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***International Support to Peace-Building Efforts in East Timor:
Achievements and Challenges***

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Introduction

It is my great pleasure and distinct honor to participate in this international conference on “Peace-Building: Towards Rehabilitations of East Timor and Afghanistan,” organized by the Japan Institute of International Affairs (JIIA) and the United Nations University. I am pleased to have this opportunity to share my views and hear those of eminent persons such as President Xanana Gusmão, JICA President Madam Sadako Ogata, Special Adviser to the Secretary-General Lakhdar Brahimi, President of JIIA Yukio Satoh, Vice Rector of UNU Ramesh Thakur and Director of JIIA Kuninori Matsuda.

Let me start at the point of an agreement among those engaged in peace keeping and peace-building activities: That peace is not just the absence of war and that peace-building requires more than the rehabilitation of infrastructure and institutional facilities destroyed by war. I believe this is the premise that has brought us together in this conference to discuss the important issue of post-conflict rehabilitation and peace-building as a means of conflict prevention. After going through the early period of active involvement by the UN in peacekeeping operations and of trials and errors in the new approach to the maintenance of peace and security in war-torn societies and failed states, we, as one of those who participated in the rehabilitation process, realized that the end of conflict hardly constitutes sustainable peace and security.

The rehabilitation of post-conflict countries has presented one of the formidable challenges as well as ample opportunities for the international community to marshal its efforts in addressing the requirements for domestic, regional and international peace and security. In the post-9/11 world, post-conflict rehabilitation has become even more crucial, as an instrument against major threats to world peace and security. As a developmentalist, I would go one step further, in sharing the view that in fact, one of the major threats to world peace and security is the unfairness that exists, at the national and international levels, in the social, economic and political conditions governing peoples and nations.

Since the dawn of the new Millennium, we have seen the world community’s moving towards a consensus, that the most critical part of peacekeeping is its link with peace-building as both constitute an integral part of the whole peace activities. Yet, we must continue to ask a thorny question: Has the recognition of the inextricable links between peacekeeping and peace-building been put in practice with the coherent policy as well as financial and organizational commitments required? The discussion in this forum of the rehabilitation of Timor-Leste, as East Timor is officially called, I hope, will help us take stock of the achievements as well as challenges of the rehabilitation of Timor-Leste, and exchange our views on the ways that may help improve the world community’s support to post-conflict rehabilitation. As the public support in troop and police contributing nations is often a determining factor in the shape and depth of international support, I hope that this conference will

help promote the awareness of the public in Japan on the prevention of conflict through peace-building and post-conflict rehabilitation.

Through Timor-Leste, the world community witnessed immense human suffering and devastation in 1999 and the birth of a nation at the dawn of the new Millennium and at the crossroad between Asia and the Pacific. The international support to this newest country came after the UN's self-examination and rethinking of the post-cold war peacekeeping efforts. As a result, the United Nations Mission of Support in East Timor (UNMISSET), which began its mandate in May 2002, has been one of the most coherent and integrated peacekeeping operations in which the UN and key Member States have recognized the need for merging, under the authority of the Special Representative of the Secretary-General, the UN's role in military operation, policing, humanitarian, justice, human rights and economic management and the need for ensuring a smooth transition from peacekeeping to peace-building and long-term development. UNMISSET's multi-dimensional mandates comprises the executive authority in external and internal security operations, the support to the civil public administration and the process of promoting reconciliation as well as punishment for serious crimes committed during the conflict.

The UN Security Council, in its resolution 1410 adopted in May 2002, entrusted UNMISSET with a set of peacekeeping and peace-building mandates in the following three areas of support to Timor-Leste:

- (1) **External Security and Border Control**, which involves the deployment of the UN military peacekeeping force to maintain security mainly in the border areas and provide deterrence to external threats, if any;
- (2) **Public Security and Law Enforcement**, which involves providing interim law enforcement and public security and assisting in the development of the national police force (PNTL); and
- (3) **Stability, Democracy and Justice**, which envisages a massive programme of support to public administration and state institutions, including those in the justice sector, by providing 100 international "stability" advisers to ensure that the critical state organs are established and functioning.

In my presentation today, I wish to provide you with first, an overview of the achievements as well as challenges in the above three areas of international support to post-conflict Timor-Leste, particularly through the mandates given to UNMISSET, second, key issues affecting the effectiveness and shortcomings of international support so as to avoid the recurrence of conflict or to protect the gains achieved and third, my views on what we may

consider as possible ways to help improve the modalities for international support to post-conflict rehabilitations and peace-building activities.

PART I: ACHIEVEMENTS AND CHALLENGES IN THE REHABILITATION OF NATIONAL INSTITUTIONAL CAPACITY FOR SECURITY, PUBLIC ADMINISTRATION, JUSTICE, HUMAN RIGHTS AND ECONOMIC MANAGEMENT

In the overview of achievements and challenges in the rehabilitation of the country, it is indeed necessary for us to recognize the multidimensional nature of peace-building activities carried out in the interlinked areas of security, public administration, justice, human rights and economic management. Therefore, let me begin with the achievements made so far and the challenges still remaining, first in the area of external and internal security, then in the areas of public administration, justice, human rights and economic management.

A. MAINTENANCE OF SECURITY

(1) Achievements in the Maintenance of External Security and Territorial Integrity

Since the United Nations established its transitional governing authority for East Timor by resolution 1272 on 25 October 1999, the UN Peace Keeping Forces (PKF) have contributed decisively to the overall security of Timor-Leste particularly in the border areas. During the last two years following the establishment of UNMISSET in May 2002, UNMISSET's military component continued to provide pivotal support for the external security and territorial integrity of Timor-Leste, while ensuring the timely transfer of security responsibilities to the national defense force, Falintil-FDTL (F-FDTL).

Major security threats did emerge in late 2002 and early 2003 when riots and grave civil disturbances erupted in Dili on 4 December 2002 and a further serious security incident took place on 4 January 2003 when a group of about 20 to 30 men armed with automatic weapons attacked villages near the towns of Hatolia and Atsabe in Ermera district and killed five people. Then, on 24 February 2003, a small group of men armed with semi-automatic weapons attacked a shuttle bus traveling from Maliana in the border district of Bobonaro to the capital city of Dili. Two people were killed and five people injured. UNMISSET military and police forces were deployed to the area immediately. On 27 February 2003, a UN Fijian military patrol sighted and exchanged fire with a group of armed men in the area, killing one and apprehending another. It appeared that former militias and armed groups were seeking to establish support within Timor-Leste with the purpose of undermining the stability of the country. This external security concern, however, has receded as the situation has remained largely calm since March 2003 while the relationship between Timor-Leste and Indonesia improved significantly during the last one year.

Meanwhile, the downsizing plan for UNMISSET's military component has taken place as planned to the current military strength of about 1,750 personnel, including 78 military observers compared to 3,760 military contingent personnel and 106 military observers in June 2003. The PKF is at present responsible for security only in the western districts and along the tactical coordination line (TCL), between Timor-Leste and Indonesia. The PKF maintains a capability to respond to security threats throughout its areas of operation. This includes visiting patrols into the border districts of Suai and Oecussi, where the military component no longer maintains a large-scale presence. In addition, the United Nations Military Observers (UNMOs) continue to facilitate border management issues through permanent border liaison teams close to key junction points or border crossing points and regular visits to other junction points using mobile patrol teams.

The Border Patrol Unit (BPU) of the national police force or Policia Nacionale da Timor-Leste (PNTL) has now assumed full responsibility for day-to-day management of all junction points along the tactical coordination line, with the UN's transfer of authority that took place at Batugade in October 2003. The BPU's ability to maintain security in the border area will depend on close cooperation with Indonesian counterparts or the Troop National Indonesia (TNI). UNMISSET continues to support the close collaboration between Timorese security agencies, in particular the PNTL and the defense force or F-FDTL. The Mission has helped create the joint information center where international military and police officers work with Timorese counterparts on day-to-day information management and analysis.

Through their interaction with UNMISSET's military component, F-FDTL officers have improved their understanding of the functioning of military headquarters and develop their skills in logistic planning, communications, map reading and other practical areas. While, the F-FDTL is capable of limited response operations, its commander Brigadier General Taur Matan Ruak told me just 10 days ago, on 13 February, at the ceremony marking the third anniversary of the F-FDTL and the closing of a training course for officers and sergeants, that it would require several more years for the F-FDTL to develop a logistic capability to respond to major external threats – if any.

In spite of the overall stable relationship that exists between Timor-Leste and Indonesia, reports of sightings of armed gangs and criminal elements in districts bordering West Timor have increased during the last few months. For example, on 29 January 2004, according to the PNTL, a group of 150-200 West Timorese including six people believed to be TNI members reportedly crossed the river bordering East and West Timor and allegedly burnt 15 huts and destroyed crops at a village (Sassa Village) in Bobonaro district. With these developments, the leaders of Timor-Leste became anxious that the United Nations maintain its security presence in the country even after the mandate of

UNMISSET completes in May 2004. Reflecting this concern, Prime Minister Mari Alkatiri wrote to the UN Secretary-General on 2 February requesting officially the retention of one military battalion. The Secretary-General took note of the wide spread public concern over the security of the country and at the same time the limited capacity of Timorese security agencies. Subsequently, he recommended to the Security Council a provision of 42 military liaison officers to monitor security-related developments and to facilitate contacts between the two sides of the tactical coordination line, or a de facto borderline, separating the two countries. To promote continued calm and to avoid potentially destabilizing impact of abrupt termination of the international presence, the Secretary-General proposed to the Security Council the retention of a formed military component with the total of about 350 military personnel, including an infantry company, air support unit and UNMOs, as reflected in the latest report of the Security-General to the Security Council (S/2004/117).

(2) Japan Self-Defense Force: Its Contributions and Limitations

Before I move to the discussion of internal security and law enforcement, I should refer to a major contribution made by the Japan Engineer Group of the Japanese Self-Defense Forces to the maintenance of roads, bridges and other transportation infrastructure facilities that are essential for the mobility of not only military personnel and equipment but also civilians and materials.

The Japan Ground Self-Defense Force Engineer Group commonly known in Timor-Leste as the Japan Engineer Group (JEG) started their activities in March 2002. In addition to 10 headquarters personnel, 680 JEG personnel were stationed in four locations of Dili, Oecussi, Suai and Maliana. The JEG provided as its primary task, engineer support for security related activities of the peacekeeping forces including water supply. They have undertaken more than 90 engineering and rehabilitation works on the main supply routs (MSR), including the rehabilitation of roads and bridges as well as clearance of rocks and trees. The maintenance of roads and bridges helped provide secure environment to local residents as it enabled PKF members to sustain their mobility.

In addition to road maintenance and rehabilitation works, the JEG carried out valuable training courses on the maintenance and operation of vehicles and heavy engineering equipment to 67 Timorese personnel. They are now maintaining roads and bridges in the southern part of the country where flooding takes place frequently. Also, the JEG has contributed its technical expertise to projects financed by official development assistance (ODA) resources provided by Japan and other countries. In July 2003, the JEG assisted the Ministry of Transport, Communications and Public Works in reconstructing the flood-damaged Lugassa Bridge in Viqueque and in September the JEG began its technical assistance in rehabilitating the Maliana irrigation intake and canal in Bobonaro, both of which were supported by the Recovery, Employment and Stability Programme for Ex-combatants Community in Timor-Leste (RESPECT),

funded by the Government of Japan. For the Maliana Irrigation II project, the RESPECT team employed 50 ex-combatants, 166 youths and 301 other vulnerable community members. It was inaugurated on 31 January 2004 by Prime Minister Mari Alkatiri who travelled to Maliana with me and Ambassador of Japan Hideaki Asahi.

As UNMISSET is reaching the end of its mandate in May 2004, the JEG as part of UNMISSET/PKF has started donating dump trucks, excavators, bulldozers, steamrollers and other engineering equipment to the Government of Timor-Leste.

By the restriction imposed by the Japan's laws upon conduct of the Japan Self-Defense Forces, the role of JEG personnel has been kept limited strictly to backup support activities. They have not been engaged in any activities directly related to the maintenance of security. For example, when the riots and civil disturbances occurred on 4 December 2002 in the capital city of Dili, the JEG soldiers could not be mobilized to intervene and patrol the capital city of Dili although they were stationed at Taci Tolu, only 5 kilometers from the center of Dili. UNMISSET/PKF had to bring in Portuguese PKF soldiers who were stationed in the districts of Liquica and Baucau, taking a few hours before they could reach Dili. The JEG also has not joined Australia, Portugal and the United States in conducting the training of personnel of the newly created national armed forces, the FDTL.

(3) Achievements in Internal Security and Law Enforcement

The rehabilitation experience in Timor-Leste has confirmed that the maintenance of law and order and internal security is most crucial in laying a pre-requisite for long-term peace and stability of a post-conflict nation. Support provided by the international community through UNMISSET has resulted in some tangible achievements as well as shortfalls in the maintenance of internal security.

Within the same year Timor-Leste gained international recognition for its independence, as indicated already, the country encountered a major civil disturbance in Dili when mobs attacked and burned government buildings as well as the residence of the Prime Minister and business premises on 4 December 2002. The inexperienced members of the PNTL fired into protesters resulting in the death of two civilians. The incident shook the confidence of the Timorese leadership and the international community supporting Timor-Leste in its post-conflict rehabilitation. Since then, however, the relative calmness and the low crime rate that prevailed during most of 2003 gradually increased the sense of security and stability among Timorese citizens and foreign residents, despite occasional reports of threats posed by armed groups and criminal elements in the rural areas as well as smuggling, extortion and robberies in many parts of the country and sporadic violence among martial arts groups and youth gangs in certain urban areas.

So far, UNMISSET police component (UNPOL) has completed the transfer of routine policing authority to the PNTL in all 13 districts of the country with the last handover of patrolling responsibilities in Dili district on 10 December 2003. This is in line with the downsizing plan for UNPOL's presence with the reduction from the total strength of 1,250 at the time of independence and about 680 UNPOL police officers last year to the current number of about 325 (comprising some 200 international police advisors and a 125-member formed unit). UNPOL continues to hand over functions to its Timorese counterpart at the police headquarters while the remaining 200 UNPOL technical advisers continue to assist with specialized tasks and mentor Timorese police officers in the districts. In addition, the 125-officer Malaysian formed police unit remains available to respond to major cases of civil disorder.

In forming the national police force in less than two years, UNMISSET has trained 3,024 national police officers. Out of this number, over 20 percent are women, representing a relatively high proportion in comparison with the figures worldwide. UNPOL has revised the training course for police cadets from the three-month course to the four and six-month curriculum while interested bilateral development partners, the UN System agencies and UNMISSET Human Rights Unit have provided in-service training for PNTL officers after their initial training. To complement police development efforts by UNMISSET, bilateral partners have supported specialized training on surveillance and intelligence as well as on supervision and management. UNMISSET has incorporated all human rights training in all police trainings.

Meanwhile, the Government has established three special police units within the PNTL:

- Shortly after the December-4 incident, UNMISSET and the Government of the Democratic Republic of Timor-Leste (G-RDTL) agreed to reconstitute one special police unit into a Rapid Intervention Unit (RIU or UIR) in order to increase the national police's capacity to respond to civil disorder in a professional manner particularly in urban areas. The training of the RIU has since been continuing with intensive retraining that initially commenced on 13 October 2003. The RIU retraining course that will take place 9-22 February is expected to enable this rapid intervention unit similar to *Kido-tai* in Japan to increase its effectiveness and professional responsiveness by the end of UNMISSET's mandates in May this year.
- Secondly, the G-RDTL decided to establish a unit within the PNTL to patrol and manage the border. UNMISSET has trained the Border Patrol Unit (BPU) with the full deployment of 219 national police officers. So far, the skill transfer from the peacekeeping force (PKF) and UNPOL to the BPU officers has helped improve the BPU's efficiency. While the BPU is

generally functioning well in border control and patrolling, it has faced the challenges of logistical requirements.

- Thirdly, the development of another special police unit, the Rapid Deployment Service (RDS), initially envisaged by the Government to be a force in countering possible incursions and threats posed by militias and heavily armed groups in the rural and border areas, has been challenging - politically, institutionally and financially. With the delay in the recruitment, equipping and training of the RDS, considerable problems are now encountered in creating an effective rapid deployment capability within the PNTL before the UNMISSET PKF military component's withdrawal in late May 2004.

To address key institutional shortcomings, UNMISSET continues to support the Government's efforts through the PNTL Institution Strengthening Committee under the leadership of the Minister of Interior and senior officials concerned to lay the basic legal, administrative and policy frameworks in creating a viable, professional and independent police agency. The Government has identified key priorities for the next three months before the end of UNMISSET's mandate. These include establishing a PNTL disciplinary committee and advancing the comprehensive review and approval of police procedures (SoPs) and general guidelines as well as ensuring their accessibility and applicability for all PNTL officers. Achievements in this area include increased awareness on the part of the Government and the PNTL to address key institutional issues. This has led to positive tangible results in establishing an administrative and planning unit in the Ministry of the Interior; assigning PNTL liaison officers to work in the defense force and the Prosecutor-General's Office; integrating human rights in all police training; revising the police curriculum; undertaking the comprehensive review of about 20 police policies and procedures and adopting specific guidelines and plan for community policing. Despite this progress, there is a need for an intensified efforts to put in place key institutional, legal and policy frameworks, according to internationally-accepted standards, in addressing the issue of police discipline, oversight mechanism and the police's relations with the public and other security organs such as the defense force in the broad national security framework.

As noted in the latest report of the Secretary-General, continued support by the international civilian police (of 157 police advisers) is crucial, beyond May 2004, for the development of the PNTL as a non-political and professional service through monitoring, mentoring and assisting in defining basic police policies and procedures (SoPs).

(4) Challenges in the Maintenance of Internal and External Security

Despite progress achieved in the development of the PNTL, by the end of UNMISSET's mandate in May 2004, reports on police misconducts and violation of human rights, such as excessive use of force, assaults, negligent use of firearms,

criminal activities and corrupt practices, have been the cause for concerns. In January 2004, there were 21 complaints registered against PNTL officers compared to 10 cases for the same period last year. This continues to erode public confidence in the police force.

Despite considerable achievements in the maintenance of security during the last two years, there remain threats to peace and stability in Timor-Leste. Let me identify these threats. The first is largely apolitical, with a history pre-dating 1999 and characteristic of many developing nations. It includes violence associated with large numbers of unemployed youth, martial arts group rivalries, marketplace turf battles and criminality, mostly centered in Dili and Baucau. Only long-term economic and educational developments will address the root causes. In the meantime, a reasonably effective, professional, impartial and publicly accountable law enforcement apparatus should be able to deal with these situations.

The second category of threats to peace and stability is more specific to the Timorese political context and related to perceived inequities in the distribution of marginal benefits. Many who were involved in the independence struggle, such as former clandestine groups, ex-combatants and veterans, hold deeply felt, genuine grievances. Prominent among these is the CPD-RDTL (Popular Defense Council of the Democratic Republic of Timor-Leste), a group rejecting the entire transition process. Of course, the two types of conflict interact with one another, e.g., the lack of productive employment opportunities drives veterans to lobby for Government jobs, while idle youth are prime recruits for groups with political grievances.

The relations between police and military, both in the early stages of their development, present potential security issues. While the UN has not been responsible for training the new defence force, UNMISSET has nevertheless devoted considerable attention to the issue of civil-military and police-military relations. One of the main challenges in promoting cooperation between the police and the defense force in maintaining internal and external security is the lack of clarity in defining the roles of these forces in the broader national security context. At the same time, recurring incidents involving conflicts between officers in the Timorese police and those in the armed forces point to the issue of morale and discipline. It is imperative for the healthy development of the Timorese police and armed forces also depends on the political decisions in redefining their roles and functions.

Despite the progress in the development of national police, it is clear that ensuring the effectiveness, impartiality and accountability of the national police force, at both the institutional and operational levels, will remain a long-term challenge. Following UNMISSET's departure, the police specialized units will play a crucial role in Timor-Leste's security structure, particularly in the management of the border area, as described below. These police special units, however, continue

to lack essential equipment and financial resources and will require additional assistance even after May 2004. Furthermore, at the end of UNMISSET's mandate, the PNTL still lacks technical skills in a number of other specialized areas, including investigation, forensics, intelligence-gathering and special police operations to counter major crimes, such as terrorism, abduction and hijacking.

The PNTL's ability to win public confidence will depend upon further efforts to strengthen discipline and compliance with internationally accepted standards of policing. Continued mentoring and monitoring of the PNTL and its special units would be necessary to promote oversight, accountability and compliance with international human rights standards. To develop appropriate institutional and legal frameworks for the PNTL requires further efforts in ensuring that police recruitment is based on merit and in encouraging an open and democratic policing culture.

With regard to the external security situation, the relationship between Timor-Leste and Indonesia remains a critical factor affecting Timor-Leste. The two countries have made progress toward establishing the kind of diplomatic framework necessary to maintain mutually beneficial relations and increase cooperation. This includes Prime Minister Mari Alkatiri's successful visit to Jakarta in June last year and the implementation of the Joint Ministerial Commission.

Another challenge is to meet the target dates for the delineation of the land border. It is now hoped that the agreement on a provisional line constituting the border would be achieved by May 2004, while recognizing that a more refined line and a formal treaty will take much longer. Although we should not overestimate the border delineation as the border will remain porous, the continuing lack of a defined line will provide fertile grounds for misunderstandings and incidents.

While reported sightings of armed groups moving around Timor-Leste's border districts continue, it is significant to note that since early 2003 there have been few significant security incidents resulting from cross-border incursions. This reduced activity has occurred notwithstanding that significant numbers of 'ex-militia' remain in West Timor near the border. Despite the continuation of long running discussions and proposals, there seem little prospects for relocating out of West Timor significant numbers of ex-refugees including the 'ex-militia' and other East Timorese associated with TNI. Repeated initiatives to encourage the remaining former refugees to return to Timor-Leste, including the tireless efforts of President Gusmão, have as yet made no headway.

The area of the tactical coordination line remains porous while illegal hunting, trade and crossings continue. Close cooperation with Indonesia will remain crucial to address these and other longer-term security challenges in the area, including the challenges posed by the continued presence of a significant population of former refugees. Approximately 26,000 former refugees from Timor-Leste still remain in West Timor, most of them located in the border areas.

In addition to its security implications, this situation has considerable humanitarian costs, including cases where parents and their children are located on separate sides of the tactical coordination line. There is a need for durable solutions in addressing these challenges.

The enclave of Oecussi, in particular, presents potential for cross-border incidents. Effective implementation of the land corridor already agreed upon with Indonesia is essential. With the withdrawal of the PKF and UNMOs and most other internationals we can expect that information from Oecussi will be decreased while the communication links will weaken further.

The development of the Timorese armed forces will continue to depend upon bilateral support through the provision of equipment, training and facilities. The interaction of the Timorese armed forces with counterparts in UNMISSET's military component has offered some opportunities for skills and knowledge transfer. Based on progress to date, a company-level capability of Timorese armed forces to undertake limited response operations may be available by the end of UNMISSET's mandate. But the development of a battalion-level capability to conduct sustained operations is likely to take a few more years following UNMISSET's withdrawal.

The timely reduction and withdrawal of UNMISSET's military component requires a smooth transfer of responsibility to the relevant Timorese security agencies and institutions, including the Border Patrol Unit. Officers of the BPU are currently deployed in all three districts along the tactical coordination line and have assumed responsibility for the nine main crossing points with West Timor as well as for "patrol zones" in the area. The PKF has invested considerable effort in establishing cooperative relations with the TNI, which has helped resolve border incidents. Recent experience at the border crossings or junction points has demonstrated the potential for the PNTL and the TNI to work together in a professional manner.

Timor-Leste represents a tempting, as relatively unprotected, target for elements from trafficking organizers, pedophiles and criminal gangs, who constitute another external threat capable of suborning, undermining and compromising the lawful order and exploiting restless elements as well. There is an urgent need for the capacity building of Timor-Leste to forestall these potential threats.

Assessment of external threats to Timor-Leste is inextricably tied to the country's internal stability. External meddling in Timor-Leste during the last 30 years has most often been linked to internal vulnerabilities and upheavals. The most effective way to minimize external threats is to develop the country's economy, especially in the border areas and Oecussi, and to build up effective and accountable Government and security institutions while minimizing disgruntled elements who feel

they have been neglected or are outside the system. Failures to manage internal issues will increase the country's vulnerability to external threats.

Fully aware of this causal relationship, during the Meeting of Development Partners on 3 December 2003, the Prime Minister called for international assistance in support of “preventive development” he wished to launch in areas close to the border.

B. ESTABLISHMENT OF VIABLE STATE INSTITUTIONS AND PUBLIC ADMINISTRATION

A major achievement of the political leadership and the people of Timor-Leste is the establishment of basic governance structures in a peaceful and participatory process while respecting fully the democratic principles and human rights. The UN and development partners have contributed much to this process. The transition is remarkable since Timor-Leste had undergone four centuries of Portuguese colonial rule and twenty-four years of Indonesian occupation. The building of basic legal structures included the election of the Constituent Assembly members held on 30 August 2001. The Constituent Assembly, after completing the adoption of the Constitution, transformed itself into a legislative assembly and became the first National Parliament of the independent country. On 14 April 2002, the first Presidential Election was held. The Constitution of the Democratic Republic of Timor-Leste came into force on 20 May 2002 marking the birth of an independent country. The Constitution provides for a unitary democratic state, based on the rule of law and the principle of the separation of powers. It provides for an elected President of the Republic, the Government, the National Parliament and an independent judiciary.

(1) Achievements

Prior to the restoration of independence in May 2002, few Timorese had been trained in senior and middle level management and administration of public institutions. As a result, the vast majority of incumbent civil servants in managerial positions were not adequately trained or experienced for the critical tasks they are entrusted to perform.

To address the problem of skills shortage, the National Development and Planning Agency and the United Nations Development Programme (UNDP) carried out a study on the “Capacity Development for Governance and Public Sector Management” in August 2001 and identified the need for a progressive capacity building approach, which extends over a period of next 15 years in four phases:

- In the first phase, during the first six months from July 2001 to January 2002, the focus was on capacity development in terms of essential capacities needed to support service delivery;
- In the second phase, in the following two years from 2002 to 2004, the focus is to be on the maintenance of skills initially developed, their consolidation and consolidation of those institutions created to support the government's general functions;
- In the third phase, during the next eight to ten years, the focus will be on the expansion of service delivery by the public administration to the population through improvements in its programming, its expertise and capacity; and
- In the fourth phase, during the next ten to fifteen years, the Government's efforts should focus on improving its service delivery and its productivity.

According to the UNDP's study on Governance and Public Sector Management, the support to public administration during the first two phases required varying degrees of dependence on international human resources. The study provided a framework for transition to a national administration and suggested 75 areas of human resources and institutional development. Some 32 components were identified as critical requiring support in 2002 while 29 components were identified for implementation by 2004, with the remaining 14 components for long-term capacity building to be completed by 2012.

Taking into account the findings of this study, the Security Council has entrusted UNMISSET, in its mandates during May 2002 until May 2004, with the responsibility of providing advisory support of international advisers or the Civilian Support Group (CSG) to ensure stability and democratic functioning of Timor-Leste independent state institutions in the immediate post independence period. The CSG advisers were to provide assistance to core administrative structures critical to the viability and political stability of Timor-Leste. The CSG core members comprise "100 stability" positions created to sustain the administration of financial, infrastructure and legal systems as shown in the following four thematic areas:

Financial and Central Services	42 advisors
Internal Systems in various ministries	27 advisors
Essential Services (water and sanitation, power, roads, housing, ports and health)	17 advisors
Legal / Justice Systems	14 advisors

At the beginning of UNMISSET's endeavor in supporting the governance and public administration institutions of Timor-Leste and in addressing the lack of capability of Timorese civil servants, the support through the CSG programme focused on these immediate goals:

- To ensure the viability and sustainability of the institutions and capacity building process initiated since UNTAET and “minimize the risks of government failure and hence political instability,”
- To provide active support for the promulgation of critical legal framework, formalization of rules regulations and standardization of operating procedures, without infringing upon Timor-Leste sovereignty; and
- To address effectively the acute lack of basic essential knowledge and skills of the Timor-Leste public servants and to move towards the path of self-reliance

With almost three fourth of the mandated timeframe a history now, UNMISSET has so far made significant achievements in enabling the viability and political stability of Timor-Leste state institutions. More specifically, the civilian advisors have played pivotal roles in assisting the Government in preparing legal frameworks, formalizing related rules and regulations, instituting operational procedures as shown in ANNEX B. As a result, by the end of November 2003, UNMISSET was able to phase out 30 out of 100 “stability” CSG advisers, in consultation with the Government. The work of these advisers continues to be supplemented by “development” advisers funded by bilateral donors.

While such bilateral assistance has brought important benefits to Timor-Leste, it has presented considerable challenge in terms of timeliness and predictability, as noted by the Secretary-General in his latest report to the Security Council. By January 2004, 20 months after the “development advisers” programme began, only 118 out of 209 posts identified for support have been filled, while an average of 63 of these posts have been occupied during this period.

The development of the public administration's legislative and regulatory framework, which is of particular significance for its long-term viability, remains at a very early stage of development. The preparation of a Civil Service Act has begun while “organic laws” for some key ministries have been adopted. The Parliament is currently considering draft legislation that would establish the office of the Provedor for Human Rights and Justice. It is crucial that further progress occur in this area before the end of UNMISSET's

mandate. It is clear, however, that many more such laws, regulations and procedures will remain to be developed.

The justice system in Timor-Leste remains particularly weak. Delays and uncertainties within the justice system have continued with negative implications for the functioning of the police and prison services. Only 22 judges have been appointed in the country. The limited availability of public defense and of judges greatly has limited the functioning of courts outside Dili. There have been long delays in issuing indictments while many pre-trial detainees, including juveniles and non-violent-crime offenders, are held for long periods before trial. The court system lacks efficient case management procedures and inadequate implementation of human rights safeguards, including the right to appropriate legal representation, translation of proceedings to a language that is understood by all concerned and the lack of guaranteed access to relevant legal information. Ongoing overseas training programmes for judges may, in the long term, help address this crucial need though, in the short term, they increase the shortages of judges. Some of these institutional weaknesses are now being addressed through a programme supported by UNDP, while bilateral efforts are playing an important role. Further support will be crucial in avoiding further backlog within the justice system.

Pending further progress in the establishment of legislative and regulatory frameworks and uncertainty in the availability of voluntary funds for civilian advisers, it has become clear that there is a need to make a change in the CSG mandate implementation plan that had been drawn up based on the assumption that no further support would be provided beyond May 2004. The exit strategy in this case was based on the assumption that the responsibility for skills transfer and capacity building support would be shifted to “responsible hands”, i.e. bilateral and multilateral development partners, for carrying forward the mission of self-reliance and sustainability.

(2) Challenges

Despite the accomplishments, the requirement for human and institutional capacity building turned out to be far more demanding than originally envisaged, requiring the Government and other state institutions to demand the continuity of the institutional support and capacity building process beyond the end of UNMISSET in May 2004. There remains a substantial challenge of developing, on a sustainable basis, the capacity of the Timorese without the international civilian advisors. In all, the progress in establishing viable public administration remains fragile with the following challenges.

- While some tangible progress has been made in instituting rules, regulations and operating procedures, the Timor-Leste state institutions are still in need of support in establishing legal frameworks. The lack of the Civil Services Law and the Organic Laws, for instance

pose a major threat or challenge to the sustainability of the accomplishments.

- The lack of basic essential knowledge and skills of the Timor-Leste public servants is the second major challenge. The efficient and effective discharge of the official responsibilities is not only impaired by the lack of adequate exposure and hands on expertise but also aggravated by the lack of basic essential knowledge and skills.

- As noted in the Secretary-General's report to the Security Council (S/ 2004/117 of 13 February 2004, para 21), the transition from the "stability" to the "development" advisers faced serious problems in terms of timeliness and predictability as the "development" advisers of necessary qualification and experience could not be recruited due to unavailability of funds. It took more than one and half years before half of 209 "development" adviser posts were filled only in January 2004.

Despite the progress that has been achieved, important weaknesses remain where further international assistance will be crucial. The administration continues to lack managerial-level expertise, and has not yet acquired the skills required to discharge a number of essential tasks, including in particular in the key area of finance, where incapacity could quickly undermine the functioning of the Government and lead to instability. Other key offices, including that of the Inspector-General, the Ministry of the Interior and of the Secretary of State for Defense, still require support.

The assessment of the critical needs that may exist after May 2004 by a taskforce comprising of the Capacity Development and Coordination Unit (CDCU) of the Government of Timor-Leste, UNDP and UNMISSET has revealed that the time required for human capacity building in some of the 100 core functions was far more than the original timeframe set for the CSG advisors. Based on their recommendations and further consultations held with the Government of Timor-Leste, it is envisaged that there will be an inclusion of 58 advisers in the Consolidation Phase of UNMISSET for another year beyond May 2004. Of these adviser posts, 19 or 33 percent would be in the area of finance administration, 16 or 27 percent in other key ministries, 8 or 14 percent in various other state organs such as the Offices of the President and the Prime Minister, the National Parliament and the Council of Ministers, and 15 posts for strengthening of the justice sector.

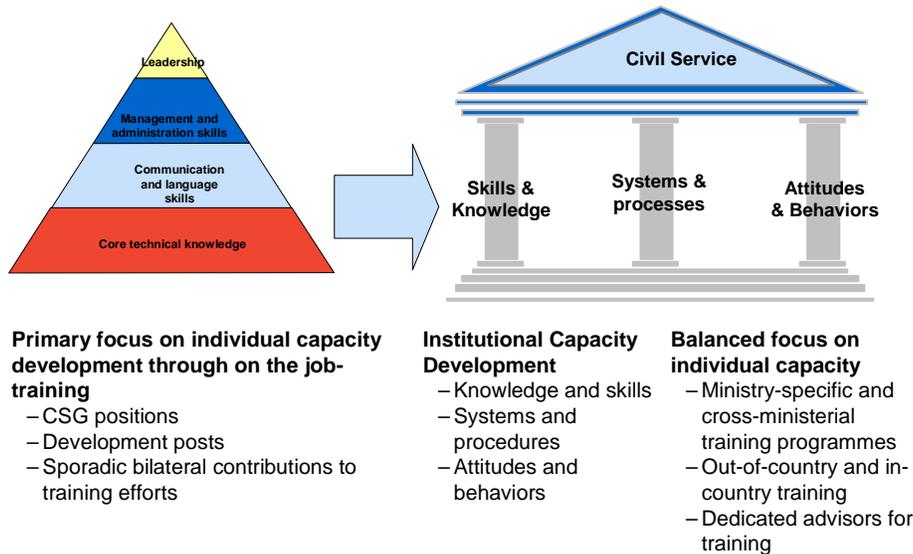
The Government and UNMISSET also recognized the need to institute a more integrated strategy for strengthening the civil services and adopt a holistic approach for long-term institutional capacity development and a coherent and well-coordinated assistance by all key stakeholders.

(3) New Integrated Approach to Institutional Capacity Building

As Timor-Leste advances to the next institutional capacity development phase, I proposed to the Meeting of the Development Partners in December 2003, that there is a need for a paradigm shift in capacity development to enable Timor-Leste state institutions to go beyond the short-term objective of securing stability but to develop administrative capacities that will enable ultimately sustainable growth and poverty reduction. This shift entailed the move from the current focus on building the capacity of individual national counterparts to institutional capacity development, which stands on three equally important pillars. These pillars are (1) skills and knowledge, (2) systems and procedures and (3) behaviors and attitudes.

This new integrated approach contrasted the traditional approach which focuses on increasing necessary skills and knowledge required for the civil service consisting of four main skills: (1) core technical skills and knowledge; (2) communication and language skills; (3) management and administration skills; and (4) leadership skills.

SHIFT FROM CURRENT TO FUTURE PARADIGM



2

As the Timor-Leste lesson has demonstrated, it is very difficult to enhance the technical knowledge of a counterpart if they do not have the appropriate academic training -- no matter how well qualified and well-intended an international advisor is. The areas of law, medicine and finance are clear examples of fields where such academic training is indispensable. In these cases, a medium-term (two to four years) intensive academic training, possibly out of the country, is essential.

The national civil service employees require training in language and communication skills to better communicate in the work place. They should be required to undergo proper language training in Portuguese, the second official language in Timor-Leste, and training in English, which is an important working language. For this purpose, UNDP had started to offer Portuguese and English language courses for the national counterparts of both CSG and “development advisors.”

As for the general management and administration skills such as planning, decision-making and report writing, short-term training courses may be sufficient. The current approach focuses on enhancing the skills of individual national counterparts, almost exclusively through an on-the-job training by an international advisor. In most cases, the advisor has performed line functions and has had little time to provide such training. Therefore, it is evident that there is a need to explore a new approach in order to ensure sustainability. One possible solution is to assign a group of international advisers, not tasked by any line functions, to act as trainers in providing in-country training of counterparts. These trainers will be part of the new comprehensive institutional capacity development programme for each ministry and cross-ministerial programmes for common functions. It is expected that the international support in providing this group of trainers through a programme, to be administered by UNDP, will come from development partners. To realize this exit strategy, the Government with the support of UNMISSET and UNDP convened the first workshop on 16 February 2004 for each Government ministry to present the exit strategy for international advisers and an institutional capacity development plan.

C. JUSTICE AND SERIOUS CRIMES

In October 1999, UNTAET inherited a feeble justice system that had totally broken down following the outbreak of violence. The judiciary personnel that managed the system withdrew with the departure of the Indonesian civilian administration in September 1999 and the physical infrastructure that sustained the justice system such as a courthouse was extensively destroyed together with other private and public buildings in then East Timor. The militia, assisted by the Indonesian military, destroyed and burnt the court buildings, police stations, prison and other institutions associated with the maintenance of law and order. The judges, prosecutors and defense lawyers, the majority of whom were Indonesians, withdrew and left Timor-Leste.

Starting from scratch, the UN administration proceeded to put in place a transitional legal system that retained the application of Indonesian law to the extent that it was consistent with international human rights standards. UNTAET created the pertinent respective judicial institutions including the courts, the prosecution service, the public defenders office and the prisons. Also, it provided maximum funding and technical support for these institutions. The

establishment of a functioning judicial system for the transitional period laid the foundation for the criminal justice system of the independent Democratic Republic of Timor-Leste.

The current criminal justice system in Timor-Leste is composed of two legal frameworks: one for ordinary crimes and one for serious crimes. The serious crimes process deals with the mass human rights violations committed in the territory of then East Timor, following the Indonesian Invasion in 1975, particularly during the period from January to October 1999. The ordinary crimes process refers to the prosecution of criminal offences other than those that, by definition, are within the jurisdiction of the serious crimes framework.

Let me now turn to the overview of achievements and challenges of the justice sector development before I elaborate on the serious crimes process.

(1) Establishment of the Timorese Justice System: Achievements and Challenges

The judicial system in Timor-Leste is still in its embryonic stage. In August 1999 there was not a single judge in the then territory of East Timor and only some 70 persons with rudimentary legal training. By 2000, after some crash course training, 25 judges, 13 public prosecutors, 10 public defenders and 12 registrar/clerks were appointed by the UN administration on a probationary basis. Today there are 17 trial judges, six investigating judges, nine public prosecutors and nine public defenders operating in four district courts in Dili, Oecussi, Baucau and very recently Suai. All of them are still on probation. Apart from these state employees, there is still a general dearth of jurists in the country – a shortage that is likely to continue for some time.

The legacy in Timor-Leste in terms of justice has always been very weak. Under the Portuguese regime, there was only one judge, who was Portuguese, in Timor-Leste while the Court of Appeal was in Mozambique. This practice continued during the Indonesian regime as the Court of Appeal was situated outside Timor-Leste while Timorese occupied mostly clerical positions.

The judicial system is comprised of the Judiciary, the Office of the Prosecutor-General, the public defenders, and other related institutions as well as the administrative services provided by the Ministry of Justice. So far, certain judicial bodies defined by the Constitution have not been established. These include the Supreme Court of Justice, the High Administrative, Tax and Audit Court, Administrative Courts of first instance, Military Courts, Maritime Courts, and Arbitration Courts. Further, the Council of State, the Superior Council for Defense and Security, and the Superior Council for Public Prosecution remain to be established.

The district courts have barely functioned without the adequate presence of court staff and other judicial personnel. The three courts outside of Dili were not functioning most of the time. The district court in Baucau, Suai and Oecussi are supposed to sit at least a few times a week, but they seem not to have sat at all for several months as the judicial officers refused to remain in these locations because of extremely poor working and difficult living conditions. There have been long delays in issuing indictments and listing matters for trial. In December 2003, there were approximately 354 detainees in three prisons located in Becora, Gleno and Baucau. Many pre-trial detainees, including juvenile detainees, are held for long periods before they come to trial, including some for relatively minor and non-violent crimes. Of the 242 detainees in Becora Prison, only 77 have been sentenced and 70 of the 165 pre-trial detainees are currently held on expired detention orders.

There are considerable delays in the enactment of necessary laws in Timor-Leste requiring the use of UNTAET and other legal instruments. The UNTAET Regulation 1999/1 provided that the applicable law should be the law which was enforced on 25 October 1999 when UNTAET was established, except in so far as it is incompatible with international standards, or where it is superseded by subsequent UNTAET Regulations. The Penal Code presently in use is the Indonesian code, with the exceptions as provided for in the UNTAET regulations. The criminal procedure that should be used is the one provided for in UNTAET Regulation 2000/30. The civil code and the civil procedures are not regulated for separately, and the ones in use are Indonesian. (Regulation 2000/11 pertains to the organization of Courts and Regulation 2000/15 refers to the establishment of Special Panels).

The issue of applicable law became critical when the Court of Appeal decided in July 2003 that the law applicable prior to 25 October 1999 was Portuguese law and not Indonesian law as earlier thought. The Court also decided that the prosecution of serious crimes under UNTAET Regulation No. 2000/15 contravened Article 24 of the Constitution, which prohibits retroactive application of laws. Dissatisfied with the ruling of the Court of Appeal, the leaders of the ruling party, Fretilin, and the Government took up the issue with the National Parliament which passed a bill, in October 2003, that stipulated that in the absence of Timorese laws or UNTAET regulations on any particular facet of law, it would be the Indonesian law, and not the Portuguese law, that should be applicable as the subsidiary law in Timor-Leste.

The national institution that will assist in overseeing the running of the courts and the competency of the judges is the Superior Council of the Judiciary. Apart from taking management and disciplinary control of the judiciary, it also has the mandate to oversee judicial inspections and propose to the National Parliament legislative initiatives concerning the judicial system. The Superior Council is comprised of one representative elected by the National Parliament, one elected by the judges, one appointed by the President of the Republic and one

by the Government. This body was formed with the swearing in of the President of the Court of Appeal in May 2003 but has not been able to implement its oversight mandate. With the continued absence of an Ombudsman to oversee the justice system and human rights issues, justice for the regular citizen is still in jeopardy.

The criminal justice system has seen little or no improvement, since its inception. The state of the justice system is currently of such a nature that it might in the long run hamper democracy, stability, and will further exacerbate existing inequalities, if measures are not taken to improve the situation. Some of the problems that exist in the justice sector can be categorized as follows:

- Low levels of judicial capacity;
- Lack of communication within and between key institutions in the judicial system;
- Confusion concerning institutional and individual roles and responsibilities;
- Distrust between the executive and judiciary (disputes regarding independence);
- Lack of oversight mechanisms being implemented (lack of transparency and accountability);
- Lack of management, planning and coordination skills;
- Lack of safeguards against political interference;
- Lack of safeguards against corruption;
- Lack of a clear policy for the sector concerning languages and lack of proper means of interpretation and translation;
- Lack of uniformity in following procedures (within and between institutions).

Despite efforts by UNDP, UNMISSET, USAID and others in increasing the capacity of the ordinary crimes system through training and mentoring projects for judges, public defenders and prosecutors, the lack of leadership of the sector and clear understanding of mandates by the national counterparts remains a major challenge. Recognizing this, UNDP, in close cooperation with the national justice organs, including the Prosecutor-General, President of the Court of Appeal and the Ministry of Justice as well as UNMISSET and other partners in the sector, has implemented a new programme in strengthening the justice sector. One of the achievements is the establishment of the Council of Coordination, comprising the Prosecutor-General, President of the Court of Appeal and the Minister of Justice. This has ensured a consensus regarding the strategy for the way forward and will contribute to improved channels of communications among key institutions in the sector. The lack of judicial capacity has led to an exponentially increasing case backlog and accentuated by increased complexity of cases. The lack of capacity, coupled with the lack of appropriate professional conduct and oversight, has created an image for the population of the justice system which is not accessible

with few incentives for people to approach the formal system with their complaints.

There clearly are a number of significant tasks that the sovereign authorities need to achieve and which will require continued specific technical assistance from the international community. Failure to reach these legal benchmarks can only have a deleterious effect on the long-term stability of the Timor-Leste justice sector and the country. For these reasons it is suggested that it is in the international community's further interest to ensure that the justice system is stable and viable in Timor-Leste.

It is highly recommended that the capacity building of the judiciary organs be a priority for future or continued support to Timor-Leste. It is envisaged that out of some 60 CSG positions identified as "critical posts" recommended for the follow-on mission, 12 should be in the justice sector as follows:

- 3 Court of Appeal judges' posts;
- 4 District Court judges' posts;
- 2 Court Clerks' posts;
- 1 Public Defender's post;
- 1 Advisor to the Prosecutor-General's post; and
- 1 Prosecutor.)

(2) Prosecutions and Trials of Serious Crimes: Achievements and Challenges

I now wish to share with you the Timor-Leste experience of bringing to justice serious crimes committed during the conflict. We all remember that the Timorese people had suffered the most severe forms of human rights violations. To provide a credible process of accountability for serious offences committed against the people of Timor-Leste, the post-conflict international support has enabled the creation of the serious crimes process as previously mentioned.

The UN Security Council, speaking on behalf of the international community, emphasized the importance of establishing such a process. The Special Panels for Serious Crimes in Timor-Leste, similar to the programme of international judges and prosecutors in Kosovo, are a unique form of court in the world. The international community has regarded the Special Panels as a type of "internationalized" national court. Though operating within a domestic legal system, the Special Panels are working with the standards, requirements and expectations of an international tribunal, like the International Criminal Tribunal for Rwanda (ICTR), the International Criminal Tribunal for the Former Yugoslavia (ICTY) or the Special Court for Sierra Leone, since those too are exercising jurisdiction for crimes against international law.

(a) Achievements

The major achievement of the serious crimes process is that justice is being served with respect to the serious crimes committed in Timor-Leste. Although all the crimes committed have not been prosecuted, many of the perpetrators have been brought to justice.

Since the work of Serious Crimes Unit (SCU) began, 81 indictments have been filed with the Special Panels for Serious Crimes at Dili District Court. In the indictments, there are charges filed against 369 persons. The accused in the 81 indictments include 37 Indonesian TNI military commanders and officers, four Indonesian Chiefs of Police, 65 East Timorese TNI Officers and soldiers, the former Governor of East Timor and five former District Administrators. At present, 281 of those 369 persons indicted by the SCU remain at large in Indonesia. The 81 indictments issued include the so-called “10 priority case” indictments, in which the total of 183 accused persons are charged with “crimes against humanity,” with 168 of those 183 accused still at large in Indonesia. An indictment was issued charging the former Indonesian Minister of Defence and Commander of the Armed Forces, six high-ranking Indonesian Military Commanders and the former Governor of Timor Leste with crimes against humanity for murder, deportation and persecution during 1999. To date, 55 of the 81 indictments issued charge 339 persons indicted with crimes against humanity.

The Special Panels for the trial of serious crimes started with the hearing of the first case at the beginning of January 2001. Since its inception until now, in spite of the handicap of insufficient resources, the Special Panels have been able to issue 44 final decisions (against 33 indictments). The final decisions include 36 judgments in which 17 were of crimes against humanity. In the 44 cases that have been decided, the panels have handed down 43 convictions and one full acquittal. Also, the Public Prosecutor withdrew seven indictments and dismissed two on procedural or jurisdictional grounds. There has been some satisfaction by the hundreds of victims by seeing their cases tried and decided. Most of the accused have not even disputed most of the facts alleged. Typical charges relate to the murder of both suspected independence supporters, East Timorese staff who worked for the UN during 1999 and other ordinary civilians. All the accused who have been tried so far have been East Timorese nationals, most of whom were low-level militia, often illiterate farmers, who admit their involvement in the events described but who generally claim that they were either forced or ordered to join the militia and participate in the crimes. Very often they are not the main perpetrators, who are still at large and presumed to be in Indonesia. Only one accused was a former member of the guerrilla resistance force. The trial of the second one is still going on.

Out of the 81 indictments submitted by the office of the Deputy General Prosecutor for Serious Crimes, so far 48 cases are still pending, out of which 18

cases involve accused presently in Timor-Leste and 30 cases in which the accused are still at large and supposed to be in Indonesia.

These achievements can be considered as a success, especially when compared with the often cited slow progress made by the ICTR and the ICTY, taking into account that Special Panels had to surmount various constraints related mainly to the implementation of warrants of arrest, lack of transcribed records, lack of interpreters and translators, and insufficiency of judges. Although multiple panels were envisaged in UNTAET Regulations No.11/2000 and No.15/2000, there have been enough judges to compose two fully working panels that can seat concurrently only for the last six months. Each panel comprises two international judges and one East Timorese judge.

There are now six international judges and two national judges working with the Special Panels. The international judges are on renewable contracts of six months. The judges have come from countries such as Italy, Burundi, Brazil, Germany, Cape Verde, Portugal and the United States. With six international judges and two East Timorese judges available, and in case one more additional national judge is appointed, it will be possible to compose three panels sitting at the same time and to finish easily the trial of the pending 18 cases and any other incoming cases from the prosecution office by the time UNMISSET departs.

The Serious Crimes Unit continues to investigate cases and anticipates filing a significant number of new indictments. Several districts have yet to be investigated, including the Bobonaro district with 209 known killings, Liquica with 156 and Ermera with 107. In other districts, extensive investigation has been completed covering the murder of 168 victims and prosecutors are now in the process of writing indictments. The unit has given high priority to the investigation of the killing of two UN staff members on 30 August 1999 at a polling station near Ermera. An indictment is anticipated February or March.

Realizing the need to hasten completion of investigation and prosecution work, the SCU management has instituted much more restrictive filing policies intended to concentrate resources on those cases that will have the greatest positive impact on achieving justice. Priority will be given to those cases involving the individuals who organized or ordered the violence. Any new indictments actually issued will have to meet the much more restrictive requirements of this policy. Further, management will continue to monitor the backlog of pending cases to ensure that all new indictments filed can be processed through trial before 20 May 2005. If the Security Council does not approve the extension of the serious crimes works, the cases pending as of May 2004 will be turned over to the Timorese national judges, prosecutors and defense lawyers although the Timorese justice system has neither the human nor financial resource to process these cases.

Apart from its main task of prosecution task, the Serious Crimes Unit is now placing greater emphasis on the training of national staff including prosecutors, case managers, national police investigators, data coders and evidence custodians. Recently, 18 national police investigators concluded a ten-week training on criminal investigations. These officers are now being integrated into the investigations teams of the Unit in order to provide them with more practical training. It is envisaged that these trainee investigators will replace the UNPOL investigators seconded to the SCU who will be withdrawn as part of the UNPOL downsizing plan. Each international prosecutor has been assigned a role in classroom training of prosecutors. Regular mock trial exercises are planned and all trainees participate in the preparation of the actual cases of the SCU under the guidance of international staff.

(b) Challenges

The serious crime process, however, continues to face four major challenges, including (a) the impossibility of trials without the presence of the accused, (b) insufficient resources, (c) all the serious crimes committed cannot be completed by the current process and (d) the competing relationship between serious crimes process and the reconciliation programme.

(a) Impossibility of trials without the presence of the accused

The inability of the prosecution office to bring before the court the main planners and perpetrators of the serious crimes committed in Timor-Leste constitutes probably the most significant challenge to the effectiveness of the serious crimes process.

In 30 cases out of the 48 that are still pending before the Special Panels, the accused are absent from Timor-Leste and are, supposedly, in Indonesia. The Court is not able to hold hearings with respect to those 30 cases as, pursuant to the applicable rules, “no trial of a person shall be held in absentia.” Some warrants of arrest have been issued against some of those accused supposed to be in Indonesia. In spite of the Memorandum of Understanding between Indonesia and UNTAET regarding cooperation in legal, judicial and human rights related matters (Section 1.2.d, 2.c and 5), Indonesian authorities do not execute those warrants. This is regrettable as the Memorandum gives both parties the right to interrogate witnesses within each other’s jurisdiction and both parties undertake to “transfer to each other all persons whom the competent authorities of the requesting Party are prosecuting for a criminal offence or whom these parties want for the purposes of serving a sentence.”

The implementation of the memorandum expects all persons indicted for serious crimes to appear before the Special Panels to face trial, except where their cases had previously been tried in Indonesia. The refusal to turn over evidence, witnesses, or suspects has frustrated the efforts of the serious crimes process. In

Indonesia's view, the memorandum is not a formal extradition treaty. Also, the Constitution of Timor-Leste prohibits the extradition of any East Timorese nationals. It is possible to conclude that no senior Indonesian government or military figures will be extradited in order to attend trial in Timor-Leste.

(b) Insufficient resources for serious crimes process

The Special Panels are working with the standards, requirements and expectations of an international tribunal, like the ICTR, the ICTY or the Special Court for Sierra Leone, since those too are exercising jurisdiction for crimes against international law. There are, however, budgetary and capacity differences among these tribunals.

The ICTY, which was established in 1993, has the capacity to run six trial panels simultaneously. The two-year budget of ICTY 2002-2003 was US\$ 223,169,800. The ICTY to date has completed trials against 48 individuals and an additional 15 have pleaded guilty, giving a total of 63 adjudications, from which many are still pending on appeal.

The ICTR's two-year budget covering 2002-2003 was \$177,739,400. It was established in 1994 and has completed to date cases against 15 individuals.

In Timor-Leste, the Special Panels were established in 2000 and had enough judges to compose two panels only within the last six months. To date, 58 individuals have had their cases adjudicated, 49 were convicted of at least some charges, one was acquitted of all charges, and one case was dismissed by the judges on the basis that the facts pleaded in the indictment did not meet the standards for jurisdiction and the indictments in some other cases were withdrawn. The budget for the Special Panels was US\$ nine million.

The budget disparity is exacerbated when one considers that the other tribunals have been operating much longer and are anticipated to go on much longer. The current request from the Security Council is to finish all trials at the ICTY by 2008 and all appeals by 2010 with the understanding that this goal will only be achievable if national war crimes courts (to be funded largely by the international community) are set up in Bosnia, Croatia, Serbia and Montenegro. The UN already funds a "national" court partly staffed by internationals in Kosovo.

It is a challenge to both Timor-Leste and the international community to carry out the necessary judiciary process against such serious crimes as crimes against humanity when the country lacks totally a proper legal framework and adequate human resources. As President Gusmão explained in his letter of 4 February 2004 to Secretary-General Kofi Annan, "Since our legal system is not currently capable of managing these prosecutions and the sensitive nature of this process in terms of looking forward to a stable and productive relations with our

neighboring country, Indonesia, I would like to request that, in the follow-up mission, emphasis be given to the continued attention and commitment of the international community to the investigative work of the Serious Crimes Unit and the subsequent prosecution of these crimes.” This call for continued support is directed to the Serious Crimes Unit that has been receiving financial support that is more than twice the combined budget for the Special Panels of judges and the defend lawyers.

(c) Limited time available for investigation and trials

Timor-Leste Constitution provides that the serious crimes process will be allowed to continue until existing investigations are completed, although their temporal jurisdiction is limited to 1999. The serious crimes process has the current UN funding assured until mid 2004, and it is likely that it will last for one more year as recommended by the Secretary-General.

The issue then is what can be achieved before the end of serious crimes mandate, probably in May 2005. And what about the issue of the remaining crimes committed, yet left without investigation, prosecution or trial?

On one hand there is a necessity to bring to trial all the perpetrators of the serious crimes committed in Timor-Leste. But on the other hand, the serious crimes process cannot last indefinitely. It is not possible to finish within one or two years the investigation, the prosecution and the trial of all the crimes committed.

Therefore the solution will be to prioritize and target certain cases that would be prosecuted and decided upon before the expiration of the serious crimes mandate. For example, and as suggested by the prosecution, give priority to 40 cases of crimes against humanity of murder, rape and severe torture. The remaining ‘lesser’ cases can be left to the Timor-Leste courts to handle with the help of other bilateral partners. The presumption here is that the East Timorese judges, prosecutors and defense lawyers who had no judicial experience prior to their appointment in the year 2000, will have gained enough experience to allow them to deal with such a process, with the assistance of bilateral and/or multilateral partners.

The pressure of international judicial actors, however, will still be necessary to guarantee the credibility and the impartiality of the process. The trial of the serious crime process committed in Timor-Leste cannot be left to East Timorese people alone when one considers the nature of the offenses that occurred between pro-independent activities and pro-autonomy supporters. But on the other hand, there is a challenge of ensuring the credibility and impartiality of the process if it is left to the East Timorese only.

Another suggestion is that the ‘lesser’ serious crime cases could also be left to the other alternative justice and reconciliation mechanisms like the informal East Timorese traditional justice, or to the Commission for Reception, Truth and Reconciliation. Certain high-ranking Timorese leaders have suggested the possibility of granting amnesties in future for some “lesser” serious crimes.

D: HUMAN RIGHTS: ACHIEVEMENTS AND CHALLENGES

(1) Institutional Foundation Building

Timor-Leste, in late 2002 and 2003, acceded to six core human rights treaties and four protocols including the International Covenant on Economic, Social and Cultural Rights, the Convention Against Torture and other Cruel, Inhuman or Degrading Treatments or Punishments, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Racial Discrimination and the International Convention on Civil and Political Rights. This symbolizes the country’s commitment to promotion and protection of human rights in addition to the Constitutional guarantees and institutional framework for the protection of human rights.

In a formal sense, the legal framework of Timor-Leste includes many human rights provisions. Part II of the Constitution deals with “Fundamental rights, duties, liberties and guarantees.” It contains a range of civil, political, economic, social and cultural rights such as the right to life, personal freedom, security and integrity, honor and privacy, protection of the family, freedom of speech, assembly and association, freedom of movement, freedom of conscience, religion and worship, political rights as well as rights to work and to strike, rights to private property, health, housing, education, culture and clean environment. The Constitution refers to the rights of children, youth and disabled citizens -- though not in details. Within the Constitution, however, there is variation in how rights-holders are expressed. Some rights are expressed to apply to ‘citizens’ (such as equality before the law, rights of senior and disabled citizens, the right of resistance and self-defense, the right of access to personal data, the right to work, the right to social security as well as political rights).

The institutional framework for protection of human rights includes the establishment of an office of the Provedor for Human Rights and Justice (Provedor de Direitos Humanos e Justica). It is a body whose existence was mandated under Article 27 of the Constitution. The Council of Ministers has approved the draft legislation in for the establishment of the Provedor’s Office. In essence, the Provedor’s Office will exercise the functions as follows:

- a classic Ombudsperson in terms of looking into alleged misadministration including acts which are contrary to law,

unreasonable, unfair, oppressive or discriminatory and involve a mistake of law or arbitrary ascertainment of facts or are otherwise irregular, ‘immoral and devoid of justification’;

- a human rights complaint body; and
- an anti-corruption body.

The Provedor is thus empowered under the draft legislation to inquire into and investigate the following: alleged or suspected violations or infringements of fundamental human rights and freedoms, abuse of power, misadministration, injustice and lack of due process; alleged or suspected nepotism, collusion and corruption, including misappropriation of public funds or other public property. In addition, the Provedor will monitor and provide advice to the Government on matters concerning the promotion and protection of human rights, review legislation for consistency with human rights standards and request opinions on the constitutionality of measures from the Supreme Court. Also, the Provedor will conduct public campaigns on human rights, make recommendations concerning international instruments, intervene in relevant court cases, if granted leave of the court, and combat corruption.

Although the Provedor will not be able to make binding determinations, the Provedor’s Office will be empowered to look into the actions of all Government agencies, specifically including the police and military. The Provedor’s Office will monitor Government owned or controlled companies and private entities fulfilling public functions and services or managing public funds and assets. The Provedor’s Office will thus make an important contribution to assisting persons faced with human rights violations.

(2) Promotion and Monitoring of Human Rights

UNMISSET’s contribution to the promotion of human rights is as follows: monitoring the human rights situation across the country and intervening in preventing violations from occurring or where it has already occurred, mitigating its impact; developing the capacity of relevant government authorities including the police, prison officials and judicial authorities to identify and deal appropriately with human rights issues; supporting non-governmental organizations in developing a strong local human rights monitoring and reporting capacity; supporting the Commission of Reception, Truth and Reconciliation (CAVR), through technical advice and training of its staff; providing human rights training to the PNTL and military personnel particularly in developing a professional and accountable police force as well as in developing a legislative framework and operating procedures for the police and conducting regular human rights training for the police; providing technical assistance and advice to the Government in promoting and protecting human rights particularly in establishing the office of the Provedor (Ombudsperson) for Human Rights and Justice, preparing the National Action Plan on Human Rights, taking action on human

rights treaty ratification; and building capacity of local human rights workers by training 19 Timorese human rights officers since December 2000.

E. ECONOMIC REHABILITATION: ACHIEVEMENT AND CHALLENGES

Timor-Leste is making every effort in moving towards building its own economy of a war-torn country, which normally goes through the rehabilitation phase with over-reliance on external assistance before it can achieve self-reliance and normal economic development. The economic rehabilitation of Timor-Leste for the past two years has seen achievements despite tremendous challenges.

The implementation of Timor-Leste's national development plan, with the two main goals of (1) reducing poverty and (2) promoting equitable and sustainable economic growth, has achieved considerable progress with the continued efforts of the Government and the support of the international community to implement the annual action plans according to priorities identified in such areas as development planning, public sector development, health, education, agriculture, job creation, oversight mechanisms and the rehabilitation of infrastructure, such as water, power and sanitation systems, and the Dili Port.

Recent positive developments in the economic sphere include the establishment of the third commercial bank, the issuance of Timorese coins, the decline of inflation rate to 7.6 percent by the end of last year compared with 10.3 percent six months earlier thanks to the improvement of food supply and the increase of employment by 50 percent in the public sector. Other initiatives by the Government, in cooperation with the development partners, include measures to refine the expenditures according to priority programs while taking into account the Millennium Development Goals (MDGs).

Still, Timor-Leste remains the poorest Least Developed Country (LDC) in the region with the majority of the poor, which accounts for 46 percent of the population mostly living in the rural areas below the national poverty line (of less than one US dollar a day). Meanwhile, according to the Government's data, only one-third of the total expenditure and one-fifth of the goods and services go to the rural areas.

The economic concerns, as noted by the Government, include the trend of declining economic growth with the estimated two percent decrease of the Growth Domestic Product (GDP) in the fiscal year 2003-2004 due to a steady reduction of international assistance and an unexpected shortfall of domestic revenues from the exploitation of natural gas in Timor Sea.

The underlying weaknesses in Timor-Leste's economy include the projected shortfall in the oil and gas revenues (by some US\$ 66 million in the next four years), the decline in capital spending by 15 percent of the GDP and the

decrease in public investment (estimated at about US\$ 40-45 million a year for the next four years). These have serious implications for the level of private sector activities and employment including the decrease in demands for goods (there have been significant declines in the imports of goods from US\$218 million in 2000 to US\$186 million in 2002) and the increase of poverty. The Timor-Leste leadership has been pragmatic in addressing key developmental and economic challenges with realistic policy options and strategies particularly in the fiscal policy and public sector development.

In bridging the resource gaps, the Government, in a transparent and efficient manner, presented, in the Meeting of the Development Partners last December, policy options including measures such as extending the Transition Support Programme (TSP) administered by the Bretton Woods Institutions beyond 2004-2005, redirecting funds for priority programmes, raising revenues and taking concession loans. The Government continues to hold consultations with the development partners to select possibly the combination of these options to bridge the fiscal gaps.

Recognizing that promoting an open and inclusive society is key to establishing a conducive environment for economic development, the Government has taken efforts to promote good governance and people's participation in economic and political life of the country. The "Open Governance" initiative, in which the Prime Minister as well as cabinet members visit various areas of Timor-Leste and hold discussion with local communities and representatives, aim to strengthen grassroots participation. In addition, the Government has expressed commitment to promote transparency and accountability with the organization of international conference on Transparency and Accountability in Public Administration in Dili last year. Also, the Government continues to hold high-level workshop as another mechanism to promote participation of all stakeholders in the implementation of the national development plan.

In my view, the economic rehabilitation of Timor-Leste requires continued international support to the Government's efforts in addressing these challenges: (1) the need to find appropriate policy options to address the fiscal gaps, of about US\$126 million over the next three years, resulting from the shortfalls in oil/gas revenues; (2) the need to balance the expenditures in the security sector and development expenditures; (3) the need to redirect bilateral and multilateral international assistance for poverty alleviation and employment generation, particularly in the rural areas; (4) the need to safeguard the human security of individuals particularly the vulnerable and to promote human capacity development, in economic sense, this means more efficient public sector staff and skilled labour force for productivity in the private sector; (5) the need to promote efficiency, professionalism, transparency and accountability in the civil service; and (6) the need to maintain joint partnership among the Government, the UN development agencies, the development partners and the civil society in achieving

specific goals on reducing poverty, promoting gender equality, improving maternal health and reducing child mortality and promoting good governance.

The Government has rightly and eloquently identified the three “difficult systemic issues” that Timor-Leste is facing, namely, (1) the high dependence of the economy on external support and the need to broaden and deepen the domestic production and service base for employment and enhancing self-reliance and sustainability, (2) the need to improve efficiency of public expenditures and finding the country’s niche or competitiveness in the region and, if I may add, in the global market and (3) the need to consolidate the assistance as well as advice provided by international advisors to be more in tune with the capacity and affordability of the country. To ensure smooth transition of Timor-Leste from post-conflict peace building to long-term development, the international support for the economic rehabilitation of Timor-Leste remains most crucial in the areas of poverty reduction, income generation and economic growth.

PART II. KEY ISSUES AFFECTING THE EFFECTIVENESS AND SHORTCOMINGS OF “INTERNATIONAL SUPPORT PACKAGE” TO POST-CONFLICT COUNTRIES

In closely examining the challenges of the international support for the rehabilitation of post-conflict Timor-Leste and experiences in other post-conflict nations, I wish to point out some of the key issues that affect the effectiveness and shortcomings of international post-conflict rehabilitation assistance.

First, the neutrality and multilateral dimension of the international support is a key factor in determining the degree of effectiveness and shortcomings in the rehabilitation of post-conflict nations, which are often prone to the influence of past or present competing interests. These interests, however, do not always represent the common goals of the international community in rehabilitating, peace-building and peacekeeping as the means for maintaining international peace and security. Rather, the lack of neutrality and multilateral dimension in implementing peacekeeping and peace-building mandate will not only yield destabilizing effects but also compromise the integrity of international assistance to post-conflict nations.

Second, the imbalance between development funding and peacekeeping operation funding presents the main challenge in determining the level and form of international support in post-conflict situations according to the political, economic and development reality and requirements of post-conflict nations. While there is a link between development, peace building and peacekeeping as well as the blurring lines between them, the imbalance between development funding and peacekeeping and peace-building operation may pose the danger of overstretching peacekeeping operations or of providing international support

through the UN peacekeeping operation when what is required is effective long-term sustainable development assistance.

Third, the need to maintain the balance between the recognition of the sovereignty of a post-conflict nation and the international community's accepted vision, norms and standards in maintaining peace and security and in promoting political and economic development.

On this point, I would like to cite the international support on the development of the national police as an example. Ensuring compliance with the internationally accepted standards of policing and human rights continues to be one of the key challenges in establishing a police force in post-conflict situations.

While there is a tendency to view this challenge as the disciplinary issue or the lack of police discipline, it is important to recognize that at the initial stage, international assistance in forming and training the national police force of a post-conflict nation should attach equal importance to the quantity and quality of the national police force. The discipline issue is merely a symptom of the real causes, involving recruitment, selection, appointment and political neutrality in creating the police force at its earliest stage. The difficulties emerge when or if the sovereign nation's vision of the national police, its roles and functions differs from the internationally accepted standards and principles. Experience in Timor-Leste has clearly demonstrated that a comprehensive strategy to tackle these issues in the immediate post-conflict phase is critical.

Fourth, coordination among the UN system agencies and a peacekeeping mission as well as key development partners remains a key to ensuring the effectiveness of post-conflict international support with the aim of laying the four basic foundations of post-conflict rehabilitations: security; social and economic well-being; justice and reconciliation; and governance and people's participation. These elements and components are closely linked with achievements and challenges in one area depend on those of the other areas and on the coordination of key agencies and supporting nations.

Fifth, the need to reconcile the desire on the part of the international community to realize direct elections at all levels of governance and the desire of Government leaders and members of the National Parliament to hold on to their power and seats. The electoral history of Timor-Leste in recent years has been relatively peaceful and constructive. In both the elections for the Constituent Assembly (which became the first National Parliament) and the President held during the period of the UN administration, voter registration and turnout was at high levels. More recently, the National Parliament has passed a law regarding the holding of elections at a local government level for village chiefs, aldeia chiefs and suco councils. Under the law, an Independent Electoral Commission will oversee the election of several hundred local government representatives. Specific provisions have been enacted ensuring

that the councils include representation of women and youth. The elections will be the first democratic elections to be run by the new nation of Timor-Leste. Yet, Government leaders remain most reluctant to hold elections at the district and sub-district levels. Also, they are unwilling to prepare a national electoral law and to consider holding elections before 2007 in spite of advice given by the Special Representative of the Secretary-General and myself.

Sixth, Timor-Leste remains a nation in which the formal separation of power, embedded in the Constitution, is still in the process of becoming a political reality. Even once structures are established in a country, whether they be the Parliament, the President's Office, the courts or the police, the political culture can lag behind the formal structures. In Timor-Leste, for instance, the precise role of the Courts vis-à-vis the Parliament is still being debated. Varying interpretations of the Constitution are being offered to support differing views of who is the ultimate interpreter of the Constitution, particularly with respect to evaluating the constitutionality of draft laws.

Seventh, it is also important to stress the need for encouraging political pluralism and tolerance for political opposition to function freely. In the context of desiring to consolidate a strong state, there can be a tendency to react automatically to voices of dissent, to use law enforcement powers to suppress the dissent, rather than separate out criminal and legitimate activities of opposition forces. This is a tendency, which needs to be resisted. There is a need for Timor-Leste to feel sufficiently supported by the international community in its newly independent status so as to provide for tolerance of diverse opinions and the quarantining of the use of more extensive state powers to situations of real threat to the state.

Eighth, the establishment of basic legal framework is a major step but the challenge is in meeting the expectations of the people for social and economic development. The challenge is in protecting civil and political rights while securing social and economic development. The newly won freedoms are faced with challenges and uncertainties as a result of socio-economic realities. It is not a new nor unique problem faced by a developing country such as Timor-Leste. In "Open Governance" held at the district level, the Prime Minister routinely says that people are now free even if the Government cannot provide for their basic needs.

Ninth, Meeting this challenge on the Government to fulfill the basic needs is important since formal or political equality raises expectations of the people and, when they are unfulfilled, may cause antagonism against political leadership and further conflicts. The challenge is to pursue an integrated approach whereby democracy and the rule of law is given meaning by the achievement in the realization of economic, social and cultural rights. Pursuing such an approach is particularly important in post –conflict societies such as Timor-Leste to avoid the perception among the people that only a selected

group is benefiting and that many others who suffered during the conflict have been abandoned. It is important to keep in mind that in Timor-Leste as well as in any transitional situation, it is not possible to draw a clear distinction between the past and present situations.

PART III: LESSONS LEARNT AND ISSUES FOR FURTHER CONSIDERATION

In my view, there are six main considerations we should keep in mind in order to ensure that international support in rehabilitating post-conflict nations yield the desired outcome and sustain the achieved progress in the long term.

The first consideration lies in the selection of any group of national and local leaders with whom the international community will entrust the management of governance during the transitional period and after the restoration of sovereignty to the country. In Cambodia, Rwanda and now in Timor-Leste, a group of exiled leaders and activists returned to their countries and moved into governmental functions with or without the support of the United Nations or the transitional authorities. In Timor-Leste, as the period of the Indonesian occupation lasted nearly 25 years, some of the exiled leaders were unable to speak the local language, Tetum, and to relate to people who remained in Timor-Leste. As the Constituent Assembly was converted into the National Parliament in which Fretilin, the dominant political party, had the absolute majority, the party leaders succeeded in selecting themselves those who will occupy 55 seats out of 88 seats allocated for the party. The result was the total control of executive and legislative branches of the state institutions by a few astute leaders, (resulting in, as the Kings College study observed, the monopoly of power in the hands of a few leaders who did not have personal support of the population.) The riot and civil disturbances of 4 December 2002 was the manifestation of people who felt that the newly established governing authorities – the Government and the National Parliament – were not caring about their welfare and livelihood. The lessons learnt from this experience is that the international community must ensure that those indigenous leaders who command respect and confidence of local people be accorded with positions and opportunities to participate actively in governing the country.

The second consideration is the need to balance the short-term and immediate requirements with the long-term sustainability of international support to post-conflict nations.

The third consideration lies in the international community's commitment and will to determine when is the right time for a UN peacekeeping mission to leave and how. In the modern history of international post-conflict rehabilitation, we tend to see Timor-Leste as "a success story" as we take into account the overall achievements and challenges. Still, to ensure that Timor-Leste continues

as a success, there is a need for the world community to acknowledge the tremendous security, institutional and development challenges that this young country continues to face.

To ensure smooth transition from peacekeeping and peace-building to sustainable development of Timor-Leste is to recognize that Timor-Leste's peace and stability remains fragile as indicated in the security assessments and the limitations of the state institutions. As reflected in the Secretary-General's last report to the Security Council, though it was initially envisaged that Timor-Leste would be in a position to achieve self-sufficiency within a period of two years after independence, it has become increasingly clear in recent months that further assistance to Timor-Leste will be crucial in a number of areas after 20 May 2004, when UNMISSET's present mandate expires. The UN is undertaking an in-depth analysis of Timor-Leste's likely requirements after 20 May 2004 in developing a strategies and recommendations for further assistance to the country. It is then under the purview of the Security Council and Member States to decide on the possible continued presence of a UN peacekeeping mission bearing in mind the importance of close coordination with development partners for providing bilateral and multilateral assistance in key areas.

The fourth consideration lies in the question of the "exit strategy." In my view, the exit strategy should be part of the design of post-conflict international support at the inception of the intervention while there is a need for the international community to remain flexible and realistic in devising further support and sustain its interests even after the first few years of immediate post-conflict period. In the case of Timor-Leste, two years is a short period to develop, from scratch, the capacity of its security organs as well as other state institutions to the sustainable level for the country to enter its development mode with increased self-reliance.

The fifth consideration lies in the need to avoid establishing two parallel court systems in two countries (in example, in Timor-Leste and Indonesia) for the investigation, prosecution and trial of crimes committed in prolonged conflict such as one in Timor-Leste. It is also desirable for the international community to realize that a conventional modern justice could not be the only solution for ensuring that justice is served. In a country like Timor-Leste, the traditional system of participatory justice in which the whole of the society would take part should be considered as a plausible alternative means of achieving reasonable sense of justice and reconciliation.

The main principle of this kind of reconciliation mechanisms would be to bring together all of the protagonists at the actual location of the serious crimes i.e., the survivors, witnesses and presumed perpetrators. All of them should participate in a debate on what happened in order to establish the truth, draw up a list of victims and identify the guilty. The debates will be chaired by non-

professional "judges," elected from the men of integrity of the community, who will have to decide on the sentence for those found guilty.

The sixth consideration lies in the need to find a workable resolution for serving justice by a practical application of trial options. Following the example of Rwanda where I served as the Resident Coordinator of the United Nations in 1995 and 1996, the people accused of serious crimes could be grouped into four categories. The first category included the planners, organizers and leaders of genocide and murders, and the second category covered those who acted in a position of authority to commit murders, rape and severe torture. The third category were consisted of those who participated or were complicit in voluntary homicide or acts against persons resulting in death, or those having inflicted wounds with intent to kill. The fourth category included those who committed violent acts without intent to kill and those who committed crimes against property. It is worth considering that the accused of the first two categories should be judged by the Special Panels for Serious Crimes, while all other cases that could be considered to lie in the third and fourth categories should be dealt with through alternative justice and reconciliation mechanisms such as the traditional participatory justice, or the Truth and Reconciliation Commission.

Finally, in recent years, the UN peacekeeping experiences in various post-conflict situations tend to suggest that the narrower the mandates of a UN peacekeeping/peace-building operation, the greater chance of success and more timely completion of the mandates. Despite the tremendous challenges of implementing the UN mandates of integrated peace-building and peacekeeping components, I maintain that there is no other alternative -- if we genuinely recognize and accept the mutually inclusive nature of and the inextricable links between political stability and social, economic and human sustainable development and those of peacekeeping and peace-building.

Annex A: Map of Timor-Leste



Annex B:

ACHIEVEMENTS IN PUBLIC ADMINISTRATION CAPACITY BUILDING

(May 2002 – January 2003)

COUNCIL OF MINISTERS

- Regular meetings of the Council of Ministers, agenda consideration, legal frameworks and policy formulation on wide ranging issues;
- Ensure full compliance with the rules and procedures of the Council of Ministers.

BANKING AND PAYMENT AUTHORITY

- Monetary policy and essential legal frameworks development;
- Preparation of the Banking and Payment Authority Annual Report;
- Preparation of Final Accounts;
- Budget performance reports.

MINISTRY OF PLANNING AND FINANCE

Planning and External Assistance Management:

- National Development Plan aligned Annual Action Plans preparation and implementation throughout the Government of Timor-Leste;
- Projects Approval Procedures approved by the Council of Ministers;
- Updated Registry of External Assistance;
- Preparation of Sector Investment Programs.

Revenue Service:

- Establishing and stabilizing the Tax Revenue System in Timor-Leste;
- Large Business Division Annual Action plans formulation to begin structured compliance programs and to finalize development and delivery of Income tax returns for 2003.

Customs:

- Adoption of the Organic Law for the Customs of Timor-Leste;
- Law on Fiscal and Customs Exemptions;
- Timor-Leste accession to the World Customs Organization;
- Implementation of the ASYCUDA;
- Adoption of the SAD – Single Administrative Document;
- Customs Quality Charter;
- Publication of Customs magazine.

Treasury:

- Stabilizing the Financial Management System of the Government of Timor-Leste and state institutions;
- Preparation of the Treasury Manual, Revenue Collection Procedures and Expenditure Procedures for the Ministry of Planning and Finance;
- Preparation of the Budget and Financial Management Act;
- Development and implementation of Payroll administration system for more than 15000 public servants
- Adoption and implementation of the automated Free balance system for financial management.

Procurement, Supply & Inventory Management Unit:

- Drafting Procurement Decree Law;
- Establishment of Board of Survey;
- Establishment of Disposal Board;
- Procedure for Assigning Procurement Instrument Numbers Disposal Manual;
- Draft Supply and Inventory Operations Manual;
- Timor-Leste Country Procurement Assessment Report.

Budget Service:

- Draft Budget and Financial Management Law in consultation with Treasury;
- Preparation of Budget Requests Overview submission for Budget Review Committee (BRC);
- Preparation of weekly briefing for Ministry of Planning and Finance to provide CoM on Budget Process;
- Preparation of the outcome of BRC deliberations and budget allocation recommendations for submission to the Council of Ministers;
- Provision of technical explanation of Budget figures to National Parliament;
- Consultation and agreement of 2003-04 aggregate budget figures with IMF;
- Reporting on budget related targets in the TSP matrix.

MINISTRY OF JUSTICE AND COURT OF APPEAL

- Court of Appeal and District Courts constituted and functioning;
- Drafting of numerous laws and submission to the Council of Ministers;
- Preparation of Proposal for Policies on Land Issues;
- Regulations & Procedures for Claim Registration;
- Umbrella Land Law 1: Juridical Regime for Immovable Property;
- Preparation of Memoranda on the principles ruling the Notary Law;
- Preparation of Memoranda on the principles ruling the Registry Law.

OFFICE OF PROSECUTOR GENERAL

- Analysis & Discussion for Legal procedures;
- Written Proposal for the code of minors;

- Organizing of International anti-Corruption Seminar;
- Written Analysis for Domestic violence law;
- Organizing Task Force against Trafficking Women;
- Preparation of handbook: on Fighting against Corruption; international Criminal Principles basic principles; Manual of Juridical Assistance.

MINISTRY OF STATE ADMINISTRATION

- Preparation of the draft Civil Service Law for consideration of the Council of Ministers; draft Human Resources Management system; draft disciplinary procedures;
- Local Government policy paper preparation and work in progress on the draft legislation “Estrutura e funcoes da AGLD e das Administracoes Distritais”; Project management manual preparation; DCDC Grant Guidelines and Procurement Manual;
- Preparation of Estatuto do Instituto Nacional da administracao Publica (5th draft).

MINISTRY OF TRANSPORT, COMMUNICATIONS AND PUBLIC WORKS

Land Transportation:

- Ministerial regulation on Collective Transport system presented to Council of Ministers;
- Presentation on traffic law.

Civil Aviation:

- Civil Aviation Decree-Law;
- Preparation of Ministerial Decree-Regulation of Fees and Charges;
- Preparation of Decree- Law to create the national institute of Civil Aviation and its statutes;
- Ratification of Warsaw, Chicago and Montreal Conventions under consideration;
- Preparation of Plans for Airport Operations Services; Terminal Management; Nav aids; Personnel Licensing; Technical Documentation; Traffic Forms; Airport taxes; Development land and Air Side; Runways; Taxiways; Shoulders; Aprons; generalities;
- Updated the Air Traffic Services Coordination Procedures between Australia, Indonesia and Timor Leste;
- Timor-Leste Aeronautical Information Publication;
- Review of Baucau and Suai NDB and Aerodrome charts for approval and publication.

Ports & Maritime:

- Stabilizing port operations and introduction of Port fees and charges;
- Port Operations rules and regulations;
- Consideration of Port safety rules.

Public Works, Housing and Urban Planning

- Preparation of Development Regulation and Building Decree;
- Pre-qualification Regulation;
- Preparation of Spatial Planning Act;
- Work in progress on Housing Policy, Building Assessment, Building Supervision, Community Participation.

Water and Sanitation:

- Formulation of Water Services Decree and submitted for the consideration of the Council of Ministers;
- Preparation and consultation in progress on Sanitation Management Decree, and Water Resources Management Decree.

Material Testing:

- Draft, coordination and implementation of the procedure for laboratory service charges revenue collection;
- Setting up Technical Standard / Codes for Infrastructure;
- Preparation of Laboratory Standard Operational Procedures for Testing.

SECRETARY OF STATE FOR WATER AND ELECTRICITY

- Basic National Electricity Law promulgated;
- Personnel control procedures drafted;
- Work in progress on Environmental Management Guidelines for EDTL.

INSPECTOR GENERAL'S OFFICE

- Preparation of the Mandate for the Office of the Inspector General;
- Formalization of Basic Procedures for reports of control;
- Publication of Internal Bulletin "Transparency" about OIG activities;
- Internal control for correspondence in the OIG;
- Regulation of activities of OIG;
- Preparation and publication of awareness and sensitization pamphlets about Corruption, Bribery, Collusion, and Nepotism;
- Work in progress on drafting Organic law of OIG.

MINISTRY OF EDUCATION, CULTURE, YOUTH AND SPORTS

- Formulation of educational policy framework. Stakeholder consultation scheduled in late October 2003.
- Guides/formats for: Education planning; policy formulation; Project preparation; Monitoring/evaluation are in progress.

MINISTRY OF AGRICULTURE, FORESTRY AND FISHERIES

- Preparation of manual on ; Administracao de Pessoal; Organizacao e Funcoes; Instrumentos Operacionais-Planificacao; Treinamento em Excel; Livro de Ponto; Recrutamento de Pessoal; Formacao e Capacitacao; Instrumentos Operacionais-Financas.

SECRETARY OF STATE FOR LABOUR AND SOLIDARITY

- Review final text of Organic Law of SSLS;
- Completion of internal administrative policies;
- Instituting system of program monitoring, evaluation and supervision;
- Strengthening SSLS financial management systems and procedures.
