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**TIMOR-LESTE: BACKGROUND PAPER ON HUMAN RIGHTS, REFUGEES AND ASYLUM SEEKERS**

**A Writenet Report by Neven Knezevic**

**commissioned by United Nations High Commissioner for Refugees,  
Protection Information Section (DIP)**

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# Table of Contents

Acronyms .....	i
Executive Summary .....	iii
<b>1 Introduction.....</b>	<b>1</b>
<b>2 Historical Background.....</b>	<b>1</b>
2.1 Invasion and Occupation.....	1
2.2 “Black September” 1999 .....	3
2.3 Post 1999: Humanitarian Interventions and Repatriation .....	4
2.4 Post 1999 Social and Economic Transformations.....	5
<b>3 Post 1999 Political Developments. ....</b>	<b>7</b>
3.1 UNTAET State-building and UNMISET Support .....	7
3.2 Constituent Assembly (CA) Elections .....	8
3.3 System of Government .....	9
3.4 Local Governance and Political Decentralization.....	10
3.5 Reception, Truth, and Reconciliation Commission (CAVR).....	11
3.6 Serious Crimes Unit (SCU) and the Special Panels Process .....	12
3.7 Indonesian Ad Hoc Human Rights Court on East Timor.....	14
3.8 Border Control and Internal Security .....	15
<b>4 Overview of Current Human Rights Situation .....</b>	<b>20</b>
4.1 Ethnic and Religious Groups .....	21
4.2 Prisoners and Prison Conditions .....	21
4.3 Civil and Political Freedoms .....	22
4.4 Immigration and Asylum Law.....	23
4.5 Refugee Repatriation and Reintegration .....	24
4.6 Economic, Land and Property Rights.....	27
<b>5 Institutional Factors behind Human Rights Violations .....</b>	<b>29</b>
5.1 Ministry of the Interior and PNTL .....	29
5.2 FALINTIL-Força de Defesa de Timor-Leste (F-FDTL) .....	32
5.3 Rule of Law: Judiciary and the Courts.....	33
<b>6 Institutional, Political, Social, and Economic Trends .....</b>	<b>35</b>
6.1 Groups at Risk.....	35
6.2 Urban Rural Divide .....	35
6.3 Politics of Exclusion and Personality .....	36
6.4 State and Private Sector Economic Development.....	37
<b>7 Conclusions .....</b>	<b>38</b>
<b>8 Bibliography .....</b>	<b>40</b>

## Acronyms

AC75	Association of Ex-Combatants of 1975
ASDT	Associação Social-Democrata Timorese (Timorese Social Democratic Association)
AST	Associação Socialista Timorese (Timorese Socialist Association)
BNU	Banco Nacional Ultramarino
CA	Constituent Assembly
CAVR	Comissão de Acolhimento, Verdade e Reconciliação de Timor Leste (Commission for Reception, Truth and Reconciliation in East Timor)
CivPol	United Nations Civilian Police
CNRT	Conselho Nacional da Resistencia Timorese (National Council of Timorese Resistance)
CPD-RDTL	Conselho Popular pela Defesa da Republica Democratica de Timor Leste (Popular Council for the Defence of the Democratic Republic of East Timor)
CRA	Community Reconciliation Agreement
CRP	Community-based Reconciliation Process
DCDC	District Coordination and Development Committee
DNAT	Direcção National da Administração Território
ETTA	East Timor Transitional Administration
FALINTIL	Forças Armadas de Libertação Nacional de Timor-Leste (National Liberation Forces of East Timor)
F-FDTL	Forças Armadas de Libertação Nacional de Timor-Leste-Força de Defesa de Timor-Leste (Timor-Leste Defence Force)
FRETILIN	Frente Revolucionaria do Timor-Leste Independente (Revolutionary Front of Independent East Timor)
GDP	Gross Domestic Product
HAER	Humanitarian Assistance Rehabilitation Pillar
HAK	Perkumpulan Hukum hak Asasi & Keadilan (Association for Law, Human Rights and Justice)
IDP	Internally Displaced Person
IOM	International Organization for Migration
IRC	International Rescue Committee
JSMP	Judicial System Monitoring Programme
JTC	Judicial Training Centre
LDF	Local Development Fund
OGP	Office of the General Prosecutor

OJETIL	Organização de Juventude de Timor-Leste (Timor-Leste Youth Organization)
OPS	Organização Popular de Seguranza (Popular Organization for Security)
PD	Partido Democratico (Democratic Party)
PKF	Peace Keeping Force
PNT	Partido Nacionalista Timorese (Nationalist Party of Timor)
PNTL	Policia Nacional de Timor Leste (Timor-Leste National Police)
POLRI	Police Forces of the Republic of Indonesia
PSD	Partido Social Democrata (Social Democratic Party)
PST	Partido Socialista de Timor (Socialist Party of Timor)
SCU	Serious Crimes Unit
TNI	Tentara Nasional Indonesia (Indonesian Armed Forces)
UDT	União Democratica Timorese (Timorese Democratic Union)
UN	United Nations
UNAMET	United Nations Assistance Mission in East Timor
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNMISSET	United Nations Mission of Support for East Timor
UNOPS	United Nations Office for Programme Support
UNPOL	United Nations Police Force
UNTAET	United Nations Transitional Administration in East Timor

## **Executive Summary**

Since the “Black September” 1999 outbreak of serious violence that followed the vote for independence from Indonesia, Timor-Leste has made commendable progress in building a viable state, which adheres to international human rights standards. Some of the current challenges confronting the government are symptomatic of problems faced by any developing country and should be taken as a sign of progress in the transition from a “post-conflict state” to a “developing state”. At the same time Timor-Leste is encountering problems that are particular to its history of occupation and resistance and that need to be resolved, if the country is to maintain security and stability in a manner that conforms to its international human rights obligations.

Timor-Leste has a fairly good legal framework for human rights but there remain serious operational, procedural, and institutional weaknesses throughout government institutions that make protection and oversight mechanisms weak or non-existent. To date, cases of serious human rights violations have mainly occurred at the community to community level and taken the form of sporadic retributions rather than being politically organized to target particular groups in society. Numerous less serious human rights violations have been committed by the state due to institutional weaknesses and insufficient training. Institutions have experienced fluid and rapid change over the past five years and are poorly resourced and therefore highly unstable. While there are numerous projects underway or planned that will ultimately improve the capacity of government, the current situation is that the courts, police services, and army have not yet been consolidated to the point where they can maintain law and order inside the territory in a manner consistent with international human rights standards. Left to its own devices it is likely that the relatively good human rights situation will deteriorate rapidly due simply to institutional weaknesses.

These factors, combined with the perception of an “upper class elite” returning from exile abroad and now taking the place of the former ruling elites, have created the impression that the government is alienated from the broader public. There is also a risk that serious political instability at this stage of Timor-Leste’s development could undermine the rehabilitation of the agricultural sector, which is still recovering from decades of structural damage from violence and war, and thus lead to humanitarian crises.

Internal challenges are compounded significantly by ongoing cross-border threats and the Indonesian government’s apparent reluctance to finalize a border demarcation agreement. Whether militia incursions have been guided by criminal motives or by political subversion with the intent of destabilizing the state is a matter of debate. However, for many Timorese this is a serious concern, as are its tangential impacts upon other areas such as rule of law, impunity for human rights violations, and disruption of local agricultural production systems. For the Timorese this relates closely to a long-standing argument about the Indonesian government’s fear of a democratic and prosperous island state on its border.

# 1 Introduction

Since the exodus of 250,000-280,000 refugees to West Timor, and the creation of over 300,000 internally displaced (IDPs) within East Timor during “Black September” in 1999, East Timor/Timor-Leste has made commendable progress in building a viable state which adheres to international human rights standards. The country has a good legal framework for the protection of human rights, set out in the Constitution as well as emerging laws, and has acceded to numerous international protocols on human rights. The territory is much safer and more “humane” than at virtually any point during the entire Indonesian occupation. However, with the withdrawal of the UN Peace Keeping Force (PKF) and civilian personnel, Timor-Leste’s economy is reverting to pre-1999 levels for much of the indigenous population. This is combined with changed social and political structures and a government unable to meet service delivery demands. These problems are compounded by ongoing cross-border security threats.

Some of the current challenges confronting the country are symptomatic of problems faced by any developing country and should be taken as a sign of significant progress in the transition from a “post-conflict state” to a “developing state”. UNHCR, International Organization for Migration (IOM) and other implementing partners contributed significantly to these accomplishments through refugee repatriation programmes that responded to the emergency events of 1999, as well as the need to create and maintain stability and assist with preparations for independence. Repatriation activities thus became a component of the broader state-building objectives of United Nations Transitional Administration in East Timor (UNTAET) and the Timorese leadership.<sup>1</sup> The result, however, was that issues of concern for returnees tended to be focused on risks associated with the level of pro-autonomy or militia involvement and ignored other factors. Timor-Leste is confronted by a whole range of threats, particular to its history of occupation and resistance, which need to be negotiated if human rights standards for returnees, refugees, asylum seekers and the general population are to be met successfully.

## 2 Historical Background

### 2.1 Invasion and Occupation

The major causes of human rights violations during Indonesia’s illegal invasion of East Timor in 1975 and the subsequent occupation were acts of violence or intimidation committed and organized by the Indonesian state apparatus – its police, military, and state intelligence services, supported by local groups that sought power, privilege and wealth within the Indonesian system.<sup>2</sup> There were also numerous violations committed by the internal resistance, beginning with the attempted seizure of power in August 1975 by the

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<sup>1</sup> Dolan, C., Large, J. and Obi, N., *Evaluation of UNHCR’s Repatriation and Reintegration Programme in East Timor, 1999-2003*, Geneva: UNHCR, Evaluation and Policy Analysis Unit, February 2004, p. 1, *UNHCR RefWorld*, Issue 13, 2004, Vol. 1

<sup>2</sup> Pedersen, J., and Arneberg, M., (eds), *Social and Economic Conditions in East Timor*, Oslo: Fafo Institute of Applied Social Science, 1999, p. 146

União Democrática Timorese (UDT), and becoming increasingly paranoid and radicalized in character as the size of the resistance was slowly reduced. Following the 1975 withdrawal to the mountains by Frente Revolucionária do Timor-Leste Independente (FRETILIN), the party and its armed wing, FALINTIL, engaged in abuses ranging from torture of suspected traitors to purging of individuals, groups, or villages suspected of assisting the Indonesians. This period was marked by a radicalization of the internal resistance until the destruction by the Indonesian forces of FALINTIL and the bulk of FRETILIN's Central Committee in the Mount Matebian region in 1978-1979. Internal human rights violations were, nevertheless, essentially the result of external efforts by the Indonesian government and right-wing political groups inside Australia, which promoted violent conflict framed around internally emerging political and ideological fault lines.<sup>3</sup>

Throughout the 1980s and 1990s, these broad dynamics appear to have continued, as the Indonesian state apparatus, along with sympathetic local groups, persecuted pro-independence supporters and attempted to crush a resurgent FALINTIL. The guerrilla resistance itself, particularly in the early and middle 1980s, underwent numerous power struggles between scattered remnants of FRETILIN's radical elements and a reformist group headed by Xanana Gusmão. Violations during this time included murder and torture of Indonesian military prisoners and pro-Indonesian supporters and "resistance purges" committed within the resistance itself against factional rivals. While exact details of human rights violations committed by Timorese actors during the pre-1999 era often remain unclear, and details of names, locations, dates and responsible units are not known, it is certain that they occurred.<sup>4</sup>

Detailed consideration of earlier patterns of human rights violations is beyond the scope of this report. Understanding their causes, however, is important when examining current political, social, and economic risk factors and their implications for land claims, current governance dynamics, and locally sustainable agricultural production.

Indonesian military offensives and government programmes that resettled large parts of the population into "guided villages" had a catastrophic impact on local economic and agricultural production systems. Much of the rural population already existed at subsistence level and are likely to have experienced regular bouts of seasonal hunger prior to 1975. By 1979, however, agricultural production had been so disrupted that the result was widespread famine.<sup>5</sup>

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<sup>3</sup> Dunn, J., *East Timor: From Portuguese Colonialism to Indonesian Incorporation*, Canberra: Parliament of Australia, Legislative Research Service, 1977, p. 50

<sup>4</sup> During the political hearings week organized by the Commission for Reception, Truth and Reconciliation (CAVR), December 2003, Xanana Gusmão, Mari Alkatiri, Lu Olo, and several other leading political figures made public admissions to these events without providing details. FRETILIN has promised an internal party investigation. See *CAVR Update*, December 2003 – January 2004, <http://www.easttimor-reconciliation.org/cavrUpdate-Dec03Jan04-en.html> [accessed December 2004]

<sup>5</sup> United States, Congress, House Committee on Foreign Affairs, *Famine Relief for East Timor: Hearing before the Subcommittee on Asian and Pacific Affairs...December 4, 1979*, Washington, 1980; see also, Rocamora, J., The Uses of Hunger, *Southeast Asia Chronicle*, No. 74, August 1980

The Indonesian administration, including the police and military, was highly corrupt, based on patronage and “rent-seeking”, authoritarian, repressive, and geared towards ensuring security by dominating the territory. Decision-making was centralized at higher levels with ultimate policy direction being dictated from Jakarta.<sup>6</sup> While there were large numbers of public servants, Timorese mainly occupied lower level non-decision-making positions. Even when serving in the Indonesian administration, the system ensured that Timorese were under the control of military, police, or security agents.<sup>7</sup> This had the effect of fostering passive dependency upon external authority figures.

Much of the population, having been terrorized for over two decades, is still recovering from “social trauma” and remains mistrustful of government. At the same time, many of those aspiring to power in Timor-Leste have had the experience that violence is a method by which to gain or maintain control, and are therefore likely to believe that the abuse of state power and the use of violence are justifiable means to the end of gaining positions of authority in the new government and, once in power, might well engage in corrupt practices to enrich themselves.

## 2.2 “Black September” 1999

The United Nations Assistance Mission in East Timor (UNAMET) was created after Indonesia, Portugal, and the United Nations signed a set of accords in May 1999, preparing the way for the UNAMET administered Popular Consultation of August 1999 as part of broader plans that included either a staged transition to full independence or autonomy within the Indonesian state.<sup>8</sup>

Indonesian police and military personnel very soon breached the security arrangements of the accord by facilitating or participating in acts of militia violence and intimidation against pro-independence supporters. The UN, while fully aware of rising levels of violence, was unable to do other than observe, given the political compromises required to secure Indonesian agreement to the accord, which left the Indonesian government in charge of security matters. Rather than postponing the Popular Consultation, the UN left it to the Timorese leadership, including Xanana Gusmão who was then still held in Cipinang prison in Jakarta, to determine whether they wanted to proceed with the vote.<sup>9</sup>

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<sup>6</sup> Goodpaster, G., Reflections on Corruption in Indonesia, in Lindsey, T. and Dick, H., (eds), *Corruption in Asia: Rethinking the Governance Paradigm*, Sydney: The Federation Press, 2002, pp. 92-100; Budiardjo, C., The Legacy of the Soeharto Dictatorship, in Hainsworth, P., and McCloskey, S. (eds), *The East Timor Question: The Struggle for Independence from Indonesia*, New York: Tauris, 2000

<sup>7</sup> Tapol, the Indonesia Human Rights Campaign, *Statement on the Question of East Timor to the UN Committee of 24*, Thornton Heath, August 1988, p. 3

<sup>8</sup> United Nations, Security Council, Question of East Timor: Report of the Secretary-General, S/1999/513, 5 May 1999

<sup>9</sup> See, United Nations, Security Council, Question of East Timor: Report of the Secretary-General, S/1999/705, 22 June 1999, *UNHCR RefWorld*, Issue 13, 2004, Vol. 5; Nevins, J., The Making of Ground Zero in East Timor in 1999: An Analysis of International Complicity in Indonesia’s Crimes, *Asian Survey*, Vol. 42, No. 4, July/August 2002; Niner, S., Maun bot: Our Brother, *Meanjin Australian Open*, Vol. 61, No. 3, 2002

Following the announcement of the ballot results on 4 September, with over 78% voting for full independence, pro-Indonesian militia systematically looted and destroyed buildings and property, beating, raping, and murdering members of opposition groups. There were also several cases of retaliatory killings against pro-autonomy supporters as they retreated to West Timor. Economic and social losses included large numbers of livestock, 95% of schools, and 77% of health facilities.<sup>10</sup> This was accompanied by the displacement of over 50% of the total population with over 300,000 IDPs, while approximately 250,000-280,000 people were forced to flee or fled voluntarily to West Timor.<sup>11</sup>

### **2.3 Post 1999: Humanitarian Interventions and Repatriation**

Those who fled to West Timor found themselves in refugee camps constructed near Kupang or close to the border town of Atambua. Reasons for fleeing to West Timor included flight from violence, escape from retaliation for involvement with militia groups, and enforced exodus of individuals who might be used as bargaining counters in future negotiations by members of the militia, and possibly also the Indonesian government forces. Refugees were controlled, sometimes ruthlessly, by militia groups under the organizational umbrella of Uni Timor Aswain (the Union of Timorese Warriors), thus making the provision of international assistance difficult and dangerous.<sup>12</sup>

By the beginning of 2000, approximately half of the estimated refugee total population had returned to East Timor. Those still remaining were individuals, mainly militia and autonomy supporters, who feared returning, who had economic reasons for not returning, who were children that remained separated from families, or who were people that were being actively intimidated against returning. By the end of 2003, of the original refugee caseload, only some 28,000 people remained in West Timor or other parts of Indonesia and were no longer classified as refugees.<sup>13</sup>

The principal criteria used for risk-screening was the degree of a returnees' involvement with militia or pro-autonomy groups, and the consequent danger that he would be exposed to acts of vengeance on return. This reflected the imperative need for UNTAET and the Timorese leadership of ensuring internal security and stability during the early transitional period and increasing the legitimacy of Constituent Assembly (CA) and presidential elections. The emphasis on these political imperatives, however, tended to remove other issues of concern from the risk-screening process. Aspects not considered included women's and children's needs and vulnerabilities, or the varying needs in different villages, sub-districts, or districts. Benchmark indicators used for evaluating returnee safety and adherence to human rights included the ability of police and judiciary to maintain security and administer due process of

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<sup>10</sup> East Timor Joint Assessment Mission, *East Timor: Building a Nation, A Framework for Reconstruction and Development*, Dili, 1999, <http://pascal.iseg.utl.pt/~cesa/dtcjammacroecon.pdf> [accessed December 2004]

<sup>11</sup> Dolan, Large, and Obi, p. 12

<sup>12</sup> International Policy Institute, *A Review of Peace Operations: A Case for Change: East Timor Report: Humanitarian Assistance*, London: King's College, 2002, pp. 2-6

<sup>13</sup> Dolan, Large, and Obi

law to returnees, the “guarantee of legal status and rights for non-East Timorese habitual residents”, and, “acts of retribution or revenge against returnees”.<sup>14</sup>

Given the highly fluid context of rapid institutional change and development, UNHCR and implementing partners could do little more than respond to immediate needs which left numerous gaps. The final report of HAER (the Humanitarian Assistance Rehabilitation Pillar, one of three operation pillars of UNTAET) identified outstanding humanitarian priorities and needs as well as potential causes for concern in the districts. HAER was responsible for the coordination of humanitarian responses and preparedness activities, for ensuring provision of assistance to vulnerable groups, and for facilitating information flows among beneficiaries and the humanitarian assistance community. While it made no specific provisions for assisting returnees, its final report made clear that a number of developmental issues impacted upon a large portion of the population, including returnees, such as for example regular food shortages, lack of health facilities, and inadequate access to water supply.<sup>15</sup>

#### **2.4 Post 1999 Social and Economic Transformations**

Dramatic changes to social structures occurred during and following 1999. Most obviously, the withdrawal of the Indonesian state left a vacuum in elite level positions and structures previously occupied by Indonesians or autonomy supporters. Social services such as schools and hospitals were incapacitated not just by the physical destruction of buildings, but by the withdrawal of Indonesian public servants, while social infrastructure such as water supply, roads, and electricity was heavily damaged or deteriorated significantly due to lack of maintenance.<sup>16</sup>

Indigenous Timorese society was, and still is, highly class-based and hierarchical, with around 80% of the population living in rural areas, where social structures are organized around hereditary belief systems and strong family alliance networks based on common sacred houses.<sup>17</sup> There was a high degree of ethno-linguistic diversity, with 30 different languages or dialects, though Tetun is spoken or understood by 80% of the population.<sup>18</sup> Women’s roles and expectations were complicated and largely depended upon their socio-economic background and cultural positioning.<sup>19</sup> Nevertheless, as the majority lived in rural areas, it is accurate to claim that most were disadvantaged socially, economically, and politically. There was also a small Hakka Chinese community, living somewhat isolated from the broader indigenous population. Prior to the Indonesian invasion of 1975, the Hakka

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<sup>14</sup> *Ibid.*

<sup>15</sup> See full report, United Nations Transitional Administration for East Timor, Humanitarian Assistance & Emergency Rehabilitation, *Final Report: October 1999-December 2000*, Dili, 2000

<sup>16</sup> Timor-Leste, Ministry of Planning and Finance, *Poverty in a New Nation: Analysis for Action*, Dili, 2003

<sup>17</sup> Ospina, S. and Hohe, T., Traditional Power Structures and the Community Empowerment and Local Governance Project: Final Report presented to the World Bank and UNTAET, Dili, 2001

<sup>18</sup> See, Timor-Leste, National Planning Commission, *National Development Plan*, Dili, 2002, p. 18

<sup>19</sup> Thatcher, P., *The Role of Women in East Timorese Society*, Melbourne: Monash University, 1988, (unpublished M.A. dissertation)

Chinese community numbered close to 18,000, almost 3% of the entire pre-invasion population.<sup>20</sup>

The elite level administrative and social positions vacated by the Indonesians were filled by incoming UN personnel. Beneath that, however, the Timorese “government in waiting” created new hierarchies that corresponded to internal CNRT (Resistance Council), groupings that reflected a number of Timor-Leste’s current social and political divisions. Elite levels in the “government in waiting” (particularly within UNTAET) were quickly filled by better-educated and wealthier members of the returning diaspora community. Members of the Timorese diaspora often brought with them nostalgic social and political expectations, corresponding to hierarchies that existed in 1975. Since then, however, indigenous society had undergone numerous changes, with higher levels of education, particularly for young people, who now made up some 50% of the population, and who no longer accepted historical social and political hierarchies in urban society. Overall, this created numerous internal social and political divisions: traditional versus modern, indigenous versus diaspora, *assimilado* versus indigenous, generational opposition, rivalry between kinship networks, student versus fighter, insider versus outsider, pro-autonomy versus pro-independence.

Timor-Leste experienced at least two sets of economic challenges in 1999. The first was the need to overcome the devastation caused by militia violence and the withdrawal of Indonesian business and government – in short rebuilding the modern sector, while the second related to long-standing characteristics of the local economy, shaped by both the Portuguese and Indonesian periods. Both sets of issues are still being addressed, but while there have been dramatic changes in the formal economic sector, a large part of the indigenous population has returned to pre-1999 economic conditions.<sup>21</sup> This in itself is a source of social frustration, given the differing levels of economic opportunity which correspond to new – or old – social groupings.

Prior to 1999 over 80% of the population lived in rural areas, with 75% of the labour force engaged in subsistence farming and with an annual per capita income estimated at US\$ 337. Not including Indonesian government subsidies, agriculture made up some 70% of total GDP. The sector was highly inefficient and characterized by subsistence production and low levels of technological inputs due to risk-averse agricultural practices, and was highly labour intensive. This resulted in low productivity, low incomes, and high levels of food insecurity in a pattern of seasonal hunger.<sup>22</sup>

Much of the population was made more vulnerable due to the forced relocation programmes of the Indonesian government. Entire villages were displaced to less fertile lands, which

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<sup>20</sup> Thatcher, P., *A Profile of the East Timorese Born Chinese Community Resident in Victoria and Australia 1986-1990*, Melbourne: North Richmond Family Care Centre, 1990, p. 3

<sup>21</sup> United Nations Development Programme Timor-Leste, *Programme Package Document for Sustainable Human Development*, Dili, 2003, pp. 5-7

<sup>22</sup> This and the following paragraphs draw on statistics in Pedersen and Arneberg (eds) and United Nations Development Programme, *Ukun Rasik A'an – The Way Ahead: East Timor Human Development Report 2002*, Dili, 2002, <http://www.undp.east-timor.org/documentsreports/nhdr/> [accessed December 2004]

disrupted traditional farming practices and increased dependency on external assistance. There tended to be overpopulation on lands that were less productive, thus making the population more susceptible to drought, hunger, and inadequate access to health and education. Most Indonesian investment was used to support government bureaucracy, while maintenance of infrastructure was inadequately funded. A “dual economy” existed, which left most Timorese at the periphery of economic activity.

The aftermath of “Black September” left Timor-Leste’s indigenous economy destroyed. Growth following 1999 was fuelled by home building and service industries catering to international personnel, with yearly growth rates of 15% (2000), 18% (2001), and 15% (2002). Most spending power was concentrated in the international community, and the bulk of economic growth and investment was centred in Dili. The dual economic system that existed during the period of Indonesian occupation was essentially replaced by UN international staff taking the place of a “new ruling elite”. Per capita GDP in 2000 was estimated at US\$ 478, with the majority of the workforce still employed in rural subsistence agricultural production. This led to significant frustration, given high expectations of an “independence dividend” amongst many indigenous Timorese.

### **3 Post 1999 Political Developments.**

#### **3.1 UNTAET State-building and UNMISSET Support**

United Nations Transitional Administration for East Timor (UNTAET) was established by UN Security Council Resolution 1272 on 25 October 1999. Its mandate included security, humanitarian relief, and the task of building institutions of state so as to prepare the territory for independence. United Nations Mission of Support for East Timor (UNMISSET) is the follow-on to UNTAET and was created in May 2002 when Timor-Leste formally became an independent state, with the mandate of assisting with consolidating institutions of state and securing a successful transition to full independence.

UNTAET quickly set up “administrative shells” and recruited local and diaspora Timorese into its service. In response to high levels of Timorese social and political frustration resulting from a perceived, and often real, exclusion of locals from the process of setting the state-building agenda in early 2000, UNTAET established participatory mechanisms to include the Timorese leadership in decision-making.<sup>23</sup> In July 2000, the East Timor Transitional Administration (ETTA) was created as the nucleus of the future independent government.<sup>24</sup> This included the First Transitional Cabinet and the National Consultative Council, later replaced by the National Council, a proto-legislative body made up entirely of Timorese nationals.

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<sup>23</sup> Soares, D.B., *Successes, Weaknesses and Challenges: A Critical Overview of the Political Transition in East Timor*, Canberra: Council for Asia Europe Cooperation, 2001

<sup>24</sup> United Nations Development Programme, *Ukun Rasik A'an...*, p. 33

### 3.2 Constituent Assembly (CA) Elections

On 30 August 2001, Timor-Leste held its first post-referendum national vote for a Constituent Assembly, mandated to draw up a national constitution. The lead-up to the Constituent Assembly elections saw the dissolution of the CNRT and the emergence of over a dozen political parties. Ninety-one percent of the population exercised their democratic franchise with no reports of serious voter intimidation or voting irregularities.<sup>25</sup>

Twelve different political parties received sufficient levels of voter support to gain seats in the 88 member CA. FRETILIN received 55 seats (including 12 district seats) with 57.4% of the popular vote; Democratic Party (PD) 7 seats with 8.7% of the popular vote; Social Democratic Party (PSD) 6 seats (including 1 district seat) with 8.2% of the popular vote; Timorese Social Democratic Association (ASDT) 5 seats with 7.8% of the popular vote). Eight smaller parties, including Timorese Democratic Union (UDT), Nationalist Party (PNT), and Socialist Party (PST), gained one or two seats each from the remaining 13 seats, with 2.5% or less of the vote.<sup>26</sup> Presidential elections were held in 2002 with Xanana Gusmão securing 82.7% of the vote, to become the first president of the newly independent country.

After drafting the Constitution, the CA voted by a sufficient constitutional majority to transform itself into the current National Parliament. Accusations were later made that FRETILIN engineered this transformation to secure a parliamentary majority until future elections, which were scheduled for five years later. These suggestions seemed little more than opportunist opposition attacks, which ignored the government's attempts to create inclusive membership structures on parliamentary committees and the Second Transitional Cabinet. Following the CA elections a new government structure was created, made up of ten ministries and four secretaries, which bridged party lines. The Cabinet of ETTA was expanded to 26 and included ministers, vice-ministers, and secretaries.

Criticisms also ignored the fact that several opposition parties were in fact unlikely to make gains in a new National Parliament with a constitutional limitation on the number of parliamentary seats, to between 52 and 65, rather than the existing 88 seats.<sup>27</sup> The proportional representation formula used for seat allocation, combined with fewer parliamentary seats, means that the level of popular support required to win a seat in parliament needs to be higher than was the case for CA elections. Using the election results of 2001 as a guide, parties such as PST and PNT would therefore have found it difficult to retain the seats held in the Constitutional Assembly and the immediate successor National Parliament. It is also possible that FRETILIN could have secured a greater parliamentary

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<sup>25</sup> European Union Election Observation Mission, *Summary of the Provisional Findings of the European Union Election Observation Mission*, Dili: Electoral Support Center, 2001; Carter Center, *Postelection Statement on East Timor Elections*, Dili, 1 September 2001

<sup>26</sup> United Nations, First Election Results Announced Today in East Timor, Dili, 6 September 2001 (press statement), <http://www.un.org/peace/etimor/DB/db060901.htm> [accessed December 2004]

<sup>27</sup> Timor-Leste, *Constitution of the Democratic Republic of East Timor*, Dili, March 2002, Section 93, <http://www.etan.org/etanpdf/pdf2/constfnen.pdf> [accessed December 2004], *UNHCR RefWorld*, Issue 13, 2004, Vol.2

majority following elections, given the strength of party organization and campaigning in 2001.

Local political dynamics sometimes resulted in competition for local authority and government positions through exploitation of community frustrations during the early state-building period. The riots of December 2002 marked the beginning of a more sober and mature approach to state-building amongst political leaders, with the realization that there remain many internal challenges to consolidating the state. Since then, and with assistance from donor agencies and UNMISSET advisors, there has been a focus on strengthening institutions, building the rule of law, developing better skills levels within the public services, and increasing the service delivery capabilities of government.

At a more localized level, numerous conflicts have occurred due to petty theft of livestock, encroachment on agricultural lands, and competing land claims. Violent clashes occurred between villages (*sucos*) in districts such as Viqueque, resulting from traditional grievances dating to the Portuguese era or conflicts for control of natural resources, particularly water supply. There have also been conflicts resulting from confusion over the legitimate role of *chefe de sucos* (village head), whether hereditary, FRETILIN-appointed, or other, and from the demarcation of *sucos*, raising overlapping political and social issues.

### **3.3 System of Government**

While the Constitution outlines democratic practices, divisions of power, and political structures aiming to include and represent the broader society, a form of democratic centralism has emerged in Timor-Leste since the passing of the Constitution.

The formal system of government set out in the Constitution is a unitary state, based on the rule of law and the principle of separation of powers. Representative organs of state, such as Parliament and the Presidency, are elected through direct and universal suffrage with party seat allocation based on a proportional representative (PR) formula. Timor-Leste has a semi-presidential system with the President as formal Head of State and commander in chief of the armed forces, while the Prime Minister heads the Council of Ministers and is formal Head of Government. The result is that most executive power resides with the Prime Minister, who decides on government policy in consultation with the Council of Ministers. Government structures are also highly centralized because of deliberate UN policies, and although these have their good reasons, they have resulted in a sense of alienation amongst many of the population, particularly former fighters and young people who were part of the student resistance movement.

In addition to those Members of Parliament who are appointed by a PR party-list method, there are also thirteen district representatives elected at district level, based on a majority counting system. Members of Parliament tend to lack skills and experience and are appointed based on party alliances. There is also a high level of absenteeism by elected officials not directly accountable to any particular geographic constituency beyond their personal support base. These weaknesses are combined with historical cultural legacies from the Indonesian and Portuguese eras, resulting in a degree of systemic political immaturity. Party members across the board tend to argue over position, status, and access to resources rather than

developing clear policies that will serve the nation, and are willing to engage in various types of political intrigue, or attach themselves to influential political figures to ensure personal advancement.

### 3.4 Local Governance and Political Decentralization

The government recognizes the political and developmental importance of creating formalized local government structures.<sup>28</sup> Serious impediments to progress include a lack of qualified personnel, lack of resources, and poorly defined systems and procedures for effective government operation at district level and below.<sup>29</sup> These weaknesses are combined with a dominant stream of thought that argues that, because of the small geographic size of the country, centrally controlled administrative functions are more effective at providing services and reducing corruption. There are also latent political fears, dating back to the very early UNTAET period, that rapid moves on administrative and political decentralization could fragment the authority of central state institutions. Groups potentially seeking to undermine the authority of the state through local structures include disaffected fighters excluded from recruitment to the PNTL (Policia Nacional de Timor-Leste) and F-FDTL (FALINTIL-Força de Defesa de Timor-Leste), opposition government parties, and ex-militia and pro-autonomy activists. Taken together, this means that rapid moves towards decentralization are highly unlikely.<sup>30</sup>

The first phase of elections for village chiefs and for village councils took place in mid-December 2004, with the next phase to follow in March. While not necessarily addressing weaknesses arising from the lack of formal local government structures, these elections will resolve a number of lingering problems at the village level and help consolidate political stability by addressing community development needs. Elections should also resolve problems with the legitimacy of village chiefs and contested territorial divisions in some villages. The formation of councils after *suco* elections will also lay a grass-roots foundation for community participation in the development and governance process for current development and governance initiatives through the District Coordination and Development Committees (DCDCs) and a Local Development Fund (LDF).

DCDCs, established by DNAT (Direcção Nacional da Administração Território), are district level bodies, which bring together representatives from community councils and government officials. At the same time, DNAT is piloting a LDF. The LDF is a bloc grant funding mechanism that will address priority community development concerns and make funds available for dealing with community disasters (e.g., pest infestation or livestock disease).<sup>31</sup> Widespread implementation of the LDF is waiting for the formation of *suco* councils, with

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<sup>28</sup> Timor-Leste, National Planning Commission, *The National Development Plan...*; Timor-Leste, National Planning Commission *Timor-Leste: The Road Map*, Dili, 2003; Timor-Leste, Ministry of State Administration, *Local Government Options Study Final Report*, Dili, June 2003

<sup>29</sup> United Nations Development Programme, *Ukun Rasik A'an...*, p. 38

<sup>30</sup> For a fuller discussion on local governance issues see, Knezevic, N., *CEP Final Report: An Evaluation of Community Empowerment, Local Governance, and Development Outcomes 2000-2004*, Dili: World Bank, 2004

<sup>31</sup> Timor-Leste, National Planning Commission *Timor-Leste: The Road Map...*, Annex 2

national funds disbursement scheduled for July 2005 after the release of the new budget. *Suco* elections thus appear to be part of a broader government strategy of addressing immediate community concerns, which will be organized around the DCDC as the *de facto* representative government structure at district level, given the slow progress on decentralization.

### **3.5 Reception, Truth, and Reconciliation Commission (CAVR)**

The CAVR's mandate included facilitating community reconciliation and the reintegration of individuals who had committed less serious crimes during the 1999 period.<sup>32</sup> This included returnees that were involved in militia violence during 1999. The Community-based Reconciliation Process (CRP) within the CAVR was the primary method of achieving this objective.

While there are no available reports of politically organized attacks or individual cases of retribution against returnees suspected of militia involvement since 2002, a number of returnees experienced animosity and were eager to go through the CAVR process to reintegrate with their communities. CAVR also facilitated the return of refugees from West Timor through organized visits, carried out information campaigns countering the misinformation strategies of militia groups in West Timor, and provided potential returnees with a sense of security and an opportunity for peaceful reintegration with their communities.<sup>33</sup> Community demands for justice in fact appear to have been constructive as they are not seeking punitive retribution, but instead seeking legal recognition for crimes committed and to hold those responsible accountable to the rule of law.

The CRP could only proceed with cases if the Office of the General Prosecutor (OGP) agreed they were not of a more serious nature (such as murder or rape) and if the parties to each case agreed to the process. By the end of 2003, 1,500 cases had been heard through the CRP, while 120 were ruled out by the Serious Crimes Unit (SCU) or suspended during hearings because they seemed to be of a more serious nature. Once a case had been heard, Community Reconciliation Agreements (CRAs) were negotiated, with the facilitation of traditional leaders at village level. These agreements incorporated "restorative justice" components, characteristic of local judicial process and had to be registered in the court as an official order, which legally obliged a deponent to undertake the act of reconciliation recommended by the CRP Panel. If a deponent did not agree to the act of "restorative justice" recommended, then he or she would be subject to prosecution in the formal courts. By successfully incorporating elements of local justice systems, the CAVR also managed to fill a legal gap at the local community level for returnees.<sup>34</sup>

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<sup>32</sup> For general information about CAVR, see its website at <http://www.easttimor-reconciliation.org/> [accessed December 2004]

<sup>33</sup> Ximenes, F. B., *The Unique Contribution of the Community Based Reconciliation Process in East Timor*, Cape Town: Institute for Justice and Reconciliation, May 2004, p. 18

<sup>34</sup> See, Pigou, P., *The Community Reconciliation Process of the Commission for Reception, Truth and Reconciliation*, Dili: UNDP, April 2004

While the CAVR has made significant strides in healing community wounds, progress should not be overstated as it is only the beginning of a longer-term process. The CAVR has always been presented as part of a broader set of initiatives addressing past human rights violations, and there remain high expectations amongst the population regarding issues of justice and accountability. There are, however, open differences amongst community members and political leaders about appropriate methods of securing justice, some of which are more punitive in nature. Failure to capitalize on gains by conducting follow-up community assistance and reconciliation activities, as well as continuing with prosecutions for serious crimes, could strengthen community perceptions that the CRP is an approach that confers impunity on perpetrators of past human rights violations. The perception that a state of impunity for human rights violations exists is fuelled by the fact that not all individuals involved in militia activity have chosen to participate in the CAVR process, nor have more serious offenders faced justice through the SCU process. This has resulted in high levels of dissatisfaction in some quarters that could lead to community members taking justice into their own hands, resulting in human rights violations against returnees suspected of militia involvement. In fact, in such a situation a vague accusation of militia involvement could be used by any group of people to target political opposition or to seek retribution for grievances not related to serious crimes committed during 1999.<sup>35</sup>

### **3.6 Serious Crimes Unit (SCU) and the Special Panels Process**

UNTAET set up the Special Panels of the Dili District Court with jurisdiction over genocide, crimes against humanity, war crimes and torture, murder, and sexual offences committed between 1 January 1999 and 25 October 1999.<sup>36</sup> The SCU (Serious Crimes Unit) was established in June 2000 and mandated to investigate cases within the jurisdiction of the Special Panels for serious crimes.<sup>37</sup> It was quickly decided after the establishment of the SCU to focus investigations on ten priority cases and five cases that, it was claimed, would demonstrate a wider pattern of organized serious crimes.<sup>38</sup> Since independence, the SCU has operated under the mandate of the Office of the Prosecutor General.

SCU could form a critical part of the refugee reintegration process by addressing issues of impunity for human rights violations. Not only would a perceived state of impunity for human rights violations lead to acts of retribution, there could also be cases in which arbitrary claims are made or actions taken against refugees. There is anecdotal evidence that suggests a number of returnees in the 2001 period were accused of being militia as a justification for the seizure of their property and assets by other community members. In other cases, retribution for long-standing grievances was masked by accusations of militia involvement.

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<sup>35</sup> *Ibid*

<sup>36</sup> United Nations Transitional Administration for East Timor, Regulation 1999/1, Dili, 1999, Section 3

<sup>37</sup> United Nations Transitional Administration for East Timor, Regulation 2000/16, Dili, 2000

<sup>38</sup> United Nations High Commissioner for Human Rights, Report on the Situation of Human Rights in Timor-Leste, E/CN.4/2004/107, 19 January 2004, p. 13, *UNHCR RefWorld*, Issue 13, 2004, Vol. 5

The current number of unresolved, or yet to be investigated, cases within the SCU process poses some concerns in the context of building a culture of respect for the rule of law and ensuring long-term security and integrity of human rights protections for many people in the country. The Timorese NGO, the Judicial System Monitoring Programme (JSMP) in January 2004 expressed concern that the SCU might close in May 2004 at the expiry of UNMISSET's mandate. JSMP observed that, should this happen, approximately 50% of the existing caseload would remain un-investigated, while a large number of cases involving reported human rights violations would not have been completed or even opened; for instance, the Bobonaro district alone had some 100 cases of murder dating from 1999 that had not yet been investigated.<sup>39</sup> Further investigation would thus fall upon the shoulders of an under-resourced and inexperienced local court system. Additionally, when considering the impact existing court weaknesses have upon policing and the public's perceptions of the PNTL as an institution, further overloading local courts with a massive SCU caseload would risk undermining the PNTL's ability to effectively provide police services to an increasingly hostile and frustrated public.<sup>40</sup>

Human rights prosecutions are a sensitive political matter for the Timorese government as they potentially undermine border security. Over the past year political figures such as Xanana Gusmão and José Ramos-Horta have, through actions or words, made clear that security and stability in the country's relations with Indonesia is a central goal of the government. The head of government, Marí Alkatiri, for his part, has generally refrained from public comment on the matter. Antagonizing Indonesian government and military figures responsible for human rights violations will, according to this logic, create a situation in which remaining hard-core militia elements still in West Timor could be mobilized to destabilize Timor-Leste.

Regardless of these international political realities, the UN has been criticized by numerous local NGOs and international advocacy groups for failing to set up an international tribunal for serious human rights violations and instead choosing to transfer responsibility to the Special Panels in Dili, while being fully aware of the lingering cross-border security concerns and political sensitivities. There is certainly sufficient evidence to demonstrate that many of the crimes committed, which included mass murder, torture, assault, forced disappearances, mass forcible deportations, destruction of property and sexual crimes committed against women and children,<sup>41</sup> were systematically orchestrated by members of the Indonesian armed forces (the TNI – Tentara Nasional Indonesia), who directly participated in militia operations at various times,<sup>42</sup> with a clear intention of intimidating

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<sup>39</sup> Judicial System Monitoring Programme, *The Future of the Serious Crimes Unit*, Dili: JSMP, January 2004, [http://www.jsmp.minihub.org/Reports/jsmpreports/SCU\\_Report%20FINAL\\_eng.pdf](http://www.jsmp.minihub.org/Reports/jsmpreports/SCU_Report%20FINAL_eng.pdf) [accessed December 2004], p. 7

<sup>40</sup> United Nations High Commissioner for Human Rights, Report on the Situation of Human Rights in East Timor, E/CN.4/2002/39, 1 March 2002, p. 24, *UNHCR RefWorld*, Issue 13, 2004, Vol. 5

<sup>41</sup> Human Rights Watch, *Justice Denied for East Timor: Indonesia's Sham Prosecutions, the Need to Strengthen the Trial Process in East Timor, and the Imperative of UN Action*, New York, 2002, p. 1

<sup>42</sup> For a brief outline on the historical development of militia in Timor-Leste, see, International Crisis Group, *Indonesia: Keeping the Military under Control*, Jakarta; Brussels: ICG, 5 September 2000, p. 19

voters in the lead-up to the Popular Consultation and, failing a vote for integration, to destroy the territory so as to send a message to other secession-minded provinces in the archipelago.<sup>43</sup>

### 3.7 Indonesian Ad Hoc Human Rights Court on East Timor

In response to international pressure to prosecute human rights violations committed in 1999, the Indonesian government set up a commission to investigate and prosecute accused perpetrators in an Ad Hoc court procedure. While there appear to have been commendable efforts by a limited number of Indonesians in the Ad Hoc process, resulting in some honest accounting of events during 1999, the overall process has not been impressive. Out of 18 indicted, only six were convicted, most of whom are Timorese who had opted to remain inside Indonesia. While the SCU passed along 362 indictments (42 Indonesian nationals and 320 ethnic Timorese), the Indonesian government has made no moves to apprehend any of the 237 outstanding indictees suspected of being inside Indonesia. The Indonesian government has not assisted with executing arrest warrants issued by the SCU and has not facilitated interviews with witnesses inside Indonesia; nor has it provided documentation to assist with the prosecution of cases.<sup>44</sup> There are also cases of high-ranking TNI officers indicted by the SCU, who have been promoted to more senior positions.<sup>45</sup> The Indonesian Supreme Court has also overturned the only conviction of any Indonesian official to date, the governor of Timor during the Indonesian occupation, Abilio Soares.<sup>46</sup>

These outcomes suggest a lack of respect for the United Nations and international human rights norms on the part of the Indonesian authorities, partly explained by the fact that many Indonesians have come to view the loss of Timor-Leste as a “national humiliation” and the Timorese vote for independence in 1999 as an attack on Indonesia, organized by a United Nations mission which was infiltrated by “leftists” sympathetic to the liberation struggle.<sup>47</sup> While grossly erroneous, this overriding political assessment influenced the manner in which investigations and prosecutions proceeded from the outset. The difficulty of establishing the systematic nature of human rights violations originated with the Indonesian Attorney-General’s decision to prioritize the investigation of five individual cases during the period of 1999, thus making it possible to ignore the role of state policy which would have been critical in establishing a case for crimes against humanity, rather than ordinary murder cases.<sup>48</sup>

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<sup>43</sup> For examples, see, Dunn, J., Crimes against Humanity in East Timor, January to October 1999: Their Nature and Causes, Dili, 2001. This report, for UNTAET, has not been published, but is available at <http://www.etan.org/news/2001a/dunn1.htm> [accessed December 2004]

<sup>44</sup> United Nations High Commissioner for Human Rights, Report..., E/CN.4/2004/107, p. 14

<sup>45</sup> Human Rights Watch, *Justice Denied*, p. 2

<sup>46</sup> Brummitt, C., East Timor Ex-governor Acquitted, *Herald Sun* [Melbourne], 5 November 2004

<sup>47</sup> For an example of commentary on the dangers of national disintegration following Timor-Leste’s Popular Consultation in 1999, see Emmerson, D.K., Will Indonesia Survive?, *Foreign Affairs*, Vol. 7, No 3, May/June 2000, pp. 95-106; see also International Crisis Group, *Impunity versus Accountability for Gross Human Rights Violations*, Jakarta; Brussels, 2 February 2001, p. 19

<sup>48</sup> International Crisis Group, *Indonesia: Implications of the Timor Trials*, Jakarta; Brussels, 8 May 2002, pp. 4-13

In fact, the manner in which prosecutions in the Ad Hoc process took place tended to reinforce the views expressed by the Indonesian government and armed forces in 1999 that the massive exodus of Timorese was the result of “large scale dissatisfaction with the vote and a situation of civil war”.<sup>49</sup> Taking a longer-term historical overview, it is arguable that the Ad Hoc Indonesian process also sought to strengthen historical justifications for the invasion of Timor-Leste in 1975, by suggesting that the country had then been economically unviable, under communist threat, and threatened by civil war.<sup>50</sup>

The overall Ad Hoc process fuels fears of cross-border aggression and explains, in part, the Timorese leadership’s own reluctance to advocate an international tribunal for the country. The overriding political imperative for national stability and security appears to have created a kind of laissez-faire attitude amongst government officials. An additional view suggests that the Timorese government is reluctant to push the process because investigations work both ways and could expose pro-independence activists to investigations of their actions during the 1999 period.

### **3.8 Border Control and Internal Security**

The line dividing Timor-Leste from West Timor is still referred to as the “tactical coordination line”, which in itself infers a great deal as to continuing cross-border instability. As no final border agreement has been reached, it is possible to dispute any part of the border, and this might in fact be the status quo that the Indonesian government is aiming to preserve until the final departure of the UN. Thereafter it will be in a much stronger position to place leverage upon the Timorese government, for instance to support the Indonesian position on an international tribunal. As it stands, the border is highly porous and virtually impossible for the Timorese to defend.

The TNI, once having considered Timor-Leste as its own economic fiefdom, now regards the border area itself in the same light and appears to be using ex-militia members to facilitate illegal trade and smuggling activities. Profits from smuggling have fuelled unregulated cross-border movements that have led to conflicts with local authorities unable to identify whether a person is a Timorese citizen due to lack of documentation, and undermined community confidence in existing security arrangements. Given their previous experiences, it is not surprising that communities in the border areas are simply scared when there is a high level of unregulated border activity and tend to go into hiding. UNHCR has attempted to address some of these problems by facilitating registration activities, but the ability of the government to conduct formal registration remains weak.

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<sup>49</sup> Hayde, W., *Ideals and Realities of the Rule of Law and Administration of Justice in Post Conflict East Timor*, in *International Peacekeeping: The Yearbook of International Peace Operations*, Vol. 8, Leiden: Martinus Nijhoff, 2002, p. 68

<sup>50</sup> Gunn, G. C., *East Timor and the United Nations: The Case for Intervention*, Lawrenceville NJ: Red Sea Press, 1997, p. 23. See also, Haseman, J.B., *East Timor: The Misuse of Military Power and Misplaced Military Pride*, in Fox, J.J., and Soares, D.B. (eds), *Out of the Ashes: Destruction and Reconstruction of East Timor*, Adelaide: Crawford House Publishing, 2000, p. 187; Dunn, J., *Timor in International Perspective*, in Carey, P. and Bentley, G. C., (eds), *East Timor at the Crossroads*, New York: Social Science Research Council, 1995

There are also outstanding legislative, institutional, and procedural issues for Timorese border management. PNTL border patrol weaknesses include their inability to protect themselves from a better-armed TNI, poor staffing levels at official border-crossing checkpoints, lack of communications equipment and no institutionalized communication procedures between TNI and Timorese border posts. Institutional rivalry between the PNTL and F-FDTL is itself a product of the Timorese leadership's attempts to ensure internal stability by placating hostile Indonesian elements. That is, by adopting a position of having a non-militarized border so as not to antagonize the TNI, the government has stripped the F-FDTL of what it regards as its legitimate function – ensuring security from external threats. At the same time, existing institutional weaknesses within the F-FDTL would bring an additional set of problems for border management – poor discipline, training and procedures, not least in relation to weapons and ammunition.

Continued activity by pro-Indonesian militia is a further problem. In September 2000, the UN Peace Keeping Forces reported that as many as 150 armed militia members were actively involved in threatening, robbing, and killing local villagers.<sup>51</sup> On 9 March 2002, a UN patrol near the border was fired upon by groups suspected of being militia. On 24 February 2003, a group of men armed with semi-automatic weapons attacked a *mikrolet* (local minibus) travelling from Maliana (Bobonaro District) to Dili, killing two people. On 27 February 2002 an UNMISSET patrol exchanged fire with a group of armed men, apprehending one and later seizing 1,000 rounds of ammunition and other military equipment, as well as a diary suggesting there were other groups seeking to destabilize the country. Several suspected militia members arrested confessed that armed groups were establishing bases within the country in an attempt to undermine the stability of the country and were being supported by external groups.<sup>52</sup>

The degree to which militia incursions have been guided by criminal motives (e.g., smuggling) or by political subversion is a matter of debate. However, for many Timorese, a serious concern relates to a long-standing argument about the Indonesian government's fear of a democratic and prosperous island state on its border. A prosperous and viable democratic Timor-Leste, the argument goes, would provide a model around which several resource-rich provinces inside Indonesia would seek to gain independence and thus lead to the disintegration of the Indonesian state. Hardcore militia members also have strong hereditary links to locals that few outsiders truly understand. The depth, scope, and complexity of these links can only be assumed given the lack of systematic research into this area. However, the combination of hereditary links, and political and economic motives for generating instability, certainly creates clear avenues through which Indonesia, if so inclined,

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<sup>51</sup> United States, Department of State, *Country Reports on Human Rights Practices 2000: East Timor*, Washington, February 2001, pp. 5, 8, *UNHCR RefWorld*, Issue 13, 2004, Vol. 3

<sup>52</sup> For details see, United Nations, General Assembly, Assistance for Humanitarian Relief, Rehabilitation and Development in East Timor: Report of the Secretary-General, A/57/353, 23 August 2002, *UNHCR RefWorld*, Issue 13, 2004, Vol. 5; United Nations, Security Council, Special Report of the Secretary-General on the United Nations Mission of Support in East Timor, S/2003/243, 3 March 2003, *UNHCR RefWorld*, Issue 13, 2004, Vol. 5; United Nations, Security Council, Report of the Secretary-General on the United Nations Mission of Support in East Timor, S/2003/449, 21 April 2003, *UNHCR RefWorld*, Issue 13, 2004, Vol. 5

could exploit internal factional fault lines that remain active after the end of the resistance era.

The Indonesian government has indicated that it would look to resettle former Timorese refugees to other parts of Indonesia, allowing only a maximum of 6,000 to reside permanently in West Timor.<sup>53</sup> Coupled with finalization of the border demarcation, such a measure would have greatly increased the sense of border security. Following a five-point strategy put forward by the UNHCR, the Indonesian government relocated approximately 12,000 people from camps along the border, but only to other parts of West Timor rather than other parts of Indonesia, which left some 16,000 individuals near the border.<sup>54</sup> Overall, there does not appear to have been any large movements of people out of West Timor; nor has border demarcation been finalized.

A particular problem is poised by the activities of the CPD-RDTL (Conselho Popular pela Defesa da Republica Democratica de Timor Leste), which was formed in 1999 in opposition to the CNRT (Conselho Nacional da Resistancia Timorense). CPD-RDTL is of the view that Timor-Leste already achieved independence with FRETILIN's independence declaration on 28 November 1975, prior to the Indonesian invasion.<sup>55</sup> It regards itself as a social movement and the real FRETILIN, and as such, does not recognize the legitimacy of the current state, the government and its institutions, including the courts, or the constitution drafted by the CA. CPD-RDTL leadership figures have demonstrated a clear ability to capitalize on popular discontent with the state-building process, security concerns, economic hardships, and the current government's alienation from large segments of the population. Their messages are full of promises of economic and political improvement, but tend not to explain how they will convert words into deeds.<sup>56</sup> The leadership does not openly question the existence of the state, but instead vigorously attacks the legitimacy of the current government.<sup>57</sup> The organization has increasingly attracted young supporters, who have felt left out of government, due to the re-emergence of Portuguese era social hierarchies (complaints about Portuguese as an official language are an indicator of this process), ex-fighters, and repatriated pro-autonomy supporters and ex-militia members.

Since the establishment of UNTAET, the CPD-RDTL leadership has developed a reputation for inciting crowds to riot against government authority, setting up roadblocks in villages to collect road tolls, or extorting money and goods from villagers in areas such as Bobonaro,

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<sup>53</sup> United Nations, General Assembly, Situation of Human Rights in East Timor: Note by the Secretary General, A/56/337, 6 September 2001, p. 12, *UNHCR RefWorld*, Issue 13, 2004, Vol. 5

<sup>54</sup> United Nations, Security Council, Report of the Secretary-General on the United Nations Mission of Support in East Timor, S/2004/333, 29 April 2004, p. 3, *UNHCR RefWorld*, Issue 13, 2004, Vol. 5

<sup>55</sup> Walsh, P., *East Timor's Political Parties and Groupings: Briefing Notes*, Canberra: Australian Council for Overseas Aid, April 2001, p. 11

<sup>56</sup> Da Costa, C., *The Vision on National Stability in the Post-UNMISSET Period*, Baucau: CPD-RDTL, December 2003

<sup>57</sup> CPD-RDTL, *Assunto: Atu Hato'o CPD-RDTL nia liafuan kmanek ba publiku, Nasional no Internasional*, Dili: 2003, p. 2. See also CPD-RDTL, *Position of the CPD-RDTL vis-à-vis to the Recommendations of the UNO's Secretary General, Mr. Kofi Annan*, Dili, 12 January 2004

Ainaro, and Baucau. CPD-RDTL attempted to disrupt the civil registration process for the CA elections in order to reduce the number of registered voters to later question the legitimacy of the entire process. Parallel to this, the organization has regularly distributed identification cards to inhabitants, particularly in rural areas, as a means of conferring “real” sovereignty to the people by linking them to the original constitution signed in 1975.<sup>58</sup> The message conveyed to villagers is that the holders of these identity cards would not be subject to the authority of the current government and constitution, but rather to CPD-RDTL and the constitution of 1975. While itself prone to manipulation, the movement has also engaged in a pattern of escalating destabilization activities coinciding with the downsizing of UN missions and a shrinking economy. This was evident in the months immediately prior to December 2002 with the departure of Sergio Vieira de Mello and the transition from UNTAET to UNMISSET.<sup>59</sup> The same pattern appears to have repeated itself with the recently completed registration of 400,000 people for the forthcoming *suco* elections. Opposition political groups were arrested in several districts for allegedly destroying registration cards or preventing people from registering for the elections.<sup>60</sup>

A number of CPD-RDTL’s leadership figures were among the more radical FRETILIN supporters and members of FALINTIL’s senior command, who opposed Xanana Gusmão’s reforms in the early 1980s, aimed at making the armed resistance a non-partisan guerrilla force.<sup>61</sup> Opposition to this internal reform amounted to a struggle for control of the internal liberation campaign and involved purges or assassinations of opposition groups or leaders. One such figure opposed to Xanana’s reforms was Olagari Aswain, head of CPD-RDTL’s security arm, the Organização Popular de Seguranza (OPS), which draws its members from among ex-FALINTIL fighters and former clandestine resistance members. Figures associated with the OPS were also responsible for establishing some of the village level inquiries of returnees suspected of militia involvement during the early days of UNTAET, sometimes resulting in arbitrary detentions, torture, beatings, denial or seizure of property, and extra-judicial killings. Other figures involved in the power struggle against Xanana included Paulino Gama, a FALINTIL commander who later left the country. His brother Cornelio Gama, better known as “L7”, of the grouping Sagrada Familia, was one of the commanders that left the FALINTIL cantonment in Aileu during 2000 in protest at conditions as well as the politicized recruitment of the F-FDTL, controlled by the FALINTIL high command of “Xanana loyalists”.<sup>62</sup>

After its creation in 1999 CPD-RDTL openly supported PNT, the Nationalist Party of Timor, which advocated autonomy within Indonesia. The president of PNT, Abilio Araujo, himself

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<sup>58</sup> See, CPD-RDTL, *Assunto: Kona ba RDTL nia Kartaun Nasional*, Dili, 2003

<sup>59</sup> Pinto, J. T., *Security and Defence: A Challenge to Struggle For*, Dili: University of Dili Timor-Leste, 2003, p. 2

<sup>60</sup> United Nations, Security Council, Progress Report of the Secretary General on the United Nations Mission of Support in East Timor, for the period 14 August to 9 November 2004, S/2004/888, 9 November 2004, para 5

<sup>61</sup> Reese, E., *Under Pressure: Falintil – Forças de Defesa de Timor-Leste: Three Decades of Defence Force Development in Timor-Leste 1975-2004*, Geneva: Centre for the Democratic Control of Armed Forces, 2004, pp. 29-33

<sup>62</sup> *Idem*, pp. 36-7

a former senior member of FRETILIN's Central Committee, switched sides to support autonomy within Indonesia after being ejected from the FRETILIN Central Committee in 1994.<sup>63</sup> Leadership figures such as Aitahan Matak (Antonio da Costa), Cristiano da Costa, Americo Menezes, and Gil Fernando da Costa were believed to have played an ambiguous role during the resistance. The CPD-RDTL leadership continues to view Abilio Araujo as the "real" president of the "real" FRETILIN.

PST, the Socialist Party of Timor, now acts as the political wing of CPD-RDTL. PST frames its position around a "Marxist grassroots" ideology and various notions of socialism.<sup>64</sup> PST was originally formed in 1991 as the Timorese Socialist Association (AST), renamed in 1997, but traces its origins to the student organization OJETIL in 1981, a FRETILIN student group. PST never joined the CNRT Resistance Council because, as part of a political trade-off for creating a united independence front in 1998, CNRT did not recognize FRETILIN's declaration of independence in 1975.

While CPD-RDTL has claimed to represent some 400,000 Timorese,<sup>65</sup> the level of voter support for PST (as well as PNT) would strongly suggest otherwise (PNT and PST combined hold three seats in the National Parliament). Though its level of support has been growing since the CA elections, overall support for the CPD-RDTL movement therefore appears to have been negligible and limited to a small but vocal minority.

Prior to the December 2002 riots, CPD-RDTL was part of a grouping of ex-fighter and security groups, the Association of Ex-Combatants of 1975 (AC75), headed by Rogerio Lobato, currently Minister of the Interior. There were two principal factors bringing CPD-RDTL into the organization structure of AC75: First, the leadership's frustration at being left out of the new security and administrative structures, and associated rewards; and second, the historical relationship between Rogerio Lobato and Abilio Araujo. Araujo and Lobato had a long history of political intrigue and training in methods of popular mobilization and regime change. It was these historical links and tactics Lobato used in 2002 to secure his position in government. The departure of Sergio Vieira de Mello and the transition to Kamallesh Sharma as Special Representative of the UN Secretary-General, the reduction of international peacekeeping troops, and economic contractions, created a transitional window of uncertainty and instability that Lobato capitalized upon by manipulating disaffected ex-fighter groups to promote his own interests.

Following the riots in December 2002, which initially mainly involved students protesting against the arrest of one of their number, but which escalated to become the most serious disturbance since independence in May 2002, an investigative commission was appointed by the President, including among others the Attorney General, an UNMISSET human rights officer, and the deputy director of HAK (Association for Law, Rights and Justice). Government officials were mentioned in the report of the commission as being involved in

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<sup>63</sup> Aditjondro, G. J., *Timor Lorosa'e on the Crossroad*, Jakarta: Center for Democracy and Social Justice, 2002, pp. 21-2

<sup>64</sup> Walsh, p. 22

<sup>65</sup> CPD-RDTL, *Assunto: Atu Hato'o...*, p. 1

the organization and radicalization of the riots. The commission also concluded that the radicalization of the protest was an attempt to undermine social stability, that there were political motives behind the riots, and that third parties had co-opted the student protest to undermine government authority.<sup>66</sup>

A large number of those co-opting the student protest came from Baucau, a stronghold of CPD-RDTL and Sagrada Familia, where police had responded to public protests by shooting civilians on 28 November. The protest itself resulted after PNTL personnel had removed a road toll roadblock in a village. Several truckloads of people made their way to Dili and, even in a situation of clearly heightened security concerns, were not stopped by UNPOL (UN Police Force) personnel that were aware of this movement. In this context, the breakdown of law and order in December 2002 represents to some extent a failure of the UN to take early preventative action prior to and during the riots. Other failures were due to weak training in non-lethal crowd control procedures and the authorized use of warning shots under UNPOL's rules of engagement, which were incorporated into the PNTL's training.<sup>67</sup>

The December 2002 riots proved to be a critical turning point for Timor-Leste and a wake-up call for the leadership of the country, particularly as regards the offices of President and Prime Minister. The elite level power struggles during the formative state-building years of UNTAET were replaced by an understanding that much greater cooperation was required to maintain political stability. While there remain some strong differences of opinion between different political offices, institutional mechanisms were established to increase the level of coordination and cooperation, starting with the Prime Minister and the President. One of the greatest challenges still confronting the government internally, however, is the ongoing threat of blackmail by groups or individuals seeking government rewards.

#### **4 Overview of Current Human Rights Situation**

The Timorese government has made many commitments to promoting and protecting human rights in the Constitution, in law, and through its accession to numerous international human rights protocols.<sup>68</sup> This legal framework for the protection of human rights, good by any standard, has not been paralleled by functional implementation, due, for the most part, to procedural and institutional weaknesses in key government areas. At the same time, there are a number of documented serious human rights violations, which have been carried out by actors located outside state structures at the community level or which were committed by community organizations (e.g., local security groups).

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<sup>66</sup> Timor-Leste, Cabinet of National President of Parliament, *Preliminary Report CII, Independent Commission of Inquiry*, Dili, 2002

<sup>67</sup> See, Amnesty International, *The Democratic Republic of Timor-Leste: A New Police Service, A New Beginning*, London, 2003

<sup>68</sup> United Nations, Report..., E/CN.4/2004/107, p. 10

#### 4.1 Ethnic and Religious Groups

Given that the majority of the population practises a mix of Catholicism and Animism, has a long history of intermixing with foreigners and a leadership that preaches social tolerance, religious discrimination does not appear to be a serious issue of concern. While there exist racist tendencies towards Hakka Chinese segments of Timorese society, attacks against minority religious or ethnic groups have been driven by political, or long-standing local traditional grievances, rather than religious or ethnic intolerance *per se*.

Prior to 2002 Chinese and Muslim communities, along with suspected militia and autonomy supporters, experienced various degrees of harassment and intimidation from local residents. Violations committed against these groups were due to suspected links to the TNI or militia groups.<sup>69</sup> A mosque was burned down in Baucau in 2001, but this proved to be an expression of community anger at the heavy handed tactics of Jordanian Civilian Police (CivPol) personnel rather than a case of targeting a minority group or its place of worship. On 9 June 2000, three Assembly of God Protestant churches in the Districts of Ermera and Aileu were attacked by local residents and burned down. These attacks, like many other examples of human rights violations at the community level up to 2002, were due to suspected links between church pastors and an Aileu based militia group in 1999. Approximately 265 Muslims that were long-time residents in Dili were initially persecuted by CNRT leaders in late 1999 and early 2000.<sup>70</sup> The government has attempted to resolve the issue but Muslims in the Dili mosque have remained isolated, and finally, in December 2004, the majority of them were expelled to Indonesia.<sup>71</sup>

#### 4.2 Prisoners and Prison Conditions

There have been a number of arbitrary arrests over the past several years that resulted from confusion about the roles and rigour between police and judicial and prosecutorial officials.<sup>72</sup> To date there are no clear cases of people arrested for political reasons. However, members of groups such as CPD-RDTL fall into a grey area. Government officials often express sympathy and understanding for the hardships confronting the organization's membership and truly respect the sacrifices made by genuine veterans of the resistance. Its leadership, nevertheless, has worked to politicize society through its rank and file to such an extent that government officials have shown signs of becoming increasingly intolerant towards them.

There are currently three prisons in the country (Becora, Gleno, Baucau). Inmates include pre-trial detainees, convicted prisoners and juvenile detainees. There have been reports of violence within the prison system. Infrastructure is poor, which creates health and safety risks for inmates, and there is no specialized training for PNTL officers deployed to prison facilities.<sup>73</sup> Weaknesses are exacerbated by prisoner frustration and overcrowding resulting

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<sup>69</sup> Human Rights Watch, *World Report 2001: East Timor*, Washington, 2001, p. 5; See also, United States, Department of State, *Country Reports on Human Rights Practices 2000...*, p. 4

<sup>70</sup> Human Rights Watch, *World Report 2001...*, p. 6

<sup>71</sup> Reuters, Timor Departs Last Illegal Muslims to Indonesia, 2 December 2004

<sup>72</sup> Amnesty International, *The Democratic Republic of Timor-Leste: A New Police Service...*, p. 79

<sup>73</sup> United Nations, Advisory Services..., p. 6

from delays in the processing of cases in the courts. In December 2003, one third of pre-trial detainees were held illegally after their detention orders expired.<sup>74</sup> The government has sought to address these problems by developing a code of conduct for prison staff, planning to establish a juvenile detention facility, developing a mechanism to deal with breaches of discipline by inmates, identifying how to address the logistical and transportation needs of social workers dealing with prisoner rehabilitation, and making moves on establishing an external oversight body.<sup>75</sup>

### 4.3 Civil and Political Freedoms

In mid 2004 Timor-Leste was ranked number 58 out of 167 countries in media freedoms by the French based organization Reporters sans Frontières (Reporters Without Borders).<sup>76</sup> There are several local newspaper publications and community radio services, with only the state-owned media television and radio outlets reporting any level of government interference.<sup>77</sup> Local NGOs have a long history of activism and have not reported political interference or intimidation from the state.

While no comparable rankings are available for political freedoms, it is without question that the people of the country have experienced much higher levels of political freedom than was ever the case during the Indonesian occupation. People are able to move about freely without fear of interference or persecution from the state. To date there are no available reports of interference with personal privacy related for instance to post and telephone communications, or to travel. There are a number of caveats to these positive signs. First, the high level of tolerance over the past five years has been a direct result of a highly moderating international influence. While it is likely that Timor will continue to experience high levels of political freedom, this is not guaranteed because of social pressures resulting from high levels of poverty. Second, there is a risk that freedom of movement could be curtailed in view of the extensive discretionary powers the Internal Security Act gives to the police, including the right to request identification cards without any specific reason. And third, the development of mail and telephone services is so limited that the flow of communication is in effect restricted even without any active interference by the government.

Freedom of assembly and expression was high during the period of UNTAET. However, since December 2002, the government has increasingly viewed organized protest in the light of security threats, and this has resulted in a growing intolerance to public dissent. This has extended to opposition political parties, government civil servants, and members of the police. There have also been examples of government officials ordering PNTL personnel to disband legitimate protests or rallies organized by opposition political party groups. One such example was a public rally organized by an opposition party, the Democratic Party

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<sup>74</sup> Amnesty International, *Report 2004: Timor-Leste*, London, 2004, p. 2

<sup>75</sup> United Nations, Security Council, Report of the Secretary-General..., S/2003/449, p. 5

<sup>76</sup> Reporters Without Borders, *Third Annual World Press Freedom Index*, Paris, 2004, [http://www.rsf.org/article.php3?id\\_article=11715](http://www.rsf.org/article.php3?id_article=11715) [accessed December 2004]

<sup>77</sup> Reporters Without Borders, *East Timor: 2004 Annual Report*, Paris, 2004, [http://www.rsf.org/article.php3?id\\_article=10168&Valider=OK](http://www.rsf.org/article.php3?id_article=10168&Valider=OK) [accessed December 2004]

(PD). Government officials instructed civil servants not to attend a PD organized event in Suai, March 2004 and ordered the PNTL to disband the gathering. The local Police Commander, who refused the order, was later transferred, while civil servants attending the rally were transferred or suspended from work.<sup>78</sup>

#### 4.4 Immigration and Asylum Law

The Immigration and Asylum Law<sup>79</sup> was surrounded by controversy, as the Court of Appeal decided that various limitations on freedom of assembly and association for foreigners were unconstitutional.<sup>80</sup> The debate around the constitutionality of the law, however, did not cover issues associated with the rights of people seeking asylum or refugee status in Timor-Leste.<sup>81</sup> The law also placed returnees from West Timor in a position where they were required to prove their citizenship, which, given already weak documentation procedures, resulted in a number of returnees being expelled to West Timor.<sup>82</sup>

According to the Judicial System Monitoring Programme (JSMP), procedures for deciding asylum applications lack strong safeguards and have unrealistically speedy timeframes that act to threaten sound decision-making. Additionally, there is concern that the grounds for cessation of asylum or refugee status, character requirements, and deportation and exclusion provisions in the law go beyond international refugee norms. A further problem is that there are no clear safeguards against expelling individuals to countries where they might be tortured, killed, or persecuted. There are also procedural and political concerns about the decision-making process itself, as decisions are made by police rather than civil servants.<sup>83</sup> Nevertheless, the broad provisions for asylum seekers under articles 84 and 85 are vague enough to provide entry to anyone making a valid claim, and those being granted refugee status are afforded rights comparable to foreigners with temporary resident status.<sup>84</sup> Several dozen third country nationals have sought asylum in Timor-Leste, including people from Sri Lanka, Russia, Vietnam, Côte d'Ivoire and Indonesia, some of whom have refused IOM offers for assisted return to their home countries, due to fear for their security.<sup>85</sup>

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<sup>78</sup> United Nations, Security Council, Report of the Secretary-General..., S/2004/333, p. 3

<sup>79</sup> An extensive collection of laws pertaining to Timor-Leste is available on the website of United Nations Mission of Support in East Timor, Office of Legal Affairs, <http://www.unmiset.org/legal/index-e.htm> [accessed December 2004]

<sup>80</sup> Amnesty International, *Report 2004...*, p. 2

<sup>81</sup> Judicial System Monitoring Programme, *The Constitutionality of East Timor's Immigration and Asylum Law*, Dili, 2003, p. 1

<sup>82</sup> Judicial System Monitoring Programme, *Report on the Immigration and Asylum Law (Short Version)*, Dili, June 2003, p. 5

<sup>83</sup> *Idem*, pp. 5-6

<sup>84</sup> Timor-Leste, National Parliament, *Immigration and Asylum Act*, Law No. 9/2003, <http://www.unmiset.org/legal/RDTL-Law/index-e.htm> [accessed December 2004], *UNHCR RefWorld*, Issue 13, 2004, Vol. 2

<sup>85</sup> Human Rights Watch, *World Report 2003: East Timor*, New York, January 2003; United States Committee for Refugees, *World Refugee Survey 2003: East Timor*, Washington, May 2003, p. 1

Non-nationals who wish to become citizens are required to reside in the country for five years, and habitual residents require ten years in the country before being granted permanent residency status. There is concern that this has placed a number of people in a legal limbo.<sup>86</sup> While there has been criticism against the nationalistic and political motives for setting forth such residency conditions, they are understandable given the history of Timor-Leste: a natural post-liberation political mistrust, especially in view of lingering concerns regarding the intentions of Indonesia.

The Internal Security Act states that the PNTL can request identification documents at any time without needing to present a specific legal reason.<sup>87</sup> The JSMP has pointed out that this kind of police power has regularly been used in politically oppressive regimes to limit opposition to a ruling group or “as a means of obtaining information about opposition members and civil society groups”. The weak civilian oversight over the monitoring of these police powers, combined with the broad discretionary powers and weak institutional decision-making procedures, leaves significant scope for the abuse of security mechanisms in the service of vested political interests within government.<sup>88</sup>

In addition to a risk of political abuse of existing mechanisms, there are also dangers from institutional weaknesses combined with poor documentation procedures in the country. Immigration officers at border entry points can do little more than provide “ cursory verification of a person’s admissibility in the country” and have limited ability to track illegal aliens once inside the country.<sup>89</sup> The danger here does not rest with illegal entry, already common along the porous Tactical Coordination Line, but rather with the potential of dangerous visitors building a credible personal history by using weak documentation procedures so as to gain legal entry to countries such as Australia, the United States, or the United Kingdom.

#### **4.5 Refugee Repatriation and Reintegration**

There are an estimated 28,000 East Timorese remaining in West Timor. Their formal status as refugees came to an end with UNHCR’s declaration on 31 December 2002 that the cessation clauses in the 1951 Convention now applied to them.<sup>90</sup> Four categories of people remain across the border: former Indonesian civil servants waiting for government payouts and unlikely to return to East Timor; former security personnel (Indonesian police or armed forces) waiting for government payouts and unlikely to return both for economic reasons and for fear of facing justice for their involvement in the violence of 1999; ex-militia unlikely to

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<sup>86</sup> Dolan, Large, and Obi, p. 93

<sup>87</sup> Timor-Leste, National Parliament, *Internal Security Act*, Law No 8/2003, <http://www.unmiset.org/legal/RDTL-Law/index-e.htm> [accessed December 2004], Section 15.2(a)

<sup>88</sup> Judicial System Monitoring Programme, *JSMP Report on the Internal Security Act (Bill)*, Dili, October 2003, [http://www.jsmp.minihub.org/Reports/jsmpreports/E\\_Internal\\_Security\\_Act\\_Report.pdf](http://www.jsmp.minihub.org/Reports/jsmpreports/E_Internal_Security_Act_Report.pdf) [accessed December 2004], pp. 16, 19

<sup>89</sup> Parayno, G.L., *Proposed Strategic Plan for the Border Service of East Timor*, Dili: UNDP, 2000, pp. 10, 58

<sup>90</sup> United Nations High Commissioner for Refugees, *Country Operations Plan: Timor-Leste: Planning Year 2005*, Geneva, September 2004, p. 2

return because they fear legal prosecution for actions in 1999; and a small number of people considering return but not yet certain, given ongoing intimidation and misinformation campaigns. The current flow of returnees from West Timor is very low, with monthly numbers from January to August averaging 23, September reported to be a small number, and October estimated at 100, a rate that is likely to continue to the end of the year, as it is estimated there are an additional 3,000 people considering return.

There is little risk of those individuals remaining in West Timor becoming “stateless”. The Indonesian government has offered full citizenship to those choosing to remain, and approximately 99% have registered to become Indonesian citizens.<sup>91</sup> Although Indonesian government officials undertook that those seeking citizenship would be resettled to other parts of Indonesia, most of the 14,000 that have moved out of camps along the border have been resettled to other parts of West Timor.

By late 2001, UNHCR and the International Rescue Committee (IRC) had identified some 2,400 cases of separated children, including some missing children from the 1970s and 1980s, which inflated the real caseload level resulting from the events of 1999. Missing children from 1999 fell into four categories:

- children placed with carers by parents who fled to the mountains. These carers then took the children to West Timor or other parts of Indonesia when they themselves fled;
- children separated from families or carers during the flight to West Timor, who later came under the care of travelling companions or extended family in Indonesia;
- some children who were separated from their parents in refugee camps in West Timor;
- children experiencing further separation, when moved to other parts of Indonesia through voluntary and informed, or voluntary and ill-informed, consent given by their refugee parents.<sup>92</sup>

By August 2004, 146 children were still recorded as separated from their parents. This included 19 children in Timor-Leste with parents still in West Timor; 98 children in West Timor with parents still in Timor-Leste or in other parts of Indonesia; and 29 cases where the location of the missing children was unknown.<sup>93</sup> A review of the UNHCR repatriation programme also noted serious weaknesses in follow-up monitoring and assistance, e.g. with education or vocational training, for children who have been re-united with families in Timor-Leste.<sup>94</sup>

Available documentation suggests that the greatest obstacle to resolving outstanding cases relates to the Yayasan Hati Organization and other quasi-religious organizations that took children to West Java and Sulawesi during 1999, ostensibly for their protection and

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<sup>91</sup> United States Committee for Refugees, *World Refugee Survey 2004: East Timor*, Washington, May 2004

<sup>92</sup> United Nations High Commissioner for Refugees, *Background Information on East Timor's Separated Children*, Dili, 2004, p. 1

<sup>93</sup> *Ibid.*

<sup>94</sup> For problems associated with UNHCR follow-up monitoring and assistance activities, see Dolan, Large, and Obi, p. 63

education.<sup>95</sup> Yayasan Hati was founded by autonomy supporter Octavio Soares, who took some 200 children out of refugee camps. There are concerns that separated children in Islamic religious institutions are undergoing religious indoctrination, while other children are undergoing political indoctrination, so as to create “the basis for a future return of East Timor to Indonesian rule”.<sup>96</sup>

UNHCR’s returnee program was, at a very early stage, driven by the political state-building objectives of UNTAET and the Timorese leadership. The rationale was that “people had to be brought back to minimize the possibility of destabilization from a large refugee population in West Timor, and to maximize the credibility of elections” for the Constituent Assembly and the presidency.<sup>97</sup>

Risk-screening and monitoring activities were thus framed around the level of returnee involvement with militia or pro-autonomy groups, primarily so as to reduce the risk of politically destabilizing retribution killings. The number of reported incidents of violence against returnees has been relatively low since 2002. UNHCR has monitored approximately 600 cases of returnees, with only 17 being identified as cases of concern. Various problems encountered by returnees included inadequate documentation, which makes it difficult to access other services and secure other rights (e.g. property), health problems due to neglect or lack of access to healthcare; denial of access to property, and lack of access to formal education due to remoteness or financial difficulty.

A number of returnees suspected of militia involvement experienced various forms of social isolation and intimidation, which led to at least ten families in one district returning to West Timor.<sup>98</sup> There is also significant anecdotal evidence suggesting that others left their communities to seek the anonymity of urban Dili. Given the lack of monitoring of migration patterns of returnees after being repatriated, it is impossible to accurately estimate these numbers. Uncertainty of these additional movements, however, works to fuel local fears about activities and motives of former militia members and security threats in a post-UNMISSET period. This fear could lead to a rise in local security groups in Dili dispensing “street justice” against anyone suspected of former militia involvement. In addition it might further increase government intolerance of public protest because of security concerns.

There also remain issues of concern regarding unfinished justice and reconciliation matters. Prior to 2002, there were clear patterns of human rights violations against returnees, and there is a risk that these could re-emerge in a post-UNMISSET period. There were several documented cases of violations by former FALINTIL members, who had organized themselves in village level security groups. Interrogation by these groups sometimes included beatings, threats, arbitrary detention in illegal facilities, or detention in “re-education” centres. Several returnees were murdered, and others were forced into

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<sup>95</sup> United Nations, *Advisory Services...*, p. 18

<sup>96</sup> Dolan, Large, and Obi, p. 60

<sup>97</sup> *Idem*, p. 8

<sup>98</sup> *Idem*, p. 56

compulsory labour as a form of community reconciliation prior to the official establishment of the CAVR.<sup>99</sup>

Lack of documentation has resulted in a number of less serious human rights violations by the state because of procedural or institutional weakness. Some returnees have been deported for not holding adequate documentation. There have also been cases of youth criminal offenders who have been arrested and detained with adult prisoners.<sup>100</sup> Recent legislation looked to addressing the weaknesses of identification by setting out a legal framework, identifying the purposes of and facilities for civil registration and identification.<sup>101</sup> The aim is to collect and store identifying particulars of all citizens, and for the National Directorate of Registries and Notarial Services to take responsibility for issuing identity cards. However, although the government is taking steps to address weaknesses in the registration of individuals, it does not have the capacity to engage in a comprehensive identification process, particularly in rural areas, and it is therefore unlikely that it will be possible through this process alone successfully to deliver targeted assistance to returnees. There are, however, other existing sources of registration information including registration for the CA and presidential elections, national census data, and *suco* election registration that can be cross-referenced if appropriate procedures are developed.

#### **4.6 Economic, Land and Property Rights**

In July 2001 the National Council passed a Labour Law, drafted with the assistance of the International Labour Organization, which established a system of labour relations in accordance with its standards.<sup>102</sup> UNTAET also applied Indonesian labour statutes, which allowed workers to form or join worker organizations or unions without prior authorization. Indonesian labour laws also set out minimum standards for worker health and safety, days off, and other benefits including maximum length of the working week and overtime pay.<sup>103</sup> Additionally, UNTAET set in place a minimum wage rate of US\$ 65 per month. In practice though, many of these rights were difficult to put into effect, given weak or non-existent institutional procedures and mechanisms.

The lack of formalized procedures and unions meant that, prior to 2002, dissatisfied workers often resorted to strikes or public demonstrations, which sometimes turned violent. Disputes often revolved around issues of wage levels, anger over the termination of short-term contracts, or threats of violence upon the termination of cash paid employment in the private sector. The Ministry of Justice has since established a Labour and Solidarity Council, which acts as a first avenue of resolution for labour disputes. Labour disputes are addressed using a

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<sup>99</sup> Human Rights Watch, *World Report 2001...*; United States, Department of State, *Country Reports on Human Rights Practices 2000...*1

<sup>100</sup> Hayde, p. 91

<sup>101</sup> Timor-Leste, *Civil Identification*, Decree Law No. 2/2004, <http://www.unmiset.org/legal/RDTL-Law/index-e.htm> [accessed December 2004]

<sup>102</sup> Human Rights Watch, *World Report 2002: East Timor*, New York, 2002, p. 4

<sup>103</sup> United States, Department of State, *Country Reports on Human Rights Practices 2001: East Timor*, Washington, 4 March 2002, p. 12, *UNHCR RefWorld*, Issue 13, 2004, Vol. 3

mixture of alternative dispute resolution methods incorporating traditional elements of conflict resolution and, failing agreement, a formal tribunal process.<sup>104</sup>

Timor-Leste has a long history of population displacement resulting from foreign invasion and violent conflict. During periods of Japanese as well as Indonesian occupation, those who fled or were forcibly removed from their land and homes often found their property occupied by others on their return, which could then generate new layers of conflict.<sup>105</sup> There is little publicly available information on land and property claims relating specifically to current returnees. This is partly due to the already complicated and overlapping web of ownership disputes, some of which could place returnee claims in conflict with those made by Portuguese era land and property owners. Additionally, returnees as a group appear to have to some extent undermined the political will to resolve their cases, through the high level of illegal occupation of property in Dili following the return of refugees and IDPs. In part this was a result of IOM and UNHCR repatriation activities, which concentrated some 53,000 returnees in Dili and contributed to an urban migration that saw an estimated 50% of houses in the city being illegally occupied.<sup>106</sup>

While an unidentified number of returnees have found their own homes illegally occupied,<sup>107</sup> there have also been cases where returnees have illegally occupied the vacant property belonging to other Timorese, who fled in 1999 and have yet to return. In addition returning refugees and IDPs took over vacated Indonesian government buildings, following the withdrawal of Indonesian civil servants, business people, and local militia members. Inevitably this enabled some to profit handsomely during the early transitional period, by occupying multiple houses and then renting them out to other locals, or to internationals, when rents could range from US\$ 600 to US\$ 3,000 per month.<sup>108</sup>

Many Indonesian migrants, who came to Timor-Leste prior to 1999, also fled during the militia violence and, in practical terms, became refugees in other parts of Indonesia. They lost their property and homes without any compensation, and had no social assistance provided to them by the Indonesian government. Land claims originating from these Indonesian citizens are sensitive, particularly in the case of militia elements and autonomy supporters who have remained in West Timor and other parts of Indonesia, and who have taken up Indonesian citizenship. While it is not legally possible for them to reclaim ownership of land in Timor-Leste, given constitutional provisions barring foreigners from owning land, demands for compensation or access are liable to create highly politicized social conflict.<sup>109</sup> Out of a total of 4,269 land claims made by April 2004, 3,141 were

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<sup>104</sup> International Legal Assistance Consortium, *Report on Mission to East Timor*, Stockholm, 23 March 2002, p. 20

<sup>105</sup> Fitzpatrick, D., *Land Claims in East Timor*, Canberra: Asia Pacific Press, 2002, p. 5

<sup>106</sup> *Ibid.*

<sup>107</sup> United Nations High Commissioner for Human Rights, Report on the Situation of Human Rights in East Timor, E/CN.4/2001/37, 6 February 2001, p. 9, *UNHCR RefWorld*, Issue 13, 2004, Vol. 5

<sup>108</sup> Fernandes, K. and Leckie, S., *Housing Rights in East Timor: Better Late Than Never*, Melbourne: Centre on Housing Rights and Evictions, 2001, p. 8

<sup>109</sup> Fitzpatrick, pp. 66-72

registered by foreigners, 2,016 of which related to property in Dili.<sup>110</sup> It is estimated that approximately 10,000 claims from Indonesian residents have yet to be registered.

Law No 01/2003 on the Juridical Regime of Real Estate Ownership sets out some of the difficulties confronting land claims generally. The law, as well as the Constitution, are fairly clear that illegal occupation of property is a criminal offence with defined procedures for a legal owner to reacquire property.<sup>111</sup> The issue seems not to rest with the legal framework *per se* (which is still developing), but rather with complicated claims that make it difficult to activate existing procedures, given numerous cases of overlapping and contested legal ownership.

## **5 Institutional Factors behind Human Rights Violations**

Many international and local observers have suggested that the Timorese government, and in particular the law enforcement agencies such as the PNTL, have started to show increasing intolerance towards opposition political parties, local level security groups, and public dissent. Such a perception could damage the government's relations with donors as well as its own solidarity networks inside and outside the country, but it is uncertain if the government is as yet realizing this. However, it should be made clear that the bulk of the PNTL's problems relate to institutional weaknesses and an inappropriate culture of policing, matters that can only be resolved over time and with significant effort.

### **5.1 Ministry of the Interior and PNTL**

In October 2002 Amnesty International reported that the PNTL remained fragile, ill-equipped, insufficiently supported and institutionally underdeveloped for its role of maintaining law and order in a manner consistent with international human rights standards. Institutional weaknesses included, and still include, confusion about applicable law, gaps in legislation and procedures, existence of legislation not consistent with international human rights standards (particularly relating to the use of force, firearms, and accountability), and weaknesses in standard operating procedures in areas of arrest rights, custody procedures, and detention rights for prisoners.<sup>112</sup> Recruitment problems included lack of experienced personnel and politicization of the institution, due to the recruitment of former officers of the Indonesian police (Polri). These amounted to 12% of total PNTL personnel in 2003, and their recruitment created resentment among members of former combatant groups, bitter about being excluded from the service.<sup>113</sup>

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<sup>110</sup> Timor-Leste Land Law Program, *Compliance With the Constitution by Non-National Claimants of Pre-Existing Land Rights in Timor-Leste: Draft/Working Research Document for Roundtable Discussion*, Dili, June 2004. p. 15. See also Timor-Leste Land Law Program, *Research Result Analysis & Policy Consideration for a Law on Land Rights and Title Restitution: Draft/Working Document*, Dili, June 2004, p. 15-17

<sup>111</sup> Timor-Leste, National Parliament, *The Juridical Regime of Real Estate*, Law No. 01/2003, <http://www.unmiset.org/legal/RDTL-Law/index-e.htm> [accessed December 2004], *UNHCR RefWorld*, Issue 13, 2004, Vol. 2

<sup>112</sup> Amnesty International, *Timor-Leste: Briefing to Security Council Members on Policing and Security in Timor-Leste*, London, 6 March 2003

<sup>113</sup> Amnesty International, *The Democratic Republic of Timor-Leste: A New Police Service...* pp. 20-1

Following the February 2003 suspected militia attack in Bobonaro there were demands for an increase in the capacity of the PNTL to respond to security threats. Amnesty International called for the PNTL to be strengthened in terms of its skills, procedures, restrictions on use of firearms, and clarification of the respective security roles of the PNTL and the F-FDTL.<sup>114</sup> The Ministry of Interior, with assistance from external donors, has since focused on building its capacity and has begun to address many of the institutional and procedural weaknesses that had been identified, though at the same time it has sought to increase the armed strength of the PNTL. The latter is part of a strategic security plan, which emerged following suspected militia incursions in early 2003, and aims to enable the police to respond to major threats to public order without resorting to the use of the military.<sup>115</sup> This strategy has been heavily influenced by the Timorese government's political decision to keep the border demilitarized, to avoid antagonizing hard-line Indonesian government and TNI figures, and President Xanana Gusmão has rejected local NGO criticism of weapons purchases for the police.<sup>116</sup>

The Timorese human rights NGO Yayasan Hak has monitored and recorded cases of PNTL and F-FDTL human rights violations for a nine month period from January to September 2004.<sup>117</sup> It reports 54 violations during this period, two of which are attributed to F-FDTL personnel. According to Yayasan Hak, most PNTL violations involved illegal arrests and detention, the beating of suspects, and gross forms of intimidation when suspects were in detention, classified by Yayasan Hak as torture. Other PNTL violations included misuse of firearms and military style search and apprehension operations in villages, which involved various types of intimidation and resulted in injuries to innocent bystanders. According to Yayasan Hak, the pattern of police violations does not support the accusation that violations committed by police are politically motivated or organized to target any particular groups. For example, out of the 52 cases of police violations documented by the organization, only seven involved individuals from CPD-RDTL. Given the history of this group's confrontational tactics with the government, a higher number might have been expected if the police were acting as a political agent of the government. However, the documentation recorded is not complete and in many cases does not include political affiliation of the victim.

There have been a number of high profile cases involving CPD-RDTL and similarly disaffected groups protesting against the government, where the role of the PNTL has been questioned. Protests have taken the form of demonstrations in front of the Prime Minister's office, boycott of the census, and attempts at organizing entire villages to refrain from registering for upcoming *suco* elections. These types of protests have, in many cases, been politically motivated attempts to undermine government authority and its administrative

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<sup>114</sup> Amnesty International, *Timor-Leste: Briefing*, p. 3

<sup>115</sup> United Nations, Security Council, Special Report..., p. 7

<sup>116</sup> Xanana: NGO labele kritika sosa kilat, *Timor Post*, 25 August 2004; see also Ministro Rogerio: Sosa kilat husi orsamentu estadu, *Timor Post*, 25 October 2004 and, Rogerio: 'See mak dehan kilat lakon nee milisia', *A voz de Suara Timor Lorosae*, 25 October 2004

<sup>117</sup> Yayasan Hak, *Monitoring of Human Rights Violations of PNTL and F-FDTL*, Dili, fe 2004

capacity. In the month of July, CPD-RDTL protests against *suco* election registration led to the arrest of 24 of its members. At the same time PNTL personnel have come under criticism for confiscating illegal CPD-RDTL identity cards issued to villagers in remote areas, or tearing down road blocks set up by locals attempting to extort road tolls. Throughout 2004 these events led to numerous individuals being arrested and sometimes being charged under Indonesian law with acts of subversion against the state. Lack of evidence and the political sensitivities – countless Timorese were arrested under this law during the occupation – led to arbitrary changes to lesser charges of common crimes, such as theft, assault against police, or fraud, in order to provide legal grounds to keep suspects detained. However, it could well be argued that the government has employed the police in a legitimate manner in reaction to systematic attempts at undermining the state, rather than politically persecuting individuals belonging to disaffected groups. At the same time, though, the state in the process has committed numerous, though perhaps not serious, human rights violations, resulting from the procedural and institutional weaknesses of the courts as well as the PNTL.

Many of the abuses committed by police are the result of the lingering influence of Indonesian policing methods, but also inadequate and sometimes conflicting training from UNPol and CivPol during UNTAET and UNMISSET.<sup>118</sup> For example, in a number of the cases monitored by Yayasan Hak, it was shown that the police employed heavy handed tactics of forcible apprehension, even when they held, and could have made use of, legal, court-issued warrants. Amnesty International has pointed out that a large number of violations involving the excessive use of force relate to the Rapid Intervention Unit, which is frequently compared to the paramilitary wing of the Indonesian police, the Police Mobile Brigade.<sup>119</sup>

Problems relating to excessive use of force are also the product of a growing culture of force in some sections of the police service as much as they are of poor training and procedures. Police increasingly see themselves as a “force”, rather than as a “service”. This attitudinal problem is compounded, when drunken off-duty police officers abuse their powers by using the social status of government employment and police service to threaten or extort locals. Correctly or not, a number of NGOs and civil society groups, as well as political opposition parties, increasingly regard the police as an enforcer for the government, and especially for FRETILIN, as the dominant government party. This runs parallel to a view that FRETILIN has sought to engineer control of the state apparatus since 2001. Combined, this has led to current perceptions of an alienated and elitist government becoming intolerant of public dissent and using the police to reduce the democratic space for protest.

Weak external civilian oversight has also acted to undermine the accountability and discipline of some, though not all, police officers. Irrespective of the real numbers of such cases, this has led many people to believe that a state of impunity exists for PNTL personnel committing violations.<sup>120</sup> This is partly due to the politicization of the PNTL in 2002-2003 and the ongoing concerns about the direction in which the police and the government are

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<sup>118</sup> Hayde

<sup>119</sup> Amnesty International, *The Democratic Republic of Timor-Leste: A New Police Service...*, p. 56

<sup>120</sup> United Nations, *Advisory Services...*, p. 7

heading, while Rogerio Lobato remains Minister of the Interior. The Professional Ethics Office, an internal PNTL oversight body, has not been able to address these problems. It is under-resourced, lacks institutional recognition and has little authority over the different branches of the police service. At the same time, PNTL personnel have been known to use people's fear of the police and limited understanding of their own legal rights to ensure that police misconduct is passively accepted and goes unreported.

The Human Rights Unit attached to the Prime Minister's office also appears weak in addressing issues of police misconduct for reasons similar to the Professional Ethics Office of the PNTL. The recently established Provedor's Office (Provedor de Direitos Humanos e Justicia), is charged with investigating complaints of human rights violations, maladministration or corruption by the government, with the power to initiate its own investigations.<sup>121</sup> Like the Prime Minister's Human Rights Unit and the PNTL's Professional Ethics Office, the Provedor's Office will also confront similar problems relating to lack of resources and weak institutional authority once the National Parliament has appointed an individual to fill the position of Provedor.

There are also signs of progress, however, perhaps most notably the relatively effective handling by PNTL of protests led by former FALINTIL commander "L7" in July 2004. Although they have been criticized for excessive use of force in dispersing unruly demonstrators in front of the Prime Minister's office, police personnel effectively used non-lethal crowd control methods and contained a potentially volatile demonstration. These operational improvements were the result of a number of initiatives, starting with a new policy, issued in 2003, restricting the use of force, as well as recent legislation providing for a Disciplinary Code for police. An Institutional Strengthening Committee was established in 2003, which includes representatives from NGOs, the Ministry of Justice and the Ministry of Planning and Finance, with advisors from UNMISSET's human rights unit.<sup>122</sup> A detailed institutional strengthening plan was developed, which included community outreach programmes, modification of standard operating procedures and standing orders in accordance with international human rights norms, the creation of an external supervisory body to review control procedures, and the establishment of a formal coordination mechanism between the PNTL and the judiciary.<sup>123</sup> While the plan itself is somewhat ambitious for the one year time frame allowed, it is a clear indication of the government's genuine commitment to addressing existing problems within the police service. The greatest remaining weakness rests with issues of politicization of the police service, which are not being addressed by the technical capacity building programmes currently in place.

## **5.2 FALINTIL-Força de Defesa de Timor-Leste (F-FDTL)**

The number of reported human rights violations committed by F-FDTL personnel has been relatively low.<sup>124</sup> There are however, several serious problems with the army that the

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<sup>121</sup> Amnesty International, *The Democratic Republic of Timor-Leste: A New Police Service...*, p. 35

<sup>122</sup> *Idem*, p. 85

<sup>123</sup> Timor-Leste, Ministry of Interior, *Policia Nacional de Timor-Leste Strengthening Plan of Action (May 2003-May 2004)*, Dili, 2003

<sup>124</sup> United Nations, Advisory Services..., p. 9

Timorese government has already identified, all of which could lead to an explosion of violations if not addressed. These include disciplinary issues, accommodation and pay, insufficient training, low morale, weak recruitment procedures, problematic procurement practices through the Ministry of Finance, poor living conditions, inconsistent attendance of personnel, feelings of marginalization relative to the PNTL, a poorly understood definition of its role and unresolved relations with ex-combatants.<sup>125</sup>

### 5.3 Rule of Law: Judiciary and the Courts

Establishing an effective and accountable rule of law has remained a slow and difficult process, as has been well documented by organizations such as Amnesty International and JSMP.<sup>126</sup> Overall, the weakness of the formal justice system has created several dangers, including the rise of vigilante justice, against a background of the police being perceived as unfair and the courts as politically biased.<sup>127</sup> Arrests often result in long periods of detention, essentially because the court system is inefficient and there is confusion about applicable or emerging laws. However, these procedural delays are regularly interpreted as being due to political intrigue or manipulation, and this runs the risk of generating a backlash from those perceiving themselves to be the target of politicized abuse of state power.

These problems were greatly exacerbated in January 2005, when the Ministry of Justice announced that all 22 locally recruited probationary judges failed to pass examinations sat during June and September 2004. In response, the government stated it would appoint additional international judges to fill the resulting judicial vacuum if necessary. There are pragmatic reasons for appointing international judges. They promise to bring greater qualifications and levels of experience, and thus introduce a level of quality and professionalism lacking in the local court system thus far. Such an approach can also provide time and space for additional training and education of local judges.<sup>128</sup> However, the cultural and generational divide between the Portuguese speaking leadership of the government and Bahasa speaking probationary judges is well-known in the streets of Dili. JSMP also noted concerns about the lack of transparency in the manner the examination papers were evaluated.<sup>129</sup> These points combined demonstrate the danger that the process will strengthen perceptions of an elite leadership seeking to dominate the state apparatus, and fuel community alienation from government by making the court system less accessible to the local population than was already the case.

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<sup>125</sup> Timor-Leste, President, On the Findings of the Independent Inquiry Commission for the Falintil-F-FDTL, Dili, 24 August 2004 (press statement); see also United Nations, Security Council, Report of the Secretary-General ..., S/2004/333, p. 2

<sup>126</sup> Amnesty International, *East Timor: Justice Past, Present, and Future*, London, 2001; see also International Legal Assistance Consortium, pp. 8-18; see also Mearns, D., *Looking Both Ways: Models for Justice in East Timor*, Sydney: Australian Legal Resources International, 2002

<sup>127</sup> Amnesty International, *Timor-Leste: Briefing...*, p. 5

<sup>128</sup> Beauvais, J.C., Benevolent Despotism: A Critique of UN State-building in East Timor, *New York Journal of International Law and Politics*, Vol. 33, No. 4, p. 1158

<sup>129</sup> Judicial System Monitoring Programme, *Justice Update*, No. 3, 24 January-1 February 2005, [http://www.jsmp.minihub.org/Justice%20update/Folder/issue3\\_2005\(e\).pdf](http://www.jsmp.minihub.org/Justice%20update/Folder/issue3_2005(e).pdf) [accessed February 2005]

Due to the inadequate capacity and geographical coverage of the formal courts, a dual legal system has developed, and the official courts are supplemented by informal local mechanisms.<sup>130</sup> Local justice systems have played an important function in facilitating conflict resolution, ensuring social order, and conferring social legitimacy on leaders.<sup>131</sup> At the same time, local systems have also been shown to be incompatible with some human rights standards and easily manipulated by traditional hereditary leaders, or by wealthy and influential individuals in the modern segments of Timorese society. The most commonly cited examples relate to issues of domestic violence and rape, referred to local justice mechanisms by the courts or by PNTL personnel, and there inappropriately treated as cases for mediation or arbitration.<sup>132</sup> Sometimes crime victims of low social standing have been forced to accept traditional conflict resolution processes even when they have sought to pursue criminal prosecution in the courts against perpetrators of higher socio-economic standing.<sup>133</sup>

While some elements of the local justice systems are incompatible with international human rights, nevertheless the need to maintain and improve these systems, e.g. by defining categories of offences which can be referred to local, mediation-based systems, in tandem with a modern legal system, is recognized by many in Timor-Leste's modernizing elite and by younger people with higher educational qualifications.<sup>134</sup> Progress has already been made through the Labour and Solidarity mediation process, the CAVR and SCU's distinctions between "serious crimes" and cases eligible for the CRP, and the UNTAET Land and Property Unit's dispute resolution process for land claims.<sup>135</sup>

Unfortunately the conflict between local and formal justice systems appears set to worsen. With the exception of three local judges sitting on the Special Panels, there are now no local judges staffing the formal court system. The likely result will be that the existing backlog of cases will increase significantly, thus causing further procedural delays, and undermine the building a "culture of respect" amongst the population for the entire formal system of law. Additionally, the cost of importing international judges will divert resources from building local capacity, thus threatening to leave the court system as dysfunctional following the inevitable departure of international judges. Equally important over the long-term, a weak court system without an independent judiciary, combined with a stronger PNTL, creates a danger there will be few legal checks against the abuse of police powers.

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<sup>130</sup> Hohe, T., Justice Without Judiciary in East Timor, *Conflict, Security & Development*, Vol. 3, No 3, December 2003, p. 348

<sup>131</sup> Hayde, p. 82

<sup>132</sup> United Nations, Commission on Human Rights, Advisory Services..., pp. 5, 15

<sup>133</sup> Amnesty International, *The Democratic Republic of Timor-Leste: A New Police Service...*, p. 38

<sup>134</sup> International Legal Assistance Consortium, p. 22

<sup>135</sup> Timor-Leste Land Law Program, *Report on Research Findings and Policy Recommendations for a Legal Framework for Land Dispute Mediation*, Dili, February 2004; Elderton, C., East Timor-Land Issues and Independence, paper presented at the South Pacific Land Tenure Conflict Symposium, University of the South Pacific, 10-12 April 2002

## **6 Institutional, Political, Social, and Economic Trends**

### **6.1 Groups at Risk**

Human rights violations committed against returnees have mostly occurred at community level, as revenge actions. Since 2002, the number of attacks or acts of intimidation against returnees has been very small. This has been due to the successes of the CAVR, the relatively successful efforts by Timor's leadership to build social harmony and facilitate the reconciliation process, and importantly, the moderating influence of the international presence in the country, acting as an outside arbitrator in numerous internal conflicts as well as providing a crucial sense of physical security. Perhaps most importantly, though, while attention is often given to disruptive elements within Timorese society, the vast majority of the population, having suffered terribly from war and its ill-effects, are keen to enjoy the fruits of peace. There are, however, continued problems with government structures, development, disaffected ex-fighters, poverty and the governance culture. The continuing hardships of life and the perception that only a handful of the elite are enjoying the rewards of independence is contributing to ex-fighter groups becoming more radicalized and manipulated by individuals keen on their own personal rewards from independence. Combined with the overall weaknesses within government this can create social pressures increasing the risk that returnees will experience attacks or threats.

Women and children of lower socio-economic standing are also at higher risk of human rights violations, due to their weak position in rural society and the practice of using local justice systems for resolution of disputes and criminal accusations.

There is also a latent social hostility to minority Muslim and Hakka Chinese members of the community, but it is not likely that these will manifest in any widespread or systematic abuse on the part of the state. However, there is a potential for sporadic community outbursts from more radical social elements.

International business people and migrant workers in Timor-Leste are similarly at some, though low, risk, given a perception that they are stealing jobs or wealth that belong to locals.

### **6.2 Urban Rural Divide**

Since UNTAET was launched in October 1999, international assistance efforts have largely focused on or been based in Dili, contributing to almost 40% population growth in Dili over the past three years, largely through rural to urban migration.<sup>136</sup> Associated problems include overpopulation relative to available housing and increasing strain on weak government services and infrastructure such as health, education, electricity, and clean water supply. The inequality of development assistance available for Dili and other urban centres, e.g. Baucau, compared with rural areas has also fuelled social resentment by strengthening perceptions that a new Dili centred elite rules the country, while the majority of the population languishes in poverty.

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<sup>136</sup> United Nations, Security Council, Progress report...., para 57

In addition to the economic incentives for urban migration, many returnees who had been involved in militia activity during 1999 have tried to avoid community hostility and social alienation in their home areas by relocating to Dili. Ex-militia members have also been known to create their own Dili based groups as a form of bonding and mutual support activity, to compensate for their political and social isolation from other segments of society. In turn, this has generated government concerns about security and resulted in a more aggressive approach to policing, which, ironically, fuels perceptions of elitism and alienation of the government from the people.

Since 2002 there have been a number of donor funded efforts attempting to reverse incentives for rural to urban migration. UNHCR has assisted the Timorese government by providing rural documentation and civil registration services in areas that overlap with its returnee reintegration activities. UNDP, IOM, the United Nations Office for Project Services (UNOPS), and international NGOs have engaged in various rural livelihood programmes in order to address the economic causes of urbanization and illegal cross-border trade. UNTAET has sought to strengthen the ability of the Timorese government to respond to natural disasters such as floods, famines, earthquakes etc. in rural areas through the establishment of the National Disaster Management Office in January 2001,<sup>137</sup> though it is uncertain whether this initiative is still active.

### **6.3 Politics of Exclusion and Personality**

If the public perception is of an increasingly isolated government dominated by personality, this is a source of social and political instability. Such perceptions are indeed strong among some Timorese and officials of international bodies, but they do not sufficiently recognize the cultural, political, historical, and geographic characteristics, which make them only partly accurate. Timor-Leste is a small country, both geographically and in terms of population, and it has only a limited number of individuals with leadership and decision-making skills within the formal government sectors. This, combined with strong existing hierarchies in both urban and rural society and the procedural weaknesses of newly constructed state institutions, has tended to create a situation in which institutional performance and stability depends upon the personal leadership of key figures. Additionally, given the history of occupation and resistance, there is a natural tendency to politicize institutions and to use popular discontent to initiate change by groups that are outside of government.

The dynamics underpinning this process have been fuelled by various government policies. In the absence of local government reform, the government attempted to bridge the government-community divide by dispatching secretaries of state and deputy ministers to serve in the districts for extended periods, while more senior officials such as ministers, the Prime Minister, and the President, regularly went to districts as part of an “open government” programme.<sup>138</sup> These initiatives have further strengthened the personalized nature of politics. That is, rather than creating local level political and administrative entry points to provide input to higher levels of government from the grass-roots level, these

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<sup>137</sup> United Nations, General Assembly, Assistance for Humanitarian Relief..., p. 5

<sup>138</sup> United Nations, Security Council, Report of the Secretary-General..., S/2003/449, p. 2

forays by high ranking government figures have had the effect of further centralizing the democratic process.

In the course of 2004 there have been several occasions when ministerial officials have circumvented the legal process and issued directives to police to disband public protests or arrest people involved in public dissent. Although cause for concern, these interventions have often been benign and have worked to prevent the politicization of the courts. The weakness of court procedures and confusion about applicable laws have created significant scope for disaffected groups to undermine the legal authority of the courts through political attack. Disaffected internal groups commonly accuse individuals, such as court personnel who received their education during the Indonesian period, of complicity with the occupation. Such accusations can undermine the courts' ability to build a culture of respect for the rule of law. In this context, only leadership figures with a high level of "resistance legitimacy" have sufficient political authority to defend the courts against protest from disaffected ex-fighter groups. Such decisive government interventions to maintain stability also seem to be informed by lessons learned during the December 2002 riots in which UNMISSET "leadership paralysis" and operational failures by UNPOL allowed protests to escalate into destructive riots.<sup>139</sup>

While political institutions remain weak, they were intentionally designed by UNTAET so as to bridge social cleavages and resolve conflicts through peaceful institutional processes. Elections for the CA and the Presidency have been free and fair. Appointments to the Cabinet and to parliamentary commissions tend to bridge party lines. Timor-Leste is fortunate in that a large number of its returning diaspora has brought positive expectations about building a humane society, while the indigenous population genuinely wants to build peace and leave its past behind, and all have learned to appreciate that patience is required to build a better future.

#### **6.4 State and Private Sector Economic Development**

The downsizing of the international personnel associated with the transition to independence has always been regarded as a matter requiring careful management so as to maintain social and political stability. Given the scarcity of paid employment in the formal sector, the current contractions increase the risk of political instability. Overall work force levels for 2002 were 310,000 with projected annual increases of 20,000, with around 80% of the population working in the agricultural sector.<sup>140</sup> Employment levels in the cash sector, including tourist resorts, hotels, restaurants, bars, security companies, government and NGOs, were estimated at 22,000, with open unemployment levels likely to be in excess of 20%.<sup>141</sup> The government practice of importing goods and services required for reconstruction activities has also led to a high negative balance of payments, and consequent projected budgetary deficits for the next several years.<sup>142</sup>

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<sup>139</sup> La'o Hamutuk, 4 December Disorder: International Responsibility, *The La'o Hamutuk Bulletin*, Vol. 3, No 8, December 2002, p. 7

<sup>140</sup> United Nations Development Programme, *Ukun Rasik A'an*, p. 17

<sup>141</sup> *Idem*, p. 18; Timor-Leste, National Planning Commission, *National Development Plan*, p. 18

<sup>142</sup> United Nations Development Programme, *Ukun Rasik A'an*, p. 58

The current international downsizing is balanced by higher levels of local spending, in part due to small business loans from the Portuguese Banco Nacional Ultramarino (BNU), World Bank financed Small Enterprise Projects, and government spending on infrastructure development. BNU loans, however, are of particular interest. There is a risk of high loan defaults over the medium term, which could lead to bank seizure of assets and other collateral underwriting private loans. Like many of the Quick Impact Projects during the period of UNTAET, BNU business loans are plagued by problems of viability, sustainability, and profitability because of the political rather than economic imperatives driving the loan process – focusing on distributing cash locally so as to assist the government to maintain social and political stability.

However, there are numerous sectors throughout the economy with tremendous growth potential. This includes the fishing industry, which has an estimated harvest potential of 116,000 tonnes annually.<sup>143</sup> Other promising areas include ecotourism, extraction and processing of marble for export, cultivation and rehabilitation of sandalwood for export, livestock production for export, and coconut production in Viqueque for export to the Japanese market. The government is also exploring the possibility of Norwegian and Chinese companies conducting inland geological surveys of potential natural gas and oil reserves.<sup>144</sup>

The potential for exploitation of the Timor Sea gas and oil reserves is considerable, though at present the Timorese government is engaged in a dispute with the Australian government over the rights to these reserves. The issues centre on the demarcation of Timor-Leste's maritime border, and at present Australia is claiming the right to exploit 80% of the likely reserves, under a hasty agreement with Timor-Leste that arguably breaches international law.

## 7 Conclusions

It is undoubtedly the case that the principal reason for Timor-Leste's high levels of stability and security in the post-2002 period has been the ongoing assistance provided by UNMISSET in areas of governance and security. UN civilian personnel have played a crucial role in filling key administrative positions in support of the Timor-Leste government, but have also served the function of de-politicizing administrative structures. The prolonged UN security mandate and retention of a credible PKF deterrent along the border has worked to counter real and perceived threats of militia incursions. The UN mission presence has also moderated internal political tensions by acting as an outside arbitrator. This moderating influence has been most pronounced in joint PNTL and CivPol policing operations in rural areas, though the UN's role in assisting with PNTL capacity building should not be ignored.

Timor-Leste has a fairly good legal framework for human rights, but there remain serious operational, procedural, and institutional weaknesses in all government institutions, and this

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<sup>143</sup> Guterres, A., Planning for Fisheries Development in East Timor, in Da Costa, H. [et.al.] (eds), *Agriculture: New Directions for a New Nation: East Timor (Timor-Leste)*, Canberra: ACIAR, 2003, <http://www.gov.east-timor.org/agriculture/ta100/ta104.pdf> [accessed December 2004]

<sup>144</sup> Pedersen and Arneberg (eds), p. 23

makes protection and oversight mechanisms weak or non-existent. To date, cases of serious human rights violations have occurred at the community to community level and taken the form of sporadic retributions rather than being politically organized attacks against particular groups in society. Numerous less serious human rights violations have been committed by the state, due to institutional weaknesses and insufficient training of personnel. Institutions have experienced fluid and rapid change over the past five years; they are poorly resourced and therefore highly unstable. While there are numerous projects underway, or planned, that will eventually improve the capacity of government, the current situation is that the courts, police services, and army have not been consolidated to the point where they can maintain law and order inside the territory in a manner consistent with international human rights standards. Without continued external support, it is likely that the relatively good human rights record that currently exists will deteriorate rapidly due simply to institutional weaknesses.

Both the formal and the local justice systems are highly unequal, particularly for women and children, but also for men from lower socio-economic backgrounds. The CAVR, along with other initiatives such as the government land law programme, have provided workable models around which to resolve some of these problems, but lessons have not yet been applied to the formal court system in a workable manner. These factors, combined with the perception of an “upper class elite” returning from exile abroad, have created the impression that the government is alienated from the broader public. *Suco* elections will not be sufficient to counter the alienation caused by the over-centralization of the political system. There is also a risk that serious political instability at this stage of Timor-Leste’s development could undermine the rehabilitation of the agricultural sector, which is still recovering from decades of structural damage from violence and war, and thus lead to humanitarian crises.

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