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EAST TIMOR

East Timor: Building a new country based on human rights

1. Introduction

On the 30 August 1999, the people of East Timor took the first step in exercising their right to self-determination by participating in a popular consultation organized under the authority of the United Nations (UN). They voted overwhelmingly for independence from Indonesia which had forcibly annexed the territory in 1975. In accordance with the Tripartite Agreement of 5 May 1999, authority in East Timor was transferred to the UN pending full independence. The UN Security Council established the United Nations Transitional Administration in East Timor (UNTAET) as the transitional authority with, “the overall responsibility for the administration of East Timor” and the powers “to exercise all legislative and executive authority, including the administration of justice”.¹

With these powers comes a special responsibility, for the UN is not only a *de facto* government for the East Timorese people but also a trustee to the realization of their human rights.

The complexity and difficulty of UNTAET’s considerable task is compounded by the extraordinary conditions which prevail in East Timor. The foundations on which an administration could be built were all but destroyed in the violence surrounding Indonesia’s withdrawal from East Timor in September 1999. The massive human rights violations carried out by pro-Indonesian militia groups and the Indonesian security forces resulted in hundreds of unlawful killings and other human rights violations including the displacement or forcible expulsion of some 70 percent of the population. Physically, the territory’s infrastructure was largely destroyed and it was left without functioning governmental, administrative or judicial institutions.

A year has now passed since the vote which, taking place in the face of considerable intimidation and violence, demonstrated a determination by the East Timorese to see their human rights fulfilled and to decide upon their own destiny. Amnesty International believes it essential that UNTAET gives priority to the realization of these rights.

Amnesty International considers that the relationship between the UN as the Administrator, and the East Timorese people needs to be clearly established on a rights-based

¹ UN Security Council Resolution 1272, 25 October 1999. For 5 May 1999 Agreements see UN Documents A/53/951-S/1999/513 and annexes.

approach including through enabling them to exercise rights relating to the development of a system of government and society of their own choice.

In order to fulfil its responsibility to promote, protect and fulfil those rights, Amnesty International recommends that UNTAET draws up a national human rights action plan through which it can identify steps it must take including the adoption of legislative and other measures, in line with the recommendation contained in the Vienna Declaration and Programme of Action, adopted at the 1993 UN World Conference on Human Rights. The active and informed participation of East Timorese non-governmental organisations (NGOs) and civil society at large should be sought in this process. UNTAET should also consider seeking the assistance of relevant departments and agencies of the UN, to develop checklists, targets and indicators to ensure the practical implementation of such a plan.

In the meantime, Amnesty International is concerned that delays in the implementation of laws and policies to protect human rights, in the establishment of core institutions and in the development of a human rights culture, may negatively impact on the rights of the East Timorese people. Already problems are arising because key institutions and policies are still partially lacking.

A partial law and order vacuum has created opportunities for vigilante groups to carry out acts of intimidation, harassment, unofficial detention, beatings and torture. Refugees returning from West Timor are particularly vulnerable. The organization is also concerned that the absence of fully functioning courts, inadequate resources for the police to carry out their duties fully, and a lack of clarity in relation to applicable law is undermining the establishment of the rule of law in East Timor.

Amnesty International considers that UNTAET possesses an enormous opportunity to positively influence East Timor's future. It is essential for the successful realization of the aims of the mission that human rights are prioritized and that bad practices are not permitted to become institutionalized.

Although ultimate responsibility for ensuring that the respect, protection and promotion of human rights lies with UNTAET, other parties also have an important role to play. As the largest and most influential political grouping in East Timor, and as UNTAET's main East Timorese partner, the National Council of Timorese Resistance (*Conselho Nacional da Resistência Timorese*, CNRT) has a particular responsibility to uphold and promote human rights.² Amnesty

² The National Council of Maubere Resistance (*Conselho Nacional da Resistência Maubere*, CNRM) was established in 1986 as a non-party political front which aimed to unite East Timorese groups

International hopes that the CNRT will use its position to support the establishment of mechanisms to protect and promote human rights. It can set an example by supporting and encouraging participation of, and consultation with, all East Timorese including those not represented by the CNRT. Amnesty International also urges the CNRT to demonstrate its commitment to human rights by publicly stating its opposition to vigilante groups and others who have taken justice into their own hands, and by condemning all human rights abuses committed, including by its own members, against minority religious or ethnic groups, returning refugees and others.

Amnesty International hopes that the observations and recommendations contained in this document will contribute to the development of a human rights-based framework by UNTAET and a new state based on a culture of human rights.

2. The UN and its Legal Responsibility Towards the East Timorese People

which favoured independence. In 1998, the CNRM was replaced by the CNRT which contained an expanded membership of pro-independence groups.

The annexation of East Timor by Indonesia in 1975 was never recognized by the UN. The status of East Timor was therefore as a Non-Self-Governing Territory, as defined under Chapter XI of the UN Charter, under the administration of Portugal. The effect of the 5 May 1999 Tripartite Agreement and the result of the 30 August 1999 vote was to entrust legal responsibility for East Timor to the UN in a relationship that is analogous to a Trusteeship under the UN Charter.³

³ The importance of clearly identifying the relationship between UNTAET and the East Timorese people not only sets out UNTAET's legitimacy, but also defines the obligations and rights that result from such a relationship both for the UN and the East Timorese people. The framework provided by the Trusteeship systems provides some basic objectives as set out under Article 76 of the UN Charter. The Article states that, "in accordance with the Purposes of the United Nations laid down in Article 1 of the [...] Charter", the basic objectives of the trusteeship system, "shall be:

- (a) to further international peace and security;*
- (b) to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement;*
- (c) to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world;*
and,
- (d) to ensure equal treatment in social, economic, and commercial matters for all Members of the United Nations and their nationals and also equal treatment for the latter in the administration of justice without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80."*

The responsibility of UNTAET as trustee of the human rights of the East Timorese people requires that UNTAET itself does not violate their human rights. It also requires that the East Timorese people are able to exercise their human rights fully.⁴ Thus the protection and promotion of the full range of human rights: civil, cultural, economic, political and social, must be central to UNTAET's mission. This should include, the right to take part in the conduct of public affairs, to participate in decision making and be informed in order to do so, the right to vote as well as to be elected, and the right to freely dispose of or protect natural wealth and resources in accordance with international law.

In other words, the very purpose of the UN's trusteeship of East Timor is not to deliver a country and a system to the East Timorese people but to enable them to decide for themselves on the nature of the country they wish to lead to independence.

In light of its responsibility as a Trustee, UNTAET should report regularly through the Secretary-General to the Security Council and the UN General Assembly on steps taken towards the achievement of the human rights of the East Timorese people. To date UNTAET's reports have been of a general nature, focusing largely on the security concerns facing the mission. It is essential that more detailed reports on the steps taken by the mission to fulfil its responsibility as Trustee be submitted for review by these bodies on a regular basis.

The tasks facing UNTAET are considerable and go far beyond the scope of past UN peacekeeping operations because it is acting fully as the *de facto* government until the East Timorese people are able to select their own through genuine elections and as such achieve independence. Its multidimensional role covers all aspects of governance, public administration and security in the short term, while at the same time it must develop mechanisms which will enable the East Timorese people to exercise the rights which will enable them to take far reaching decisions at the political, economic legal and social level for the successful transition to independence of their country.

3. Creating a Human Rights Culture

⁴ In that regard, UNTAET's responsibility differs from the responsibility of the UN in other operations where the UN also had all legislative and executive authority such as in Kosovo under UNMIK (See S/RES/1244 (1999) 10 June 1999.) UNTAET's authority in East Timor results from an act of self-determination, the Popular Consultation vote of 30 August 1999, as well as UN Security Council Resolution 1272 of 25 October 1999, as opposed to a mandate by the sovereign power or administering authority asking the UN for assistance in enabling a people to decide on their political status.

The protection and promotion of the civil, political, economic, cultural and social rights of the people of East Timor is not only one of the basic objectives of UNTAET's role as the administering authority, it is the foundation required to enable the East Timorese people to exercise their rights to self-determination and self-governance.

UNTAET must implement laws and policies to protect and promote human rights and establish institutions which will ensure that laws are respected and policies put into practice. A human rights culture must be developed throughout society, by educating and informing everyone about their rights and remedies. Part of this human rights culture must be the achievement and full enjoyment of rights including freedom of expression, opinion and religion, as well as the right of peaceful assembly and freedom of association. A framework must be developed to allow the East Timorese people, without discrimination, to enjoy the right and the opportunity to take part in the conduct of public affairs including through discussing and deciding on the political, social and economic shape of East Timor.⁵

3.1 Enforcing human rights law

UNTAET took an important first step in adopting Regulation 1999/1 which sets out the framework for the authority and powers of UNTAET.⁶ *The Regulation affirms that all legislative and executive authority with respect to East Timor, including the administration of the judiciary, is vested in UNTAET and is exercised by the Transitional Administrator. It goes on to state that in exercising their functions all those undertaking public duties or holding public office in East Timor shall observe internationally recognized human rights standards reflected, in particular, in:*

- *The Universal Declaration on Human Rights (UDHR);*

⁵ For an analysis of the obligation of governments to fulfil their responsibilities in relation to these rights, see the Human Rights Committee's General Comments including on Articles 1 and 2

⁶ UNTAET/REG/1999/1: UNTAET, 27 November 1999, *On the Authority of the Transitional Administration in East Timor*.

- The International Covenant on Civil and Political Rights and its Protocols (ICCPR);
- The International Covenant on Economic, Social and Cultural Rights (ICESCR);
- The International Convention on the Elimination of All Forms of Racial Discrimination (CERD);
- The Convention on the Elimination of All Forms of Discrimination against Women (Convention on Women);
- The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture);
- The Convention on the Rights of the Child (CRC).

While clearly not intended to be exhaustive, this list represents a clear basis for the enforcement of international human rights law to East Timor. The Regulation requires that public officials respect human rights standards as defined in these treaties, and it also creates a corresponding right for the East Timorese people to see these standards complied with and implemented. UNTAET must therefore ensure implementation of these standards in East Timor, and ensure that the East Timorese people are aware of their rights and have access to redress and reparation when these are violated.

In order to give meaning to these rights, UNTAET must develop the tools for their implementation in East Timor. In particular, where the standards are not already integrated into the applicable law, UNTAET must ensure their implementation through regulations and relevant enforcement mechanisms.

3.2 Participation and consultation

Rights to involvement in government, public administration, and economic, social and cultural development are enshrined in core human rights conventions. The implementation of the right to participate in public affairs and the rights of equal access to public services (Article 25 of the ICCPR) is closely linked to the implementation of a whole range of other human rights.⁷ It is the legal responsibility of UNTAET as Administrator to ensure that these rights are observed.

The importance of consultation and cooperation was emphasized by the Security Council in Resolution 1272. It stressed, “... *the need for UNTAET to consult and cooperate closely with the East Timorese people in order to carry out its mandate effectively with a view to the development of local democratic institutions, including an independent East Timorese human rights institution, and the transfer to these institutions of its administrative and public services functions*”. The need for consultation was also stressed by the Special Representative of the Secretary General (SRSG) and head of UNTAET, Sergio Vieira de Mello, in his briefing to the Security Council on 3 February 2000, in which he described the consultation process as reflecting the basic philosophy that guided the work of UNTAET.

⁷

These rights include:

- the right not to be discriminated against (article 2 ICCPR, ICESCR, CERD, Convention on Women, CRC)
- the right to liberty and security of person (article 9 ICCPR)
- the right to freedom of thought, conscience and religion (article 18 ICCPR)
- the right to hold opinions without interference and the right of freedom of expression (article 19 ICCPR)
- the right of peaceful assembly (article 21 ICCPR)
- the right to freedom of association (article 22 ICCPR)
- the right to equality before the law without discrimination (article 26 ICCPR)
- the right to work (article 7 ICESCR)
- the right to form trade unions and join trade unions (article 8 ICESCR)
- the right to education (article 13 ICESCR)
- the right of the child capable of forming his or her own views to express those views freely (article 12 CRC)

Mounting concerns about the lack of direct participation in government by East Timorese people led to the introduction by UNTAET, in July 2000, of a system of co-governance under which four East Timorese appointees serve together with UN officials in a cabinet to provide policy direction to a civil service which will be partially staffed by East Timorese. The membership of the legislative body, the National Consultative Council (NCC), now known as the National Council (NC), has also recently been extended from 15 to 33 people, all East Timorese, with representatives from civil society including women, students and NGOs.⁸ Initiatives have also been taken to extend the direct participation of East Timorese in public affairs at district level.

Some steps have also been taken to develop processes of consultation, including through the introduction of public hearings in which members of NGOs and other relevant groups and experts are able to give their comments on draft legislation to the National Council. However, Amnesty International is aware that the ability to participate fully in such hearings or other consultation processes has been hampered because documents and discussions have not been translated into Bahasa Indonesia, the working language of many lawyers, members of the judiciary and human rights experts in East Timor.

In Amnesty International's view, the extent to which principles of participation, consultation and representation are applied will play an important part in determining the success of UNTAET's mission. Fostering participation will necessarily entail further measures including the provision of space and facilities for the development of political parties and for a systematic and intense program of public education. Measures should also be taken to ensure the full representation in government of all sectors of East Timorese society, including women and minority groups.

While acknowledging that there is a balance to be achieved between the urgent requirement to establish institutions and the need for consultation, Amnesty International also considers it essential that a framework for meaningful consultation with East Timorese civil society, including NGOs and other groups that have particular expertise and knowledge, is developed which would allow them adequate time and facilities to consider and comment on proposals including UNTAET regulations.

Amnesty International also considers it to be imperative that mechanisms are developed which allow for the participation of the broader population in decision making processes. Amnesty International considers that a public process of discussions about human rights, justice, institution building and other issues would contribute to creating an

⁸ The National Consultative Council, established under Regulation Number 1999/2, (UNTAET/REG/1999/2, 2 December 1999) was originally intended to be the primary mechanism through which representatives of the people of East Timor could participate in the decision making process during the transition period. Of its 15 members, 11 were East Timorese and four were from UNTAET. It was widely criticized for being unrepresentative and possessing only limited authority.

atmosphere of government accessibility and accountability and would foster an environment where freedom of speech, association and opinion can thrive. It is also a prerequisite to enabling the East Timorese to decide on the nature of their future institutions and other key aspects of self-governance.

The principles of participation, consultation and accountability should also apply to the designing of an agenda for sustainable economic and social development. International human rights law and standards should guide UNTAET's policy and practice with regard to implementation of economic reconstruction and development programs. In particular, UNTAET must abide by principles of openness, transparency and accountability. This should also apply to UNTAET's relationship with the private sector, including multinational companies and enterprises; and to decisions relating to the contracting out of development programs and the development of a legal framework within which companies should operate and can be monitored. The formal involvement of NGOs, women's organizations, community and other relevant groups in designing and monitoring programs and policy should also be sought.

3.3 Accountability of public officials

Respect, promotion and protection of the rights of the East Timorese people should govern all aspects of the Administration's operations and the conduct of all of its officials. All UNTAET officials, including the Civilian Police Force (CPF) and Peace Keeping Force (PKF) personnel, must comply with the highest standards of international human rights and humanitarian law in performing their duties.

UNTAET officials must be adequately trained in all relevant areas of human rights. The importance of such training is recognized in Security Council Resolution 1272 which states that UNTAET personnel should be provided with, "*appropriate training in international humanitarian, human rights and refugee law, including child and gender-related provisions, negotiation and communications skills, cultural awareness and civilian-military coordination.*"

Systems of monitoring and accountability must also be developed as a matter of urgency to ensure that any allegations of human rights violations against UNTAET officials, including members of the CPF, are immediately and impartially investigated and, where allegations prove to be well founded, appropriate action taken.

In particular, Amnesty International recommends that establishment of an Ombudsperson's office is given immediate priority. Although the establishment of such an office has been under discussion for some months, at the time of writing it was not yet operational. Amnesty International fears that further delay would risk contributing to perceptions among East Timorese that UNTAET and its officials are not bound by the same standards to which the UN holds other governments.

An Ombudsperson would be to provide a mechanism by which complaints against UNTAET could be made and investigated. The office should be fully accessible to any member of the East Timorese population wishing to bring a complaint, either in writing or orally. It should be provided with all necessary resources so that complaints can be promptly and independently investigated. It should also possess powers to conduct investigations on its own volition. Mechanisms should be established to ensure that recommendations made by the Ombudsperson's office on the basis of its investigations are enforced.

Amnesty International believes that the Ombudsperson's office should be established with a view to it continuing to function as a mechanism for receiving and investigating complaints against the government after East Timor becomes independent.

3.4 Ending impunity

A lack of accountability of the security forces and government officials during the period of Indonesian occupation permitted and indeed encouraged an environment in East Timor in which human rights violations were widespread. To build a future for East Timor based on justice and rule of law, responsibility for past violations must be addressed.

Both the UN International Commission of Inquiry on East Timor and a team of UN Special Rapporteurs concluded that a pattern of serious violations of fundamental human rights and humanitarian law were perpetrated in East Timor in 1999. Both recommended, among other things, the establishment of an International Criminal Tribunal on East Timor.⁹ The UN Secretary-General also recommended further systematic investigations of these violations with a view to bringing justice to the people of East Timor, and that UNTAET's capacity to conduct investigations should also be strengthened, and collaboration between UNTAET and the Indonesian investigation be enhanced.¹⁰

Important steps have been taken by UNTAET to establish a framework to facilitate the investigation and prosecution of serious crimes. It has established a Special Crimes Unit to carry out investigations. Jurisdiction over serious crimes under international law including war crimes, crimes against humanity, torture and sexual offences has been established under Dili Court. A number of international judges have been sworn in and will sit with East Timorese judges on a joint panel.

⁹ The UN Commission of Inquiry visited East Timor from 25 November to 3 December 1999 (see UN Document A/54/726, 31 January 2000). Three UN Special Rapporteurs also carried out investigations in East Timor in November 1999 (see UN Document A/54/660, 10 December 1999).

¹⁰ See: Identical letters dated 31 January 2000 from the Secretary-General addressed to the President of the General Assembly, the President of the Security Council and the Chairperson of the Commission on Human Rights. A/54/726, 31 January 2000

In the meantime, Indonesia has also set up its own investigations. It has drafted legislation which provides for the establishment of *ad hoc* Human Rights Tribunals to try past cases, under which it is expected that the East Timor cases will be tried. A Memorandum of Understanding on cooperation in legal, judicial and human rights affairs was signed by Indonesia and UNTAET in April 2000 and provides for mutual assistance in investigations or court proceedings.¹¹

¹¹ Memorandum of Understanding between the Republic of Indonesia and The United Nations Transitional Administration in East Timor Regarding Cooperation in Legal, Judicial and Human Rights Related Matters, 5 April 2000.

Amnesty International considers both the UNTAET and Indonesian processes to be potentially important steps towards the ultimate goal of ensuring justice is done. However, the organization is concerned by the slow progress of the investigations and, with regard to the Indonesian process, by legal, judicial and political obstacles which cast doubt on the Indonesian Government's ability to bring to justice all the perpetrators, including those responsible for designing policy and giving orders, in trials which meet with international standards for fair trial.¹² Amnesty International believes that the international community must be prepared to consider the establishment of an international criminal tribunal on East Timor should Indonesia prove unable to fulfil its responsibility to hold those responsible to account.

In the meantime, effective investigations and prosecutions by UNTAET in East Timor will contribute towards fulfilling the right to justice for the people of East Timor. They will also assist the process of national reconciliation and re-integration. Moreover they will help develop confidence in the rule of law among East Timorese by discouraging individuals or groups, motivated by retribution, from taking the law into their own hands.

While recognizing the size and complexity of the task, Amnesty International is concerned by the slow pace with which the UNTAET investigations are proceeding. Despite statements by UNTAET officials over the past months that indictments are imminent, so far no one has been charged or brought to trial in relation to serious crimes committed in 1999. A number of suspects have already spent more than ten months in detention without indictment.

The organization fears that delays could lead to an increase in incidents of reprisal attacks against suspected militia members and will undermine confidence in the process of justice.

Amnesty International believes that investigations by UNTAET should be carried out with the aim of establishing individual criminal responsibility, including through the principle of command responsibility, so that perpetrators can be brought to justice. The Special Crimes Unit must therefore be provided with necessary resources and technical expertise including experienced human rights investigators and forensic expertise.

¹² For further details see Amnesty Documents: East Timor: Demand for Justice (AI Index: ASA 21/191/99), 28 October 1999; Indonesia: Comments on the draft law on Human Rights Tribunals (AI Index: ASA 21/25/00), Indonesia: Retroactivity Amendment Regressive for Human Rights (News Service, ASA 21/033/2000), 18 August 2000.

Amnesty International urges that special attention is paid to cases of gender-based violations including rape. The full extent of such violations is not known. However, on the basis of cases documented by Amnesty International and the preliminary findings of investigations by the East Timorese NGO, *Forum Komunikaun Feto Timor Lorosae* (FOKUPERS), there is evidence that they were widespread.¹³ Expertise on violence against women including gender-based crimes must be provided at all stages of the process including during the investigations and with regard to witness protection and the giving of evidence.

With regard to the Dili Court, it is particularly important that the highest standards of human rights are observed in these cases by the judges and all other law enforcement officials. The high profile of the Dili Court means that it has the potential to set an example for other courts in East Timor. Thus, Amnesty International recommends that the following measures be taken to ensure that the Court functions as a just, fair and effective institution:

Training - A substantive and practical training program in international criminal and humanitarian law for judges, prosecutors and defence lawyers is essential. The training program should involve analysis of the four Geneva Conventions and their Protocols and the developing international case law regarding crimes against humanity, including an examination of the relevant case law of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).

International Experts - Amnesty International welcomes the provision made for the placement of international judges on the panel which it considers to be essential. This is not intended to undermine the important role of the East Timorese judges in the process. However, in recognition of the complex and sensitive nature of these particular cases and the relative inexperience of the newly appointed East Timorese judges, Amnesty International believes that their effectiveness will be enhanced by working with judges who already have experience of working on similar cases elsewhere. The international judges should be selected on the basis of their knowledge and practical experience of international criminal law.

Witness Protection - An effective witness and victim protection support program must be adopted by the in cooperation with the PKF, the CPF, inter-governmental organizations (IGOs) and NGOs, and with other states including Indonesia. The Court should ensure, in a manner which is consistent and without prejudice to the rights of suspects and accused people, that all necessary and effective measures are taken to protect victims and witnesses from unnecessary anguish and intimidation. These measures should encompass protection before, during and after the trial until any security threat ends. Amnesty International recommends that a Victims and Witness Unit is attached to the court and that it has the capacity to serve both the prosecution and the defence. It is recommended that the Unit is staffed with professional personnel with experience and expertise in the field of

¹³ Progress Report 1: Gender-based Human Rights Abuses during the Pre and Post-Ballot Violence in East Timor, January-October 1999. FOKUPERS, July 2000.

witness and victim protection and that they include persons with relevant experience in dealing with sexual violence, other gender-based violence and violence against children.

Cooperation with Indonesia - Amnesty International recognizes the importance of cooperation between UNTAET and the Indonesian authorities. However, in view of outstanding concerns relating to the Indonesian process, guarantees must be sought by UNTAET prior to any transfers of evidence, witnesses or suspects. These should include guarantees from Indonesia of confidentiality of all information and evidence; the establishment of an effective witness protection program; clarification of the legal basis for the investigation; and assurances that trials will meet with international standards for fair trial.

4. Creating Human Rights Institutions

4.1 Human rights and the administration of justice

4.11 Building a framework

The magnitude of the destruction in East Timor, including in relation to institutions for the administration of justice, was described by the UN Secretary General in his October 1999 report on East Timor. The report stated that, “[t]he situation in East Timor is critical... The civil administration is no longer functioning. The judiciary and court systems have ceased to exist. ...These are critical issues, which must be addressed even before the full deployment of the United Nations Transitional Administration.”¹⁴ The importance of establishing the physical security of the East Timorese and their access to a fair legal system was recognized by UNTAET as a key objective for its first six months.¹⁵

The role of enforcing law and order during the period between the Indonesian withdrawal and the establishment of UNTAET was carried out by the International Force in East Timor (Interfet) which was deployed to East Timor on 20 September 1999 to restore peace and order to the territory. An international CPF of 1,640 officers was mandated for in Security Council Resolution 1272 of 25 October 1999. In the two or three months that it took to build up the CPF numbers in East Timor, Interfet continued to play a role in carrying out arrests and overseeing detentions.

Until such a time when there is a fully trained East Timorese police force, the provision of law enforcement services will remain with the CPF. In addition, the CPF will

¹⁴ Report of the Secretary-General on the Situation in East Timor, S/1999/1024, 4 October 1999

¹⁵ Security Council Press Release SC/6799 4097th Meeting, 3 February 2000.

play a central role in the training and development of the local East Timorese police force, the establishment of which is already underway. In March 2000, a police training college in Dili was opened and in July 2000, the first 50 cadets graduated. The 50 had undergone a 12-week pilot course, and are now engaged in on-the-job training with members of CPF acting as their mentors. It is planned that a total of 3000 East Timorese police officers will be recruited and trained by UNTAET.

Applicable law in East Timor is established under UNTAET regulation Number 1999/1 of 27 November 1999, which provides for the application of laws applied in East Timor prior to 25 October 1999 - namely Indonesian law - insofar as they do not conflict with international standards. Additional guidelines on procedures for arrest and detention have been issued to the CPF to supplement or replace provisions in the Indonesian Code of Criminal Procedure (KUHAP). New provisions on arrest and detention have also been added in the form of subsequent UNTAET regulations. An entirely new Criminal Procedure Code is in the process of being drafted to replace KUHAP.

The selection of judges and prosecutors is the responsibility of the Transitional Judicial Service Commission which consists of five people - three East Timorese and two international experts. The Commission, established under UNTAET Regulation Number 1999/3, became operational in January 2000 and as of 5 July 2000 had appointed 46 judges, investigating judges, prosecutors and public defenders.

The composition of the judiciary is to be wholly East Timorese except in cases of the serious crimes which come under the jurisdiction of the Dili Court. Under Indonesian rule there were no East Timorese judges and few East Timorese lawyers were licenced to practice in court. Thus legal professionals appointed to serve in East Timor's new judicial system must be recruited and trained by UNTAET from a relatively small pool of East Timorese law graduates, few of whom have had any practical courtroom experience.

The first criminal trial under the new East Timorese judicial system began on 26 July 2000 at the Dili District Court. Judicial officials have been appointed to the three other District Courts of Baucau, Suai and Oecusse, but the courts are not yet fully operational.

In addition to its role in recruiting and appointing judicial officers the Transitional Judicial Service Commission is also mandated to receive and review complaints regarding the professional performance of judges and prosecutors, and is charged with drafting a Code of Ethics for judges and prosecutors which was due to be submitted within three months of the appointment of the Commission's members.

A program of reconstruction of prison facilities is currently underway and two prisons, in Becora, Dili and Gleno, Ermera are now operational. The opening of these two facilities, which have a combined capacity of 360 inmates, has helped to relieve pressure on the now obsolete Dili detention centre which, with a capacity to hold only a few dozen prisoners, had been the only detention facility in East Timor until May 2000.

4.12 Emerging human rights concerns

Amnesty International welcomes the priority given by UNTAET to the establishment of a criminal justice system. However, the organization is increasingly concerned that delays may negatively effect the possibility for establishing respect for the rule of law in East Timor.

The effect of the delays has been to create a partial law and order vacuum which has contributed to perceptions among the people of East Timor that justice, including in relation to the serious human rights violations committed during 1999, will not be done.

This situation is resulting in the appearance of new human rights problems in East Timor. It has contributed to the development of alternative, unofficial mechanisms of law, order and punishment. Vigilante groups have emerged and have been responsible for meting out punishments including beatings and torture. Among the main targets of these groups have been individuals suspected of membership of pro-Indonesian militias against whom beatings and other forms of ill-treatment and torture have been carried out by way of retribution for their activities in connection with the violence surrounding the popular consultation process in 1999. Relatives of militia members have also been harassed and intimidated and in at least one case are known to have been subjected to torture. Human rights activists who have publicly criticized the activities of vigilante groups have been threatened and harassed.

Also at risk are refugees returning from West Timor, Indonesia to where they fled or were forcibly expelled in September 1999. There have already been a number of reported incidents of returning refugees being subjected to beatings, illegal detention and extortion. For example, on 8 February, a 21 year old refugee who had returned to the town of Liquica, Liquica district from West Timor, was beaten and stabbed at the local CNRT office where he had been taken in order to report his return to East Timor. More recently, local CNRT officials were reported to have threatened returning refugees in Cintrana, Oecusse district that they would inform the CNRT in Dili that the returnees had not supported East Timorese independence unless they handed over money and possessions.

Unauthorized detentions of returning refugees have taken place in the context of the CNRT's role in screening returning refugees for possible militia links and assisting with their re-integration into their communities. In many regards the CNRT has played a positive role in the process of reintegration and has prevented incidents of reprisal attacks by local communities both by helping to negotiate the return of individuals and, in some cases, by providing protection. However, this effective devolution of responsibility for the security of returning refugees to the CNRT, often resulting from lack of capacity by the relevant official agencies including the CPF, which lacks translators and vehicles, creates conditions which facilitate unauthorized detention. This practice creates in turn the risk of further human rights abuses including ill-treatment.

In cases where suspects have been arrested and detained, Amnesty International is concerned that the right to trial without undue delay or release may be adversely affected because the judicial system does not yet have the capacity to expeditiously process their cases. Concern that the right to a fair trial may be contravened is also arising because of apparent confusion over applicable law and procedures.

The first pre-trial hearing, which took place on 11 May 2000 in the newly established Dili District Court, revealed a lack of clarity on arrest and detention procedures including issues relating to length of detention. The suspect had originally been detained on 12 December 1999 by Interfet, until his dossier was transferred to CPF on 11 January 2000. During the hearing it was argued by the prosecution, and accepted by the judge, that the period spent in Interfet detention could not be considered as part of the time limits on the detention because military law rather than civilian law governed this period despite the provision under UNTAET Regulation 1/1999 that Indonesian law applied in East Timor, which came in to force on 27 November 1999.

The process was further confused by the promulgation, 24 hours before the pre-trial hearing began, of Regulation 2000/14 under which new procedures relating to detention periods were established.¹⁶ According to KUHAP a detainee must be brought to trial within 110 days of arrest or released. Regulation 2000/14 allows for longer periods of pre-trial detention and, under Article 12a.8 on exceptional grounds, “... *and taking into account the prevailing circumstances in East Timor, for particularly complex cases of crimes carrying an imprisonment sentence of ten years or more under the law, a panel of the District Court may, at the request of the Public Prosecutor, order the continued detention of a suspect, if the interest of justice so requires, and as long as the length of pre-trial detention is reasonable in the circumstances and having due regard to international standards of fair trial.*”

Amnesty International is concerned that the lack of clarification of procedures has created a situation in which the suspect in this case, and others arrested by Interfet, appear to be penalized because their original detention took place at a time when Interfet, rather than CPF, was responsible for enforcing law and order.

The organization is further concerned that new legislation should not contravene rights to fair trial, including the right to trial within a reasonable time or to release, enshrined in Article 9(3) of the ICCPR.¹⁷ While Amnesty International appreciates the particular

¹⁶ UNTAET/REG/2000/14, 10 May 2000, Amending Regulation No. 2000/11 on the Organization of Courts in East Timor, 6 March 2000.

¹⁷ Article 9 (3) of the ICCPR states that, “[a]nyone arrested or detained on criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to a trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of judgement.”

difficulties experienced by UNTAET in meeting the time limits set in the Indonesian Code of Criminal Procedure, which result from the fact that no functioning judicial system was in place when UNTAET entered East Timor, Amnesty International is concerned that extensions of pre-trial detention, including under Article 12a.8 of Regulation 2000/14, should not result in violations of the rights to which all those held in pre-trial detention are entitled under international human rights law.

In order to guarantee the rule of law in the present and future, Amnesty International urges UNTAET to ensure the rapid development and implementation, in consultation with the East Timorese people, of a fully functioning criminal justice system which conforms to international standards. The organization considers the following elements to be essential for such a system:

4.13 An independent judiciary

An independent and impartial judicial system is a fundamental guarantor of the rule of law. It is required by the ICCPR, and key elements for such independence are set out in some detail in the UN Basic Principles on the Independence of the Judiciary.

The duty of judges to perform their duties independently and impartially is already provided for in UNTAET Regulation No. 2000/11 On the Organization of Courts in East Timor. Amnesty International also recommends that the independence of the judiciary should be enshrined in any new constitution drafted for East Timor.

Legislative guarantees for judicial independence, which should include explicit reference to freedom from executive control and interference, should be complemented by the establishment of policy and practice for securing and promoting independence. Key elements must include:

Selection and Security of Tenure - measures should be taken to ensure that suitable persons, with the necessary qualifications and of high moral character, impartiality and integrity are selected for judicial office. Their conditions of service and tenure should be adequately secured by law to ensure that they are protected from political, economic or other pressures;

Training - training for judges, prosecutors and other legal professionals should be comprehensive and mandatory and incorporate substantive areas on international standards relating to fair trial as well as on the practical application and interpretation of international law in East Timor. Amnesty International believes that all training programs should encompass, among other things, examination of the following UN standards:

- the Universal Declaration of Human Rights
- the International Covenant on Civil and Political Rights
- the International Covenant on Economic, Social and Cultural Rights
- the International Convention on the Elimination of All Forms of Racial Discrimination
- the Convention on the Elimination of all Forms of Discrimination against Women
- the Convention on the Rights of the Child
- the UN Standard Minimum Rules for the Administration of Juvenile Justice
- the UN Standard Minimum Rules for Non-custodial Measures
- the UN Rules for the Protection of Juveniles Deprived of their Liberty
- the UN Standard Minimum Rules for the Treatment of Prisoners
- the UN Body of Principles for the Protection of All Persons under Any Form of Detention and Imprisonment
- the UN Basic Principles on the Independence of the Judiciary
- the UN Guidelines on the Role of Prosecutors
- the UN Basic Principles on the Role of Lawyers
- the UN Code of Conduct for Law Enforcement Officials and commentary thereto
- the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power;

Independent and Impartial Judicial Oversight Mechanism - currently the Transitional Judicial Service Commission is mandated to both select officials for judicial or prosecutorial office and to receive and review complaints against such officers. In Amnesty International's view, these two roles should be carried out by separate bodies in order to guard against possible conflicts of interest.

Amnesty International recommends that UNTAET considers establishing an independent mechanism or mechanisms which could examine impartially, and report on the performance of the newly established judiciary and its adherence to international human rights law; receive complaints from the public; initiate and carry out investigations; and make recommendations for action to be taken against individuals or to reform the system. In order to be effective, any such mechanism/s should also have the ability to act upon its/their findings and take steps to intervene when problems are identified;

Codes of Ethics - Amnesty International urges UNTAET to ensure that separate Codes of Ethics for judges, prosecutors and lawyers are developed and that they are consistent with relevant UN standards, notably: the Code of Conduct for Law Enforcement Officials; Basic Principles on the Independence of the Judiciary; Guidelines on the Role of Prosecutors; and Basic Principles on the Role of Lawyers.

4.14 A professional civilian police force

International Civilian Police Force (CPF)

Training - Amnesty International considers it to be essential that members of the CPF are adequately trained in international human rights standards and the law, and procedures which are applicable in East Timor. Such training should be both theoretical and practical. In light of the decision in February that the CPF will have access to firearms, it is essential that their training includes practical training in the appliance of the UN Code of Conduct for Law Enforcement Officials and UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Particular attention should be paid to training in the application of non-violent means of carrying out their duties, using force or firearms only as a last resort;

Monitoring - the performance of the CPF officers should be subject to constant monitoring and there should be an independent mechanism by which individual officers can be investigated, either on the basis of complaints received or on the mechanisms own initiative, and appropriate measures taken against officers found to have violated human rights;

Resources - The CPF should be provided with adequate resources so that it can carry out its duties effectively.

East Timor Police Service

Amnesty International recommends that a comprehensive attempt be made to make a human rights-based approach the philosophy of policing in East Timor through training, a code of ethics and the establishment of an independent monitoring body.

Training - Amnesty International believes that members of the new East Timorese police force should receive training in international human rights standards and that emphasis should be placed on the practical implementation of these standards for policing (for a list of relevant standards see above list under Section 4.13 “An independent judiciary”);

Accountability - Amnesty International considers it essential that mechanisms are established to appraise and monitor the performance of police officers and to receive and investigate complaints.

The organization recommends that a system of appraisal of police officers in every rank, is developed which should include awareness of human rights issues and respect for human rights in the performance of their duty. The performance of all East Timorese police officers must also be subject to continuous monitoring including their awareness of human rights issues and adherence to national and international law in the performance of their duties. In addition, it will be necessary to establish an independent mechanism to investigate

complaints promptly, independently and impartially. Any complaints mechanism should be easily accessible to members of the public. It should also be able to initiate its own inquiries or investigations even if no specific complaint has been received. In order for systems of monitoring and complaints mechanisms to be effective, they should have the ability to act upon their findings and take steps to intervene when problems are identified.

4.15 Guarantees of the right to fair trial

An effective criminal justice system should provide redress to victims and bring to justice suspected perpetrators in a manner which protects the rights of suspects at all stages of the proceedings. As the administrative authority, UNTAET is responsible for ensuring that procedures and practice comply with international standards and that the rights of detainees and prisoners are fully respected. This responsibility includes ensuring that suspects are treated in accordance with the highest possible standards of fairness enshrined in international standards.

In relation to the specific concerns mentioned above, Amnesty International urges UNTAET to pay attention to the following:

Clarification of applicable law - Amnesty International urges that procedures for arrest and detention in East Timor be immediately clarified;

Training, translation and dissemination - Amnesty International urges that all international and local law enforcement and judicial officials immediately receive training in applicable law. To facilitate this, all amended laws should be translated into local languages and disseminated widely through official publication;

Compliance with international standards - Amnesty International urges UNTAET to facilitate the expeditious review and revision of all current applicable laws in East Timor to bring them fully in line with international human rights standards.

In particular, Amnesty International recommends that UNTAET review Regulation 2000/14 to ensure that it does not contain provisions which would risk contravening international standards including the right to be brought to trial “within a reasonable time” or to release.

4.16 Detention facilities

All detention and prison facilities should meet with basic standards including those contained in the UN Standard Minimum Rules for the Treatment of Prisoners, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). This should include provision for the separation of different categories of prisoners, including men and women, and untried and convicted prisoners. Detention and imprisonment

of children should be avoided if possible, but if it proves necessary separate facilities should be provided.

4.2 Constitution

There are currently plans for a constitution for East Timor to be drafted and for it to be adopted during 2001. A constitution can be a central part of a legal framework to ensure that people enjoy human rights, that human rights violations are prevented or, when they take place, that the perpetrators are brought to justice and victims have access to reparation. While no law is sufficient in itself to prevent violations of human rights, a constitution can often be the most comprehensive and accessible means by which ordinary individuals can understand:

- what their rights and freedoms are;
- which legal guarantees are in place to prevent human rights violations;
- how these rights and freedoms may be limited in order to protect the rights and freedoms of other individuals or groups;
- how and where individuals can seek justice if they believe their rights have been violated.

Amnesty International believes that an enumeration of fundamental human rights and mechanisms for their protection should be incorporated into the constitution and these basic rights should be consistent with international standards.

Special attention should be paid to the process of drafting the constitution which can also be a vehicle for public education and debate. Amnesty International believes that it would be beneficial for UNTAET to support and encourage the close involvement of East Timorese NGOs in this process, including in developing programs for civic education in human rights and other issues. Adequate time and resources should be made available and local, regional and international experts should be consulted.

4.3 National human rights institutions

UN Security Council Resolution 1272 of 25 October 1999 mandated UNTAET to establish an independent East Timorese human rights institution. Amnesty International regards national human rights institutions to be important mechanisms for enhancing the promotion and protection of human rights by supplementing fundamental *social or legal infrastructures including an independent, impartial, easily accessible and effective judiciary.*

The establishment of national human rights institutions should be accompanied by a clear and firm commitment from government and its law enforcement agencies, to support the rule of law, including upholding, complying with and implementing international human rights standards, as well as recommendations and decisions issued by international bodies entrusted with the protection and promotion of human rights.

There has already been some discussion about the setting up of a national human rights commission in East Timor. Amnesty International considers that the establishment of such a body could be usefully considered once key judicial and legal institutions are in place. If such a commission is to be established it should be done so in a manner which is consistent with existing international standards for human rights commissions and investigatory bodies, such as the UN Principles Relating to the Status of National Institutions, adopted by the UN Commission on Human Rights in 1992 and endorsed by the UN General Assembly in 1993.¹⁸ The key functions of a national human rights institution identified by the Office of the UN High Commissioner for Human Rights (UNHCHR) are as follows: an advisory function, an educative function, and an impartial investigatory function.¹⁹

Although no single model of national institution can, or should, be recommended as the appropriate mechanism for all countries, in order

¹⁸ These are also known as the “Paris Principles”. The standards establish minimum requirements for the effective functioning of national human rights commissions and outline a necessary elements concerning their mandate, composition, facilities and methodology.

¹⁹ See the UN Handbook on National Human Rights Institutions, which is part of the UN Training Series, published by the Office of the UN High Commissioner for Human Rights in 1995.

for national human rights institutions to be able to perform their role effectively they should include the following characteristics:

- they should be independent from government;
- they should consist of men and women known for their integrity and impartiality of judgment as well as their expertise and competence in the field of protecting and promoting human rights;
- they should have precisely defined powers to investigate, on their own initiative, situations and cases of reported human rights violations;
- they should have legal authority to demand cooperation from government agencies and full powers to compel witnesses to testify and ensure the production of documents;
- their mandate should contain no restrictions with respect to the scope and subjects of the investigations;
- there should be no provisions in their mandate preventing them from investigating human rights violations allegedly directly carried out by government agencies, including law enforcement personnel, the security forces and the military, or with these agencies= knowledge, complicity, acquiescence, connivance, or as a result of their direct negligence or failure to exercise due diligence;
- mechanisms should exist to to ensure implementation of their decisions and recommendations.

5. Ensuring the Human Rights of All in East Timor

The need to take concrete measures to protect certain groups is especially acute in a transitional situation such as that in East Timor where formal institutions have broken down and where community, family and other informal structures have been weakened by the effects of violence and massive forced displacement.

The need to include special protection and the provision of assistance for vulnerable groups, including women and children, in the mandates of peacekeeping operations is specifically mentioned in Security Council Resolution 1265 (1999) on protection of civilians in conflict.²⁰

Standards have also been set in a number of UN human rights instruments which should provide the basis of UNTAET's approach to establishing mechanisms to protect groups requiring particular attention from discrimination and promoting their rights. UNTAET is responsible for enacting and implementing legal safeguards against discrimination and for providing guidelines, training and other measures to raise consciousness of the issues, to ensure that discrimination does not occur and where it does, to take immediate remedial action.²¹

5.1 Women

²⁰ Paragraph 13 of Security Council Resolution 1265 (1999) on protection of civilians in conflict, 17 September 1999.

²¹ *The fundamental principle of non-discrimination is articulated in the UDHR, the ICCPR and ICESCR, the Convention on Women, CERD, CRC. The Human Rights Committee stated that, "the term "discrimination" as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms."* Human Rights Committee General Comment 18: Non-discrimination. 10/11/89. Para. 7.

"The concept of equality means much more than treating all persons in the same way. Equal treatment of persons in unequal situations will operate to perpetuate rather than eradicate injustice. True equality can only emerge from efforts directed towards addressing and correcting these situational imbalances. It is this broader view of equality which has become the underlying principle and the final goal in the struggle for recognition and acceptance of the human rights of women. " ²²

East Timorese women suffered widely from the effects of repression during the Indonesian occupation. Over the years Amnesty International recorded cases of extrajudicial execution, "disappearance", imprisonment and torture, including rape, of women. In some cases women were subjected to human rights violations by the Indonesian security forces in retaliation for the pro-independence activities of their male relatives. The cover of impunity enjoyed by the Indonesian security forces and pro-integration militia also permitted practices such as sexual slavery.

Hundreds of women have been widowed in the violence and must now provide for the needs of their families alone. Combined with the effect of an underdeveloped economy and the influence of traditional values, the years of repression have contributed towards the exclusion of women from many spheres of life including education, healthcare, public office, political organizations and employment. It has also denied women access to property and contributed to high levels of domestic violence in East Timor.

The rebuilding of East Timor presents a unique opportunity for ensuring that the rights of women are promoted, protected and respected and that they are equal participants in the process of building and shaping their country.

²² From the UNHCHR Fact Sheet No.22, Discrimination against Women: The Convention and the Committee.

The legal framework which enshrines the equal rights of women, including equality before the law and the equal protection of the law, is well established in core human rights treaties. It applies to the enjoyment of all the rights provided under these conventions and requires that UNTAET takes specific steps to promote those rights, to secure them for all, to prevent violations of those rights and to provide remedies when they are violated. This must include taking “*all steps necessary, including the prohibition of discrimination on the ground of sex, to put an end to discriminatory actions both in the public and the private sector which impair the equal enjoyment of rights.*”²³ In that regard, UNTAET’s obligations relate not only to acts by individuals who act on its behalf or at its instigation such as public officials, but in relation to any acts by individuals, groups or institutions which impair the rights of women.

In order to secure the human rights of women in East Timor Amnesty International recommends that the following measures are taken:

Legislation - enact regulations articulating clearly what the equality of women means in all areas of social, political, legal and economic life in accordance with the provisions of the Convention on Women;

Implementation - develop a program of action to ensure the implementation of these rights;

Participation - ensure the full and effective participation of women on equal basis in decision making, and provide them with equal opportunities to hold public office at all levels of the administration, to participate in the formulation of government policy, and the elaboration and implementation of development planning at all levels of public life and to access resources and property;

²³ Human Rights Committee: General Comment No 28, Equality of rights between men and women (article 3) : . 29/03/2000. CCPR/C/21/Rev.1/Add.10. Para. 4. In paragraph 3, the Committee added, “*These steps include the removal of obstacles to the equal enjoyment each of such rights, the education of the population and of state officials in human rights and the adjustment of domestic legislation so as to give effect to the undertakings set forth in the Covenant. The State party must not only adopt measures of protection but also positive measures in all areas so as to achieve the effective and equal empowerment of women*”. Ibid para 3. See also the Convention on Women’s General Recommendations 1-24 for an analysis of the measures that should be taken by States in all areas of life to fully implement the Convention.

Education and training - Develop education and training programmes on the human rights of women for all individuals exercising public functions, including *inter alia* police and military personnel, law enforcement personnel including the judiciary.

The Committee on the Elimination of Discrimination against Women (CEDAW) identified clearly that, “*gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men. [...] The full implementation of the Convention requires States to take positive measures to eliminate all forms of violence against women*”.²⁴ The pervasive legacy of violence against women in East Timor requires UNTAET to act effectively on both addressing impunity for such violence in the past and to devise strategies and programmes, including through public education campaigns, to prevent violence against women whether occurring in private or public life.²⁵

In that regard, Amnesty International urges UNTAET to:

- condemn unequivocally all forms of violence against women;

²⁴ CEDAW: General Recommendation No. 19 (Eleventh session, 1992): Violence against women A/47/38. paras 1 and 4.

²⁵ As above. Para 11 states that “*Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them of the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. While this comment addresses mainly actual or threatened violence the underlying consequences of these forms of gender-based violence help to maintain women in subordinate roles and contribute to their low level of political participation and to their lower level of education, skills and work opportunities.*”

- to ensure that criminal law and procedures grant women effective protection against, and ensure the prosecution of, crimes directed at or disproportionately affecting women, as well as access to just and effective remedies for those crimes;
- to establish institutional mechanisms so that women and girls can report acts of violence against them in a safe and confidential environment, free from fear of penalties or retaliation.

5.2 Children

The rights of children are often among the first to be violated during times of political violence. In East Timor, a generation of children grew up after 1975 knowing little else but repression and fear. Education was frequently disrupted and, in the violent aftermath of the August 1999 ballot, schools and university facilities were destroyed.

Many children actively participated in pro-independence and anti-authority activities, both peaceful and violent. They were among the victims of human rights violations, including unlawful killing, arbitrary detention and torture; an unknown number of children were also orphaned as a result of unlawful killings by the security forces.

In the lead up to the popular consultation vote, there were widespread reports of pro-integration militias recruiting among youth, sometimes using violence, drugs, alcohol or promises of money. Evidence for forced recruitment of East Timorese youths to the militia was also found by the The UN High Commissioner for Human Rights who stated that, “*parents were threatened and bribed to coerce the young men and the youths were harassed and intimidated into becoming members of the militia.*” On the pro-independence side, a French journalist reported on girls wearing berets and teenagers in tracksuits carrying machetes seen at a camp of the East Timorese National Liberation Army (*Forças Armadas de Libertacao Nacional de Timor, Falintil*).²⁶

²⁶ Weber, O., "Timor-Oriental: dans les sanctuaires de la guérilla", *Le Point*, 22 October 1999.

Children were among the tens of thousands of East Timorese who were forced to flee their homes during the human rights crisis in 1999. Many still remain in refugee camps in West Timor. Issues of family identification and reunification, reintegration into education and schooling and appropriate vocational training should be critical elements of the return program.

The healing and rehabilitation of these children will be critical to East Timor's long term security and development. There is new recognition within the United Nations and international community of the need to make special provision for children in peace building and post conflict programs. The UN Security Council, in Resolution 1261 of August 1999 and 1341 of August 2000, has underlined the importance of this issue, calling for specific measures such as the demobilization, rehabilitation and reintegration of former child combatants, special programs for the girl child and training in children's rights for UN peacekeeping missions. In Security Council Resolution 1272 the UN Security Council called upon all parties to ensure the protection of civilians, in particular children. Rehabilitation and reintegration programs should be guided by the principles set out in the UN Secretary General's February 2000 report on the role of UN peacekeeping in disarmament, demobilization and rehabilitation, in particular the need for sustained commitment of at least three years, special programs for girls and community and child participation.²⁷

Ensuring accountability for violations against children should be an integral part of the UN mission's mandate. The International Criminal Court defines the recruitment and use of child soldiers under the age of 15 as a war crime, and UN Security Council Resolution 1314 calls for the exemption of crimes against children from amnesty provisions and agreements. Of course, child combatants are sometimes perpetrators of crimes and human rights abuses themselves, but they should be dealt with in line with the principles of juvenile justice which emphasize the 'best interests' of the child and rehabilitation over retribution.

²⁷ Report of UN SG on the Role of UN Peacekeeping in Disarmament, Demobilization and Reintegration, February 2000, S/2000/101

Amnesty International urges UNTAET to ensure that the ability to deal with juvenile justice is an integral part of rebuilding East Timor's judicial system. This may require special institutions, programs and training for judicial officials and police. The new administration could look to implement one of the key recommendations of the 1995 Graca Machel report on children and armed conflict by creating a special Children's Ombudsperson, or incorporating this function into a national human rights commission or other institution, to investigate complaints and ensure political attention is paid to children's rights and welfare issues.²⁸

In addition, Amnesty International recommends that UNTAET:

- ensures family reunification and reintegration as part of refugee return program;
- ensures birth registration, including for returnees;
- ensures provision for legal status, for example land title, and income support to child-headed households;
- ensures demobilization, rehabilitation and reintegration of former child combatants in armed groups and militias;
- ensures equal access to assistance for girls, and programs to meet their special health and psychosocial needs;
- criminalizes the recruitment of children for military purposes - that is anyone under the age of 18;
- ensures training in children's rights of UN peacekeepers in line with UN Security Council Resolution 1314.

5.3 Minorities

Threats, harassment and a series of attacks over recent months against various ethnic and religious groups highlight the need for measures to protect individuals against discrimination. Verbal intimidation, stone throwing and other forms of harassment have necessitated 24 hour guard for a small group of Indonesian Muslims living in the An-Nur Mosque in Dili. The majority of the 250 or so people living in the Mosque have been there since September 1999 having fled their homes to escape the violence. However, a group of around 60 returned in December 1999 having fled the territory altogether, among them were several family members who had not previously been resident in East Timor. The arrival of the new group resulted in protests by local residents who were angered, among other things by perceptions that Indonesians were being prioritized over East Timorese for return and by suspicions that some members of the group had links with the Indonesian military or had supported

²⁸ Graca Machel, Expert of UN Secretary General, Report on the Impact of Armed Conflict on Children, 1996. <http://www.un.org/special-rep/children-armed-conflict/fUnDocs.htm>

continued integration with Indonesia. The protests were diffused with the help of members of the CNRT. Since then, sporadic incidents have been reported.

Real or perceived political differences as much as religious tensions also appear to have motivated a number of attacks which have taken place on Protestants and their churches. The current Protestant community in East Timor is estimated to be about 25,000 people, down from around the 50,000 members prior to September 1999. Two communities in particular have been targeted, in Lequidoe sub-district, Aileu district and in Railaco sub-district, Ermera district. Attacks in early June 2000 in Berliu and Darun villages resulted in a pastor and church worker being beaten and the burning of two churches. Prior to the attack there had been several incidents of members of the church returning from refugee camps in West Timor being singled out for beatings apparently because they were suspected of being linked to a pro-Indonesian militia group. Incidents of intimidation in Taraca village, Railaco sub-district have also been reported. Among those alleged to have been involved in incidents in both areas have been local CNRT members.

Reports have also been received of intimidation and harassment of people belonging to the ethnic-Chinese community including of business people who have been subjected to threats and extortion.

Such incidents are emerging as a key test of religious and political tolerance in an independent East Timor and will require the efforts and commitment of UNTAET, CNRT and the population as a whole if an independent East Timor is not to be characterized by persecution of groups or individuals who do not conform to dominant cultural, political or religious groups or views.

Rights relating to discrimination are provided for in a range of international standards including:

- UN Declaration on the Elimination of All Forms of Racial Discrimination;
- International Convention on the Elimination of All Forms of Racial Discrimination;
- Discrimination (Employment and Occupation) Convention;
- Convention against Discrimination in Education
- Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief;

Amnesty International urges that laws to protect against discrimination are enacted; that all public officials, including the police receive training in relevant international standards and law; and that a program of public awareness and education is developed to promote understanding and tolerance among the general population. UNTAET must also set an example by ensuring that it pursues a policy of non-discrimination within its own operations and that all East Timorese, without discrimination, are provided with opportunities

to participate fully in decisions relating to the political, social and economic future of their country.

In the meantime, immediate remedial action should be taken. This should include investigations into reported incidents and prosecutions of those suspected of being responsible for discriminatory acts.

5.4 Returning refugees

In the past 11 months some 170,000 people who fled or were forcibly expelled from East Timor by the Indonesian security forces and pro-Indonesian militia groups have returned from Indonesia to East Timor. However, around 100,000 East Timorese refugees remain in camps in West Timor. The repatriation process continues to be severely hampered by ongoing militia activity in the camps which have caused UNHCR to suspend its repatriation program on several occasions since July 2000.²⁹

As the months go by, those refugees remaining in West Timor are regarded with increased suspicion by some in East Timor who believe that the refugees are not returning because they were involved in last year's violence and fear prosecution or reprisals. Such perceptions increase the risk for refugees who do return.

Security Council Resolution 1272 of 25 October 1999 reaffirmed the need for all parties to ensure that the rights of refugees and displaced persons are protected, and that they are able to return voluntarily in safety and with dignity to their homes. The Special Representative of the Secretary General also singled out as priorities for the first six months of UNTAET to support the repatriation to East Timor for those refugees in West Timor who wish to return and to provide resources for the re-integration of returning refugees.

The Indonesian authorities are responsible for providing the necessary conditions for those refugees remaining in West Timor to facilitate voluntary repatriation, including by providing security and access for UNHCR and other relevant agencies - an obligation which, to date, the Indonesian authorities have proved unable or unwilling to fulfil. Upon their return to East Timor UNTAET, together with other agencies including UNHCR, is responsible for ensuring that the security and well-being of the refugees is guaranteed.

In order for the security of returnees to be guaranteed, coordination and clarification of the roles of the various agencies involved must be established. As promoter and facilitator of the repatriation program, UNHCR has a particular responsibility to ensure that returnees will be received in safety and dignity, that the return program is coordinated, and that systems

²⁹ For further details on the situation of East Timorese refugees in Indonesia see: Indonesia/East Timor: No end to the crisis for East Timorese refugees, AI Index ASA 218/208/99, December 1999.

for continued monitoring of returnees are operating effectively. UNTAET must ensure that security for returning refugees should be provided only by official law enforcement agencies. In cases where individuals are alleged to have been involved in human rights violations immediate investigations should be carried out. If the allegations are well-founded action should be taken against the perpetrators.

6. Ensuring the Realization of Human Rights Through Monitoring and Reporting

Effective human rights monitoring and reporting should be an integral part of UNTAET's operations. The UNTAET Human Rights Unit is primarily responsible for this role. However, in Amnesty International's experience of monitoring human rights throughout the world, implementation of covenants and other international standards can only be fully effective if all branches and all levels of government take vigorous steps to ensure that conventions are implemented in practice, not just in law. In the case of UNTAET, this requires that all departments and personnel take the initiative to step in and prevent human rights from being violated and to report on any violations which may occur, whoever is responsible.

For human rights monitoring to be effective it should include the following elements:

- The international human rights monitoring component of UNTAET should be assured of a high level of independence and autonomy from the political considerations of the operation and from any ongoing political relations between the UN and various East Timorese parties. It should also be provided with the necessary resources to carry out its work effectively;
- The human rights component should prepare periodic reports on their work, describing allegations received regarding human rights abuses, steps the component has taken to investigate and correct them, and general recommendations to UNTAET. These reports should be readily available and widely disseminated in East Timor, as well as to the relevant UN experts and departments;
- Mechanisms should be established to ensure the implementation of recommendations made by the human rights component of UNTAET and by UN expert bodies;
- International and national human rights monitors should have full and unhindered access to all parts of East Timor, including to judicial and penal institutions;
- Effective international human rights monitoring and assistance should continue beyond the UNTAET transition period for as long as necessary, until it is clear that

the government of an independent East Timor is implementing international human rights guarantees effectively.