco* (village). And education is to be based on principles of *inter alia*, equity and accessibility of services, particularly with respect to gender, the poor, rural and ethnic communities and other disadvantaged sectors of society<sup>157</sup>, in accordance with rights-based development which prioritises attention to the most vulnerable groups in society.
302. To achieve the highest attainable standards of health, health services are currently provided for free and a package of policies to improve maternal and child health and to provide cost effective interventions to prevent, control or treat problems causing the highest burden of disease in the country has been developed. The SIP on HealthCare expressly recognises that the Ministry of Health cannot alone address the causes, the determinants of health but that education, income, housing, food water and sanitation are among those other critical determinations reflecting the need for a multi-sectoral approach, clearly reflecting the principle universality.
303. In justice, whilst development of the legal framework and rule of law is rightly prioritised and central to justice sector development, the rights-based approach is also reflected in the vast range of policies to improve justice sector delivery as well as strengthening of oversight and accountability mechanisms.
304. The Government has been working hard to draw linkages between budgeting and the NDP through Annual Action Plans developed by each agency (AAP). At this early stage, much work remains to be done to draw clear linkages between the budget allocations for specific ministerial programs and the State's human rights obligations. However, as with many development policies, budget allocations also reflect a sizeable rights-based allocation.
305. To take some examples, for the FY 2004-2005, education and health received 36.4 percent of the general state budget. Although this number declined to 32 percent in FY 2005/06, this remains a high percentage of the overall State's budget. 45 percent of the education budget is allocated for primary education as a means, among others, of promoting universal quality primary education.
306. In conformity with the Health Policy Framework, most health expenditure has been concentrated on primary and preventive care services at the districts level. Progress have been made in restoring basic infrastructure for immunization,

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<sup>156</sup> Defined as the first nine years of schooling.

<sup>157</sup> Timor-Leste: Education and Training Sector Investment Programme, April 2005, p12.

allowing the country to achieve 73 percent of immunization rate for diphtheria and pertussis, 72 percent immunization for tetanus and 70 percent for measles. The Ministry of Agriculture also allocated almost 65 percent of its 04/05 budget to programs and activities aimed to increase food production and to enhance the productivity of agriculture and livestock. The latter of which is crucial for the overall efforts to improve food security in the country.

307. These are but a few examples. Nevertheless, the technical capacity of existing planning and budget officers in Government's line Ministries must be vastly improved to enable rights-based budget analysis.

#### *Foreign aid in rights-based development*

308. The Government is currently unable to provide a holistic assessment of the extent to which donor assistance is supporting the realisation of its human rights commitments. What can be said, however, is that foreign aid (ODA) to date has provided considerable support to the rights-based fields of education, health, and agriculture with substantial provision also made for police training.
309. The Government has maintained a firm position that ODA should take close account of government's vision, goals, guiding principles, policies and allocated priorities between sectors as contained in the NDP and SIPs and to assist in the identification and formulation of future programs and projects of assistance<sup>158</sup>.
310. Overall, ODA in its various forms has funded the bulk of public expenditures since 1999 that necessarily has included substantial rights based initiatives. This trend has started to decline and will remain so in the remaining last two three years of the Plan. It is hoped that the donor community will continue to offer support primarily in the form of development and technical assistance. The current projections indicate that the steady decline in the level of development and technical assistance per capita will decline to about \$100 per capita from \$236 in the previous years.

### **Gender Mainstreaming**

#### *Setting*<sup>159</sup>

311. According to the provisional results of the 2004 census, there were a little more than 450,000 females in Timor-Leste as of July 2004 – equal to about half the population. Girls under the age of 18 probably number about 225,000 or about half the female population. There were about 120,000 women in the work force as of July 2004, accounting for about 41 percent of the total. Almost two-thirds of these women were employed in the farm sector, mainly in subsistence

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158 National Development Plan 2002, para 8.45(e).

159 Timor-Leste: Sector Investment Program, Rights, Justice and Equality, April 2005, p26.

agriculture, at very low levels of productivity. Within the non-farm sector, women account for about 45 percent of the work force of a little over 100,000 people.

312. Women's full participation in the nation building process requires full access to all social services, such as health and education. According to data presented in the National Development Plan, two-thirds of women from 15 – 60 years are illiterate and 20 percent of children enrolled in school rarely attend classes. Although there is no data on this matter, anecdotal evidence indicates that it is mostly girls who are withdrawn from school at an early stage to assist in subsistence farming and household chores.
313. Women are likely to receive less food than men and one third of women aged 15-49 are malnourished and suffer from chronic energy depletion<sup>160</sup>. Women also have poor health and their access to health services is limited. Women's health is strongly linked to their reproductive role. According to the Census 2004, Timor-Leste's fertility rate was 7.0 children per woman, among the highest in the world and far higher than other countries in South-East Asia. This reflects the lack of awareness of women's reproductive rights and access to family planning services and information. There are few facilities for pre-natal and post-natal care, as well as a shortage of skilled birth attendants. This has resulted in a high maternal mortality rate which, according to the Ministry of Health is as much as 800 maternal deaths for every 10,000 live births.

#### *Gender mainstreaming in all sectors of Government*

314. There is currently no national gender mainstreaming policy that has been approved by the Council of Ministers. There are also no sector specific gender policies at the time of writing. This stated, however, the Government has adopted a gender mainstreaming 'policy', which is outlined in the National Development Plan (NDP) that identified the promotion of gender equality through gender mainstreaming as a key strategy for poverty reduction. Gender equality is considered throughout the NDP, but especially in three key sectors, women's economic empowerment, education and health, where strategies, programs and performance indicators to measure gender equality are set out.
315. In 2003, the OPE was charged with developing a set of gender mainstreaming guidelines and devoted one of its four key program areas to promoting coordination and cooperation within central government to ensure mainstreaming of a gender perspective in all policy making, planning and implementation processes. It has emphasized the approach of building the capacity of different ministries to conduct gender analysis and develop individual programmes and policies, rather than leave the task of gender mainstreaming to one department such as the OPE. These set of guidelines

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160 Multiple Cluster Index Survey 2002, UNICEF 2003.

reaffirm that poverty reduction planning is the immediate priority, with agriculture, trade, education and health listed as key sectors where gender mainstreaming is central to effective planning.<sup>161</sup>

### *Strategy*

316. The strategy of the OPE for gender mainstreaming focuses on building the capacity in different government departments to integrate a gender perspective in their programs and policies. This entails the following:
- Creation of Gender Focal Points in the different ministries, who are organized into an Inter-Ministerial Working Group;
  - Provision of training activities for Gender Focal Points and key staff of ministries and other government departments;
  - Establishment of mechanisms and strengthening of key government departments to undertake crucial roles for gender mainstreaming, which can act as support structures, namely gender analysis of legislation, production of gender statistics and monitoring and evaluation of government planning exercises as well as a national trainers support group;
  - Coordination of the efforts undertaken in the different government departments to ensure that the approaches undertaken are in accordance with the national gender policy and the international instruments ratified by the government such as CEDAW.
317. As part of the program of work undertaken to implement the above strategies, the OPE held workshops during the 2003-2005 period and provided training on the concept of gender and equality for all ministries and departments, at a national and, to a lesser extent, at a local level, specifically targeting those officials who are responsible for programming and planning in the respective ministry or institution.
318. The Office also created an Inter-Ministerial Working Group of gender focal points and, with support from UNIFEM, conducted a five-day workshop in June 2004 to analyze gender in the 'Rights, Equality and Justice' Sector Investment Program (SIP). As a result of this workshop, the OPE identified several gaps that could hamper effective gender mainstreaming and made recommendations for action to the Government, which have been included in the updated version of the above-mentioned SIP (2005) as well as the Transition Support Programme III and Consolidation Support Program I coordinated by the World Bank. A summary of these recommendations is outlined later in this section.
319. The OPE has also created a 'Training Support Group', which has been the beneficiary of several trainings in the last two years and is now able to deliver training on gender concepts, including gender awareness, as well as gender

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149 Gabinete para a Promoção da Igualdade, 'Guia de Integração de Políticas de Género – Para uma Governação e Administração Públicas Eficazes', 2003.

analysis and gender responsive planning at government and civil society level. However, as yet, no formal evaluation has been carried out on the capacity to independently implement what has been learned in this training.

320. The Ministry of Labour and Community Reintegration has appointed one permanent gender focal point and developed an Action Plan for the Ministry that primarily attempts to address the gender imbalances within its staffing and human resource management. The appointment of this Gender Focal Point is a good example of increased leadership commitment to the promotion of gender equality. The Ministry of Agriculture, Forestry and Fisheries is also in the process of establishing a Gender Unit, having recently appointed one full-time Gender Focal Point.
321. At the time of writing, the OPE is recruiting Gender Advisors for two ministries - Education and Health. The advisors will conduct a gender assessment of these sectors, as well as establishing a stronger gender focal point system and developing specific gender policies for these sectors.
322. The OPE has provided advice in discussions to develop a gender mainstreaming strategy for the PNTL. This strategy would aim to address gender imbalances within the PNTL, as well as engendering some of its crucial programs, such as police responsiveness to women and community policing.
323. After this first phase of awareness raising activities, OPE has turned its attention more squarely on promoting mechanisms in different government departments to help the Government face the challenges of gender mainstreaming as well as fulfilling some of the basic pre-requisites for effective gender mainstreaming. As part of this effort, a stronger relationship has been forged with the National Directorate of Planning and Coordination of External Assistance (NDPEAC). Planning Officers of this directorate have been increasingly able to monitor the engendering of Annual Action Plans (which did not previously contain specific policies for the promotion of gender equality) and other planning exercises (such as the SIPs) within government departments. In coordination with NDPEAC, the OPE has also developed 'gender checklists' for priority sectors to complement its gender mainstreaming guidelines. These instruments are being introduced into the planning branches of the different ministries and are currently being developed and tested through a participatory process. They are also being translated into Tetum.

#### *Gender budgeting*

324. The OPE has conducted several training sessions with the 'Training Support Group', Gender Focal Points and senior staff in the Ministry of Finance and Planning throughout 2003/04, with the aim to improve capacity to analyze budgets and policies from a gender perspective and to integrate gender into policy development. To date, most resources for gender mainstreaming have

been committed by donor organizations. Further support, in terms of sufficient resources (consultants, time and funding) is urgently required from donor organizations.

325. The Government views gender mainstreaming in all sectors as paramount to ensure the implementation of the principles contained in NDP as well as fulfillment of the Government's treaty obligations, particularly as it relates to CEDAW<sup>162</sup>. The OPE has therefore proposed that a budget reallocation take place to support and adapt programs and specific instruments in addition to organizing training of staff and planning on gender mainstreaming in order to ensure the existence of proper human and financial resources. The OPE has proposed that approximately 5 percent of the budget for each sector be reserved for technical assistance to engender that sector, ensure capacity to implement and also for monitoring and evaluation purposes. Indeed, the NDPEAC anticipates that the Annual Action Plans for FY 2006/2007 will integrate a stronger gender perspective into their programs, including increased provisions for funding.
326. At the time of writing, UNIFEM is developing a gender-responsive budgeting strategy in Timor-Leste, which will be implemented in cooperation with the OPE and NDPEAC and will focus on strengthening the capacity of key actors in areas of public financial management and gender mainstreaming. Sectorally, the project will focus on two key line ministries, Health and Agriculture, to further support engendering of the SIPs. Furthermore, the project aims to build upon the experience of academia in analyzing state budgets and implementation of policy. It is envisaged that this knowledge can then be accessed by women's NGOs to strengthen their advocacy in addition to assisting the OPE in monitoring gender mainstreaming progress. Furthermore, it should provide the specific line ministries with an independent and credible basis of comparison for their own assessment and evaluation processes.

#### *Gender analysis of legislation*

327. The OPE, with the Ministry of Justice and the HRU UNOTIL jointly produced a publication on women's rights guaranteed in national legislation, which aims at increasing awareness of both Government and civil society on women's rights guaranteed in the law. As stated earlier, discussions have commenced with the Ministry of Justice to establish a mechanism for the gender analysis of specific policies and draft legislation.

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162 Timor-Leste: Sector Investment Programme, Rights Justice and Equality, April 2005, p27.

### *Sex-disaggregated data*

328. The initial Suco Survey in 2001, the Living Standards Measurement Survey (LSMS) household survey 2002, the 2002 Multiple Indicator Cluster Survey (MICS), a Demographic and Health Survey (DHS) in 2003 and the first national Census in 2004 provide a broad range of outcome indicators with all key variables disaggregated by sex. However, as gender has not been a priority for the international agencies concerned, a gender perspective has not been integrated into data collection. As a result, the data, although disaggregated by sex, are generally not gender-sensitive.
329. The main gaps in the availability of sex-disaggregated data are in the administrative data system. There is a lack of systems to collect, collate and regularly update data and to routinely disaggregate by sex. In most cases, the data required for this report could be obtained but often only through ad hoc efforts to disaggregate the data by sex. In a number of cases, the basic data for both women and men have had to be specially collated from the primary data records.
330. The lack of sex-disaggregated data on the processes that lead to unequal outcomes for women is of particular concern. In most government agencies, personnel and human resource data on appointments, promotions, training etc are generally lacking. Where they are available, they are often not disaggregated by sex. Some of the routine tabulations required of government agencies by CISPE are also not disaggregated by sex. Sex-disaggregated data are also rarely available on critical processes within the health system: data are still reported in terms of diseases (rather than the age, sex etc of the patient), hospital beds (rather than the age, sex etc of the occupant). As a result it is not possible to analyse areas of potential and critical discrimination.
331. Process indicators on key gender issues, particularly violence against women, are relatively rich as a result of ad hoc efforts by international consultants and agencies. A project with the national police force (PNTL) is currently working to integrate these and routine sex-disaggregation of all data from the criminal justice system into a national crime database.
332. Sex-disaggregated data are well utilized in policy making in several sectors, including education, justice and health. However, this is largely a result of the role of international agencies in policy development, and the data are drawn primarily from surveys. National systems to monitor policy and program implementation on a regular basis through processing data from the administrative system have yet to be developed. There is limited appreciation of the need for sex-disaggregated and gender-sensitive data to be incorporated into such systems, particularly among national staff.

333. At the time of writing, the OPE is working with the National Statistics Directorate (NSD) to conduct a gender analysis of Census data, and to assess existing government databases from a gender perspective. This activity entails the training of users and producers of sex disaggregated data to ensure that these data are collected and conform to the needs of users, thus enabling the engendering of policy and program cycles and the production of gender responsive program and policies.

*Role of men and boys in the promotion of gender equality*

334. In all of its workshops on gender, the OPE has always emphasized that the promotion of equality is not solely a woman's exercise and that the concept of 'gender' includes men as well as women. Therefore, all workshops on gender awareness and mainstreaming have targeted both men and women, though most beneficiaries of these programs have been women. In 2005, a total of 70 staff (26 females and 44 males) from the Ministry of Finance and Planning, the OPE and inter-ministerial gender focal points as well as planning staff of line ministries received gender-awareness training. 17 staff (9 female and 8 male) of NDPEAC and Planning Directors of key government agencies have increased their technical knowledge, acquired a certain degree of confidence to use gender mainstreaming tools and have been equipped with advocacy skills in gender sensitive policy, planning and monitoring.
335. The OPE has made concentrated efforts to target boys and girls in its gender awareness programs. For example, both sexes have participated in the aforementioned televised 'Buka Hatene' quiz for secondary school students and both sexes benefit from educational workshops organized by the Office. The OPE deliberately attempts to sensitize and educate all men on the importance of gender equality in development.
336. In Timorese culture, there is a belief that men have more rights than women. As Timor-Leste is rooted in a strong patriarchal culture, the first step in all OPE training is to encourage men to open their minds and become more sensitive to the ideas of gender, gender equality and women's roles in society. A correct understanding of the concept of gender is crucial to the degree of openness and willingness to work towards the elimination of gender discrimination in Timor-Leste. The difficulty with much training in the past is that men tend to dominate the discussion and women, especially at a grass roots level, do not have sufficient space to air their views. Despite this tendency, the OPE recognizes the importance of men in gender awareness building and has worked closely with organizations such as AMKV ('Asosiasaun Mane Kontra Violencia' - 'Men's Association Against Violence'), founded in 2002, which has been promoting and making efforts to end gender-based violence. This organization also aims to foster men's awareness of gender issues. The work of AMKV in relation to gender based violence will be discussed in further detail in the CEDAW Treaty Specific Document.

### *Difficulties in gender mainstreaming*

337. Although significant achievements have been realised thus far, challenges in mainstreaming gender have greatly impacted the level of results.
338. One of these challenges includes the perception of gender mainstreaming as an ‘add-on’ strategy and additional ‘burden’ for already busy government staff. There is currently no incentive system whereby individuals and institutions are encouraged to meet gender mainstreaming objectives. Furthermore, although there is a strong political will to promote equality, there is still a lack of cultural sensitivity, including a resistance in certain quarters to even accepting the idea of discrimination against women. Where there is recognition of the need to incorporate a gender-sensitive perspective to programmes and policies this is often viewed as the sole responsibility of the OPE, placing a heavy burden on the Office. Instead of devoting its time to policy development and monitoring, the OPE becomes the sole Government agency responsible for both technical support to the mainstreaming agency as well as effective implementation of their gender programs and policies.
339. The lack of technical capacity to mainstream gender into program and policy cycles is yet another major obstacle. This is felt across the Government, including OPE, where the number of staff capable of undertaking such tasks is very limited. Gender Focal Points who are appointed are often junior staff not appointed on the basis of their capacity to mainstream gender. To illustrate, during the exercise of engendering the SIPs, the timeframe for conducting the exercise was extremely short and hampered by the lack of technical skills in gender analysis of the people involved. It turned out to be as much a gender analysis exercise as training for participants. These factors, coupled with budget constraints and, to some extent, poor timing between the hiring of technical assistance and subsequent planning, make it very difficult to implement a comprehensive gender mainstreaming agenda.

### *Recommendations and immediate priorities for the OPE*

340. The degree of success of effective gender mainstreaming depends on a strong leadership and commitment at all levels, in addition to substantial support and drive from civil society, NGOs, academia and other community organizations.
341. The OPE has specifically recommended that a national gender mainstreaming policy be developed and approved by the Council of Ministers, thus making it clear that gender mainstreaming is the responsibility and obligation of all sectors. As it stands, prioritizing gender in the NDP is not sufficient to guarantee the commitment of the sectors.

342. In the foreseeable future, the OPE is committed to continuing to work closely with the NDPEAC to maintain, follow up and monitor priorities and work initiated. This includes further introducing and internalizing the ‘Gender Mainstreaming Guidelines’ and the ‘Gender Checklists’ to line ministries and sectors in addition to organizing regular coordination meetings for gender mainstreaming. Task forces and/or working groups will be created to discuss the implications of gender in and provide advice on best practices for programs and policies. These groups will involve all relevant stakeholders, including civil society members.
343. A gender impact assessment will identify the impact of policies and programs on women and men. To assist in this process, gender sensitive and realistic indicators should be developed for all programs and should reflect the principles of the MDGs, CEDAW and the Beijing Platform for Action.
344. The OPE will encourage all sectors and ministries to collect sex disaggregated data for programs and policies and evaluate the impact of this program. Data collection should be adapted to be gender sensitive and all sectors should develop databases that contain sex disaggregated data. This should be systematized and easily accessible. Any future research conducted should contain a gender dimension.
345. As all individual sectors are responsible for engendering their own programs and policies, the OPE believes it is crucial that all relevant staff involved in the planning and decision-making processes are familiar with gender concepts as well as the methodologies through which gender is integrated into the policy cycle. To achieve this, further training on basic gender concepts, gender sensitive policy making and gender impact assessments involving definition of indicators and data collection will be carried out. This should include a training course on ‘Gender and Development’ with an academic institution for both OPE staff as well as Gender Focal Points to deepen their knowledge in this area.

#### ***F. ROLE OF REPORTING PROCESS IN PROMOTING HUMAN RIGHTS AT THE NATIONAL LEVEL***

346. Having ratified the core human rights treaties in 2003/2004, the Government of Timor-Leste came under an obligation to report on its progress in implementing the rights and freedoms that it had committed to protect. The challenges that Timor-Leste would face in meeting these reporting requirements were discussed with the OHCHR, following which Timor-Leste determined to pilot a new system of reporting based upon “*Draft Guidelines for Harmonised Reporting*”<sup>163</sup> (‘Guidelines’) produced by OHCHR and adopted at the sixteenth meeting of chairpersons of human rights treaty bodies, in June 2004. These

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163 HRI/MC/2004/3.

Guidelines were intended to streamline the reporting process through eliminating duplication, avoiding fragmentation and enhancing cohesion across the treaties and treaty body system.

347. In 2004, the Ministry of Foreign Affairs proposed a broad and flexible five-phase plan to ensure fulfillment of the Government's human rights treaty reporting obligations. These phases were as follows:

- Phase One: Preliminary planning
- Phase Two: Formal launch and socialization of the treaties and reporting process
- Phase Three: National and community consultation to gather data for treaty reports.
- Phase Four: Inter-ministerial consultation on draft reports.
- Phase Five: Final edit and review, and submission of reports to Secretary General and Human Rights Committees.
- Phase Six: Socialisation of reports at grass roots/community level.

348. Following submission of the treaty reports to the respective human rights committees, further steps will be undertaken to respond to any lists of issues and, ultimately, the recommendations proposed by the respective human rights committees. The Human Rights and Gender Focal Points designated by the Prime Minister to assist the Foreign Ministry and OPE in the development of the Government's treaty reports were actively engaged in data gathering throughout the report development process. However, further training and support to these Focal Points to enable them to more effectively respond to their reporting obligations and to strengthen their capacity to mainstream rights into their respective portfolio areas will be required in future.

349. A socialisation of the reporting process and consultation to enable data to be collated to develop the reports was conducted between December 2004 and July 2005 as follows:

- First, introductory meetings were undertaken in all 13 districts to inform participants of the Government's reporting obligations and to encourage district-level participation in that process, particularly in the provision of information and subsequent comments on the Government's draft reports.
- Second, a series of regional workshops/focus groups with local government representatives and to a lesser extent NGOs (due to limited attendance) were conducted to gather information for the development of the CCD and Treaty Specific Documents.

350. Regional focus groups were targeted to collect data for one document per visit. For example, a series of focus groups to gather data for the CCD initially took place with subsequent meetings to gather information for the CRC and again for the CEDAW Specific Document. Five regional meetings were convened in each case. Participation of women, civil society and representatives of

vulnerable groups differed in each meeting that took place. In some cases civil society participation was high whereas in others it was very limited. Regional visits were determined according to logistical capacity and not administrative groupings officially recognized by the Government. The district enclave of Oecusse was singularly visited due to its detached geographical status.

351. The Government of Timor-Leste recognizes the importance of civil society participation in the human rights reporting process as a means to balance perspectives on Government progress in the implementation of its human rights obligations. The Government has always advocated collaboration with civil society in the reporting process so far as possible, while at the same time respecting the principle and value of civil society independence and autonomy in reporting or shadow reporting.
352. The Treaty Reporting Team took many steps to foster the participation of civil society in reporting with frequent invitations for civil society to attend national and regional workshops and to provide information for the draft reports. The Government has also encouraged UN and other agencies to support civil society organisations to develop strategies for engagement in the reporting process. Such efforts yielded substantial civil society contributions of information and, to a lesser extent, comments on the drafts reports themselves.
353. Great importance has also been placed on the participation of vulnerable groups including children, women, disabled and migrants because they are more vulnerable to human rights violations. In some cases, such as the CRC and CEDAW programs, targeted initiatives to encourage participation of children and women were successful and valuable contributions of those groups were received. On other occasions, absent targeted initiatives for group participation at a district level, vulnerable persons from all groups including women, children, disabled and elderly were unable to engage the desired levels of participation of those specifically vulnerable groups.
354. It is apparent that the integrated system of treaty reporting as advanced by the '*Guidelines for Harmonised Reporting*' is designed to lessen the burden on States in terms of eliminating duplication of reports and fragmentation of processes. Nevertheless, despite its obvious merit as a more integrated and holistic rights analysis, the experience of Timor Leste - a newly independent country with limited resources - has been that the process of treaty reporting under the Guidelines remains a resource intensive project and that the Guidelines require substantially more conceptual development. This underlines the need for continued means of ensuring that reporting methodologies are well tailored to meet their objectives, and that sufficient support is forthcoming from the OHCHR and the international community to support this endeavour.

## **G. NATIONAL HUMAN RIGHTS ACTION PLAN AND OTHER RELATED HUMAN RIGHTS INFORMATION**

355. The Prime Minister installed the Working Group on the National Human Rights Action Plan (NHRAP) and nominated his Adviser on Human Rights to lead the Working Group to promote and to elaborate the National Human Rights Action Plan. On December 11 and 12, 2003, the Office of the Advisor for Human Rights organized an international consultative seminar on the development of action plans. The seminar served to inform the Working Group, civil society and the Government of what needed to be done to elaborate such plan. The seminar's most important recommendation was the establishment of Human Rights Focal Point Officers (HRFPO) in all ministries, secretaries of states and districts<sup>164</sup>.
356. On May 3, 2004<sup>165</sup>, a national campaign was launched to socialize the NHRAP by organizing a workshop on the collection of data for the HRFPOs. Following those activities, the task of the working group was to understand first, and subsequently to explain to the wider administration and the population that the NHRAP is a national project that involves the State, the Government and civil society<sup>166</sup>. This was confirmed by the Prime Minister confirmed this to the Working Group on July 17 2004 when he met with this Group calling all members to play a more active role. In the meantime, an important seminar took place on June 24 and 25, 2005 on Social, Economics and Cultural rights<sup>167</sup> as a way to socialize the Covenant and to highlight the importance of the NHRAP for the nation.
357. The next task for the Working Group was to develop a timetable of regional seminars, workshops and public hearings in order to discuss the goals for the establishment of the NHRAP. These regional seminars took place between 22 July to 12 August 2004 in Baucau<sup>168</sup>, Bobonaro, Ermera, Los Palos, Liquiça, Manatuto, Maubisse<sup>169</sup>, Maliana<sup>170</sup> and Oecusse<sup>171</sup>. It involved the entire Office

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164 The Prime Minister decided on 6 January 2004, following the recommendations of the consultative seminar on the development of Action Plans, to request each Ministry, Secretary of State to appoint a person as Human Rights Focal Point. This person has the responsibility to work with matters related with human rights and good governance issues in strict cooperation, and under the coordination of the adviser on Human Rights.

165 Workshop on collecting data, May 3-7 2004, Memorial Hall, Dili.

166 Several meetings were organized during various months. The socialization needed also the media.

167 Seminar on Social, Economic and Cultural rights, June 24 and 25, 2005, CNTR, Balide, Dili.

168 For the districts of Baucau, Lospalos, Viqueque, and Manatuto.

169 For the districts of Aileu, Same, Ainaro, and Cova-Lima.

170 For the districts of Maliana, Ermera, and Liquiça.

171 For the districts of Nitibe, Pasabe, Oesilo and Pante Makasar.

of the Advisor on Human Rights to the Prime Minister, the Working Group, national and local authorities, and members of the National Parliament<sup>172</sup>.

358. The dialogue between the Working Group and the population was based on the one hand on presentations given by the members of the Working Group, and on the other hand, on the questions, remarks and suggestions of the participants. Those questions revealed to the Working Group the need to better explain to the population the relation between the rights and obligations of citizens.
359. The Working Group also realized that it was important to make a connection between the National Development Plan (NDP) and the NHRAP, the connection being the right to be free from poverty and the reduction of poverty as a fundamental objective of the NDP.
360. Before initiating the campaign of public hearings on the NHRAP, the Office of the Advisor on Human Rights organized a meeting with the Working Group<sup>173</sup> in order to prepare the guidelines, a timetable, and the strategy; seven sub-districts<sup>174</sup> were chosen where the meetings took place. The predominant themes identified for those public hearings were education, health, justice, security, agriculture, and infrastructures.
361. This campaign showed how difficult it is for the majority of the population of Timor-Leste to understand what human rights mean and how rights fit into their daily lives. The number of people attending the regional seminars and public hearings surpassed all expectations<sup>175</sup>, with broad participation of varying groups and ages.
362. The information collected was collated in a consolidated district report that subsequently informed a baseline report for the NHRAP baseline report<sup>176</sup>. A seminar on civil and political rights was organized on February 24 and 25, 2005 to strike a balance between people's perception of civil and political rights and social, economic, and cultural rights. The Prime Minister also decided, within the framework of the NHRAP, to organize a seminar on '*Integrity in the State*' on March 11, 2005, as a way to promote and to develop its politics of good governance. Following this seminar, eight ministerial half-day workshops have been organized putting out the need to improve civil servants capacity on good governance.

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172 It is important to emphasize that it required significant preparation before, during and after each seminar. The logistic and the people needed for each seminar had also showed us the existing ability to organize these kinds of events. UNMISSET helicopter was essential.

173 Meeting organized on 14 August 2004.

174 The Sub-districts were Hatu-Builiko, Bazartete, Balibo, Tutuala, Ossu, Passabe and Fatumean.

175 At least 1200 people around the country attended.

176 All of these documents need to be prepared, analyzed, processed, and translated as well.

363. Keeping in mind the need to continue the dialogue with civil society and state actors, the Office of the Adviser organized an international seminar on the “*Role of Civil Society in the Consolidation of Peace and Democracy*”, in Dili 1-2 December, 2005. This seminar set up the perspectives that the country should have for coming years on issues such as education, political parties, religious matters, the role of the opposition and active participation by civil society.
364. Following this seminar, two important initiatives took place the first being a dialogue called “From Truth to Friendship”, a one day open discussion on the relations that Timor-Leste is building with its neighbours. The second will take place on 22-23 May 2006 on the “Role of Political Parties and the Media in the Consolidation of Peace and Democracy”. The objective of this seminar is to continue the dialogue between state actors and civil society. It is intended to mention that all of these activities contribute to one another, to maintain the NHRAP in the mind of the people on the one hand and to help the Advisor on Human Rights to enrich the draft baseline report of the NHRAP.
365. In the ongoing process of developing the Action Plan, the Working Group identified six main sectors that require particular human rights attention: health, education, justice, agriculture, infrastructure and security.
366. While still very much in draft form, it is expected that the National Human Rights Action Plan will make specific reference to the Government’s commitment to implement programs on the prevention of domestic violence; take measures to combat gender-based violence and to combat the abuse and sexual exploitation of women; children and adolescents. It is also anticipated that there will be further protective measures for children involved in international adoptions and that measures to eradicate child labour will be invoked. Greater assistance will be provided for Timorese citizens living and working abroad and legislation will be enacted pertaining to foreigners, including refugees, living in Timor Leste.
367. In addition, there will be measures to protect and enhance the rights of the other groups of vulnerable persons such as the elderly, as well as greater protections afforded to progress towards realization of certain socio-economic rights such as health, and protection against HIV/AIDS.
368. The Office of the Advisor on Human Rights to the Prime Minister is expecting to finish the first draft of the NHRAP in May 2006 subject to the availability of funding<sup>177</sup>.

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177 NHRAP Powerpoint Presentation 2005.

## **Follow up to Human Rights Conferences, Programs of Action, and Declarations**

369. Timor-Leste became fully independent in May 20, 2002 following a declaration by H.E. Mr. Kofi Annan, Secretary General of the United Nations in an official ceremony for the Proclamation of Independence in Tasi Tolu – Dili. This ceremony saw a transfer of sovereignty from the United Nations Transitional Administration to the leaders of the Democratic Republic of Timor-Leste, restoring independence as unilaterally proclaimed in Dili, November 28, 1975.
370. The World Society Information Conference in 2003-2005 in Nairobi was the First World Conference in which Timor-Leste was represented (by H.E. Mr. Ovídio de Jesus Amaral, Minister of Transport and Telecommunications). Among other notable meetings, Timor-Leste participated for the first time in the 49<sup>th</sup> United Nations Session of the Commission on the Status of Women and the 10<sup>th</sup> Anniversary of the Beijing Declaration and Platform of Action in New York on 28 February – 11 March 2005. The delegation from Timor-Leste included a Ministry of Health Representative, the Chief of Staff from the Office of Promotion of Equality as well as the Project Manager for the Gender Based Violence Project based within the OPE.
371. The delegation took part in a series of round table discussions on a number of issues and co-sponsored those resolutions that were especially relevant to Timor-Leste including resolutions on mainstreaming a gender perspective into national policies and programs, the economic advancement of women, women and peace-keeping operations and human trafficking. The Government found participation at this conference extremely useful as it provided an opportunity to learn from other countries' experiences.
372. In its national declaration, the delegation outlined the progress that has been made in Timor-Leste with regard to the advancement of women's rights and the current and future activities of the OPE. The delegation especially noted the importance of working towards all the MDGs.
373. The Conference emphasized the importance of using international instruments such as CEDAW, the Platform of Action and the MDGs as a conceptual framework within which to establish national programs and policies with the ultimate aim of achieving equality between women and men as well as eradicating poverty. As outlined above, the Government, through the OPE, has already started the process of gender mainstreaming through its SIP, AAP, and CSP initiatives.
374. National priorities that correlate with the critical areas of the Beijing Platform for Action include current emphasis on combating poverty, strengthening the economic potential of women and strengthening the national capacity to address gender based violence. These have already been outlined in further detail in the sections on gender mainstreaming and also in the CEDAW Specific Document.

375. The most recent of world conferences at which Timor-Leste was represented was the Millennium Development Goals Summit, in New York from 12-16 September 2005. In this conference, world leaders affirmed their commitment to multilateralism as a means to change the lives of people around the world, in all sectors of society, through gradual and sustainable development and to reduce and eventually totally eradicate poverty.
376. The Government of Timor-Leste, through its Representative H.E. Dr. Mari Alkatiri, Prime Minister, reiterated its commitment to work hard for the implementation of the MDGs in Timor-Leste, as part of global efforts to provide a better life for all people around the world in all sectors including human rights.

### **III CONGRUENT SUBSTANTIVE PROVISIONS**

#### ***H. NON-DISCRIMINATION AND EQUALITY<sup>178</sup>***

377. Article 16 of the Constitution and the core treaties to which Timor-Leste is a party provide that no one shall be discriminated against on any of the following grounds:

<b>Constitution of RDTL</b>	<b>Core human rights treaties</b>
➤ sex	➤ gender
➤ race/colour	➤ colour
➤ ethnic origin	➤ ethnic, national or social origin
➤ N/A	➤ age
➤ language	➤ language
➤ political or ideological conviction	➤ political or other opinion
➤ religion	➤ religious conviction
➤ physical or mental condition	➤ disability
	➤ person living with HIV/AIDS
➤ N/A	➤ birth
➤ marital status	➤ marital status
➤ N/A	➤ citizenship
➤ social or economic status	➤ or any other particular ground (for example; economic position, property or employment status
➤ education	

378. Article 17 of the Constitution affirms equality of rights and obligations between women and men, in all areas of family, political economic, social, and cultural life. Article 6(j) declares the State responsible “to promote and ensure effective equality of opportunities between women and men”

379. Each of these articles accords with the obligation of article 2(a) of CEDAW which is “to consecrate the principle of equality between men and women in the national constitution”, though it is respectfully noted that these principles of ‘equality of opportunities’ do not equate with the notion of ‘equality’ in its fullest sense. The notion of equality also includes equality of status, which the Constitution does not currently reflect. To that end the Constitution may not wholly accord with the fullest measure of equality proposed by article 2 of CEDAW itself.

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<sup>178</sup> See Annex 3 definition.

380. The Constitution does foresee full equality of rights between women and men in the context of family relations (art 39 refers), for example, in starting a family, and also in regards to entering into marriage, which are compatible with several of the provisions of article 16 CEDAW. The Constitution also promotes equality between women and men in respect of political rights, specifically in access to political positions (art 63(2) refers), as well as in key areas of social and economic life, including the right to work and choose a profession (article 50 refers), social security and assistance (art 56), and education (art 58), all of which will be examined in greater detail in the CEDAW Specific Document.
381. With regards to the rights of children, articles 18(2) and (3) respectively guarantee children the enjoyment of all universally recognized rights, all treaty rights ratified by the nation, and equality in rights and social protection for children born in and out of wedlock.
382. On disabled citizens, article 21 of the Constitution prescribes that “a disabled citizen shall enjoy the same rights and shall be subject to the same duties as all other citizens, except for the rights and duties which he or she is unable to exercise or fulfil due to his or her disability. The State shall promote the protection of disabled citizens as may be practicable and in accordance with the law”.
383. A significant number of domestic laws safeguard against discrimination. For example, the forthcoming law on domestic violence states that “individuals shall not be discriminated against by action or omission, on the basis of gender or age”<sup>179</sup>. The Decree Law No. 5/2004 on Community Authorities gives special attention to equality of status or rights for women including instances where women can be victims of violence, particularly domestic violence. In this case, the law confers specific competence on the *Chefe do Suco* “to support the initiatives that aim to monitor and protect victims of domestic violence” and to facilitate “the creation of mechanisms for protecting victims of domestic violence” (art 8(g) refers). These provisions demonstrate the resolve of the Government to promote the rights of women and to address the problem of gender-based violence.
384. In the area of employment, the current and proposed Labour Codes also clearly assert that “discrimination in employment and occupation, in particular, as regards to equal remuneration between women and men for work of equal value is hereby prohibited”<sup>180</sup>.
385. Discrimination afflicts every society both directly<sup>181</sup> and indirectly<sup>182</sup>. As not all cases of disadvantage faced by particular groups actually constitute

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179 Section 6 on Principle of Equality, Law on Domestic Violence (forthcoming, 2006)

180 Section 3 refers.

181 Direct discrimination arises where one groups is explicitly advantaged over another, for example, as may occur in the allocation of resources.

discrimination, it can be difficult to categorically determine what does and does not amount to discrimination. With this in mind, this report identifies cases in which a particular group faces a specific disadvantage but does not conclude which of those cases can actually be said to amount to discrimination.

386. Among the most prominent forms of disadvantage seen to prevail in Timor-Leste are disadvantage on the grounds of:
387. *Gender* - The most pervasive form of disadvantage faced by a particular group in Timor-Leste is discrimination due to gender, particularly in areas of education, employment, health, political participation and access to justice<sup>183</sup>. The CEDAW Specific Document more specifically considers cases where gender discrimination is considered to arise.
388. While often endorsed as pivotal to the life and identity of the nation, traditional practice and culture is clearly identified as another area in which women suffer discrimination. Cases of discrimination against women in marriage and family relationships are widespread. Patriarchal lineages of hereditary land title, ‘*barlake*’ (the bride price system where a man’s family must make a payment or ‘dowry’ to the woman’s family), and an emphasis on women remaining in the home are among other indirect discrimination that limit a woman’s capacity to participate fully in social and political life. These complex matters have attracted significant domestic attention and are considered in much greater detail in the section on ‘Marriage and Family Life’ below, and the CEDAW Specific Document.
389. *Status as former combatant* – Arguably veteran combatants lost their opportunity of education and professional development as a consequence of their significant commitment to the struggle for independence. As a result, some of these combatants, today, are limited in their capacity to participate fully in economic and social life, particularly in terms of labour market participation. A number of key measures, designed to target the disadvantage faced by these combatants, are discussed in the section on ‘affirmative actions’ measures below.
390. *National origin* – Various limitations on the rights of foreigners to own land and participate in political life exist in Timor-Leste. Such distinctions on the basis of citizenship and the potential disadvantages that foreigners face as a result are considered justifiable and not to constitute discrimination as they are limited to specific areas in which an individual must have an enduring relationship with

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182 Indirect discrimination arises where distinctions between groups are not clear but the impact of a policy favours one group over another. An example might be a decision of local authorities to issue birth certificates only to children that have been baptised. Whilst not explicit, this would have the effect of allowing only Catholic children to receive birth certificates thus giving rise to indirect discrimination on the grounds of religious belief.

183 This was reflected in the regional focus groups across the country.

the State and be subject to the civic responsibilities that citizenship entails. The limitation on foreign ownership of land is deemed necessary also to ensure that Timorese citizens are not disadvantaged by the unequal purchasing power between themselves and foreigners.

391. *Language* – Tetum and Portuguese are the official languages of the State, with Bahasa Indonesia and English recognised as two working languages<sup>184</sup>. As the most technically advanced of the two official languages, Portuguese is used prominently in State affairs. Laws and government policies are currently drafted in Portuguese (though some Tetum translations are also available) and justice sector administration is predominantly undertaken in Portuguese, to the extent possible.
392. Integration of the official Portuguese language into State affairs has not come without significant transitional problems. Only a minority of the population can communicate confidently in Portuguese (according to the Census 2004, 12% of the Population over 6 + years can speak, read and write). In effect then, many non-Portuguese speaking individuals are disadvantaged and limited in their capacity to fully participate in public life and decision-making. Women face particular problems because in some rural areas, they do not speak Tetum let alone Portuguese.
393. The Government is taking steps to mitigate languages disadvantages through the integration of Portuguese language instruction in schools, fully-funded Portuguese language classes in most Government work places, and the provision of an accessible pool of interpreters in the courts to ensure due process. It is, however, expected that non-Portuguese speakers will continue to face a measure of disadvantage until the transition to Portuguese is effectively completed.
394. *Political opinion* – There are groups who advocate political positions which differ from the mainstream or the leadership and allege that they suffer disadvantage as a result of this difference of political opinion.
395. *Religion* – Timor-Leste is largely a religiously tolerant country, but concerns were raised during district consultations that in some parts of the country a child could not be registered unless it had first been baptised thus giving rise to indirect discrimination on the grounds of religious belief. Other cases of children being unable to obtain passports unless baptised have also been reported. This issue is more fully discussed in the CRC Specific Document. Such religious pressure had not, until recently been apparent to the Government and will not be tolerated should clear cases of this nature come to its attention in the future.

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184 Article 13.1 CRDTL.

396. *Disabled and elderly persons* - According to provisional Census 2004 data, 11.6 percent and 2.4 percent of households report at least one household member with respectively a physical disability and a mental illness<sup>185</sup>.
397. For many adults – especially males – the major causes of physical impairment are illness, accidents, malnutrition, poliomyelitis and leprosy. Work related injury is also a cause of disability and, until just and affordable conditions for occupation health and safety are established to reduce this risk, and compensation can be provided to offset loss, it can only be expected to increase with an increasing labour force<sup>186</sup>.
398. For women and children, many disabilities such as TB and chronic bronchitis are the consequence of poor living standards, which include nutritional deficits, inadequate water and sanitation within households, and limited access to health facilities – from the pre-natal period to early years of infancy. Malnutrition and illnesses such as poliomyelitis particularly affect infants and young children<sup>187</sup>. In the case of women, often they ensure that everyone in the household is taken care of and then wait too long before seeking treatment themselves, thus exacerbating their illnesses. These issues are further detailed in the CRC and CEDAW Specific Documents.
399. There is little doubt that in a nation of underdeveloped infrastructure, limited geographic access to all areas and high levels of unemployment and poverty, disabled persons in Timor-Leste face specific disadvantages in daily life. While there is no clear information on this point, difficulties in obtaining employment, access to services, and full participation in social and political life, are likely among the many difficulties faced by disabled individuals. The Government has also received non-confirmed information which suggests that children with disability and older adults are more likely to be either kept within the household, away from schools and community life, or placed within residential institutions.
400. Mental illness was raised as an issue of particular concern during consultations for this document<sup>188</sup>. Reference was made to cases in which a lack of facilities, including psychiatric treatment for individuals with mental illness, has resulted in human rights violations. There are currently no secure facilities for people considered to be mentally unstable or a danger to the community. The HRU of UNMISSET had also documented cases of individuals detained by their family or

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185 This contrasts with a recent UNICEF report which states that “global estimates of disability... range from 4 to 8 per cent of the population”, but do not attribute the source, which could be construed as suggesting that Timor-Leste is suffering from an inordinately high rate of disability. (UNICEF (2004), pp 86-87) The origin of those ‘global estimates’ is unknown. More reassuringly, the ratio of physical to mental disabilities from provisional Census data are in the order of the ratio derived from the 2002 survey (see previous footnote).

186 Timor-Leste: Social, Civil and Heritage Protection Sector Investment Program, April 2006, p19.

187 Timor-Leste: Social, Civil and Heritage Protection Sector Investment Program, April 2006, p18.

188 HRU Submission 30 May 2005, JSMP and other reports refer.

community after displaying abnormal, usually violent behaviour, largely because of the lack of appropriate treatment or facilities<sup>189</sup>. It is alleged also that in several cases, the method of restraint used on the individual was cruel and resulted in physical injuries and that, on occasion, the PNTL failed to intervene to protect mentally ill individuals from abuse. Cases coming to the attention of the authorities and NGO monitoring bodies such as JSMP and the HRU of successive UN missions have included a failure to investigate allegations of sexual abuse by a father of his mentally ill teenage daughter on the basis that the complainant was in no fit state to actually make a complaint<sup>190</sup>.

401. In 2003, the Government established a National Mental Health Service (NMHS) within the Ministry of Health and placed mental health nurses in each district to conduct basic mental health assessments with the support of several psychiatrists. The provision of adequate mental health services, especially regular distribution of medication for those women who are suffering from illnesses such as bi-polar disorder, is of particular concern and will be discussed in further detail in the CEDAW Specific Document. It is hoped that these and further initiatives will serve to combat poor treatment of individuals with mental illnesses, though much work remains to be done on this issue in the future.
402. All State institutions possess an enormous respect for vulnerable groups, particularly disabled persons and veteran combatants. Yet, the difficulty of ensuring effective support and integration of these groups into society remains. Lack of developed infrastructure is a particular concern and one which the Government, particularly the Ministries of Health and Labour and Community Reinsertion, are currently addressing. This issue is further considered below and in the Treaty Specific Documents themselves.
403. *Minority ethnic groups*<sup>191</sup> - It has been suggested that some minority groups are vulnerable to harassment (including harassment by the police) and that the individuals most vulnerable are of Indonesian or ethnic Chinese origin<sup>192</sup>. The Government is not aware of any specific cases in which discrimination against these particular ethnic groups has occurred but, as with all forms of discrimination, the Government will act decisively to eliminate discrimination on the grounds of ethnic or national origin status should it be found to exist. This Government has always and will continue to promote the ideals of tolerance and respect for diversity.
404. The newly independent status of Timor-Leste and its significant resource limitations naturally gives rise to disadvantage in different areas of social, political, civil, economic, and cultural life, a situation not uncommon in both

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189 As raised in the HRU UNOTIL Submission 30 May 2005.

190 HRU UNOTIL Submission 30 May 2005.

191 Importantly, the State has not yet determined a definition of "minority ethnic group".

192 HRU UNOTIL Submission 30 May 2005.

developed and developing States, particularly newly independent countries. In Timor-Leste, existing challenges are further exacerbated by the absence of a reliable source of data or information on issues of disadvantage faced by particular groups in society and the Government's current limited ability to systematically address such issues.

405. For a country plagued by poverty, inequity in wealth and assets distribution cannot be resolved quickly. In other cases, disadvantage or discrimination is difficult to address because it is an entrenched part of society as is the case with discriminatory traditional practice.
406. The Government is wholly committed to the principles of non-discrimination and is committed work to eliminate any unjustifiable disadvantage where it has been found to exist through equitable resource allocation and better training and education of State officials, as well as the implementation of remedial programs to combat discrimination where it has been found to exist.
407. A national campaign to combat poverty, targeted gender empowerment programs, community dialogues on the relationship between individual rights and traditional practice and culture in Timor-Leste, and Portuguese language training in schools and State institutions are just some of the initiatives that the Government has taken or supports to reduce specific disadvantages that clearly exist.
408. It is anticipated that increased support for the Offices of the Provedor, Human Rights Advisor to the PM, and the OPE will also assist to raise awareness of any issues of disadvantage and/or discrimination and the means by which to avoid the emergence of discrimination in the future.
409. Further and more specific information on issues of discrimination are also considered in the Treaty Specific Documents.

#### ***H(A) NON-DISCRIMINATION : EQUALITY BEFORE THE LAW AND EQUAL PROTECTION OF THE LAW<sup>193</sup>***

410. Article 16(1) of the Constitution clearly states that “all citizens are equal before the law, shall exercise the same rights and shall be subject to the same duties”. Article 26(2) further specifies that “justice shall not be denied for insufficient economic means”.

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193 This section covers:

Articles 14(1) and 26 ICCPR

Article 9(2) CRC

Articles 18 MWC

Article 5(c) CERD

Article 15 CEDAW

411. Citizens enjoy equal protection of the law in Timor-Leste. Equality before the law or courts is, however, proving more difficult to attain at this incipient and transitional phase of justice sector development. One particular problem is the issue of language.
412. As stated before, article 13 of the Constitution of Timor-Leste provides that Tetum and Portuguese shall be the official languages of the Democratic Republic. Accordingly, in February 2004, the Superior Council of Magistrates adopted a directive on the use of official languages within the judicial system. This directive prescribed a seven-month transition at the end of which all court documents were to be written in the official languages of the nation. Bahasa was no longer permitted to be used in the courts. Notably also, Tetum Prasa is the most spoken language of Timor-Leste<sup>194</sup>.
413. The technical limitations of the Tetum language, the limited knowledge of Portuguese throughout the country, and the long standing use of Bahasa Indonesia in the courts throughout the period of occupation have created some obstacles and confusion in transitioning from the use of Bahasa Indonesia to Portuguese and Tetum Prasa in the courts. The absence of a permanent pool of translators and interpreters, until very recently, has further compounded matters so that it is alleged that defendants, witnesses, and victims have in some cases had limited knowledge or understanding of the proceedings in which they have been involved.
414. The Government and the courts have actively sought, where possible, to mitigate these problems through the induction and training of a new team of justice sectors translators. However, the long-term and sustainable effects of such measures have yet to yield the intended results. Many of these translators are still in the developmental phase of their professional career. The Government hopes that its substantially increased resource allocation for the courts, coupled with enhanced Portuguese language education, will soon address these linguistic challenges.
415. It is also important to note also that although the Constitution guarantees women equality before and equal protection of the law, in practice they have very limited access to the formal justice mechanisms. This is due to a number of factors and includes practical constraints such as limited or no financial resources to bring a case to trial; lack of transport to and from the court; inability to speak Portuguese, English (the language used by many international judicial officers) or Tetum Prasa; little or no understanding of their rights as protected under law, in addition to the considerable length of time taken to process an individual case.

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194 Census 2004.

416. Traditional practices also play a role in preventing women from seeking justice through more formal means. The social stigma that may be suffered for drawing attention to sensitive issues such as domestic violence or sexual abuse often inhibits women pursuing such matters. Often they are pressured by their family to resolve the case within the family itself. In these instances, a woman cannot rely on the social or economic support of this unit should she wish to bring a case before the court. This issue of access to justice for women will be dealt with in further detail in the CEDAW Specific Document.

### *H (B) SPECIAL MEASURES TO ACCELERATE PROGRESS TOWARDS EQUALITY<sup>195 196</sup>*

417. The Constitution of Timor-Leste provides that children<sup>197</sup>, senior citizens<sup>198</sup>, and disabled citizens<sup>199</sup> have the right to special protection by the State.
418. As discussed above, there are some circumstances in which members of these vulnerable groups face specific disadvantages in their daily lives. The Government is cognizant of the plight of disadvantaged persons in the country and is committed to use necessary practical special or affirmative action measures to support the full participation and integration of such groups into society, as far as possible.
419. Importantly, Timor-Leste's status as a fledgling democracy, ranked only 140<sup>th</sup> in the Global Development Index, places considerable constraints on the nature and extent of special support that the Government is currently able to provide. Within its existing capacity, the Government is particularly active in working to address entrenched and systemic disadvantages faced by women and in providing targeted assistance to veteran combatants and other vulnerable groups most critically in need including children, disabled persons, and the elderly. Some examples of affirmative action measures taken by the Government are set out in brief below.

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195 This part covers :

Article 27 ICCPR

Article 2(3) CESC

Articles 1(4) and 2 CERD

Article 4 CEDAW

Articles 22 and 23 CRC

196 See Annex 3 definition.

197 Art. 18(1) provides that "children shall be entitled to special protection by the family, the community and the State, particularly against all forms abandonment, discrimination, violence oppression, sexual abuse and exploitation".

198 Art. 20(1) states that "Every senior citizen has the rights to special protection by the State".

199 Art. 21(2) states that, "the State shall promote the protection of disabled citizens as may be practicable and in accordance with the law".

*Special measures of a temporary nature relating to women*

420. To date, few temporary laws or measures have been drafted or adopted specifically for the purpose of accelerating equality of women. One clear example, however, of such a measure, is Article 11.18 of UNTAET Regulation No. 2002/5 on the establishment of a Labour Code for East Timor. This article states that “special measures” may be taken by the Ministry of Labour and Community Reinsertion to “overcome discriminatory practices and perceptions that hinder the equal opportunities and treatment in access to training ... jobs and terms and conditions of employment” for amongst others, women workers and/or pregnant and nursing women workers. It is further stated that such measures will not be deemed discriminatory.
421. During UNTAET, the administration attempted to promote greater women’s political participation publicly through informal measures, including in the establishment of a National Council. The Special Representative of the Secretary General (SRSG) directed that at least two out of four nominees for the Council from each of the 13 district and civil society organizations be women. These measures resulted in 13 out of 33 positions on the National Council being held by women.
422. As a result of recommendations arising from the First National Women’s Congress in 2000, the SRSG adopted a ruling on a minimum 30 percent quota for women in public administration in 2001, with immediate positive effects in that just over 18 percent of women were recruited to administrative positions. Similarly, during the UNTAET period, special measures were taken to ensure an adequate representation of women during the establishment of the National Police of Timor-Leste (PNTL) and 40 percent of the first wave of new recruits were women. However, this percentage has since decreased progressively and, at the time of writing, less than one in five of the police force are women.
423. The issue of quotas later resurfaced when women’s organizations lobbied heavily for a 30 percent quota of seats for women in the Constituent Assembly Elections in 2001. Although the request for a quota of women candidates was rejected by the administration, a number of informal affirmative action measures to promote women’s participation in the elections were implemented. These included support to train almost 200 potential women candidates as well as the provision of extra air-time on television and radio to those parties who proposed at least 30 percent women candidates. Parties were also encouraged to include women’s issues on their agendas. As a result, 23 of the 88 members elected to the Assembly (which later became the first Parliament of Timor-Leste) were women.
424. These initiatives to institute a minimum representation of women have had substantial repercussions in the political arena, culminating in 2004 in the Law

on Suco Elections and Suco Councils<sup>200</sup> which guarantees women the right to become a village chief or to be elected to the village council. This will be discussed further below in the section on political participation.

425. In the field of education, the Ministry of Labour and Community Reinsertion, through its Division of Social Service (DSS), is working with a local NGO, the Alola Foundation, to provide scholarships and bursaries for young girls who would not be able to attend school without this support. The Foundation currently distributes approximately 700 scholarships to young women. From 2004 -2005, 470 scholarships were awarded to young girls to complete their secondary education.
426. Efforts to address violence against women and girls, and discrimination against women in separation, divorce, and child support have also been immediate priorities for the Government. A maintenance law will also be enacted as part of the Domestic Violence Law package to ensure victims of violence and their children are supported. .
427. Some women's NGOs provide basic support services, for example, in the form of several shelters to women and child victims of gender-based violence, which must cover the whole country but they are constrained by many factors, such as limited resources.. Also many of these NGOs rely on funding solely from international donors, which is not guaranteed in perpetuity. Services and support structures outside the capital remain sparse and poorly resourced. This issue will be discussed further in the CRC and CEDAW Specific Documents.

#### *Veteran Combatants*

428. As a group, veterans constitute a key part of the nation's patrimony. Article 11 of the Constitution acknowledges that in valuing the secular resistance against foreign domination it "shall ensure special protection to war-disabled, orphans or other dependants of those who dedicated their lives to the struggle for independence and national sovereignty, and shall protect those who participated in the resistance against the foreign occupation".
429. While individual veterans may qualify as being members of at-risk groups, or be challenged by disability and age, or be seen as a potential source of instability, as a group they are defined by their singular place in history and possess a special status. All veterans of the resistance to the occupation are viewed by Timor-Leste society as living national treasures, an iconic source of honour to the nation.

430. The SEAVAC in Ministry of Labour and Community Reinsertion is the agency responsible for undertaking valorization programmes for veterans. Programs to date include the building of the resistance fighters cemetery at Metinaro.
431. As part of the valorization programme for veterans, a national process of identification and registration of veterans as either Antigos Combatentes das Falintil or Veternaos das Falintil depending on the dates of their period of service, has been undertaken by the CAAC and CAVF Commissions initiated by the President. The database developed by the Commissions, with World Bank assistance, included some 37,000 registrants. The final report of the Commissions, completed in June 2004, included recommendations for paying homage to veterans' different war service contributions. In accordance with these recommendations, the Parliament recently passed legislation valorizing veterans, with provision for the payment of grants to former combatants. It should be mentioned also that a further Commission for the Civil Resistance (CAQR) was also established to recognize the contribution of clandestine and civil units to the struggle for independence. The CAQR included in its terms of reference that 40 percent of the district and sub-district Commission members should be women.
432. Prior to the specific passage of the law on valorizing veterans, the Government had also commenced a programme of social support to veteran combatants who had fought as part of the 24 year armed struggle. Qualifying veterans receive between \$100 - \$135 USD of social assistance per month, administered by the Ministry of Labour and Community Reinsertion. At present 36 individuals are deemed to qualify for such assistance, though more specific attention is also still required to be given to female veterans to assess how they too can benefit from Government support.

*Emergency assistance for vulnerable groups*

433. The Ministry of Labour and Community Reinsertion has taken steps to establish a Social Solidarity Fund to support action to assist social groups in special circumstances or with special needs (a) obtain urgent assistance and (b) support efforts for their improved well-being and sustainable livelihoods in open markets on the basis of equality. Between July 2004 and June 2005, 524 families of vulnerable children, 513 families with disabled persons and 228 families with veterans received this form of social assistance<sup>201</sup>. The assistance was provided direct to the head of families to relieve hunger faced by these vulnerable groups.

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201 Ministry of Labour and Community Reinsertion Data (July 2005).

## *Disability Strategy*

434. The Government seeks to overcome the marginalisation of physical and intellectually disabled groups by encouraging programs that can reduce social and physical barriers that deprive these people from access to an independent life, including mainstream participation in decent productive work, recreation, training and education.
435. The *Labour Code* (Sec. 8.4.1) assigns responsibility for the “work and welfare of persons with disabilities” to the Ministry of Labour and Community Reinsertion, via the Division of Social Service (DSS).
436. During early 2005, the SSLS has hosted a project to formulate a national policy for persons with a disability. Local consultations within all districts during April-May 2005 also revealed high levels of community interest in the issue of disability with the emergence of two common themes: the need for employment and promotion of employment opportunities, and issues related to the quality of life (including access to health and education services, social support, accommodation and transport concerns). A preference for better-trained teachers within ‘mainstream’ schools and community-based responses to rehabilitation needs were also emphasised.
437. By June 2005, a Disability Working Group, hosted by the MLCR, reviewed the draft outline for a National Disability Policy developed by the Ministry, in close cooperation with the Ministry of Health. This policy seeks to build on relevant lessons learned by the international community, as well as responding to specific national circumstances, needs, and priorities. This work is guided by essential rights-based principles including non-discrimination and inclusion in all aspects of development and the empowerment of people with disabilities as agents and beneficiaries of all aspects of development.
438. The objectives for the national policy are: accessibility in the general systems of society; social security and social safety nets; employment promotion and sustainable livelihoods in open markets; civil and political participation; and information, communications and freedom of expression for all. Implementation will be supported by a law on disability and the establishment of a national consultative and coordination mechanism and annual reporting to Parliament on performance and outcomes of actions provided for in the policy.
439. While responsibility for medical treatment of illnesses and diseases such as poliomyelitis and leprosy lies with the Ministry of Health, local NGOs such as ASSERT, assisted by Cambodia Trust, are taking action to reduce social exclusion of disabled victims and others requiring motors aids through the

supply of orthotic and prosthetic services. This program will ultimately be handed over to Government to operate in the future<sup>202</sup>.

## ***I. PROCEDURAL GUARANTEES***<sup>203</sup>

### **Arrest and Detention**

440. In Timor-Leste, the authority to maintain law and order, and to arrest and detain individuals, primarily rests with the National Police of Timor-Leste (*Polícia Nacional de Timor-Leste – PNTL*)<sup>204</sup>. The Customs Service<sup>205</sup> and any individual witnessing the commission of a crime<sup>206</sup> also have the power to arrest an individual.
441. The power to detain individuals remains primarily with the national police and is most often exercised to detain criminal suspects. The police are also authorized, however, to detain illegal immigrants<sup>207</sup>.
442. Police may conduct an arrest in *flagrante delicto* - when there is clear evidence of the commission of a crime or a crime is in the process of being committed, or, if the suspect is followed immediately after the commission of a crime and is found with suspicious objects or evidence. An individual may also be arrested following the issuance of a warrant for arrest by a judge<sup>208</sup>.
443. As arrest and detention impose direct and significant limitations on individual rights and freedoms, the law provides strict safeguards to ensure such powers are not arbitrarily exercised. Article 34.1 of the Constitution and Article 60 of the Criminal Procedure Code<sup>209</sup> provide that a suspect must be presumed innocent until proven guilty and must be informed of his/her rights and the charges against him/her in a clear and precise manner. The legality of the arrest

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202 Timor-Leste; Social Civil and Heritage Protection Sector Investment Program, April 2006, p37.

203 This Part covers:

- Articles 9, 14 and 15 ICCPR
- Articles 18(2) and (3), 19 MWC
- Article 5 CERD
- Articles 7,12, 13 and 15 CAT
- Articles 37, 39 and 40 CRC

204 See article 147 of the Constitution. Specifically about the Police's law enforcement functions, see Section 1 – Section 3, Decree-Law no. 8/2004 on the Organic Structure of the National Police of Timor-Leste. On arrest and detention, see Section 2.3, Section 6 and Section 9.8. UNTAET Regulation 2000/30 on Transitional Criminal Procedure as amended by UNTAET Regulation 2001/25.

205 Section 1(3)(b). Decree-Law No. 9/2003 on the Duties and Competencies of the Customs Service of Timor-Leste.

206 Article 218.2, Criminal Procedure Code Decree Law No. 15/2005

207 Section 72 Immigration and Asylum Act, Law No 9/2003.

208 Articles 218-220 Criminal Procedure Code, Decree Law No15/2005

209 Decree Law No. 15/2005

and detention must be reviewed by a judge in a closed hearing within 72 hours of arrest, and once every six months thereafter to determine the validity of ongoing detention<sup>210</sup>. Pre-trial detention may not exceed a period of one year without the presentation of an indictment; two years without a first instance conviction; and three years without a final conviction. The above mentioned time limits may be increased by six months where a case proves exceptionally complex<sup>211</sup>.

444. The Constitution and Criminal Procedure Code allow individuals to make an application of *habeas corpus* to the Supreme Court to challenge his/her arrest or detention<sup>212</sup>. As detailed in Section L of this document on ‘remedies for violations of rights’, some five *habeas corpus* applications were successfully taken to court between 2002 and 2005. The Code specifically provides that the imposition of pre-trial detention must, where feasible, be preceded or followed by the hearing of the defendant, allowing him or her to challenge the existence of the pre-requisites for detention. The pre-requisites for pre-trial detention include:
- reasonable fear that the defendant may escape, that an investigation may be disrupted or that criminal activity may be pursued<sup>213</sup>;
  - strong indicators that a crime punishable with imprisonment exceeding three years has been committed; and
  - inadequacy of any other restrictive measures<sup>214</sup>.
445. Provided the pre-requisites for pre-trial detention are met, a person suffering with a mental disorder shall be preventively admitted to a psychiatric hospital or other appropriate establishment for the period of time necessary.<sup>215</sup>
446. Recall also that the Provedor is mandated to investigate any places of detention to inspect conditions therein and to conduct confidential interviews with persons in detention.
447. Despite their comprehensive nature, the rules and procedures for arrest and detention are not always respected. This occurs for several reasons.
448. The evolving nature of the legal system has generated some confusion as to applicable arrest and detention laws and procedures in Timor-Leste. It is hoped that the proposed Penal Code, and new Criminal Procedure Code and Organic Laws for the Office of the Public Prosecutor and Public Defender will resolve

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210 Article 30.2 and article 30.3 of the Constitution and Articles 63 and 196 of the Criminal Procedure Code Decree Law No15 /2005

211 Article 195 Code of Criminal Procedure Decree Law No15 /2005

212 Article 33 CRDTL and Article 205 Criminal Procedure Code refer.

213 Article 183, Criminal Procedure Code, Decree Law No. /2005

214 Article 194 Criminal Procedure Code Decree Law No. /2005 refers.

215 Article 194.4 Criminal Procedure Code Decree Law No /2005.

some of these inconsistencies though extensive trainings will also be required for the police force to develop their knowledge of the new legal framework.

449. The PNTL is itself a very young and relatively inexperienced organisation of approximately 2,980 personnel. This inexperience has sometimes manifested itself in poor conduct.
450. Disciplinary cases are categorized as either minor or serious offences with human rights violations falling within the latter category<sup>216</sup>. Serious disciplinary offences that also might also constitute human rights violations are:
- conviction for a criminal offence (if involving harm to others);
  - unlawful or unnecessary exercise of authority (if involving physical or psychological harm to others);
  - sexual harassment;
  - trafficking and prostitution of women and children
  - discriminatory conduct.
451. Overall, while there has been no substantial increase in cases of police indiscipline, reports of police infractions continue to be made. In 2004, 6.8 percent of police officers had a disciplinary case brought against him/her (38 percent of which were minor offences), though not all involve human rights violations. Seven officers were dismissed for cases involving serious misconduct. A further three had been dismissed as at April 2005. Police have also been convicted for criminal assault - usually maltreatment<sup>217</sup>.
452. Of major disciplinary offences during the period from 1 January 2005 – 31 March 2005, 13 resulted in convictions for assault offences, seven were due to the unlawful exercise of authority and two were sexual assault or sexual harassment cases. As at November 2005, 175 cases of police misconduct had been reviewed by the PEO, of which 63 were said to involve human rights violations<sup>218</sup>.
453. This profile of cases suggests that police officers need further training in arrest, interview and handling of detainees, as well as understanding of their role as police officers<sup>219</sup>, though training would not respond to the more egregious matters, namely sexual offences, in which criminal proceedings are the only appropriate avenue for redress.

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216 Article 33 of the Police Disciplinary Regulations Decree Law 13/2004 refers.

217 On 19 November 2004, a PNTL BPU Officer from Batugade was convicted and sentenced to 19 months' imprisonment for serious maltreatment under Article 351(2) of Indonesian Penal Code. Previously two further PNTL officers had been convicted of light maltreatment involving assault of two suspects. The Officers in this case received a fine of \$15 each and were transferred to other units.

218 Presentation by Domingos Soares, Police Inspector, "Professional Ethics and Accountability within PNTL", July 2005.

219 Ministry of Interior, Review of PNTL Professional Standards Administrative Cases Against PNTL Members, 18 April 2005, p7.

454. The new Police Disciplinary Regulations<sup>220</sup> provide a sophisticated means by which to strengthen police accountability to more effectively address cases of police misconduct, though corollary rules of procedure to give more practical effect to these regulations are not yet in effect.
455. The Ministry of Interior is also considering the establishment of mechanisms to ensure that all cases reported are reviewed for human rights violations and that a system of reporting these cases on a monthly basis to the Minister is implemented. This will provide the ministry with sufficient information to fully assess the nature and extent of rights violations and to take more targeted action to address cases that have occurred.
456. Alongside challenges of a legal and institutional nature, limited resources continue to undermine efforts to realize fundamental guarantees including the right to adequate conditions of detention and access to legal representation while in police custody, timely execution of pre-trial hearings, and access to interpretation/translation support.
457. The Constitution provides that men and women who are imprisoned retain their rights as human beings except those that have been lost as a specific consequence of the lawful deprivation of liberty<sup>221</sup>. While prison conditions are generally good, though currently in need of rehabilitation, the conditions of police custody can vary. These conditions are never so bleak as to constitute grave violations of rights. However, limited resources have on occasion resulted in police resorting to use of their own meager resources to ensure that detainees are properly fed, clothed, and provided blankets for sleeping – a far from desirable solution that the Government expects to resolve in the short-term.
458. Although there are a number of private institutions providing legal services, for a long time, there were only 10 public defenders<sup>222</sup> to provide free legal assistance to individuals involved in criminal investigations or criminal proceedings. The situation today has deteriorated still further with the failure of public defenders in national examinations so that now there are only seven international public defenders to provide this service. Police also advise that the right of a suspect to contact a lawyer may be suspended in circumstances where there are reasons to believe that the suspect poses a threat to public security, such as being found in possession of weapon, ammunition or explosives<sup>223</sup>.
459. Breaches of the 72-hour limit for police detention have also occurred, particularly in remote areas where lack of transport, gasoline or poor road

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220 Decree Law 13/2004.

221 Article 32(4) CRDTL refers.

222 In September 2001, 10 lawyers were recruited to work on probation with the Office of Public Defenders. Each of those 10 national probationary public defenders failed their evaluations in 2005. Now there are at least 4 international Public Defenders in the Office.

223 PNTL Submission to CCD (6 January 2005) and Ministry of Justice Meeting July 2005.

conditions have resulted in suspects not being able to be brought before the court in a timely fashion. During a significant part of the reporting period, the Dili District Court was the only court consistently in operation. The other district courts functioned irregularly in their respective districts and instead operated from the Dili District Court premises making it still harder to bring a suspect before the court from farther regions<sup>224</sup>. The arrival of international and national judges and prosecutors in recent months has improved the functioning of the courts but the situation is still not resolved. District consultations also revealed misinterpretations of the 72-hour rule on the part of police with some believing it necessary to detain a suspect for at least 72-hours before s/he is brought before an investigating judge<sup>225</sup>. It has also been claimed that 72-hour detention rule has been used as a form of punishment to detain individuals without charge for short periods of time.

460. Police officers are aware of a suspect's rights to be told in a clear and precise manner of the charges against him/her upon arrest. Yet the language complexities and the absence of a pool of interpreters to assist with proceedings in each of the thirteen district police stations has made this guarantee difficult to fulfil in all cases.
461. Much of the information on police violations of human rights or breaches of due process that is detailed above is anecdotal in nature. The Ministry of Interior, the ministry responsible for the PNTL, acknowledges breaches of human rights violations have occurred, though emphasizes that the ministry itself has not yet had the opportunity to establish a mechanism to identify or record data on the nature of extent of human rights violations and so is currently unable to provide conclusive data on this issue. Nevertheless, it is expected that: once fully operationalised, the Disciplinary Regulations 2004 coupled with improved data collation; enhanced referral and complaints handling mechanisms as between the Office of the Inspectorate, Professional Ethics Office and the Office of the Provider; and, extended periods of police training will yield positive results including strengthened police accountability and a reduced number of human rights violations in arrest and detention practices.
462. Article 2.1 (c) of UNTAET Regulation 2001/23 provides that the penitentiary system shall aim to reform and socially rehabilitate prisoners. Indeed, the penal system in Timor-Leste is designed to ensure that inmates are not completely disconnected from society at large, particularly their families and relatives. Regular visits to prisons are allowed for relatives and families. All other visits of prisons are conducted following approval of the Minister of Interior and

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224 Judges and prosecutors assigned to district courts across the country have been working on a probationary basis since 2001. They have were often required to attend trainings in Dili, and therefore abandon their posts. The situation has improved somewhat following the arrival of international judges to fill the vacuum left by national judges after the failure of their exams, but it is still less efficient and consistent than desirable.

225 This misperception was raised by Manatuto Regional Focus Group Meeting.

Minister of Foreign Affairs. The Ministry of Justice, in partnership with UNDP, have established a 'Prisoner Assistance Program', which includes vocational as well as anger management training for prisoners convicted of gender-based violence offences. In addition, the Office of Promotion of Equality, with the support of UNFPA, is currently piloting a 'Controlling Violent Behaviour Training Program for Violent Offenders'. At the time of writing, 12 prison guards have successfully completed the first phase of the Training of Trainers (TOT) component of the program. A training manual has been developed with the input of relevant stakeholders, which will be followed by an intensive TOT for 3 prison guards (co-facilitators) before proceeding to the final phase of implementation of the training modules for the group of prisoners. Other social and educational programs have also been devised to enable inmates to conduct normal lives once they return to their community.

### **Criminal Proceedings**

463. Both the Constitution and Criminal Procedure Code provide the domestic legal basis for the guarantee of 'fair trial and due process' in Timor-Leste.
464. In accordance with the right to be presumed innocent until proven guilty, as protected by article 34(1) of the Constitution, the onus to establish proof of the commission of a crime rests with the public prosecutor<sup>226</sup>. Article 35.4 of the Constitution is also clear that no witness may be compelled to incriminate him or herself and, while there is no specific legislation on the matter, a suspect is not compelled to confirm or deny information provided by victims and witnesses regarding the commission of a crime. It remains the responsibility of the prosecutor to conduct further investigations and collect evidence for the case. Defense counsels are given the opportunity to cross-examine witnesses presented by the prosecution.
465. The Code of Criminal Procedure expressly prohibits the admission in court of evidence obtained through unlawful means such as torture, coercion or threats to moral or physical integrity<sup>227</sup>. Any officer who uses unlawful means to obtain such information may be sentenced to a maximum of 4 years imprisonment<sup>228</sup>. The Government is not aware of any cases in which evidence deduced by torture, coercive or threatening means has been presented to the courts.
466. Article 34.2 of the Constitution and the Criminal Procedure Code<sup>229</sup> guarantee an accused the right to a lawyer at all stages of the criminal proceeding and the Office of the Public Defender<sup>230</sup> is the principal means through which people

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226 Articles 114 and 265 Criminal Procedure Code, Decree Law No15 /2005.

227 Article 34.4 of the Constitution and Article 110.1 Criminal Procedure Code, Decree Law No15 /2005.

228 Article 422 of Indonesian Criminal Code.

229 Article 66.1 and 68 (b) Criminal Procedure Code, Decree Law no 15/2005 refer.

230 This institution has been incorporated into the structure of the Ministry of Justice by Government Decree-Law 10/2003.

can access free legal assistance. Other entities exist that provide legal assistance, either as a commercial or pro-bono service, besides the Office of the Public Defender. Article 135 of the Constitution provides that legal and judicial aid in Timor-Leste has a social interest and should be provided in accordance with this principle<sup>231</sup>, and there are at least eight legal aid non-governmental organizations are operating in the country, which are funded by the Asia Foundation. Nevertheless, Timor-Leste currently suffers from a substantial shortage of legal representatives which impacts a suspect's right to competent legal representation and often undermines timely resolution of his or her case. This situation has been further exacerbated by the failure of public defenders in their legal exams in early 2005. Timor-Leste still remains heavily dependent upon international advisers and donor support for the continued operation of the Office of the Public Defenders.

467. The Constitution and law provide that trial hearings shall be open to the public and this is largely respected in practice<sup>232</sup>. Where the specific circumstances surrounding the case require, however, the public character of hearings may be restricted in whole or in part, to preserve public morals or dignity<sup>233</sup>. This may include cases involving sexual criminal offences and, in fact, hearings involving sexual criminal offences against an under 18 year old are, as a rule of thumb, invariably closed to the public.
468. The right of a defendant to cross-examine a witness and the right of vulnerable witnesses to be free from intimidation are recognized in law and are generally respected by judges in criminal proceedings<sup>234</sup>. The more problematic aspect of court proceedings to date has been the excessive delay in processing cases and substantial backlogs due to inexperience and ill-preparation by judges, insufficient support for the courts, and lack of clarity and uniformity in the management of cases. This protraction has, in some cases, undermined the right of defendant to be tried without undue delay.
469. According to data collected by the Office of the Prosecutor General, the backlog of cases has grown significantly since 2001, though has reduced slightly following the arrival of international judges. As at the end of 2004, there were 1091 cases entered into the system (174 in 2004) of which 440 were still pending<sup>235</sup>. The new Criminal Procedure Code includes a series of provisions designed address the problem of undue delays that have plagued the effective functioning of the judicial system since before independence. It is hoped that

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231 Article 76, Criminal Procedure Code, Decree Law No15 /2005.

232 Article 131 of the CRDTL and Articles 75 and 247 Criminal Procedure Code Decree Law 15/2005

233 Section 76(1) Criminal Procedure Decree Law No15 /2005. See also Article 131 of the Constitution.

234 Article 254(3) of the Criminal Procedure Code provides that a defendant may be sent away from the courtroom for a period of time deemed necessary when his or her presence may contribute to inhibiting or intimidating a person who is to make a statement.

235 Timor-Leste, Rights, Justice and Equality Sector Investment Program, April 2006, p14.

this new legislative framework and increasing capacity of justice sector actors will do much to strengthen efficiency in the processing of cases.

470. Court decisions are to be made available to defendants and their families through their attorneys, and to the public through print and electronic media so far as possible<sup>236</sup>. In 2005, a directive was issued by the President of the Court of Appeal, formalizing public access to court decisions. Initially, there were complaints that some court decisions remained inaccessible<sup>237</sup>, but the courts have now commenced more regular publication of their decisions and improved the flow of case information.
471. There is no specific Constitutional ‘right to appeal’ but the Criminal Procedure Code states that “unless expressly prohibited by law, court orders, sentences and decisions may be appealed to in whole or in part on matters of fact and law”<sup>238</sup>. Appeals from decisions of the district courts shall be made to the Supreme Court of Justice, currently the Court of Appeal<sup>239</sup>.
472. The Constitution of Timor-Leste provides that the criminal law shall not be enforced retroactively. It also prohibits double jeopardy so that, regardless of the final verdict, once an individual has been tried for a crime, s/he cannot be tried a second time for the same offence<sup>240</sup>. There are no reported cases of a defendant having been tried more than once for the same offence. There are, however, two cases on the issue of non-retroactivity.
473. The first arose in the Court of Appeal which held that the Serious Crimes Panel did not have the jurisdiction to hear cases of *crimes against humanity* that had occurred before the establishment of the Special Panels, as this would amount to retroactive application of the criminal law. The Special Panels had been delegated specific jurisdiction to determine such cases<sup>241</sup>. However, this decision was revisited by the Special Panels for Serious Crimes, which determined not to follow the decision of the Court of Appeal and found that as *crimes against humanity* are deemed to constitute crimes under customary international law, such crimes formed part of the fabric of law in Timor-Leste at the time the crimes were committed. Accordingly an individual could be tried for crimes against humanity committed before the establishment of the court without violation of the principle of retroactivity<sup>242</sup>.
474. In a subsequent decision, *Public Prosecutor v. Paulino de Jesus*<sup>243</sup>, the Court of Appeal also found the defendant guilty of ‘*crimes against humanity*’ despite the

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236 Ministry of Justice submission for CCD, 3 February 2005.

237 HRU submission 30 May 2005.

238 Article 287 Criminal Procedure Code, Decree Law No15 /2005.

239 Article 291 Criminal Procedure Code, Decree Law No15 /2005.

240 Section 19.A.7 Criminal Procedure Code, Decree Law No15 /2005

241 *Armandos dos Santos v Prosecutor General*, Court of Appeal (15 July 2003).

242 *The Public Prosecutor v. Joao Sarmento and Domingos Mendonca*, Special Panel for Serious Crimes (24 July 2003), Case No.18a/2001.

243 Court of Appeal (4 November 2004)

fact that the crimes were committed before such acts were deemed to be crimes by domestic law. This has resolved any ambiguity on the point.

475. Special measures have been adopted to ensure support for victims of sexual offences. These measures include the establishment of the Vulnerable Persons Unit (VPU) within the police service to provide support to victims of sexual abuse. In addition, there is a network of support services consisting of Government agencies and NGOs, which provide continuing assistance in the form of trauma counseling and safe houses to help victims towards full recovery. These agencies often work closely with the police and accompany victims during investigations<sup>244</sup>. This referral network of support services is currently being coordinated by the OPE, with support from UNFPA.

### **Traditional Justice**

476. Citizens, particularly in the districts, are not familiar with the process of bringing disputes to the district court<sup>245</sup>. While Timorese generally approve of the formal system, people are most comfortable and familiar with “*Adat*” or traditional justice. Indeed, it is evident that a significant proportion of the population prefer to revert to traditional dispute resolution instead of formal justice to resolve their grievances as they perceive the formal system as weak and inefficient<sup>246</sup>.
477. Often referred to as ‘local justice’, traditional justice has existed since before the Portuguese and Indonesian occupations. It is an unwritten oral tradition of decision-making by elders that is passed down the generations through respected elders in the community, the “*Lia Nain*” (elder) of the “*aldeia*” (village or sub-village).
478. Hierarchical in structure, traditional justice is commonly used to resolve both civil and now an increased number of minor criminal matters, which have customarily included: land and domestic disputes and petty crime. Traditional justice often takes account of fundamental human rights principles though the degree of consideration afforded to human rights varies considerably from one case to another.
479. Due to its traditional and hierarchical nature, traditional justice does not always guarantee that parties to a dispute are equal before the law. For example, in cases involving a father and son, the father will always ‘win’ because he is the elder and because he has provided for his son.
480. The use of traditional justice to resolve more serious crimes such as domestic disputes or cases of sexual violation is widespread across Timor-Leste and is cause for concern because the victims, usually women and children, have

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244 FOKUPERS, the Victim Support Service at JSMP and PRADET, among others, have been active in providing assistance to victims of sexual abuses.

245 Asia Foundation Report, p2.

246 This point was reiterated throughout district consultations

virtually no say in the matter and are left disempowered by the process. This is also evident in cases of land disputes, especially in the patrilineal system in which men are more likely to inherit land and women will not question these decisions.

481. District consultations revealed also that despite its obvious merit, traditional justice mechanisms can in some cases have the effect of inhibiting free expression due to the shame experienced by the parties to a dispute. Some individuals, often the victims, reportedly feel constrained by feelings of shame and are generally reluctant to air their grievances in a community forum. Invariably these feelings afflict those most vulnerable including women and children<sup>247</sup>. This issue is discussed in more detail in the CEDAW Specific Document.
482. Traditional justice remedies are based on a traditional concept of “compensation”, most commonly referred to as “*fo sala/ monu ain*“. Compensation always comes in the form of money, or an animal: such as a buffalo, horse, pig, or goat. The aim of “*Adat*” is to redeem the dignity of the victim while at the same time calling both parties to reconcile with one another publicly. “*Belak*” (crescent shaped ornament worn on the chest) are sometimes worn to symbolize efforts to restore a victim’s dignity.
483. Alternative remedies available include mediation whereby the “*Lia Nain*” approaches both parties with the aim of achieving a family/private solution and ‘redemption’ of the victim’s dignity. Following the initial approach, the “*Lia Nain*” calls both parties into “*biti boot*” to forgive one another. This is considered the end of the matter and it falls on both parties to receive or treat one another as before the conflict. Very often, in cases of domestic violence and/or sexual assault, the perpetrator may not be penalised any more than having to provide reparations, such as fines or payment of goods, to the victim’s family. Discussions from regional human rights treaty reporting workshops in 2005 indicate that women rarely receive any direct form of compensation, are often blamed for the crime and are left to deal with the consequences or shame associated with the crime.
484. Despite its obvious weaknesses, experience has shown that traditional justice is capable of resolving both civil and criminal disputes. In fact, when used as mechanism for low level community dispute resolution, involving matters of a minor nature that can be dealt with expeditiously, it can be extremely effective. In more serious cases its efficacy is questionable.
485. Firmly embedded in the historical culture of the country, traditional justice resolves problems through consensus. If one party is not happy with a decision or a resolution could not be reached at the village or local level, the matter can be taken to the formal justice system /court for resolution.

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Reported in Oecusse, Maliana and Dili, among others.

486. Article 31 of the Constitution gives primacy to the formal justice system over traditional practices. However, traditional practices do have a constitutional place as affirmed by article 2.4 which requires the State to “recognise and value norms and customs of East Timor and any legislation dealing specifically with customary law”. The Government recognizes the special place of traditional justice within the country. But, the relationship, if any, between traditional and formal justice is still to be determined and increasingly warrants attention as the country progresses in strengthening the rule of law and justice institutions, and in the implementation of relevant legislation such as the law on domestic violence.
487. In the interim, it is evident that traditional justice will continue to enjoy its current role as a popular community dispute resolution mechanism throughout Timor-Leste.

## ***J. PARTICIPATION IN PUBLIC LIFE***

### **J(A)RIGHT TO NATIONALITY<sup>248</sup>**

488. In Timor-Leste, nationality and citizenship are regulated by article 3 of the Constitution, Law 9/2002 on Citizenship, and Decree Law 1/2004 on the Regulatory Arrangements for the Law on Citizenship.
489. The Constitution provides for two types of citizenship: original and acquired. Both original and acquired citizenship are determined by a combination of factors including birth, parentage and marriage. For original citizenship, birth and parentage are the most important factors. Article 3.1 of the Constitution and sections 8.1 and 8.2 of the Citizenship Law provide that children born in Timor-Leste are original citizens if one of the parents was born in Timor-Leste also.<sup>249</sup> Children who were born outside the country are also original citizens of Timor-Leste on the basis of parentage.<sup>250</sup> The legal regime grants original citizenship to children whose parents are unknown or stateless, or of unknown nationality, providing those children were born in Timor-Leste<sup>251</sup>. Children who at age of majority (17 years) declare their will to become citizens of Timor-Leste are also deemed citizens of the State.

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248 This part covers :

- Article 24 ICCPR
- Article 7 and 8 CRC
- Article 9 CEDAW
- Article 5(c) CERD
- Article 29 MWC

249 See article 3(2) CRDTL and article 8(1) Law 9/2002.

250 Article 3(3) CRDTL and article 8(2) Law 9/2002.

251 See article 2(2)(c) CRDTL and article 8(1)(b) Law 9/2002.

490. The acquisition of citizenship is regulated by law and may include acquisition by parentage, adoption by Timorese nationals, marriage and naturalisation/residence.<sup>252</sup> Citizenship by naturalisation/residence can be acquired by a person who is a usual and regular resident of Timor-Leste for at least ten years prior to 7 December 1975 or after 20 May 2002, provided that person: speaks one of the official languages; has the ability to sustain him/herself; and has some knowledge of the history and culture of the nation.
491. East Timorese nationality may also be awarded to a person who is married to an East Timorese citizen for more than five years, and has resided in the national territory for more than two years. Again, acquisition of citizenship in this case is contingent upon a requirement to speak one of the official languages<sup>253</sup>. A foreign national who loses his or her previous citizenship because of being married to an East Timorese national shall also be granted East Timorese nationality. East Timorese citizenship acquired in good faith through marriage shall not be affected by the annulment of the marriage.
492. And finally, the National Parliament may also grant citizenship to a person who has rendered high and relevant services to the nation<sup>254</sup>.
493. In the case of original citizenship of Timor-Leste, the law provides that an individual's voluntary decision not to continue to be a citizen of Timor-Leste is all that is necessary to relinquish citizenship. In the case of acquired citizenship, any one of the following criteria may give rise to loss of citizenship:
- service in the army of a foreign State without authorisation;
  - unauthorised exercise of functions of sovereignty in a foreign State;
  - conviction for a criminal offence against the external security of the State of Timor-Leste; or
  - acquisition of citizenship through forged documents, fraudulent means or deception of competent authorities.
494. Reacquisition of citizenship may occur, upon deliberation by the Ministry of Justice, if the loss happened during childhood and that child is now an adult, or if citizenship was renounced. Residence of one and five years respectively must also be established.

### **Equality of Citizenship Rights**

495. Timorese law guarantees equality of citizenship so that men and women enjoy the same rights to obtain, change and retain their citizenship regardless of their gender. And indeed a woman continues to enjoy her rights as a national citizen

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252 Sections 10 to 12 Law 9/2002.

253 See for example Sections 11(1)(c) and 12(1)(f) Law 9/2002.

254 Section 13, Law 9/2002.

regardless of the nationality of her husband or any decision by her husband to change his nationality. Many East Timorese women who are married to foreigners still enjoy the same levels of participation in social and political life as women married to Timorese men. A woman is also not required to request her husband or male guardian's permission if she wishes to obtain a passport, though it is customary for both women and men to inform their respective families of any plans to travel.

496. A mother's citizenship carries equal weight to that of the father. Children can take either the mother or father's citizenship. Dual citizenship is informally accepted by the State and many Timorese enjoy Timorese citizenship as well as that of another State, most often Portugal, Mozambique, or Australia. The law does not formally sanction dual citizenship, but rather states that where there is a conflict with other citizenship in Timor-Leste, Timorese citizenship shall prevail<sup>255</sup>.

## **J(B) RIGHT TO POLITICAL PARTICIPATION AND ACCESS TO PUBLIC SERVICE<sup>256</sup>**

497. The right of Timorese citizens to political participation is guaranteed by the Constitution in several provisions. Article 46 of the Constitution provides that: *"every citizen has the right to participate in the political life and in the public affairs of the country, either directly or through democratically elected representatives"*.
498. Other key provisions of the Constitution include: the right to establish and to participate in political parties, and the right to vote and be elected<sup>257</sup>. The Constitution is clear that the right to vote is personal and constitutes a civic duty and that the direct and active participation by men and women in political life is fundamental for the consolidation of a democratic system<sup>258</sup>. Equality in the exercise of civil and political rights and non-discrimination on basis of gender in access to political positions is also promoted<sup>259</sup>.
499. There are three types of elections in Timor-Leste's political system: Presidential, Parliamentary, and "*Chefe de Suco/suco*" (chief of village/village) council elections. Elections are universal, free, direct, equal, secret, exercised

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255 Sections 29 and 30 of Law No. 9/2002 on Citizenship.

256 This part covers:

Article 25 ICCPR

Article 7 and 8 CEDAW

Article 5(a) CERD

Article 41(2) and 42(3) CMW

257 Articles 46 and 47 CRDTL.

258 Article 63(1) CRDTL.

259 Article 63(2) CRDTL.

through personal and regular universal suffrage<sup>260</sup>. Presidential and parliamentary elections are held every five years, in accordance with the term of office for the President and the Parliament while *Chefe de Suco/suco* elections shall be every three years, with the exception of the first term which shall last for a period of four years<sup>261</sup>. Subsequent terms shall be three years duration. The first elections were staggered by district and held throughout 2004/2005.

500. An independent National Electoral Commission (CNE) was established to administer and implement the elections at all three levels. The Commission is comprised of thirteen members, representing all sectors of Timorese society. Three members are appointed by the President, three by Government, and four are appointees of the National Parliament. At least one woman is appointed by each institution. The Court, the Office of the Public Prosecutor and the Office of the Public Defender respectively appoint one member to the CNE. The task of the CNE is to oversee the realisation of the elections, to ensure compliance with the law and the Constitution, to examine and decide upon complaints and claims related to the conduct of the elections, and to present the results of the elections to a competent court for validation. An Independent Electoral Commission had also been established by UNTAET Executive Order<sup>262</sup> to oversee the elections for the Constituent Assembly and the presidential elections held during the UN Administration in 2001 and 2002.
501. A technical secretariat for electoral administration ('STAE') exists within the Ministry of State Administration and is tasked with the organisation and execution of electoral processes and consultation and support in electoral matters, which includes proposals for appropriate measures to ensure the participation of citizens<sup>263</sup>. Most recently, this administration has provided specific advice on the possible nature and content of electoral laws for the 2007 elections.
502. An important part of the electoral process is the political campaign. The conduct of electoral political campaigns is regulated by law. According to article 65 of the Constitution, electoral campaigns shall be governed in accordance with the principles of freedom to canvass, equality of opportunity and treatment for all candidacies, impartiality towards candidacies on the part of public bodies, and transparency and supervision of electoral expenses. Whilst there is no law on the issue, in practice, political parties conduct the political campaigns for elections. Where there are individual candidates standing for election, they conduct their own electoral campaign. Equal opportunities to conduct electoral campaigns are provided both for individual candidates and for political parties.

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260 Article 65(1) CRDTL.

261 Article 6 Law 2/2004

262 No. 2002/10 on Independent Electoral Commission.

263 Section 12, Organic Law on the Ministry of State Administration, Law No 2/2003.

## Women and Political Participation

503. The Government of Timor-Leste recognizes the importance of increasing the numbers of women in public office and is supported by a solid Constitutional and legal framework to achieve this objective. Article 63 of the Constitution is explicit in its advocacy of equal political opportunities for both men and women noting that “*the direct and active participation of men and women in political life is a requirement of and a fundamental instrument for consolidating the democratic system*”. Equality in the exercise of civil and political rights as well as non-discrimination on the basis of gender in access to political positions is also guaranteed. Section 8 of the ‘Law on Political Parties’<sup>264</sup> obliges political parties to encourage the participation of women in party politics, particularly in the leading organs of a party, advocating the use of quotas and other measures to promote such participation.
504. The many determined efforts of the Government to guarantee equal opportunity and to enhance women’s participation in the political process, including through legislation, have so far yielded impressive results. At the time of writing, a number of key positions within the Government and the legislature are occupied by women including the Minister and Vice-Minister of State Administration, Minister for Public Works, Minister and Vice Minister of Planning and Finance, Vice Minister of Foreign Affairs and Cooperation and Vice Minister of Education. Both the Office of the Human Rights Adviser to the Prime Minister and Office for the Promotion of Equality are headed by women, as are many key directorates across the range of government ministries such as Education and Health. 26 percent of seats in the National Parliament are currently held by women, a percentage significantly higher than many other OECD countries.
505. The Ministry of Foreign Affairs and Cooperation tries to maintain, where possible, a 30 percent quota of women working within the ministry and encourages women to apply for vacant positions, but these are ultimately determined on the basis of merit and a transparent application process. It is also understood that government service, particularly service abroad, is demanding and that often women rely on the support of a spouse and family to share family responsibilities such as taking care of children, while they are working. Many women do not enjoy the full support of their families while they are working and are therefore unable to undertake all opportunities for professional development.
506. Until recently, both male and female diplomats could not bring their families to their respective postings, as the package offered for service abroad did not make provision for families to accompany diplomats. From April 2005, an

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264 Law No 3/2004.

amendment to the Civil Service Act has enabled spouses and children of diplomats to join them abroad.

507. At the time of writing, there are six women employed in foreign service posts out of an available 24 positions. With five of these positions vacant, this currently constitutes approximately 31 percent female representation. Of these six women working abroad, one is currently an Ambassador in Portugal; two are Chargé D'Affairs in Beijing, China and Mozambique and one is a Counselor based in New York, USA. The two remaining women diplomats are a Second Secretary in Jakarta, Indonesia and one junior diplomat in Sydney, Australia.
508. As previously mentioned, section 3 of the law<sup>265</sup> on *Chefe do Suco/Suco* Council Elections specifically provides that, of the minimum number of seven posts in each *suco council*, three must be reserved for women - two women representatives and one female youth representative. The law also provides the opportunity for women to participate in the administration and oversight of the election process<sup>266</sup> through the mandatory nomination of one woman to the CNE by the President, Government and National Parliament respectively. The results of the *suco* elections 2004-2005 have been viewed as important for women, with 22 out of the 2,228 *Chefe de Aldeia* and seven out of the 442 *Chefe do Suco* positions won by women. In all of the 442 *suco* councils in the country, there are at least 1,332 women members. During elections, women represented 60 percent of the total registered voters.

### *Obstacles to women's participation in public life*

509. During the Indonesian occupation, women and men were not been able enjoy the same degree of political participation or representation.<sup>267</sup> The decision-making power was delegated to civil servants, mainly men, who answered to provincial or central authorities or directly to the Governor of East Timor. Few women participated in local government<sup>268</sup> and candidates were often chosen in line with the prevailing military interests.<sup>269</sup> Traditional views concerning the roles of women and men in society also contributed to the estrangement of women from political processes. Many Timorese viewed and continue to regard politics as a restricted and masculine sphere of influence.
510. Today, the nature of patriarchal culture in Timor-Leste, particularly in the districts has presented greater obstacles to the realisation of equal

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265 Law on Suco Elections 2/2004

266 Article 29, Law 2/2004 refers.

267 Sofi Ospina and Tanja Hohe 'Traditional Power Structures and Local Governance in East Timor – A Case Study of the Community Empowerment Project (CEP)' (2001), p. 71

268 Sofi Ospina and Tanja Hohe 'Traditional Power Structures and Local Governance in East Timor – A Case Study of the Community Empowerment Project (CEP)' (2001), p. 71

269 Sofi Ospina and Tanja Hohe 'Traditional Power Structures and Local Governance in East Timor – A Case Study of the Community Empowerment Project (CEP)' (2001), p. 50

representation, for example, as *Chefe de Sucos* or on *suco* councils than currently enjoyed on national governing bodies.

511. A survey conducted by Oxfam in the district of Covalima in 2003, identified a number of reasons for the poor participation of women in local politics. Principle restrictions included women's limited access to education, low confidence, low awareness of issues and limited time available for women to participate in such activities.<sup>270</sup> An additional limitation, especially at the district level, is the notion that women have a minor role in decision making at that level. The same study noted that both women and men's views of their respective roles also limited their ability to view the former group as potential leaders. When asked how they could improve their political participation, men replied by increased participation in meetings and consultations; while women thought of acquiring cooking, sewing and language skills.
512. Older women in the community are more likely to participate in local activities, as they have greater social status, especially if they come from a respected family in the community, whereas younger women often find they have no time to devote to political activities over and above normal family duties such as taking care of children. Where the will to become more involved exists, women tend not to be supported by their husband or immediate family, nor at times can they rely on encouragement from other women to stand for election. In some districts such as Lautem, where support for women's participation is relatively strong, women have put themselves forward for local positions, only to withdraw their candidature at a later stage. Furthermore, events of 1975 and more recently 1999 have prevented many women from becoming prominent in the community due to fear of violence or reprisals.<sup>271</sup> To some extent, this attitude is slowly changing as women are thinking more about traditional practices that define gender roles and how they can identify opportunities for change.

#### *Government efforts to support women's political participation*

513. As noted in above, the Office for the Promotion of Equality (OPE) is tasked, *inter alia*, to provide advice to the Prime Minister, as well as other ministries, to ensure that women and other vulnerable groups are afforded the opportunity and adequate support to participate in all sectors of public life including political decision-making.
514. The OPE has been active in this regard, with 'Supporting the Empowerment of Women' as one of its four key programs. The empowerment of women is listed as the second core component of the development strategy of the National Development Plan. OPE's strategy for this program has focused on participation in public life, leadership and decision making (in addition to economic

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270 Oxfam 'Underlying Causes of Gender Inequity in Covalima, Timor Leste', September 2003, p.6

271 Results from the Regional CEDAW Treaty Reporting and Socialization Workshops (2005)

empowerment) through the establishment of mechanisms to effectively communicate and empower local women's organizations and the promotion of women's political participation.

515. Alongside other Government and NGO counterparts, such as Caucus, the OPE has been a key partner to UNIFEM in the implementation of a 'Program for Enhancing Rural Women's Leadership and Participation in Nation Building in Timor Leste' (PERWL). The objective of this three year program (2004-2007) is to facilitate women's participation in building a social, political and legal framework for an independent Timor-Leste that is rights-based, socially inclusive and gender responsive. This program has had an important role in promoting women's participation in local elections and in training women leaders at the local level.
516. As of time of writing, the OPE has contributed to the following key achievements of this project through assistance in:
- The training of 1,265 potential women candidates and elected women officials on transformative leadership, politics and communities in 12 of the 13 districts in Timor-Leste;
  - Additional training for 514 women officials in the *suco* councils conducted in nine districts;
  - Design, production and dissemination of materials used in the *suco council* election campaign to increase women's awareness to actively participate in village elections. This included leaflets on PERWL and campaign brochures. In addition to radio and TV broadcasts, the President of Timor-Leste recorded a public message, focusing on women and encouraging them to participate as candidates and to exercise their right to vote in the elections;
  - Performance of a training needs assessment with elected women officials in several districts with a total of 125 elected women officials. These officials indicated that their training now would require leadership skills better focused on initiating community activities and managing people; building confidence in public speaking, conducting meetings and writing reports as well as civic education. This assessment was simultaneously conducted through debriefings with women candidates in eight districts. Those women who were not elected expressed their willingness to stay involved in the process and provide support to their elected women candidates.
  - Collaboration with a research institution to conduct a baseline study on the situation of rural women focusing on feminized poverty, in order to contribute to government planning, programming, policy development and budget allocation, that is based and responds to the socio-economic situation, needs and rights of rural women.
517. Under PERWL, a series of orientation and information dissemination campaigns, with women leaders from '*aldeias*' who are not members of the

village councils, are being conducted by the National Directorate for Territorial Administration (DNAT) of the Ministry of State Administration (MSA). This campaign, which aims to cover the 13 districts, includes sessions on gender and culture, concepts and principles of transformative leadership, the structure of government with focus on its links to the district, sub-district and *aldeia* or *suco* levels, and the functions of the *suco* council. It has already trained 1,274 women leaders in eight districts.

518. In addition to the positions within the government structure, women also enjoy wide participation in the non-government sector, lobby groups and organisations, in many cases occupying management positions. Non-governmental organisations that work specifically on women's issues as well those concerning general social issues led by women are well respected in Timor-Leste both by the public and the Government itself. There is wide representation of women's organisations and women-led organisations on consultative bodies and working groups established by the Government, such as the Working Group for the Protection of Vulnerable Persons, the Working Group for the National Human Rights Action Plan and the Working Group for National Police Service Development. Again, women's groups such as Rede Feto have also played a pivotal part in the drive for enhanced political participation of women. Participants of the Second National Congress of East Timorese Women<sup>272</sup>, called for the application of a minimum quota of 30 percent of women on decision making bodies; affirmative actions; and, the allocation of adequate financial resources to enhance women's political participation. They put forward three national independent candidates; however, none of whom were elected. Despite the rejection of the quota system for women in the Constituent Assembly elections, lobbying on behalf of the women's network to draw attention to this issue at all levels led to a successful outcome with more than 25 percent women members elected to the Assembly.
519. More recently, UNIFEM, in partnership with the OPE and Fokupers, have undertaken a preparatory phase assessing women's needs to participate in the legislative and presidential elections in 2007. This preparatory phase has included discussion forums with women's organizations and decision makers to promote an informed debate on temporary special measures and affirmative action, mobilizing women's votes, women's platform and the role of political parties in promoting and ensuring women's political participation. The discussion forums have also contributed to consensus building on the above-mentioned areas, although there is still a need to empower women to participate in these debates in addition to addressing other needs relating to women's participation in the forthcoming elections.

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272 Organized annually by the Timorese National Women's Network (Rede Feto Timor-Leste), attended by women's organizations and individuals, including women's representatives from the districts.

## **Political participation of migrants**

520. Migrants enhance Timor-Leste's ethnic diversity and more often than not provide a welcome contribution to the growth and development of the nation. Indeed, Timor-Leste is currently devising steps to enhance foreign investment and migration of foreign workers to support Timor-Leste in its ambitious program of national development.
521. Overall, migrants enjoy all the rights and freedoms afforded nationals of the State with some key exceptions. One of these is political participation. Article 46 of the Constitution guarantees the right of political participation only to Timorese nationals. More explicitly, section 11 of the Immigration and Asylum Act explicitly restricts: foreign national engagement in activities of a political nature; direct or indirect interference in State affairs; organization or participation in demonstrations, processions; and rallies and in meetings of a political nature.
522. Common through the world, such limitations have been designed to ensure that those involved in political decision-making and the political direction of the nation are individual citizens who possess a direct and ongoing connection to Timor-Leste and are subject to the obligations and responsibilities that Timorese citizenship entails.

## ***K. SOCIAL AND ECONOMIC AFFAIRS***<sup>273</sup>

### **Adequate Standard of Living**

523. Despite significant progress in the establishment of governance institutions and basic infrastructure since 1999, Timor-Leste faces daunting social challenges and remains one of the least developed countries in East Asia. Poverty is high and human and physical capital is depleted.
524. Timor-Leste is not just a new nation but one of young people, with one in two East Timorese below the age of 18 years and around 20 percent five years or under. As at 2004, Timor-Leste's population was at 923,198. 77 percent of this population live in rural areas. There are 103 males to every 100 females and average life expectancy is 55.6 years.<sup>274</sup> At seven births per woman, the

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273 This part covers:

- Article 6, ICCPR
- Articles 10, 11, 12 CESCR
- Article 12 CEDAW
- Articles 24, 27, 28 and 32 CRC

274 Census 2004

fertility rate is among the highest for developing countries. The high birth rate in Timor-Leste informs that the population is expected to grow rapidly bringing enormous pressure to bear on the range of basic social services necessary to enable children to mature as adults with long and prosperous futures ahead of them.

525. The most comprehensive information on standards of living in Timor-Leste are those of the Joint Poverty Assessment conducted by the Government of Timor-Leste, World Bank, Asia Development Bank, UNDP, UNICEF, JICA (Japan International Cooperation Agency) and UNMISSET, published May 2003.
526. In this, it is broadly said that<sup>275</sup>:
527. Following the people's vote for independence in a referendum in August 1999, the country experienced a fundamental social and economic upheaval. The bulk of the population was displaced in the weeks following the ballot results and most of the physical infrastructure was destroyed or rendered inoperable.
528. Timor-Leste has achieved enormous progress in rehabilitating its economy, reconstructing its infrastructure, reintegrating its refugees and building the key elements of a sustainable political process in an environment of internal peace. It now faces many challenges of nation-building and of overcoming the deprivations affecting the lives of the poor.
529. Poverty is a complex phenomenon involving multiple deprivations. We use an economic definition of poverty, in which an individual is deemed poor if she is unable to attain a minimal standard of living. Based on this definition, two in five people in Timor-Leste are poor. Economic well-being varies across the country. Urban areas, especially Dili/Baucau, are better off than rural areas. Nevertheless 86 percent of people live in rural areas, where households experience food shortages approximately four months per year. 14 percent of the population of Dili/Baucau and at least 40 percent of the rural population suffer food shortages each year. Poverty is concentrated in rural areas. Three quarters of the population lives in villages but six in seven of the poor, or 280,000 people, reside there. Poverty also increases from East to West. The three western districts (Oecusse, Bobonaro and Covalima) are home to one fifth of the population but account for a quarter of the poor. In contrast, the three eastern districts (Baucau, Lautem and Viqueque) account for a quarter of the population but less than a fifth of the poor.

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275 Government of Timor-Leste, ABD, World Bank, JICA, UNDP, UNICEF, UNMISSET "Timor-Leste: Poverty in a New Nation: Analysis for Action" May 2003, pvii – ix.

530. The Poverty Assessment also found that children are poorest, while the elderly are least poor. Prime-age individuals rank in-between these two groups<sup>276</sup>. Male-headed households are consistently better off than female-headed households in terms of education, health and subjective well-being, but not so based on consumption poverty. There was a lack of information on intra-household distribution<sup>277</sup>.
531. In Timor-Leste, better education reduces poverty, poverty decreases with larger land size and larger livestock holdings, and there is urban rural divide in terms of access to infrastructure. Nearly half of people are poor in households where the household head has not finished primary school, but this declines to one in seven where the head has at least senior secondary education<sup>278</sup>. Nationwide, something like three in four persons live without electricity, three in five without safe sanitation, and every other person is without safe drinking water.
532. There are no up-to-date surveys of the incidence of income poverty in the country as at 2006 but the sharp economic contraction and subsequent slow growth since 2001 have probably led to an increase in the incidence of poverty. The number now in poverty is conservatively estimated at about 380,000, the number in extreme poverty is conservatively estimated at about 200,000<sup>279</sup>.
533. Currently – while the Constitution (Article 56: Social security and assistance) guarantees an entitlement of “social assistance and security” to all citizens, and commits the state to “promote, in accordance with its national resources, the establishment of a social security system” — there is no formal social security system in Timor-Leste. A Social Security Fund does, however, exist to provide emergency assistance to vulnerable persons and social security for veteran combatants is also in the early stages of formation. The establishment of national social security and pension regimes is not within the immediate remit or capability of the Government.
534. The National Development Plan prioritises poverty reduction and proposes the creation of an enabling environment to generate opportunities for economic participation of the poor through: improved productivity in agriculture and the informal sector; the provision of an enabling environment for private sector development; and the provision of infrastructure and pro-poor public expenditure policies particularly in the areas of health and education.
535. The Government has also recently announced a four-pronged strategy for poverty reduction. It includes: (1) promoting opportunities for the poor; (ii)

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276 Timor-Leste: Poverty in a New Nation: Analysis for Action, May 2003, p62.

277 Timor-Leste: Poverty in a New Nation: Analysis for Action, May 2003, pxii

278 Government of Timor-Leste: Combating Poverty as a National Cause, April 2006, p14.

279 Government of Timor-Leste: Combating Poverty as a National Cause, April 2006, p11.

improved access of the poor to social services; (iii) enhancing security, including reducing vulnerability to shocks, and improving food security; and (iv) empowering the poor and vulnerable groups.

536. Collective social surveys to date have indicated that there are a large cluster of people close to the poverty line, which implies that the number of people in poverty can be influenced strongly by economic growth. Sustained strong economic growth and balanced distribution of the benefits of growth remain central to the goals and objectives of the country, along with continued high priority for education, health and basic services such as safe water and sanitation<sup>280</sup>.

### **Housing**<sup>281</sup>

537. Approximately 70 percent of all buildings in the country, including an estimated 68,000 houses, (about 40 percent of the housing stock) were destroyed in the post-referendum violence of 1999. About 65 percent of the population was displaced and over 40 percent rendered homeless, with many more left to live in damaged or substandard housing. These problems were compounded by the loss and destruction of most property records. Present estimates are that the immediate short-term emergency shelter needs of the country have, for the most part, been met. Nevertheless, housing conditions generally are poor and there are huge disparities in access to services between urban and rural areas. About 50 percent of houses in urban areas have access to piped water supply, 58 percent to a private toilet, 74 percent to an electricity supply. Corresponding figures in rural areas are far lower, with figures at 40 percent, 14 percent, and 10 percent respectively.
538. Continuing high rates of population growth forecast in the coming years, especially in urban areas, suggests that housing will become an increasingly critical issue to be addressed by Government. Until very recently, the Government did not have a clear view of the scale and nature of the problems confronting the housing sector and thus, by implication, the resources needed to address these problems. The recent statistical information presented by Census 2004, will do much to inform policy development in this area.
539. Census 2004 has now revealed that around 95 percent of the population lives in private homes owned either by themselves or family members and that there are an average of 4.7 persons in each household. 18.9 percent of households are headed by women. Urban population estimates drawn from the Census suggest that there will be a demand for about 60,000 new housing units in urban areas in the period from 2004-2015.

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280 Government of Timor-Leste: Combating Poverty as a National Cause, April 2006, p2.

281 Timor-Leste: Sector Investment Program on Housing and Urban Development, April 2006.

540. Improving housing conditions is often complicated by disputes arising as a result of the complex inherited land and property laws, compounded by disputes between returning refugees claiming property “illegally” occupied in their absence. These obstacles have hampered efforts to regenerate activity in the housing market and address the critical issue of security of tenure<sup>282</sup>.
541. The Land and Property Unit (LPU) of the Ministry of Justice is currently preparing a comprehensive Land Law that will address this and other land-related issues.
542. A draft National Housing Policy setting out clear recommendations on a number of key policy issues, including the role of the State in the housing sector and issues related to the provision of affordable housing for poor households, communities and other vulnerable and disadvantaged members of society, was presented to the Council of Ministers in early March 2005. Early adoption of a National Housing Policy will be vital to driving activities forward in urban development planning and housing sector investment.
543. Pending formal adoption of the NHO, housing policies and programs for the medium-term will be developed and built around three broad sets of initiatives:
- Development of a national housing program that: (i) reduces housing shortages in urban centers through improved planning and regulation in support of national policies; and (ii) improves housing facilities in urban slum areas through planning, contracting, engineering services and support for poverty reduction initiatives;
  - Development of mechanisms for housing finance; and
  - Policies and programs related to construction, technology and materials research.

### *Water and Sanitation*

544. The 1999 destruction of physical infrastructure has seriously hindered such access (especially to safe water), and this is reflected in alarmingly poor health indicators and high mortality rates. Around 37 percent of the population has access to safe water supply ( 44 percent urban, 35 percent rural) and 30.5 percent (52.5 percent urban, 24 percent rural) have adequate sanitation. Rural communities rely mostly upon springs and dug-wells for their water needs and, in some peri-urban areas, shallow wells equipped with hand pumps are used<sup>283</sup>.
545. With the support of the donor community, the Government has launched a multi-year program aimed at major improvement in access to water and sanitation and there has been some improvement in accessing these services to date. Rapid population growth has meant that, in practical terms, this

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282 Timor-Leste: Sector Investment Program on Housing and Urban Development, April 2006, pvi.

283 Timor-Leste: Combating Poverty as a National Cause, April 2006, p11

improvement has yielded little reduction in the total number of households that still do not have access to these basic services.

546. The overarching challenge is to increase the low levels of access to safe water and adequate sanitation to achieve the revised and more ambitious set of national targets. These new targets call for 80 percent of urban and rural populations to have access to safe water and adequate sanitation by 2015.

### **Health Status**<sup>284</sup>

547. The Constitution of Timor-Leste provides that everyone has the right to health and medical care and the duty to protect and promote them<sup>285</sup>.
548. Since the restoration of independence in 2002, the Government has accorded a very high priority to the development of a modern, accessible and affordable health system. The widespread destruction of physical health infrastructure in 1999, accompanied by the departure of skilled health personnel, vastly increased the vulnerability of a population which already displayed some of the worst health indicators in the region.
549. Impressive progress has been made since independence towards establishing a new health system, and health indicators appear gradually to be improving. Nonetheless, the comprehensive health reform package that has recently begun to be implemented has not yet reaped the expected benefits.
550. Overall, health indicators for Timor-Leste are amongst the lowest in East Asia. Among the more serious of problems are high infant mortality and under-five mortality rates caused by infectious diseases, with low utilization of skills assistance for ante-natal care and poor reproductive health identified as the main causes. Primary causes of death are communicable diseases including tuberculosis and malaria, as well as diarrhoea diseases and dengue. Malnutrition has also emerged as an immediate contributor to other diseases.
551. Health problems in Timor-Leste are compounded by food shortages that affect more than 40 percent of the population between the months of November and February each year. Food insecurity is worst in rural areas and relief efforts can be difficult during these times as it coincides with the rainy season which can make parts of the country inaccessible.
552. The Maternal Mortality Ratio (MMR) (deaths related to pregnancy, delivery, and post-partum) has been estimated as high as 800 per 100,000 live births and is considered to be yet another of the more serious health concerns in the

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284 Submission by the Ministry of Health, August 2005 and Timor-Leste: Sector Investment Program for Healthcare 2006.

285 Article 57(1) CRDTL. The remainder of this section states that "the State shall promote the establishment of a national health service that is universal and general".

country. Poor reproductive health is a major cause of maternal mortality, there is an increasing incidence of teenage pregnancies, and short periods between pregnancies. Birth spacing and birth limiting are virtually unknown. Maternal and child malnutrition have long been common in the country. There is a high prevalence of malnutrition, iodine and vitamin A deficiency. One third of women aged 15-49 are malnourished and suffer from chronic energy depletion<sup>286</sup>.

553. Causes of death for children under-five include diseases that could be prevented through immunization such as tuberculosis and malaria, communicable diseases including diarrhoea and Acute Respiratory Infections (ARI). Again, malnutrition is identified as a primary contributor to other diseases<sup>287</sup>. Census 2004 records an Infant Mortality Rate (IMR) of 90 per 1,000 live births; the most common causes being infections, premature birth and birth trauma, with an under five mortality rate estimated to be 136 per 1,000 live births and child mortality to be 46 per 1,000 live births. Low utilization of skilled assistance for antenatal care and poor reproductive health are identified as contributing causes.
554. According to the Multiple Indicator Cluster Survey (MICS) undertaken in 2002, 12 percent of children under age five are moderately wasted, 47 percent are stunted and 43 percent are underweight. There are approximately 200,000 children in Timor-Leste under the age of five, which suggests that somewhere around 24,000 of these children are moderately wasted and 94,000 are stunted.
555. Some of these issues will be further explored in the CEDAW and CRC Specific Documents.
556. There is a high incidence of preventable communicable diseases such as malaria, tuberculosis, childhood respiratory infections, diarrheal diseases and a rising incidence of non-communicable diseases. The most common childhood illnesses are acute respiratory infections and diarrheal diseases, followed by malaria and parasitic infections. The widespread incidence of diarrheal diseases is linked to lack of access to safe water. As much as 60 percent of all households do not have access to safe water, with the figure proportionally higher in rural areas. As many as 60 percent of urban households access shallow groundwater that is susceptible to contamination by sewage and other waste. Malaria is highly endemic in all districts with the highest morbidity and mortality rates reported in children. Due to the breakdown of surveillance, vector control activities and treatment facilities, malaria had three-fold increased in Timor-Leste following the crisis in 1999. Four districts, including the capital, are high transmission areas and chloroquine-resistant strains of malaria have been reported. Tuberculosis is a major public health problem,

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286 Multiple Index Cluster Index Survey (MICS – 2002) 2003, Timor-Leste.

287 Submission by the Ministry of Health, August 2005.

with 2,762 cases of TB reported in 2002, of which 1,136 were sputum smear positive. Timor-Leste is endemic for leprosy. Recent surveys conducted in Oecusse District have demonstrated an astonishingly high prevalence of leprosy (80/1,000 persons).

557. Recently, five districts, including the capital, Dili, were affected by dengue. During the wet season of early 2005, there were over 700 confirmed cases with 39 reported dengue related deaths, mostly that of infants and children.. A Dengue Task Force responded quickly with the distribution of mosquito nets to the vulnerable groups of the population, fogging/cleaning the areas affected by dengue and also making the public aware of the disease through a mass campaign that includes use of media. A medium term strategy is also being developed to respond to the environmental determinants of mosquito borne disease as a more sustainable measure.
558. Participants of regional consultations also observed that high levels of alcohol intake (most often “*tua*” or palm wine) by men, particularly in rural areas, were also contributing to increased health risks for men’s health<sup>288</sup>. According to the DHS Survey, approximately 60 percent of men smoked but only four percent of women reported smoking some form of tobacco.
559. Another set of problems in the health sector is associated with capacities for service delivery. People living in remote areas have poor access to health services. There are inadequate communication facilities and difficulties in accessibility between and within districts, particularly during the rainy season. While measures are being put in place, the desired system of comprehensive and quality care for sick children who attend health facilities is not always achieved. An adequate pool of experienced and well trained health care workers to fully meet the needs of the primary and secondary health systems has yet to be achieved.

### *Reproductive health*

560. At seven children per woman, Timor-Leste has the highest fertility rate of anywhere in the world and low levels of contraceptive use or knowledge. According to the DHS, 80 percent of ever-married women had never used any form of contraception, and only 10 percent were doing so at the time of the survey. Main reasons for non-usage were reported as being ‘opposition to use’ (by self or partner or religious prohibition) (29 percent), ‘fear of side effects’ (24 percent) and ‘wants as many children as possible’ (19 percent). ‘Lack of knowledge’ was reported by 10 percent of women and 25 percent of men, which seems to be inconsistent with the 62 percent of women and 71 percent

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288 The Ermera, Manatuto, Maliana and Covalima Regions in particular raised this issue during district consultations

of men who were unable to spontaneously identify or even recognise at least one contraceptive method<sup>289</sup>.

561. Given indications that fertility rates have actually been increasing (from 6.0 in 1998/99 to 7.0 in 2004) and that the median age of first pregnancy has (contrary to the norm elsewhere in the region) been lowering there is an urgent need to improve efforts to educate young women about reproductive health and maternal health risks.
562. While there appears to have been a decline in infant and child mortality, the conditions surrounding pregnancy, delivery and infant care are still of great concern. Less than 20 percent of births are assisted by trained personnel<sup>290</sup>, and the vast majority of births take place in settings without access to timely emergency obstetric care. Most pregnant women suffer from nutritional deficiencies, and the short birth intervals they experience expose them to high risks of birth complications, and elevated chances of mortality. The DHS also suggests that only 61 percent of mothers receive antenatal care from a medical professional (56 percent from a nurse or midwife), whilst 37 percent received no such care. Rates of professional care were higher in urban areas, and for more educated women<sup>291</sup>.
563. Age-specific birth rates suggest that, on average, about one-third of women aged between 20 and 34 will experience a live birth each year<sup>292</sup>. Together with short birth spacing, high fertility “clearly poses a significant problem for the health not only of mothers, but also of their children, and accords with the high national child mortality rates discussed earlier.
564. There is increased advocacy of improved birth spacing and regional consultations held for the development of the government’s reports also revealed overwhelming support for improved reproductive health knowledge and education, including within the formal education system.

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289 Ministry of Health and National Statistics Office, Timor-Leste, and ACIL Australia Pty Ltd, University of Newcastle and The Australian National University, Australia “Timor-Leste 2003 Demographic and Health Survey: Key Findings” 2004, pp83 and 99.

290 90 percent of births occur in the home (8.6 percent in public health facilities and 1.2 percent in private health facilities), though these rates are even higher in rural households, with 95 percent of rural deliveries occurring in the home. Just 18 percent of deliveries are assisted by a skilled birth attendant, 19 percent are by traditional birth attendants, 61 percent are assisted by a relative or friend, and 2 percent receive no assistance (District Health Survey 2003 pp 35,150 and 152)

291 Ministry of Health and National Statistics Office, Timor-Leste, and ACIL Australia Pty Ltd, University of Newcastle and The Australian National University, Australia “Timor-Leste 2003 Demographic and Health Survey: Key Findings” 2004, pp141-144.

292 Ministry of Health and National Statistics Office, Timor-Leste, and ACIL Australia Pty Ltd, University of Newcastle and The Australian National University, Australia “Timor-Leste 2003 Demographic and Health Survey: Key Findings” 2004, pp 69-70. In local consultations in the preparation of this document, several districts reported the concept of ‘one year, one child’, and the view was expressed several times by male participants that pregnancy results from divine intervention (in response to calls by female participants for improved reproductive health knowledge). This view seems to extend, regrettably, to infant mortality and an evidently somewhat phlegmatic attitude to the ease of a replacement pregnancy.

565. Nevertheless, it appears that the desire for improved reproductive health knowledge is driven more by desires to improve birth spacing more than a desire to reduce the number of births. At the time of the DHS survey in Timor-Leste, two-thirds of women with six or more children, expressed a desire to have still more children with little or no perceived disadvantage associated with having large families.
566. Overall the picture of reproductive health is one of concern and is an area in which the Government has focused considerable attention as part of the national health development policy framework. The Government perceives the need to address family planning issues as essential to reduce infant and maternal mortality rates, improve birth spacing and child health levels, and ease household poverty rate. Accordingly gender-focused services form the main focus and core of the majority of Ministry of Health interventions. The basic package of services directly recognizes a range of interventions specifically to address the needs of women, as individuals, reproducers and producers within society. While all services and interventions recognize these important roles, the maternal health department within the Ministry has programs that specifically attend to reproductive health, with the greatest focus on the health of women, and nutritional needs of women as producers of children. Additionally, the Ministry is strengthening the primary to secondary referral system to attempt to address the unacceptably high number of maternal deaths in or after childbirth<sup>293</sup>. Specific interventions are more specifically detailed in the CEDAW Specific Document itself.
567. Providing women specific services alone will not improve the status of women and hence their health and wellbeing. Interventions are therefore intended to relay to the male members of family groups as well as individuals the specific needs of females within society including the burden of producing large numbers of children, maintaining general health and empowering women as valuable individuals contributing to the growth of society in general<sup>294</sup>.

### *HIV/AIDS*

568. In 2003, the first survey of HIV in Dili amongst ‘at risk’ populations established a low level but potentially escalating presence of HIV<sup>295</sup>, the presence of some degree of injecting drug use, that bisexuality is common amongst many (including married) men, and extremely low condom usage (even amongst those sexually active with multiple partners). By 2005, reported cases of HIV/AIDS numbered approximately 26<sup>296</sup>. HIV cases are, however,

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293 Timor-Leste: Sector Investment Program for Health Care, April 2006

294 IBID, p11.

295 Pisani E and Dili Survey Team, “HIV, STI and Risk Behaviour in Timor-Leste: an historic opportunity for effective action”, 2004, Family Health International Dili, p18.

296 UNICEF Report 2005

typically substantially under-reported, especially early in an epidemic, and the true magnitude of the problem of HIV in East Timor is not currently known.

569. The 2003 survey emphasised the urgent need to target a strategy at prevention services, to educate and provide access to information and services on sexually transmitted infections, and to promote condom usage amongst the at risk populations<sup>297</sup>.
570. The most risky form of transmission in Timor-Leste is anal sex given the limited levels of intravenous drug users or needle sharing in the country. In some social circles there is a perception that male-male sex is a “foreign” behaviour but the data suggest that the majority of male-male sex in Dili takes place between Timorese men. Men who self-identify as having sex with other men also very commonly have sex with women<sup>298</sup>.
571. It is often widely assumed that “youth” are among the groups at highest risk for HIV. The preliminary survey among close to 900 university students in Dili shows that this is something of a misperception. But the 2003 Survey revealed that only a tiny fraction of female students report any sexual activity at all, while among male students close to three quarters are not sexually active<sup>299</sup>. Nevertheless as levels of HIV/AIDS increase so too do the risks for mother to child transmission.
572. There is still considerable opportunity for Timor-Leste to ensure that the impact of AIDS on the population and particularly children – be it sexual transmission to teenage girls (especially by older men with a more risky sexual history), mother-to-child transmission, or the creation of a second wave of orphaned children (this time due to an epidemic of deaths of parents)—may be avoided in Timor-Leste.
573. In September 2002, the Government developed a National Strategic Plan for a comprehensive and multi-sectoral response to HIV/AIDS/STI 2002-2005. The District Health Survey 2003 provided a baseline measurement for the plan. This survey concluded that 79 percent of women and 70 percent of men had never heard of HIV/AIDS, and that only 10 percent of women and 15 percent of men believed that there was a means to avoid contracting HIV. Just 1.9 percent of women and 2.1 percent of men know that condom usage prevents

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297 Pisani E and Dili Survey Team, “HIV, STI and Risk Behaviour in Timor-Leste: an historic opportunity for effective action”, 2004, Family Health International Dili.

298 Pisani E and Dili Survey Team, “HIV, STI and Risk Behaviour in Timor-Leste: an historic opportunity for effective action”, 2004, Family Health International Dili, p11.

299 Pisani E and Dili Survey Team, “HIV, STI and Risk Behaviour in Timor-Leste: an historic opportunity for effective action”, 2004, Family Health International Dili, p7. Note also some limitations in data collation demand that the Survey results revealed must be interpreted with caution. Please refer to the Survey itself for further information.

HIV transmission<sup>300</sup>. This lack of knowledge largely reflects both Timor-Leste's isolation from global media exposure over the past decade, as global awareness has improved, and its freedom from the infection until recent times.

574. For Timor-Leste, the immediate challenge is: to rapidly improve knowledge of and screening for HIV/AIDS as an essential part of a national preventative strategy. The current low rates of infection provide a small and brief window of opportunity to avoid the ravaging effects suffered elsewhere in the world. The absence of knowledge and of testing and screening facilities and a failure to effectively prevent transmission through the promotion of condom usage may otherwise combine to enable HIV and AIDS to take speedy and irreversible hold within a highly vulnerable population.
575. Consider for example also that drug injection is the fastest way of spreading HIV but that drug injection is still rare in the country and HIV prevalence still low. New drug injectors are almost always introduced to injecting by someone who already uses drugs. So if it is possible to identify the small number of existing users and work with them to reduce the likelihood of HIV infection and to introduce a safer culture among drug users, the benefit for the overwhelming majority of East Timorese who are not drug users may be substantial in the long run<sup>301</sup>.
576. In 2005, the Ministry of Health commenced a process to review the 2002-2005 national strategy for HIV/AIDS, and to create a new strategy. A structure that includes a Steering Committee (decision making body) and an Executive Committee with NGO, UN Agencies, Church and National AIDS Council membership was created. The Ministry of Health, AusAid, UNICEF, and CWS (Church World Service) are the primary financial partners in this process while coordination of this program is undertaken by a team of facilitators and Secretariat Ministry of Health, AMI, UNICEF, Family Health International, Fundasaun Timor Hari, CVTL (Red Cross), CWS.
577. The overall four-phase process was designed to be participative, multi-sectoral and nationally reaching and to progress as follows:
- *Phase one:* a participative process of regional consultations for district participants to increase knowledge on HIV/AIDS, encourage participation, and to collect information to review the existing national strategic plan.
  - *Phase two:* a national congress of 265 participants was held on 5<sup>th</sup> and 6<sup>th</sup> of December 2005 to: present the review of national strategic plan; to plan means to build capacity and implementation skills for HIV projects; and to present a draft framework for the new Strategic Plan.

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300 District Health Survey 2003, pp225-232.

301 Pisani E and Dili Survey Team, "HIV, STI and Risk Behaviour in Timor-Leste: an historic opportunity for effective action", 2004, Family Health International Dili, p14.

The congress delivered plenary sessions on the situation of HIV/AIDS in South Asia as well as the current situation in Timor-Leste. Review highlighted that the 2002-2005 strategy had very good programs but that overall there was a lack of planning and coordination.

Ten panel discussions on more specific issues were also undertaken and included several thematic workshops on education and gender for example. Five district workshops also took place to prepare phase three, district implementation plans.

- *Phase three* - included a technical working group to write the new HIV/AIDS Strategy and to develop implementation plans for the districts.
- *Phase four* – another national congress took place on 23 and 24 February 2006 with decision-making authority to formally approve the new five year strategy and implementation plan. At the time of writing, this strategy was still being finalized.

### *Health policy*<sup>302</sup>

578. The Ministry of Health has made remarkable progress in the development of comprehensive package of laws and policies to respond to the troubling health indicators and evident needs of the population and to achieve the ultimate goal of improved health status for all in Timor-Leste.

579. The current framework of health laws include:

- Health System Law<sup>303</sup>
- Organic Law for the Ministry of Health
- The Practice of Health Professionals Law<sup>304</sup>
- Pharmaceutical Activities Law<sup>305</sup>
- Private Health Units Law<sup>306</sup>
- Institute of Health Sciences Law<sup>307</sup>

580. The Ministry of Health's mission is to strive to ensure the availability, accessibility and affordability of health services to all people of Timor-Leste; to regulate the health sector; and to promote participation by the community and other stakeholders (including other sectors).

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302 Timor-Leste: Sector Investment Program for Health Care, April 2006

303 The Law on the Health System No. 10/2004.

304 Decree Law No 14/2004,

305 Decree Law No 12/2004. This law is designed to regulate the supply and control of medicines, both in the public and private sectors.

306 Decree Law No 18/2004

307 Decree Law 2/2005. Section 3 states that "the objective of the Institute of Health Sciences is to train and retrain health professionals needed by the health system in its different areas and levels".

581. Consistent with the health goals in the National Development Plan (NDP), though somewhat broader in scope<sup>308</sup>, the Health Policy Framework prepared by the Ministry of Health in June 2002, expects the Ministry to contribute to the overall goal of improving the health status of the nation through the provision of *“quality health care to East Timorese by establishing and developing a cost-effective and needs-based health system which will specially address the health issues of women, children and other vulnerable groups, particularly the poor, in a participatory way”*<sup>309</sup>.
582. Health services are currently provided free to the public. Recognizing, however, that the Government has limited resources to provide the comprehensive/complete services that may be demanded at all levels, it is imperative that the Ministry of Health defines a package of services that it can deliver to ensure greatest coverage and impact for the majority of people. The current basic package consists of essential health services and cost effective interventions to prevent and control or treat problems causing the highest burden of disease in the country<sup>310</sup>. The burden of disease in Timor-Leste consists mainly of common endemic communicable and preventable diseases, large proportion of which can be effectively dealt with at health posts and health centres in each district.
583. With this in mind, the Ministry has developed a basic package of services that comprises maternal health; child health; communicable diseases; non-communicable diseases; health promotion; and environmental health.
584. Each of these six priority areas will be supported with an over-arching policy comprised of specific strategies to address key priorities within each sector. For example, to date maternal health policies have been approved for nutrition strategy; family planning; and reproductive health strategy. Child health has policies for immunization; and integrated management of childhood illnesses (IMCI) and a child health policy is currently under development. Communicable diseases has approved policies for a tuberculosis strategy and malaria whereas leprosy and HIV/AIDS strategies are under various stages of development. Non-communicable disease has policies approved for oral and mental health. A health promotion policy has also been approved while policies for environmental health and food handling are in various stages of development.

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308 While the NDP focuses mainly on the implementation of health programs by the public sector, the health policy framework has greater coverage of health financing issues and the appropriate mix of public sector and private sector service provision.

309 Timor-Leste: Sector Investment Program for Health Care, April 2006, p17.

310 In January 2003 the Ministry of Health held a workshop to develop the national basic package of services. The outcome of the workshop has been documented in the draft report Basic Package of Services (and Interventions) for Community, Health Posts and Health Centres in Timor Lorasae, November 2003.

585. Decentralisation of health services forms another key feature of the health policy framework to enable more effective participation by local level health workers and communities in the development and implementation of health programs. Decentralisation will involve the strengthening of management capacity in district health administrations, which will then become the focal points for the preparation and implementation of District Health Plans.
586. The pace and extent of decentralisation of the health system will be influenced by the approach adopted to decentralisation across the Government as a whole, particularly in areas such as financial delegation and personnel management. To date, district health plans have been prepared for all 13 districts and are reviewed quarterly by district health management teams.
587. As detailed in the section on “*reproductive health*” gender-focused services form the main focus and core of the majority of Ministry of Health interventions. The basic package of services directly recognizes a range of interventions specifically to address the needs of women, as individuals, reproducers and producers within society. While all services and interventions recognize these important roles the maternal health department within the ministry has programs that specifically attend to reproductive health, with the greatest focus on the health of women, and nutritional needs of women as producers of children.
588. By 2005, a sound national policy and resourcing framework had been put into place to accompany the development of nationwide physical infrastructure to enable ready access to health for the vast majority of the population. Nonetheless, many issues of service quality and primary health care remain. These include:
589. *Lack of community awareness of health issues:* Many communities have only a limited understanding of basic health and nutrition. There is widespread lack of awareness of health problems, particularly among women and a general lack of understanding of health benefits. These problems are compounded by early marriage and pregnancy and neglect of gender issues.
590. *Limited capacity in health service:* The challenges of staff shortages, a focus on curative rather than preventative care, poor remuneration, a reliance on foreign workers; and management issues remain<sup>311</sup>. The desired system of comprehensive and quality care for sick individuals (including women and children) who attend health facilities is not always achieved, and there is a shortage of experienced and well trained health care workers.

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311 There is a mismatch of priorities between decentralised service delivery but centralised management and financing, need for an improved system of health data collection and monitoring, and for improved health promotion, service advocacy and signage of facilities.

591. *Difficulties in access to healthcare:* Despite a move towards geographic decentralisation of health services, inadequate communication and access remain a problem for many poor and vulnerable communities in remote rural areas, particularly in the highlands and during the rainy/wet season (86 percent of people walk to health services)<sup>312</sup>.
592. *Limited use of health service:* In spite of the establishment of a reasonable nationwide system of health facilities and of continuing serious health problems within the population, the level of utilisation of health services is comparatively low compared with that in other low-income countries. Anecdotal evidence points to several key factors for this, akin to those referred above, including:<sup>313</sup> cost<sup>314</sup>; access; knowledge and attitudes<sup>315</sup>; and service delivery.
593. Other key indicators that may impact on the health status of the population include.
- The vast majority of poor people (85 percent) live in rural areas.
  - Some 680,000 Timorese do not have electricity.
  - Limited access to safe drinking water (particularly in rural areas).
  - More than 40 percent of the population 15 years or older cannot read or write.
  - An estimated 560,000 people live in families without radio.
  - The average walking time to a health facility was 35 minutes with 25 percent of households being two hours from care.
594. Despite good progress, the fuller implementation of the basic package of health services has been identified as requiring stronger support for district health services, maternal and child health, HIV/AIDS, community health care, malaria (second tranche), and tuberculosis. These areas of need primarily relate to stresses placed on national capacity as Government assumes greater responsibility for programs requiring ongoing technical capacity and significant resource commitments. In that regard, they also underscore the considerable level of cooperation between the Ministry of Health and a range of bilateral and multilateral partners.

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312 Ministry of Health and National Statistics Office, Timor-Leste, and ACIL Australia Pty Ltd, University of Newcastle and The Australian National University, Australia "Timor-Leste 2003 Demographic and Health Survey: Key Findings" 2004, p18.

313 According to the DHS – distance (64 percent); transport difficulties (43 percent); unavailability of medical staff (14 percent), expensive (11 percent) and inadequate opening hours (9 percent) are among other reasons for this. The sixth highest factor was 'personnel not friendly' (4 percent), which was emphasised within district consultations held in the preparation of the CCD, CRC and CEDAW documents, especially as an explanation for low use of formal birthing services.

314 Health care is nominally free but, anecdotally, fees are paid to supplement low health employee salaries; if services are free then the cost of drugs "rarely are and relative to incomes are extremely expensive for the rural poor"

315 There is a clear need to improve knowledge and awareness of health services which, in turn, is contingent upon improving service quality and coverage (27 percent of women do not know where to go when ill, and this is higher for less education and poorer women).

595. The Government recognizes that the Ministry of Health cannot alone address the causes, the determinants of health. A multi-sectoral approach is required. Secondly, there must be full political support to enable changes that empower people themselves to assist in addressing the causes of ill health as well as changing their own behaviours through seeking health interventions in conjunction with living healthier lives. The concept of participation then becomes tangible. The 'Sector Investment Program for Health Care' recognises the need to build systems where, access, social solidarity, cultural, religious and gender equity along with human rights are taken into consideration.
596. Health problems do not originate exclusively in health-related sources. In fact, health care services make only a modest contribution to the health status of the nation. Education, income, housing, food, water and sanitation are among the most important determinants of the health status of the population. The Ministry of Health is aware of the various determinants of the health status and has assumed from its inception a vision that implies a broad definition of health.

## **Employment**

597. The Constitution provides the foundation for the right to work; the right of workers to organise and engage in collective bargaining; and rights to certain conditions of work including health and safety, remuneration, rest and vacation. Each of these are afforded regardless of gender. According to the Constitution, work is both a right and a duty, and the freedom of every citizen to choose a profession is guaranteed.
598. Alongside Constitutional provisions (including also provisions on strikes and lockouts), several specific labour laws go to the heart of employment sector regulation. These include: Articles 51 – 53 of the Constitution, UNTAET Regulation 2002/5 on the establishment of a Labour Code for East Timor and Law 8/2004 on the Statute of the Civil Service.
599. Timor-Leste became a member of the ILO on 19 August 2003. Although the Government has not yet ratified the core ILO conventions (including Nos. 138 and 182), the Government acknowledges its obligations to promote and realise their objectives in accordance with the 1998 ILO *Declaration on Fundamental Principles and Rights at Work* –the provisions of which are reflected in the *Labour Code*.
600. At the time of writing a new Labour Code was also due to be presented to the Council of Ministers by the Ministry of Labour and Community Reinsertion, as ministry responsible for labour issues. This Code is established to protect the rights, responsibilities and obligations of workers, to promote economic opportunities in the workplace and to assist the Government to establish policies

and regulations for labour relations. The Code clearly supports the fundamental principles of worker and employers rights to freedom of association and collective bargaining, prohibition of forced labour, specific and prescriptive terms and conditions for the employment of children and non-discrimination in employment and occupation<sup>316</sup>. Further specific laws to regulate aspects of employment including a Law on Occupational Safety and Health, and Foreign Workers Law are also proposed to be added to the legislative package in this area.

601. For now, the Transitional Labour Code adopted during the UNTAET Administration still provides the essential legal framework for labour administration and employment promotion, labour relations, termination of employment, and minimum wages in Timor-Leste. As referred above, the Code is specifically designed to embrace compliance with relevant ILO Conventions, including No. 138 '*Minimum Age Convention 1973*' and No. 182 '*Worst Forms of Child Labour Convention 1999*'.
602. The Civil Service Statute, which applies to civil servants and agents of public administration both in-country and overseas, guides the rights, duties and responsibilities of labour relations, as well as the benefits and remunerations of employees in the civil service.
603. For its implementation, the Labour Code establishes the National Labour Board, which is composed of two specialised bodies, the Labour Relations Board and the Minimum Wages Board. Among other roles, the Labour Board is responsible for the provision of independent advice on occupational health and safety and vocational training and skills development programs. It also determines minimum wages for national, district and sectoral employment<sup>317</sup>, based on the recommendations from the Minimum Wages Board. According to the Labour Code, the Minimum Wages Board shall provide recommendations to the National Labour Board on the issue of minimum wages at least once every two years.
604. The Labour Code does not determine a fixed minimum wage, nor does it establish a specific procedure for the determination of minimum wages. This responsibility to recommend a minimum wage falls upon the 'Minimum Wages Board' (referred to as the 'Minimum Wages Tribunal' in new draft Labour Code). In making the recommendations regarding minimum wages, the Minimum Wages Board is obligated to take into consideration the needs of workers and their families, the general level of wages, the cost of living, social security benefits, the relative living standards of other social groups, and economic factors including the requirements of economic development, levels of productivity and any effect that wages might have on employment.

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316 Section 3 of the Draft Code refers.

317 Section 4 and 5 of UNTAET Regulation 2002/5 on the Establishment of the Labour Code of East Timor.

605. The existing and proposed new Labour Codes do not address matters of occupational safety and health, vocational training and skills development. However draft occupational health and safety as well as vocational training laws have been developed and will soon be presented to the Council of Ministers for consideration.
606. The new draft Labour Code provides for a more comprehensive legal framework to regulate employment issues in Timor-Leste than the current UNTAET Code. It is expected that this new Code will also resolve existing discrepancies between the Constitution and the current Labour Code. For example, the Constitution expressly prohibits lock-out<sup>318</sup>, while the current Labour Code allows this measure to be taken by employers to resolve a labour dispute<sup>319</sup>.
607. Despite the existence of a comprehensive legislative regime for employment, Timor-Leste very clearly has some way to go to realise the very aspirational goals that the country has set for employment generation.
608. Census figures suggest that unemployment has increased since independence. According to Census 2004 statistics, the overall labour market population is 60 percent for those 15 years or older with higher figures for men as compared with women (69 percent and 52 percent respectively). More than three quarters of the population are working in subsistence farming or fishing.
609. In 2001, unemployment had reached around 15 percent among youth (15-24 yrs) nationwide with about 43 percent of those in the labour force in Dili and Baucau<sup>320</sup>. These figures have worsened according to the Census 2004 with unemployment now at 8.9 percent, and 23 percent among youth. Less than 25 percent of the labour market population was in paid employment, which is defined as being self-employed, employed in private industry, employed by Government, working in NGOs or employed by the UN. In terms of paid employment, self employment provided the most paid work though Government and UN work featured prominently also.
610. In the event that the labor force participation rate remains at its current estimated level of 59 percent, which is low by international standards, the labor force would grow at about three percent a year, adding about 10,000 new entrants to the labor force each year seeking employment. Should the participation rate rise to levels that are common among low income developing countries around the world, the labor force growth rate could be as high as five percent a year. In this case, and perhaps the more likely outlook for the future,

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318 Article 51.3 of the Constitution.

319 Section 24.9, 24.10 and 24.11 of the Regulation 2002/5 on the Establishment of a Labour Code for East Timor.

320 UNDP, Human Development Report 2006

the number of new entrants seeking employment would be in the range of 17,000 to 20,000 a year in the decade ahead.

611. Given the relatively small size of the non-farm commercial sector, creating enough productive employment for new entrants into the labour force represents a major challenge. The challenge is to promote rapid growth in the non-food private sector, which currently employs about 50,000 workers at much higher average levels of productivity. Rapid growth in the latter will allow for a gradual shift from low productivity employment in rural areas. With rising levels of labor productivity, the incidence of income poverty could decline.
612. For the medium-term, a key issue is the extent to which the agricultural sector can create productive employment for the projected 5,000-9,000 new entrants into the rural work force each year. Three critical policy issues emerge. Can the agricultural growth rate be increased through private investment that results in larger production of marketable surpluses for the domestic and export markets? Will much larger numbers of people move to urban areas looking for work? Can the non-farm sector grow fast enough to absorb larger numbers of people into productive employment?<sup>321</sup>

#### *Equal Employment Opportunities*

613. Discrimination on any ground is strictly prohibited in employment, unless it is specifically required due to nature of the particular job<sup>322</sup>. Section 11.18 of the Labour Code requires that measures must be taken by the employing agency to overcome discriminatory practices or perceptions that may hinder equal opportunities and equal treatment in access to training, access to employment, and terms and conditions of employment.
614. The Office for the Promotion of Equality (OPE), the Office established to mainstream gender equality into all aspects of life in Timor-Leste, provides advice to the Prime Minister and other government ministries to ensure equal opportunity in employment.
615. Though not formal government policy, women are encouraged to compete with men for job vacancies, both in the government sector as well as private sector, and women candidates are often given special consideration particularly in fields such as engineering, an area in which higher qualifications and longer work experience is required to redress inequality stemming from the past<sup>323</sup>.

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321 Timor-Leste: Overview of Sector Investment Programs – Volume 1, April 2005, pvi

322 Sections 2, 9.4 and 11.5 of the Labour Code, and Section 8 of the Civil Service Statute.

323 Office for the Promotion of Equality Submission.

616. Dismissal on the ground of pregnancy is prohibited in Timor-Leste<sup>324</sup>, though a few incidents have been reported<sup>325</sup>. Article 39.4 of the Constitution states that: maternity shall be dignified and protected; special protection shall be guaranteed to all women during pregnancy and after delivery; and working women shall have the right to be exempted from the workplace for an adequate period before and after delivery, without loss of remuneration or any other benefits, in accordance with the law.
617. Section 11.10 of the Labour Code goes on to provide twelve weeks maternity leave with two-thirds remuneration for women and the right to maintain seniority in position, to resume such position, or to be reinstated to an equivalent position at the same rate of pay at the end of maternity leave. Sections 11.11 - 11.16 cumulatively provide guarantees of benefits and support for pregnant and nursing working women. Please refer to the CEDAW Specific Document for further information on women in employment, particularly on the impact of this regulatory framework in practice.
618. The Ministry of Labour and Community Reinsertion, with the significant support of UNDP and ILO, has initiated a program called STAGE (Skill Training for Gainful Employment) which is designed to contribute to the reduction of poverty in Timor-Leste and facilitate economic growth by reducing the level of unemployment and underemployment through building national capacities to deliver a demand driven employment skills training system. STAGE also seeks to promote a decentralised and flexible system of training as a bridging measure whilst the formal labour market evolves. Whilst not solely targeted to women, as a program designed to overcome inequality in employment, this program does include specific initiatives to create greater opportunities for women to compete in the labour market and for clear tracking of gender participation through future gender disaggregation of data in the Division of Employment and Skill Development and District Employment Centres and the provision of training for women seeking employment.

### *Challenges in employment*

619. Overall in the employment sector, unemployment has increased since independence and labour market participation is set to grow substantially in the next ten years.
620. There are several reasons for the increase in unemployment including a lack of educational or technical expertise and scarcity of capital to generate employment<sup>326</sup>. Since independence, both girls and boys have gained greater opportunities to attend formal education. However, many of those who

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324 Section 35.2.e of the Labour Code,

325 Office for the Promotion of Equality Submission.

326 Consolidated District Data and Submission of the Ministry of Labour and Solidarity.

completed their secondary education are not technically equipped to enter the labour market and do not have the resources to access higher education. Employment opportunities are also lacking due to a limited capacity to generate public sector employment and currently low levels of business investment. Foreign businesses to date have not been motivated to invest in Timor-Leste because of the lack of infrastructure and the absence of an adequate regulatory framework to secure investment. Foreign businesses are also concerned about the lack of skills in the labour market meanwhile local businesses lack the capital to invest in the areas that have the potential to generate employment<sup>327</sup>. Comparably high costs of labour in Timor-Leste as compared with its asian neighbours create a further disincentive to establish businesses in the country.

621. Confronted with these challenges, the Government has taken several vital steps, both legislative and administrative, to improve the current employment system in Timor-Leste. Several key pieces of legislation are currently being drafted including decree laws on professional training, workers and unemployment registration, certification of professional training centers, and migrant workers. It is expected that these will soon be ready for presentation to the Council of Ministers.
622. With 51 training centres currently functioning in the country only ten are qualified including two owned by the Government. It is crucial for the Government to standardise training centres, to improve and control the quality of training by the centres. The standardisation and certification of vocational and professional trainings will also help to avert misconceptions that formal education is superior to vocational training, which has been largely informal to date.
623. Besides legislative interventions and skill development, the Government is also working on labour market assessment and micro-enterprise promotion. Labour market assessment includes the identification of employment opportunities, both domestically and overseas, and the allocation of job seekers who meet the requirements for those jobs. The government has secured an agreement with a South Korean company to send almost 200 East Timorese workers to South Korea many of whom have already departed. The Ministry of Labour and Community Reinsertion is continuing to establish a series of similar agreements, with the Governments of Malaysia, China, and Macau, to send East Timorese to work in various sectors. Micro-enterprise promotion focuses on self-employment in households, especially in fields such as food processing.
624. The Ministry of Labour and Community Reinsertion has also established four 'Centres of Employment' to facilitate its work across the territory. These centres are based in Oecusse, Maliana, Dili and Baucau. Each centre is run by two staff

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327 Submission of the Ministry of Labour and Solidarity.

working on the promotion of equal opportunities for women in employment and training for economic development.

625. Recognising the significant importance of having a growing economy which generates new employment opportunities, the Government has embarked on a significant project to improve the enabling environment for domestic and international private investment. This will be pivotal to create productive employment opportunities for the new entrants into the labour force.

## **Education**<sup>328</sup>

626. The right to education is enshrined in article 59 of the Constitution which provides that:
- *The State shall recognise and guarantee that every citizen has the right to education and culture, and it is incumbent upon it to promote the establishment of a public system of universal and compulsory basic education that is free of charge in accordance with its ability and in conformity with the law;*
  - *Everyone has the right to equal opportunities for education and vocational training;*
  - *The State shall recognise and supervise private and co-operative education*
  - *The State should ensure the access of every citizen, in accordance to their abilities, to the highest levels of education, scientific research and artistic creativity;*
  - *Everyone has the right to cultural enjoyment and creativity and the duty to preserve, protect and value cultural heritage.*
627. After the violence resulting from the referendum in 1999, the education system was in disarray and on the verge of collapse. Almost 90 percent of schools and educational facilities, including practically all furniture and teaching materials, were destroyed or had disappeared. About 20 percent of teachers in primary education and about 80 percent of teachers in post-primary education, mostly non-Timorese, left the country. This included almost all educational administrators and managers who were also non-Timorese.
628. The immediate challenge after the events of 1999 has been rebuilding the education system and getting children back into school. There has been impressive progress on both fronts. The system is now functioning at a basic operational level and the Government has been able to implement almost six school years since 2000 at all levels of the educational ladder, with a surge in school enrolment. Schooling has normalized for more than three-quarters of the 285,000 school-age children in the country. The most impressive accomplishment has been the massive increase in enrolment by the poor, by girls and by rural children. Nevertheless, the links between the incidence of

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328 Timor-Leste: Education and Training Sector Investment Program, (April 2006)

poverty and education are strong. Close to one in two persons are poor in households where the head of the household has not completed primary school as compared with less than one in seven where the head has at least senior secondary education.

629. Having successfully weathered the emergency, the Government is now focusing on the longer-term development challenges for education and training, which are many.
630. Around half of the adult population of Timor-Leste is illiterate, and despite remarkable progress in the past four years, large numbers of children still do not have access to basic or quality education.
631. At present the legal foundation for the education sector is lacking, though the Government has proposed a significant package of laws to address existing gaps.
632. Policy and practical difficulties in the education sector include:
- lack of access to education;
  - high drop out (10 percent<sup>329</sup>) and repetition rates (20-25 percent);
  - poor quality of education;
  - a lack of qualified teaching professionals;
  - lack of school materials and resources;
  - the challenge of transitioning to Portuguese language in schools;
  - prioritisation of education at higher levels for boys as compared with girls; and,
  - a weak education management structure;
633. Access to education is difficult in rural areas due to long distances to schools and lack of transportation for children. Local reports also suggested that some schools were prohibitively expensive, particularly for the poorest families. Until very recently, unregulated school fees were levied in government-run primary schools with no exemption for children from orphanages. The unregulated nature of school fees and its prohibitive effect on access to education was an issue of significant concern to the Government.
634. A circular issued by Ministry of Education, Culture, Youth and Sport (now Ministry of Education and Culture) in November 2002, sought to standardize school fees across the country according to the level of school:
- Primary US\$1.00/month
  - Pre-Secondary US\$1.50/month
  - Secondary US\$2.00/month.

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329 UNICEF in Timor-Leste, 2005, p17.

635. Then, since 2005, school fees have been temporarily suspended at all levels of school in Dili District and for all primary schools in the remaining 12 districts<sup>330</sup>. It has since been decided that this suspension will remain until at least the end of school enrolment 2006/2007. It is expected that this will do much to enhance school enrolment in Timor-Leste.
636. Low levels of literacy, a poignant legacy of Portuguese colonisation<sup>331</sup>, present another significant barrier to accelerated efforts to redress poor educational standards. The basis of measurement is the ability to read and write. Census 2004 placed the literacy rate of people aged at least 15 years at 49.9 percent, declining with age (41 percent for 35-44 year olds, 24 percent for 45-54 year olds, and only seven percent for those aged 55 years or more). Females are less literate than males, the difference being most extreme from the ages 30 and above. Literacy is also lower in rural and highland areas, and among poorer households. Extensive illiteracy, predominantly in rural areas, poses major challenges for programs aimed at poverty reduction and skills development in the labour force.
637. The efficiency of education is compromised by late entry, high repetition (20 percent) and dropout rates (10 percent), and absenteeism among teachers and students. The Government defines the first nine years of schooling, which combines primary and junior secondary schooling, as constituting basic education. Assuming initial school enrolment at age 6 years, this means that a child would be in basic education until 15 years of age. Considering the high rate of delayed school entry, and high levels of repetition and drop-out, this is by no means the practical reality. All things considered, it seems that less than 50 percent of children reach and complete grade 6<sup>332</sup>.
638. Improvements in the quality of education are also necessary. Achievement tests show that the quality of primary education is low, particularly in the area of mathematics<sup>333</sup>. Student teacher ratios have decreased but remain high, teacher qualifications are variable, and there is a lack of familiarity with the official language of instruction, Portuguese. Portuguese language is progressively being introduced into the school system. It was introduced in Grades 1 and 2 in 2000 and has progressively moved up one grade per year since then, reaching Grade 5 in the school year 2003/04. In those grades where Portuguese has been

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330 Dispatch by the Ministry of Education and Culture no.10/GMEC/2006, dated 9 February 2006.

331 By the end of Portuguese colonisation in 1974, about 90 percent of the population was illiterate, only an estimated 60,000 children were in primary school, and there were just two junior high schools, with education delivered in the Portuguese language. During the Indonesian occupation (1975-1999), instruction was in Bahasa Indonesia, net primary enrolment reached an estimated 74 percent (compared to the Indonesian national average of 99 percent), the primary school population more than doubled (by 1986 it was approximately 130,000), and secondary education grew (with an expansion in the number of schools and improved access), albeit more slowly and with high rates of repetition and low efficiency.

332 Timor-Leste: Education and Training Sector Investment Program, (April 2006), p14.

333 World Bank, "Bank Assistance Strategy: Creating Conditions for Sustainable Growth and Poverty Reduction", June 22 2005, p34 para 59 refers.

introduced, Indonesian books have been withdrawn. However, there were not enough Portuguese books to replace them. Language comprehension difficulties also exist both for teachers and students, though teachers have been allowed to use Tetum to explain lessons to children.

639. Parent Teacher Associations and school based management training programs have been established to enhance the quality of education. An evaluation of that project identified that schools adopting this model are producing improved teaching outcomes for students and greater commitments by local communities<sup>334</sup>. Despite these positive steps to improve the quality of education, the need for a stronger teaching body comprised of better educated, more formally accredited, more geographically disbursed, with improved teaching skills remains. Serious deficiencies in the delivery of learning materials and school facilities compound these problems and can only be addressed by continued rehabilitation, upgrading and construction of additional schools, the equipping of more student places, and the installation of vastly improved educational materials, libraries and laboratories. Proposed of the government related to these activities are detailed further below.
640. The gender imbalance in educational participation in Timor-Leste is modest in primary education, where the participation of boys and girls is estimated to be 50/50<sup>335</sup>. At higher levels of the educational structure, girls' participation declines steeply. In adult literacy programs, it has also been observed that the participation rate of females is much lower than that of males, despite conscious efforts of program organizers to target more female participants to address the higher illiteracy rates among women.
641. A number of factors contribute to lower participation rates in schooling among females, most of which are socio-cultural in nature, such as the very traditional and stereotyped view of women and girls' role in the family and the community<sup>336</sup>. Though this point is not conclusive as revealed in a recent UNICEF report which found that:<sup>337</sup>
- “There was a significant difference with boys experiencing more frequently than the girls that their parents do not allow them to go to school. This finding is unexpected as often in Timor-Leste people report that girls are not allowed to attend school more often than boys.”

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334 “100 Friendly Schools Evaluation Report June 2005”, presentation to UNICEF Timor-Leste Office, 1 July 2005). It is understood that one of the key findings of this evaluation concerns the inadequate incorporation of CRC principles into the primary school teacher training materials.

335 UNICEF Submission 9 January 2006.

336 Timor-Leste: Education and Training Sector Investment Program, April 2005, p13.

337 UNICEF in Timor-Leste, 2005, pp45,47

642. With the population growing at three percent a year or more as a result of very high fertility rates, there will be continued pressure on the education system for a decade or more. Collectively, these challenges demand the development and implementation of an education strategy that has a vision for the next generation. Poverty reduction is central to the development strategy of this new nation and international experience clearly shows that better education is central to poverty reduction strategies. Improving the educational status of the people of Timor-Leste is therefore a very high priority for the Government, along with improved health care and employment creation.
643. For the medium term, the highest priority will continue to be accorded to primary education in particular and to junior secondary schooling as part of the longer-term objective of providing nine years of basic education to all children. A particular concern for the medium term is improving access to basic education for the 87,000 children of 6-14 years of age who continue to be outside the school system, improving the quality of education through teacher training, curriculum development, improved instructional materials and related programs, and improved internal efficiency.

#### *Education policy framework*

644. The main goals for the formal education system, as enunciated in the NDP, are:
- easier access to education for all, and the establishment of at least one primary school in each *suco* (village)
  - better quality of teaching and learning
  - higher school completion and retention rates
  - the development of a school curriculum, particularly for technical training, relevant to the conditions and needs of Timor-Leste
  - the reintroduction of Portuguese and Tetum in schools.
645. The development of the education sector to achieve these objectives is guided by the key principles of education as a right, equity and access for all marginalized groups including girls, poor, rural and ethnic communities, quality and relevance to ensure development of a balanced individual with respect to economic, social, cultural, moral, political and spiritual aspects, efficiency and effectiveness, participation, transparency and accountability. The Government is committed to ensure the provision of quality basic education of international standard to all children legally resident in Timor-Leste, regardless of their economic condition, gender, religion, ethnicity or geographic location.
646. An Education Policy Framework was developed in 2004 to provide practical steps to meet the goals of the NDP. The priorities for basic education (defined as the first nine years of schooling) established in this framework include:

- primary education as the highest priority for resource allocation
- universal quality primary education – from the age of six years – in line with the MDGs, CRC, and the requirements of the Constitution, and in order to ensure that, by 2015, all children are able to complete a full course of primary education
- second highest resource priority to pre-school education, with an initial combination of fee-paying and increased public financing (focused on teacher training and the development of prototype teaching materials)
- Early Childhood Education (ECE) as a key measure to reduce drop-out and repetition rates in primary schooling. Recognizing the State’s limited resources, however, ECE shall be promoted as a community-based, privately financed activity with the State providing support for teacher training and development of prototype teaching materials, and the enabling environment for private initiative.

647. Beyond the commitment to basic education, the Education Policy Framework emphasises:

- secondary, tertiary and especially technical and vocational education through both government and private institutions, ensuring equity of access according to individual capacity and national development needs
- the development of effective planning and implementation of educational policies and programs, especially a national curriculum and formulated language policy based on the official languages; improved qualification standards, training, career development and welfare of teachers; and the setting of minimum standards of operation for all schools (including public and private) with accompanying monitoring mechanisms.
- mobilisation and coordination of the role of relevant ‘stakeholders’, including private educational providers and parent and community participation, and an associated regulatory and incentive framework and the promotion of participation, consultation and transparency.

648. A package of laws is in preparation with some of those now ready for consideration by the Council of Ministers<sup>338</sup>.

- Pieces of legislation proposed for the education sector include:
- Basic law on education;
- Organic law for the Ministry of Education, Youth, Culture and Sports;
- Vocational Education Training Law;
- Regulation to govern tertiary education institutions;

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338 “The Basic Education Law and the Organic Law of the Ministry of Education... have been written and as soon as the National Education Policy document is approved by the Council of Ministers the laws will be submitted to the Council of Ministers and to the parliament.”  
Minister of Education, “Education Policy for East Timor”, comment to Education for All Planning Week (Dili, June 2005).

- Law or charter to provide the legal basis and future development of the National University; and
  - Regulations to govern the establishment and operation of non-government schools.
649. Introduction of necessary legislation and regulations for education will assist to regularize the education sector and will specify the respective roles to be played by the Government, Church, NGOs, local communities and parents in the management of education.
650. Efforts to develop a national school curriculum are also of central importance in building a new education system. Approval and implementation of the primary school curriculum has already taken place paving the way for the staggered introduction of a new curriculum for junior secondary and secondary education sectors.
651. The Government recognizes the importance of addressing the gender dimensions of educational development and has included a number of goals from the MDGs that will promote gender equality.
652. Culturally speaking, the Division of Culture is examining the need to give closer attention to the nature of indigenous culture and language within the educational curriculum. Certainly, in these early stages of development, there has been a necessary dependence upon the use of external educational materials, especially textbooks, which may not adequately reflect Timor-Leste's "cultural identity, language and values". Even so, the new curriculum emphasises the benefit of teaching core subject areas such as 'arts and culture' and 'environmental studies' with links to local resources such as traditional leaders and teachers of customary beliefs and practices to give substance to the curriculum with respect to indigenous identity and values<sup>339</sup>.
653. Overall, the coming 2-3 years will demonstrate the extent of the Government's success in implementing sustainable reforms to and capacity-building of the educational sector. Sustainable reforms will necessarily revolve around the Government's capacity to harness sufficient resources to give effect to the present reform agenda.
654. The education policy framework, as with all other sectors for development in Timor Leste, is vastly ambitious and gives rise to significant cost implications. Past spending concentrated heavily on rehabilitation of the education system and on re-establishing primary education services throughout the country. Over the past six years, total spending on the formal education sector has amounted to

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339 A recent evaluation of parent and teacher associations within primary schools emphasised the role being played by some parents in teaching customary practices to students. The consultations with children at Tasi Tolu Primary School, in the preparation of this document, yielded unanimous support from those children to being taught about Timorese culture and traditional practices within the school program.

\$297.7 million, with donors accounting for 60 percent of outlays. In the first years following independence spending was at about \$40 million per year due to rehabilitation costs, it has stabilized in the last two years at around \$36 million. For the five year period of FY 2005/06 to FY 2009/10, total spending on the formal education sector will amount to around \$220 million. Primary education will account for some 48.6 percent of this at almost \$107 million, while secondary education will be allocated some 28 percent<sup>340</sup>.

655. Securing funding for the education system, and in particular the primary and secondary school systems poses a major challenge for the Government, given uncertainties about levels of donor support over the medium-term. An unduly sharp decline in donor support for materials, teacher training and other recurrent expenses could compromise progress towards the earlier mentioned objectives for basic education over the medium and longer term. The sector also needs to ensure equity in the distribution of resources by continuing to prioritize primary education, and ensure funding for quality enhancing measures. A range of issues related to the financing of primary and secondary education must therefore be addressed. The gap would have to be met through some combination of new donor funding, increased emphasis on expenditure management and school fees. To this end, the Minister of Education is strongly advocating for the provision of donor resource commitments within the ‘*Education for All*’ framework with a focus on the primary education sector.

## ***L. MARRIAGE AND FAMILY LIFE***<sup>341</sup>

### *Definition of ‘family’ and ‘home’*

656. The concept of the *family* is defined in the Timorese Constitution as “society’s basic unit and condition for the harmonious development of the individual”.<sup>342</sup> The Constitution further adds that everyone should enjoy the right to establish and live in such a family.<sup>343</sup> While the Indonesian Civil Code, the existing law applied in Timor-Leste, does not provide any additional legal definitions of either *family* or *home*, the forthcoming Domestic Violence Law, does expand on

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340 Timor-Leste: Education and Training Sector Investment Program, (April 2006), p34.

341 This part covers :

- Article 23 ICCPR
- Article 16 CEDAW
- Articles 5, 18 and 20 CRC
- Article 44 CMW

342 Section 39 (1) of the CRDTL

343 Section 39 (2) of the CRDTL

the notion of *family* as follows, with family members or persons in a familiar relationship defined as:<sup>344</sup>

- spouses in the context of civil, religious or customary marriage;
- a man and woman living together in a situation analogous to marriage;
- the ascendants and descendants of either or both of the spouses or those in a situation aforementioned in the previous line provided that they are integrated in the same context of familial economy and dependency or;
- any other person within the same context of familial economy and dependency, including those who carry out continuing and subordinate forms of domestic labour

657. This definition of *family* shall be enforced along with other measures in the law so as to “provide a fundamental guarantee of the integrity of the family as the fundamental social and cultural unit of Timor Leste”.<sup>345</sup> The principle of the family unit as defined in art. 5 of this law can be read in conjunction with arts. 16 and 17 of the Timorese Constitution, whereby the cornerstone of the family unit is the respect for fundamental human rights such as equality of all citizens before the law.<sup>346</sup>

658. In traditional Timorese society, a basic family unit consisting of the married couple and their unmarried children inhabit a single residence, known as the ‘*House*’. This unit is nearly always linked to a myriad of other social relationships, in particular to the family’s closest relatives or members of its ‘lineage’, which can be either through the father’s *patrilineal* or through the mother’s *matrilineal* side. However, for the most part, societies in Timor Leste are *patrilineal*<sup>347</sup>. All members of the lineage claim a common ancestor and pledge allegiance to this ancestor. They form part of what is termed the *uma kain* or *ahimatan*, or descent group, which can consist of siblings, parents and their siblings and grandparents. Normally, the oldest male acts as head of this extended family.<sup>348</sup>

659. In Timor Leste, one or several descent groups may also refer to a ‘sacred house’ known as the *uma lulik* or *uma lisan*. Members of this sacred house still have a common ancestor, though the roots of this ancestor can no longer be traced. Sacred houses represent the entire universe and contain heirlooms of the ancestors of the family. Tradition believes these to be the oldest houses, where the first ancestors lived and, as such, they are more senior to the other houses. In any one *knua* or ‘hamlet’, the sacred house is placed at the centre with surrounding houses situated in order of seniority. For example, the house of the

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344 Art. 4 of the forthcoming RDTL Domestic Violence Law

345 Art. 5 (1) of the forthcoming RDTL Domestic Violence Law

346 Art. 5 (2) of the forthcoming RDTL Domestic Violence Law

347 Covalima was cited during consultations as one exception to this rule as this district is predominantly matrilineal.

348 Sofi Ospina and Tanja Hohe ‘Traditional Power Structures and Local Governance in East Timor – A Case Study of the Community Empowerment Project (CEP)’ (2001), p. 21.

first born son is to be found next to his parents' house, with the youngest son's house situated further from the centre. A woman who is not married is normally included as part of the descent group as long as she can trace her lineage through the male line. Once she marries, she then leaves the family hamlet to join her husband's family.<sup>349</sup>

660. The importance of both the '*House*' and the '*sacred house*' as entities in the Timorese social structure cannot be overemphasized. Both form the centre of marriage relationships and political power; every relationship between different '*Houses*' is noted by the family and thus a system with specific rules (see below) governing marriage is created.

#### *Role of customary law in family relations*

661. Family relations are governed by a combination of civil, religious and customary law. At a local level, a hierarchy is followed, with traditional law first, followed by teachings of the Church, then civil law. Where possible, traditional leaders try to interpret the teachings of the Catholic Church in a way that corresponds with traditional beliefs. The success of this mix of religious and customary laws also depends to a great extent on the attitudes of local clergy. Timorese demonstrate great respect for the Church with regular attendance at Mass, but often interpret many teachings of the Church in a way that validates rather than contradicts their traditional beliefs. In fact, many people, certainly at a local level, do not believe that their Christian beliefs in any way challenge their traditional practices.<sup>350</sup>
662. Marriage, however, is one such example of where customary and religious laws are at odds. A wedding ceremony conducted at Church is nearly always accompanied, if not *replaced* by a traditional service. Given the importance of creating fertility through the exchange of marriage goods (*barlake* or 'bride price' – see below), fulfillment of religious obligations alone is not usually sufficient to maintain good relations within the family or local community. The exchange of goods, which forms part of a traditional service, is crucial to establishing a wide social system. To remove it would effectively do away with an important purpose of the marriage.

#### *Training for family social workers*

663. Currently there are six social workers working in Dili, employed by the Division of Social Services in the Ministry of Labour and Community Reinsertion, with some additional social workers employed on a short-term basis by NGOs. The Government is not aware of any social workers working in

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349 Dionísio C.B. Soares 'A Brief Overview of the Role of Customary Law in East Timor' (1999) p.7

350 Sofi Ospina and Tanja Hohe 'Traditional Power Structures and Local Governance in East Timor – A Case Study of the Community Empowerment Project (CEP)' (2001), p 80.

the districts. They have different specializations and divisions of tasks: violence against children and children at risk, juvenile justice and orphanages<sup>351</sup>. Training of social workers or professional groups dealing with family matters is limited due to financial and practical constraints, and the inability to clearly identify professional groups of social workers with whom to work. Where training of individuals involved in social service type activities has taken place it is mainly related to areas such as health, justice and gender based violence. Activities are focused on encouraging the appropriate authorities, especially in the case of gender based violence, that this is not purely a family matter and that intervention on their part is required. Where the assistance of trained professionals is not available or even sought, it is the local clergy who are often called to attend conflict-mediation meetings, especially in the sub-districts. For example, in cases where couples are considering separation, the priest is seen as a respected person, called to witness the process or to make suggestions, but not take decisions, regarding a solution.

## Marriage

### *Right to enter marriage and freedom to choose spouse*

664. In theory, every individual in Timor-Leste can exercise the right to choose his/her own husband/wife. In accordance with article 39 (3) of the Timorese Constitution, *'marriage shall be based upon free consent by the parties and on terms of full equality of rights between spouses, in accordance with the law'*.
665. This notion of free will is also explicit in the current law, so that the *'voluntary consent of the prospective spouses'* is required (Art. 28 of the Indonesian Civil Code).
666. There are certain instances where marriage is prohibited as outlined in Arts. 31-49 of the Indonesian Civil Code. They include but are not limited to:
- marriages between individuals who are related lineally, either by legal or illegal birth
  - marriages between brother and sister
  - marriages between uncle or great-uncle and niece or great-niece, also between aunt or great-aunt and nephew or great-nephew
  - marriages between brother-in-law and sister-in-law, unless the spouse by virtue of whom these persons have become related is deceased or because of his absence the surviving spouse has been issued approval by a judge to enter into another marriage.
667. In traditional law, a man may not marry his parallel cousins (from the father-brother-daughter relationship), as she is considered his sister by virtue of his

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351 UNICEF Submission 9 January 2006.

lineage. A woman and man may not marry their brother/sister – in laws as they are considered brothers/sisters by virtue of their marriage. In many communities in Timor Leste, the preferred marriage is that of a ‘MBD marriage’ or ‘mother’s brother’s daughter marriage’, which is in effect a cross-cousin marriage. This is a complex system of marriage, which traditionally brought many families into a wide social network.

### *Betrothal of girls*

668. It is evident that the current law is at odds with some traditional practices. Although increasing numbers of men and women are choosing their own partners based on free will and love, evidence from regional consultations suggests that many young women are not able to freely choose their spouse in reality<sup>352</sup>. A husband, for example a cousin, is chosen for a woman by her family at her birth. An aunt or uncle offers an initial *barlake* to the woman’s family, who then cares for her until she is old enough to marry<sup>353</sup>. This is sometimes a way of keeping *barlake* within families. She is not permitted to break a promise that was made at her birth, even if she does not like or indeed love her intended husband. To do so, would bring shame on the family and the initial *barlake* would have to be repaid. These values are subsequently reinforced during the course of a woman’s married life.<sup>354</sup>

### *Minimum age*

669. The current law under the Indonesian Civil Code (Art. 29) states that men may not marry until they reach the age of eighteen, but women may marry at the age of fifteen, subject to their parents’ approval (Art. 35).

670. It is commonly held that child marriage and engagement (that is, marriage or engagement below the age of 18) takes place in Timor Leste<sup>355</sup>. Marriages between girls as young as 13 or 14 years old have been reported in the districts.<sup>356</sup> These are often marriages decided with a particular family before the birth of the marriage partner. In other cases, as a result of extreme poverty, families arrange child marriages in an attempt to obtain *barlake*, not informing potential suitors of the child’s real age. Invariably, the child is not able to read or write and has never attended school. This practice seems to be more common in rural areas than the capital.

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352 Results from the Regional CEDAW Treaty Reporting and Socialization Workshops (2005).

353 District consultations reported this to be the case in Bobonaro, Hauba sub-district, Oecusse and Manatuto

354 Oxfam ‘Obstacles to the Effective Participation of Women in Adult Education Programs: Focus on Social –Cultural Factors’ (2004), p17

355 As reportedly the case in Maliana, Oecusse, Ermera and Manatuto for example

356 Results of group discussions, regional CEDAW treaty reporting workshops, 2005.

### *Polygamy*

671. The Indonesian Civil Code only recognizes a civil marriage (Art. 26) and outlaws polygamy (Art. 27). But, as evidenced in district consultations<sup>357</sup>, polygamy remains a problem, despite the efforts of the Catholic Church to combat it. It is difficult to get a real sense of the scale of the problem as civil registries require that the name of only one wife is recorded in the system. It is common practice that a man marries one woman in the Catholic Church, taking additional wives in traditional ceremonies.<sup>358</sup> Women suffer directly as their husbands or partners spend time with their other families, spending limited financial resources on them. Some husbands have left their family home because their first wives have been unable to bear them children.

### *Equality in marriage*

672. Although the Timorese Constitution clearly states that men and women should enjoy the same rights and duties in all areas of family life<sup>359</sup>, and that marriage should be based upon “full equality of rights between spouses”,<sup>360</sup> traditional interpretations of the different roles and responsibilities of men and women within the family effectively prohibit women’s full enjoyment of these rights.

673. For example, while not practiced in all parts of the country, in some regions a married man is entitled to receive a plot of land from his family as he is a member of the ‘lineage’ or descendant group. His male children are also members and enjoy rights to access this land through their father. As long as unmarried women can prove their lineage through the male line, they too can claim a share of the land, though in comparison to their male siblings, their share is smaller. Where the situation becomes tricky is where married women seek to make use of their father’s land. Conflicts that arise from land disputes are usually settled by traditional means and will probably favour access to land rather than ownership of it. This issue is further discussed in the CEDAW Specific Document.

### *Roles and responsibilities in marriage*

674. As Timorese society is patriarchal in nature, it is assumed that men are the primary actors in all negotiations and take decisions on behalf of the family and lay down the law. By contrast, it is expected that a Timorese woman will defer

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357 District consultations revealed that polygamy continues to be practiced in Timor-Leste. For example, in Ermera where participants reported on the number of wives they possessed. It is understood that the polygamy is not practiced solely in Ermera but in other parts of the country also.

358 Sofi Ospina and Tanja Hohe ‘Traditional Power Structures and Local Governance in East Timor – A Case Study of the Community Empowerment Project (CEP)’ (2001), p. 81

359 Section. 17 of the RDTL Constitution

360 Section 39 of the RDTL Constitution

to her husband in most matters, only assuming the role of the principal decision-maker for the family if her husband dies. She is expected to routinely sacrifice in favour of her husband and children, whilst at the same time remain acutely aware of not engaging in any activity that would be viewed as bringing shame to the family.

675. The main duty of a woman once she is married is to produce children, thus continuing the 'flow of life' or lineage of a particular family. While the husband leaves the home to find employment and to provide for his family, the house remains the province of the wife, where she takes care of her children in addition to carrying out her normal household chores.
676. Although there is no law which expressly confers upon women the right to freely choose how many children to have and their spacing, cultural traditions dictate that once a woman is married, it is her duty to continue the "flow of life" between families.<sup>361</sup> Women who are not able to give birth are looked down upon in Timor.<sup>362</sup> Many women claim they do not have an equal say in decisions relating to family planning.<sup>363</sup> The MICS survey revealed that less than 1 % of all Timorese men use any form of contraception, thus shifting the primary responsibility for contraceptive use to women, although the same survey also indicates that only 8 % of women living with a husband or partner in Timor-Leste actually use contraception, mainly for the reasons outlined above. Women have little or no access to information on family planning which would enable them to exercise their rights under Art. 16 CEDAW. This issue will be explored in greater depth in the CEDAW treaty specific document. Often, members of the husband's family, such as his mother, exercise a certain degree of influence over and take a decision with her son as to how many children his wife should have. As in many Timorese traditions, men are key decision-makers and naturally assume the power in a family.
677. These roles, which are established from an early age, effectively restrict the mobility of women. They are rigidly enforced and adhered to and, in the case of young girls, are partly to ensure their safety, for fear of anything untoward happening to them, for example, if they stay out late. However, the main purpose is to control females in the family. For example, young girls are expected to return home immediately after school to complete work around the house, sometimes to study and to learn how to sew. To stay out past early evening, is considered bad and would lead to both the girl and her family being compromised in the eyes of the community. This is in stark contrast to the ordinary lives of males in the family, who enjoy greater freedom to relax with their friends outside the home.

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361 Sofi Ospina and Tanja Hohe 'Traditional Power Structures and Local Governance in East Timor – A Case Study of the Community Empowerment Project (CEP)' (2001).

362 Results of group discussions, regional CEDAW treaty reporting workshops, 2005

363 Results of group discussions, regional CEDAW treaty reporting workshops, 2005

678. It is not surprising then that restricted movement outside of the home ultimately results in the limited development of women's interpersonal and other vital life skills. Education is one area where the impacts of this are clear. Women whose mother tongue is not Tetum have less opportunity to learn this language as they are not travelling to Dili or other major towns in the same way as their husbands to conduct business. Instead, women must rely on second-hand information on what is going on in the world from family and friends.
679. In Timor Leste, roles and responsibilities in married life have to be constantly re-negotiated. A woman's duty is to *learn* from her husband and any acts of violence suffered by a woman within a family setting because, for example, she did not prepare an evening meal, are tolerated because of communities' beliefs that violence is a form of education and punishment<sup>364</sup>. The power relationship between a man and his future wife can be identified from the earliest stages of their relationship. A young woman is referred to by her boyfriend as *hau nia labarik* or 'my child', while she refers to him as *maun* or 'older brother'.
680. It is interesting to note that since independence, cultural attitudes are beginning to slowly change in Timor and the idea of equal rights between men and women in the family is gathering momentum. There is also a growing expectation that women should speak out on a number of issues, which is naturally proving difficult as their opinions have not been courted in the past. For some Timorese, equal rights have now come to mean equal rights to carry out certain roles. For example, women can be represented in the community through organizations such as OPMT/OMT. A husband can take care of his children if his wife is sick. However, more often, even where an educated woman is engaged in work outside of the family home, she is expected to perform this work *in addition* to her normal responsibilities within the home.

### *Divorce*

681. Under the current law (Art. 33 of the Indonesian Civil Code) both men and women are able to divorce; however, the waiting period before entering into a new marriage is less for a woman than a man. According to Art. 34, a woman may not get married earlier than three hundred days following the dissolution of her previous marriage. Ordinarily, the waiting period is one year (Art. 33 of the Indonesian Civil Code). This same article stipulates that a further marriage between the same individuals who previously divorced is not permitted.
682. In traditional law, a man may complain about his wife if there are problems in their relationship and then choose to separate from her. In this scenario, the man or his family must make a significant payment to his wife's family. If he is

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364 Oxfam 'Underlying Causes of Gender Inequity in Covalima, Timor Leste', (2003) and Results of the Regional CEDAW Treaty Reporting and Socialization Workshops (2005)

unable to pay, traditional law dictates that the couple continues living together. If, on the other hand, a wife wishes to separate from her husband, her family must provide her husband with another woman from her house. At this point no further payment is required. In the case that both parties wish to separate, no fine is paid.<sup>365</sup>

683. The reality in Timor-Leste, however, is that most women and men feel that separation or divorce is not an option in a country that holds deep Catholic traditionalist views and it would be quite unusual for them to go as far as to divorce legally. Inevitably, there is a sense of shame at the break-up of a marriage and the perception among the community is that the woman is to blame for this rupture in the marital union. Unsurprisingly, a woman is not given much support from family or Church, who both advocate returning to her husband in a further attempt to resolve differences. Some women have even described scenarios whereby their husbands have threatened to take their children if they decide to leave the family home.<sup>366</sup> In the few cases where divorce does occur, this is mainly in families where there is a greater income and usually for the purposes of entering into a new relationship.

*Bride price/ “Barlake”*

684. Bride price or dowry (*barlake*) is not illegal in Timor Leste and is still observed in many districts. The practice flourishes in the east of the country more so than the west where sums paid are often smaller. The exchange of marriage goods between the man’s family or ‘Wife Taker’ and the woman’s family or ‘Wife Giver’ is considered to be the most important act in a marriage. The elders of both families discuss what amount of goods should be exchanged for the marriage, based on history of relations and the status of the respective ‘Houses’. As individuals, both the man and woman are not as important as what their families can bring to the marriage. In the face of much criticism from women activists that *barlake* is the root of inequality between a man and a woman, many traditional elders hold the view that *barlake* is not the price of the woman for marriage, but actually gives value to the woman and that the higher the dowry, the higher her value is in relation to her future husband.
685. However, the reported reality is that this practice does have ramifications for women in many aspects of their married life. Once the *barlake* has been paid, there is often the belief that a wife is the ‘property’ of the husband, to do with as he pleases. If she does not conform to his or the family’s expectations, she may

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365 Sofi Ospina and Tanja Hohe ‘Traditional Power Structures and Local Governance in East Timor – A Case Study of the Community Empowerment Project (CEP)’ (2001), p. 31-32

366 Results of group discussions, regional CEDAW treaty reporting workshops, 2005

suffer violence.<sup>367</sup> It is interesting though that a study by the International Rescue Committee (IRC) in 2003 found that although almost half of all the women interviewed had a bride-price paid when they were married, only nine percent said that it had a negative influence on their treatment. Indeed, 38 percent said that it had a positive influence and 43 percent said that this practice had no influence on their treatment. Many of those consulted in the districts for the development of these reports, were of the view that *barlake* strengthened family relationships.

686. Despite these findings, a number of women's activists still consider *barlake* to be the root of domestic violence and some have called for a law to eliminate the practice as it discriminates against women.<sup>368</sup> The custom involves transfers of considerable sums of money and cherished items from the groom's family to that of the bride. As a result of this transfer, a sense of ownership or control over a wife is often established.
687. Consultations in the regions have also indicated that men too feel 'victimized' by this practice due to the pressure to be able to provide a substantial *barlake* for the bride's family. It has been further commented that women whose bride price has not been fully paid are perhaps in a better position as their family is still able to wield some power over the family of her husband.<sup>369</sup>
688. What is clear also from this practice, however, is that once *barlake* has been paid, the marriage becomes more than a union between man and wife, but rather an important joining together of families. The couple is expected to help each other's family. As it is custom for a woman to follow the decisions of her husband, for a woman, this may mean less time spent tending to the needs of her own family and clearly herself.
689. Although many communities in Timor would be reluctant to put an end to this tradition, the burden of *barlake* and the constant requirement to contribute to each others families is becoming unmanageable. The money given for *barlake* is often at the expense of other necessities such as food, health care and education, thus leaving women and their children exposed to the dangers of malnutrition, inadequate access to existing health care facilities and education. In effect, *barlake* can prevent both women and men from participating in and enjoying many aspects of their economic, social, cultural and political lives.

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367 D. Grenfell, Anna Trembath, Chris Scanlon, Globalism Institute, University of RMIT, Melbourne 'Challenges and Possibilities: International Organizations and Women in Timor Leste: A weekend of Reflection, Dialogue and Collaboration' (2005), pgs. 21-22. Also the Results of group discussions, regional CEDAW treaty reporting workshops (2005).

368 Kathryn Robertson 'Case Study on Gender Based Violence in Timor Leste', by PRADET and UNFPA (2005), p. 24

369 Kathryn Robertson 'Case Study on Gender Based Violence in Timor Leste', by PRADET and UNFPA, primary author, (2005), p. 24

## **Ability to own property**

690. As in many countries, land rights are a major issue concerning women in Timor-Leste. In rural areas, land is the principal asset and traditional practices dictate that land rights are passed through the male line, except in matrilineal communities such as Covalima and Bobonaro. Otherwise, women can only usually acquire land through marriage and do not have any property rights, other than acquisition through a male relative's right to land and even then, it is only to use the land, not own it.
691. To date, the issue of women's rights in relation to land has not been directly addressed in policy. However, the Government is aware of the need to focus on the right of women to access and own land, not least to give women equal opportunities to obtain income from land. At the time of writing, land ownership laws are being drafted, with the input and participation of the OPE. This issue is discussed in further detail in Art. 14 of the CEDAW Specific Document.

## **Care of Children**

692. Taken together, articles 9 and 18 of the Constitution provide a strong recognition of the responsibilities, rights and duties of parents, members of extended families and the community, towards the child. Traditional customs also give all due consideration to the welfare and upbringing of the child, with particular recognition of the obligations of the extended family (*uma kain* or *ahimatan* – the child's 'descent group' within a unilateral lineage).
693. The Constitution is explicit in:
- stating the obligations of family, community and State to the child
  - inferring a 'hierarchy' of obligations, commencing with the family
  - respecting customary practices, to the extent compatible with international standards
694. Article 17 of the Constitution (equality between women and men) provides that "women and men shall have the same rights and duties in all areas of family, political, economic, social and cultural life". In accordance with the matrilineal and patrilineal family lineages in Timor-Leste, customary practice with regard to the care of children can be broadly divided into two different systems. Under the matrilineal system, where the man integrates into woman's family in marriage, the child stays with the mother, in the event of the father's death or divorce. The mother holds the primary right of decision-making in respect of the child's upbringing. The opposite practice, is that of the patrilineal system where, in the event of divorce or the death of the father, and the father does not remarry, both the mother and child continue to be part of the father's extended

family and the responsibility for the upbringing passes to the paternal extended family. If the mother chooses to re-marry, the child continues to stay with the father's family, and in some instances, the mother may lose the right to care for the child. Of course, this may simply constitute an extension of family support for the child in the father's absence and illustrates the responsibilities assumed by the father's family (the majority of lineages in Timor-Leste are patrilineal) as a consequence of paying a bride-price (*barlake* or dowry) to the child's mother's family. Nevertheless, as explained, this can also result in the mother forfeiting rights and responsibilities in the child's upbringing. This is a complex and difficult aspect of gender-discriminatory customary practice for which a response will need to be carefully considered, especially in terms of how the formal legal framework and administrative practice respond.

695. As reiterated throughout this document, the current state of flux in the legal framework and the fledgling state of the formal administrative system concerning the protection and welfare of children, has limited the extent to which the State has intervened in family affairs. State interventions tend to be limited to those in which there has been a serious breach of the child's best interests, though interventions are steadily expanding and can be reactive to specific issues.
696. While the State has limited resources to provide assistance to families in need, recent work has been very much focused on strengthening the capacity of key institutions – such as DSS, Vulnerable Persons' Unit (VPU) and District Administrations – to respond appropriately. Work is also continuing to strengthen the awareness of parents, communities, families and children, of the rights of the child and of the roles and responsibilities of parents and families in the development and upbringing of children. Specific programs for strengthening families to allow parents to better care for their families are also planned<sup>370</sup>.
697. The Government emphasises that
- the Constitutional foundations are in place,
  - the legislative and administrative frameworks are still being developed, and
  - there has been an early emphasis on community and family-based education, to strengthen Timor-Leste's compliance with these essential building blocks of child development, care and protection.
698. Given that Timorese society is for the most part patrilineal, children likely remain with their father in the event of parents separating. According to the tradition already described above, if *barlake* has been paid, the father must

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370 Timor-Leste, 'Social, Civil and Heritage Protection Sector Investment Program', April 2006.

reimburse his wife this amount for restoration of her honour. In some cases, children do remain with their mother and similarly, she will be required to pay back the *barlake* to her husband.

### **Child Maintenance**

699. Article 230 (b) of the Indonesian Civil Code states that, after a formal application has been made to legally separate, the Court can order the parent who has not been appointed guardian to “deliver weekly, monthly or quarterly payments of a specified sum ... for the support and education of one or more children”, unless there are reasonable grounds for that parent not being able to “sufficiently contribute to the support and education of the minor children”.
700. Article 329 (a) of the same Code further states that these levels of support are to be “proportionate to the needs of the minor and to the income and wealth” of the responsible parent. However, the current law does not make any other reference to enforcement provisions in the event that this parent is not able to pay.
701. Although article 237 of the Code refers to the right of the Court to validate and regulate any arrangements for maintenance, there is currently no administrative framework in place to enforce payment following formal separation. Indeed, there are very few judicial rulings on child maintenance as a whole which partly stems from a lack of awareness on the couple’s part as to how to proceed with an application for formal separation, the legal costs associated with making such an application, limited judicial competence in specialist areas such as ‘family law’, and the absence of a traditional resort to the courts for enforcement of such rights. Similarly there is presently no administrative framework for collection and enforcement.
702. As already outlined above, separation and divorce are not common occurrences in Timor-Leste. When couples do decide to separate, the issue of with whom children stay depends again to a large degree on whether *barlake* or ‘bride price’ has already been paid. It is more common that children remain with the father if he has paid *barlake* to the mother’s family. If, however, the mother is in a position to repay this *barlake*, then the children may remain with her.
703. In traditional practice, when parents separate, the provision of child maintenance is not always discussed. Regional consultations with members of the community, NGOs and local government in 2005 have indicated that in cases where the mother has retained responsibility for raising the children and where maintenance has been agreed to, the father is often unable to or does not pay the agreed sum.<sup>371</sup>

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371 Results from the regional CEDAW Socialization and Treaty Reporting Workshops (2005)

704. The issue of child maintenance for Timorese women who have had children by a non-Timorese male was also raised during consultations.<sup>372</sup> At present, there is no provision for child maintenance in instances where foreigners, such as international UN mission personnel, have fathered children in Timor-Leste and later left the mission. The Ministry of Labour and Community Reinsertion has taken statements from women who have had relationships with internationals who have worked in various UN missions with a view to establishing paternity and also to examine the possibility of obtaining child maintenance. In only a few cases has paternity been determined. There are no reported cases of child maintenance being obtained.
705. The Government is cognizant of the difficulties in this area and has taken steps to address the situation with a forthcoming law on the provision of child maintenance, which at the time of writing is waiting to be considered by the Council of Ministers.

### **Adoption of Children**

706. At the time of writing, there is no national legal framework which regulates adoption and it is largely an informal process, carried out within families, mainly the extended family. The Indonesian Civil Code and an UNTAET Regulation on registration do, however, address various elements of the adoption process.
707. Adoption is common in Timor-Leste, though there have been very few judicial decisions handed down in cases. Broadly speaking, in order to adopt, the applicant must provide proof of financial means to care for the child, a suitable motive for wishing to adopt, aside from consent of the natural parents in person that adoption can indeed take place and will be permanent.<sup>373</sup> Once an adoption order is issued, the Court must then give notice to the Central Civil Registry, so as it can issue a civil document which confirms the adoption of the child.<sup>374</sup> The Central Civil Registrar has reported that, to date, it has received only a handful of adoption notifications. On average, there has been one formal adoption hearing before the Court per year in the course of the past five years and all of the applicants were non-Timorese nationals.
708. In a recent decision taken by a District Court, an adoption order was issued whereby a Timorese child was adopted by a non-Timorese national, with the approval of both the child's natural parents. Although there were questions raised in this particular case concerning the process of issuing the adoption order, it was considered that the applicant's motives were appropriate and that she was financially stable, so the child was eventually taken abroad.

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372 Results from the regional CEDAW Socialization and Treaty Reporting Workshops (2005)

373 Interview with a Judge, Dili District Tribunal, January 2005 and Public Defender (July 2005)

374 UNTAET Regulation No. 2001/3, Sec. 2.1 (e)

709. This case highlights one of the main reasons for the adoption of children, namely severe poverty coupled with large numbers of children in the family; displacement of children, especially during the Indonesian occupation and to some extent, orphaned children. Discussions from regional consultations in 2005 have raised the issue of single mothers who are particularly vulnerable to attempts to ‘adopt’ their children.<sup>375</sup> Some women have pointed out that the practice of a single woman raising children without the support of a male partner or family is frowned upon socially in Timor-Leste. There have been reports of attempts on the part of the woman’s extended family to take the children or have them placed in care, usually orphanages, as this is considered by the families to be in the best interests of the children.<sup>376</sup> The women in these cases have little or no support or resources with which to challenge the action.
710. In a response to the situation, the Ministry of Labour and Community Reinsertion has been working on a set of adoption guidelines for domestic and inter-country adoption. This proposed regulation sets out a framework for a system of foster care and has been based on extensive consultations, both at the district and national levels. It includes the following:
- Assignment of the Ministry of Labour and Community Reinsertion as the central authority on adoption matters
  - Requirement that the Division of Social Services (within the Ministry of Labour and Community Reinsertion) as a competent authority, prepare a social inquiry report for the Court’s consideration
  - Criteria for both the child and applicants’ eligibility as parties to an adoption
  - Requirement for the relinquishing parent’s consent to be informed and voluntary
  - Provision for traditional customs to be a part of the adoption order (where not in conflict with international standards)
  - Specific attention to the circumstances of children presently subject to informal adoption
  - Post-placement monitoring by the Division of Social Services
  - Registration of adoption with the Central Civil Registrar.

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375 Results from the regional CEDAW Socialization and Treaty Reporting Workshops (2005)

376 Results from the regional CEDAW Socialization and Treaty Reporting Workshops (2005)

## M. EFFECTIVE REMEDIES<sup>377</sup>

711. The Timor-Leste Constitution affirms the right of individuals, either jointly or individually, to seek a remedy for the violation of his/her rights through the organs of sovereignty or any authority<sup>378</sup>. It also assures access to tribunals, in order to defend those legally protected rights<sup>379</sup>.
712. The Constitution and a variety of other laws establish the mechanisms through which remedies for rights violations can be sought. Redress for rights violations ranging from wrongful conviction, unlawful arrest and detention, torture, excessive use of force, and economic, social and cultural rights such as labour exploitation are among those that can be sought. Remedies available include, *inter alia*, judicial review, compensation, administrative review, dismissal of the offending State actor (as in cases of police misconduct), and reinstatement of employment.
713. The *Supreme Court* is empowered to review and declare the unconstitutionality and illegality of normative and legislative acts by the organs of the State<sup>380</sup>. A declaration of unconstitutionality is usually followed by parliamentary review and, in some cases, modification of the offending provision, as occurred with the Law on Freedom of Assembly and Demonstration.
714. An individual may also request that the Supreme Court consider a writ of *habeas corpus* or decision that the arrest and detention of that individual was unlawful<sup>381</sup>. If successful the complainant will be immediately released from detention and may be awarded compensation for his/her wrongful incarceration<sup>382</sup>. Both the Constitution and Civil Procedures Code provide

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377 This part covers:

- Article 2(3) and 14 ICCPR
- Article 2 CDESCR
- Article 6 CERD
- Article 2(c) CEDAW
- Article 14 CAT
- Articles 16(9) CMW

378 See Art. 48, "Everyone has the right to submit, individually or jointly with others, petitions, complaints and claims to organs of sovereignty or any authority for the purpose of defending his or her rights, the Constitution, the law or general interests".

379 Article 26, CRDTL

380 Article 126 CRDTL.

381 Section 205, Criminal Procedure Code, Decree Law 15/2005.

382 Article 351, Criminal Procedure Code (CPC) provides person arrested or unlawfully placed under pre-trial detention may ask for compensation for the losses suffered as a result of the deprivation of liberty.

compensation for wrongful conviction, though the Government is not aware of cases in which such an award has been made to date<sup>383</sup>.

715. Between 2002 and July 2005 at least five *habeas corpus* claims were brought before the court alleging prolonged and thereby illegal police or pre-trial detention. Each of these claims was successful and the defendants were subsequently released from detention. It is understood that compensation was not awarded to the complainants.
716. Mandated to review legislation, policies, and practices to ensure compliance with the Constitution and international human rights standards<sup>384</sup>, the *Office of the Provedor* also provides an important avenue for individual redress of rights violations.
717. Importantly, however, while the Provedor may review legislation, policies and practices for human rights compliance, the Provedor does not have the authority to set aside, revoke or modify the decisions of the agencies or entities concerned, or to make compensation orders. This Office is only authorized to make recommendations for remedies or reparations or to advise and propose measures for their correction, prevention or elimination and the observance of the highest standards of respect for human rights, rule of law, ethics and efficiency<sup>385</sup>. The Office is also authorised to intervene in court cases (through the expression of opinions)<sup>386</sup>, to inspect places of detention<sup>387</sup>, and to act as mediator and conciliator in a dispute<sup>388</sup>.
718. Complaints of breach of rights and freedoms including cruel, degrading and inhumane treatment, torture, assault or other misconduct by security agencies can be made to the *Professional Ethics Office (PEO)* and *Office of the Inspectorate*, of the Ministry for Interior. As detailed in the chapter on 'Procedural Guarantees' above, a number of disciplinary complaints have been filed and processed against police officers.
719. If any citizen has a complaint relating to the process of election for *suco* chief and *Suco* Council, s/he can provide a letter of complaint or reclamation directly to National Electoral Commission (CNE) or to the CNE focal point in the district. The Commission may subsequently make recommendations to the competent court related to claims connected with the voting process and the determination of results.

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383 Article 31(6) CRDTL and Article 320, Criminal Procedure Code provides compensation for loss suffered and refund of any amount of money paid as fine, tax and court costs for conviction and subsequent acquittal of defendant on review of conviction.

384 Section 24(d), Statute for the Office of the Provedor, Law No 7/2004.

385 Sections 28(j), (l) and 47 of the Statute for the Provedor.

386 Section 25(3) Statute for the Office of the Provedor, Law No 7/2004.

387 Section 28(f), Statute for the Office of the Provedor, Law No 7/2004.

388 Section 38 Statute of the Office of the Provedor, Law No 7/2004.

720. In 2005, during national elections for *Chefe de Sucos* and suco councils, a small number of re-elections were held in various *aldeias* and *sucos* where the initial ballot was either tied, declared void or following complaints of irregularity.
721. The *Conciliation and Mediation Service* within the Ministry of Labour, coupled with the *Labour Relations Board* (soon to be called “*Employment Relations Tribunal*”) and *Minimum Wage Tribunal* are also mandated to work with aggrieved employers and employees to resolve employment disputes. Among the remedies available in this system are compensation and reinstatement in cases of unjustified dismissal.
722. It is important to recall also that traditional justice or community dispute resolution mechanisms are widely used as an alternative to the formal justice system and that this system employs various remedial measures to resolve disputes. Remedies may include the provision of compensation in the form of animals or money, as well as more ad hoc measures to restore the dignity of victims.
723. The establishment of a normative framework is an important step towards the provision of remedies for rights violations. Nevertheless, in practice remedies remain difficult to obtain. Vast obstacles confront the State in delivering an effective formal system to remedy human rights violations. Such obstacles are characterized by institutional weaknesses and insufficient resources that require institutional skill and capacity development as well as sound institutional management. While many institutions formally exist, their capacity to deliver substantive remedies for rights violations remains limited.
724. The Office of the Provedor has only recently opened its doors to begin receiving complaints and it still ill-equipped to resolve an influx of cases. Systemic weaknesses in the justice system; and, the absence of a source of funds for financial compensation are among the obstacles to practical judicial remedies.
725. Low-level dispute resolution fora such as the Conciliation and Mediation Service and Labour Relations Board continue to operate painfully slowly so that many of the 200 cases filed in recent years remain unresolved. Formal recognition of the relationship, if any, between traditional and formal justice mechanisms would also go some way to strengthen avenues for redress of rights violations and to ensure continuity between formal and informal systems. The State still has some way to go to strengthen disciplinary processes for security forces also to guarantee accountability for rights violations.