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East Timor

Country Reports on Human Rights Practices - [2005](#)

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East Timor is a parliamentary republic; its population is approximately 925 thousand. Its first parliament was formed from the 88-member constituent assembly chosen in free and fair, UN-supervised elections in 2001. The 41-member cabinet was dominated by the Fretilin Party, which won the majority of assembly seats. Mari Alkatiri, Fretilin's secretary general, was prime minister and head of government, and Xanana Gusmao, elected in free and fair elections in 2002, was president and head of state. The UN Mission of Support in East Timor (UNMISSET) completed its mission in May, and a smaller UN Office for East Timor (UNOTIL) replaced it. UNOTIL's mission is scheduled to end on May 20, 2006. Civilian authorities generally maintained effective control of the security forces; however, there were a few instances in which members of the security forces acted independently of government authority.

The government generally respected the human rights of its citizens; however, there were problems in some areas. A continuing problem for the international community and for the government was dealing with the human rights abuses during the period of Indonesian rule, and particularly with the crimes committed in 1999. The following human rights problems were reported:

- excessive use of force and abuse of authority by police
- prolonged pretrial detention
- denial and restriction of the rights to due process and to an expeditious and fair trial
- instances of violations of the rights of expression and association
- domestic violence against women, rape, and sexual abuse
- trafficking in persons
- lack of infrastructure to care for persons with disabilities
- child labor in the informal sector

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Arbitrary or Unlawful Deprivation of Life

The government or its agents did not commit any politically motivated killings; however, in February a national police (PNTL-*Policia Nacional de Timor-Leste*) officer who had been assaulted by other PNTL officers in December 2004 died, apparently from injuries sustained during the assault and exacerbated by insufficient medical care. PNTL officers had arrested the officer for alleged indecent behavior and then assaulted him at the police station in Los Palos. According to the official investigation of the incident, the arresting officers, including the district commander, repeatedly kicked him in the head. The autopsy reportedly concluded that he died as a result of blunt trauma to the head. Five PNTL officers, including the district commander, were charged in connection with the ill-treatment and initially expelled from the PNTL; however, the case was subsequently dismissed and they were allowed to return to active duty. The district commander was transferred to the police academy in Dili.

In January a member of Colimau 2000, an organization suspected of links to anti-independence militias, was killed in Bobonaro District. Strong circumstantial evidence suggested that the killers were former militia members normally resident in West Timor. Later in January a militia member was arrested following a firefight with police. He denied any knowledge of the killing and was charged and convicted only of illegal arms possession.

There were no developments in the investigation of the 2003 killing of fugitive militia leader Francisco Vegas Bili Atu by a member of the PNTL. There also were no developments in the case of the former militia members arrested after attacking a bus near Aidabaleten in 2003, in which two persons were killed and several others injured.

b. Disappearance

There were no reports of politically motivated disappearances.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The law prohibits such practices, and the government generally respected the prohibition against torture; however, there were incidents of cruel or degrading treatment by police officers. On January 7, members of the Border Patrol Unit (BPU) arrested an Indonesian citizen in the enclave of Oecusse for illegally crossing the border. BPU officers beat and kicked the man, and did not intervene when members of the community beat him and burned him with cigarettes. The case was investigated by the PNTL district commander and the results sent directly to the national police commissioner. No further action had been taken at year's end. In early March two men and one woman were arrested without warrant in Cailaco for allegedly providing food to former anti-independence militia members. PNTL officers reportedly punched and kicked the men and forced a pistol into one's mouth. No investigation has been opened for this case. In early June a man accused of assaulting the wife of a PNTL officer by pulling her hair was arrested without warrant and beaten and kicked until unconscious. He was then brought to the police station and beaten again. Following treatment at the hospital, one of the PNTL officers threatened that they would beat him to death if he took legal action against the officer who instigated the arrest. The PNTL investigation unit in Dili opened an investigation but suspended it, reportedly because members of parliament had begun an investigation. At year's end there were no known further developments in this case.

On July 26, the PNTL raided the Baucau offices of the Comite Popular de Defesa-Republica Democratica de Timor-Leste (CPD-RDTL), an organization that sometimes claimed to be the legitimate government and some of whose members were accused of criminal activity, and, according to credible reports, indiscriminately beat and detained members (see section 1.d.). The acting PNTL district commander said that only those persons who actively resisted the operation were briefly detained.

In November following a traffic incident involving a truck, the minister of interior and three of his bodyguards, who were members of the PNTL's Rapid Intervention Unit, pursued the truck and forced it to a stop. The truck driver escaped on foot, but the minister and two of the bodyguards kicked and beat two passengers in the truck. According to an eyewitness account, the minister hit one of the passengers in the back of the head with a rifle butt, reportedly fracturing his skull.

There was one reported case of illegal law enforcement activity by a member of the military. In mid-July a captain in the national defense force, Falintil-Forca Defesa Timor Leste (F-FDTL), and military police under him beat and detained for several days a man who had been involved in an alleged assault on the captain. The man filed a complaint with the police but by year's end no investigation was carried out.

In April the international judge presiding in the trial of three PNTL officers accused in the May 2004 rape of a 16-year-old girl freed the accused and closed the case for lack of evidence as the victim and other witnesses did not appear. The judge apparently did not refer to the evidence presented at a previous hearing, nor inquire whether the victim and witnesses had been notified of the trial date. The prosecutor general appealed the dismissal to the Court of Appeals, and at year's end the appeal was still pending. There were no significant developments in the September 2004 case of an off-duty police officer who forcibly entered the home of a 12-year-old girl who had allegedly been statutorily raped by the officer's 19-year-old brother. The Professional Ethics Office (PEO) opened an investigation, but no further action was taken by year's end.

The district court in Oecussi convicted a village chief of arbitrary arrest in the 2003 case in which a police officer reportedly participated in beating and burning with cigarettes a 16-year-old deaf and mute boy who had been accused of petty theft. There were no further developments regarding police involvement in the abuse.

Delay or refusal by police to investigate allegations of rape or domestic violence was a common problem (see section 5).

There were no known judicial or administrative actions in the cases of the April 2004 police assault on a member of a foreign military team; in the May 2004 police assault on two men at a cockfight; in the June 2004 police assault on a security guard at a Dili restaurant; or in the September 2004 police assault, in the presence of the minister of interior, on the driver of an allegedly overloaded car.

Prison and Detention Center Conditions

Prison conditions generally met international standards; however, prison facilities were deteriorating, and there were reports of undisciplined behavior and abuse by prison guards. At Gleno prison, the deterioration of the infrastructure gave rise to safety and security concerns, and there were severe water shortages.

There were no developments in the criminal case filed against a guard who in 2003 reportedly beat and injured an inmate at Baucau prison while other guards watched. An investigation was reportedly completed in July 2004, but no further action was taken.

Becora prison added two separate cells for women during the year, so that unlike in previous years all three prisons now have separate facilities for female prisoners. There were two full-time social workers to deal with juveniles, women, elderly, and mentally ill inmates. All prisons operated at or very near capacity throughout the year.

The government permitted prison visits by the International Committee of the Red Cross and independent human rights observers.

d. Arbitrary Arrest or Detention

The law prohibits arbitrary arrest and detention; however, there were instances in which these provisions were violated. A number of persons were arrested and detained but ultimately not charged with crimes. Although this sometimes happened due to misunderstandings or because an investigation exculpated the suspect, the circumstances of other cases suggested that law enforcement officers may have held detainees as a form of punishment.

In several cases in which members of groups or organizations were accused of criminal behavior, the police arrested members of these groups without any apparent effort to determine whether the individuals arrested were suspected of involvement in the criminal behavior. For example, on February 7, police arrested seven members of an organization called Kultura Halibur in Manatuto following complaints about alleged fraud by members of the group. The arrests and accompanying searches were carried out without warrants and appear to have been based on no specific evidence against the individuals arrested. The police brought the detainees to a community meeting where the district commander said that Kultura Halibar was an illegal organization and that community members must seek police permission before participating in any group.

Role of the Police and Security Apparatus

The national police commissioner oversees the PNTL and is responsible to the civilian minister of interior. Each of the country's 13 districts has a district commander who reports to the office of the national police commissioner. The PNTL comprises approximately 3,300 members, including specialized units. It remained poorly equipped and undertrained; there were numerous credible allegations of abuse of authority (see section 1.c.), mishandling of firearms, and corruption. Reports of abuse of authority and unprofessional conduct decreased somewhat compared to last year; however, it is unclear at this time whether this reflected a positive trend in police conduct or the reduced presence of international personnel monitoring the police.

The PEO investigated allegations of police misconduct and reported its findings to the PNTL commissioner. Cases of severe misconduct were referred to a committee chaired by the vice minister of the interior. During the year some officers were punished for relatively minor misconduct, and in several cases police officers were convicted and sentenced for assaults committed while on duty; however, by year's end, no action had been taken in a number of cases involving serious misconduct. There were allegations that personal connections within the police force or the Ministry of Interior were a factor in some cases.

The PNTL often was slow to respond, willing to overlook required procedures, or ill-equipped to complete an investigation or arrest. In May a man accused of raping his granddaughter was released by police in Baucau because they were unable to reach a judge and prosecutor to arrange a detention review hearing and had no vehicle available to transport him to Dili. No further action was taken. Victims and suspects often were transported in the same vehicle, due to the limited availability of transportation.

Observers continued to be concerned regarding the independence of the police. For example, in July and August police carried out a series of searches and arrests of CPD-RDTL members motivated not by evidence of particular criminal offenses but rather at the direction of senior government officials who also directed details of the operations. (see sections 1.c.). In July the PNTL refused to investigate allegations of domestic violence by a PNTL deputy district commander (see section 5.).

Arrest and Detention

The law requires judicial warrants prior to arrests or searches, except in exceptional circumstances; however, this provision was often violated.

In July and August the PNTL carried out a coordinated series of searches and detentions targeting the CPD-RDTL. The searches and arrests were carried out without warrants, apparently at the direction of senior government officials. In late July a member of the political party Association of Socialist and Democratic East Timor (ASDT) was arrested without warrant in Suai after police questioned him while he and several friends were putting a roof on a building to be used for ASDT meetings. Police asked him if he had a license for the party and for the "meeting" and arrested him when he replied in the negative. He filed a complaint with the PEO.

Government regulations require a hearing within 72 hours of arrest to review the lawfulness of the arrest and detention and also to provide the right to a trial without undue delay. During these hearings the judge may also determine whether the suspect should be held in detention or released either because evidence is lacking or because the suspect is not considered a flight risk. However, because of a shortage of magistrates, many suspects were forced to wait longer than 72 hours for a hearing. This situation was particularly acute in areas that did not have a local magistrate or where authorities lacked means to transport suspects to a hearing. Some prosecutors, in violation of regulations, granted police the authority to detain persons beyond 72 hours.

The law provides for access to legal representation at all stages of the proceedings, and there are provisions for providing public defenders to indigent defendants. However, there is an extreme shortage of qualified public defenders, and many indigent defendants relied on lawyers provided by legal aid organizations.

There were no reports of political detainees.

A 2003 ruling by the Court of Appeals stated that the pretrial detention limit of 6 months and the requirement that such detentions be reviewed every 30 days need not apply in cases involving certain serious crimes; however, the 30-day review deadline was missed in a large number of cases involving less serious crimes, and a majority of the prison population consisted of pretrial detainees.

e. Denial of Fair Public Trial

The law provides that judges shall perform their duties "independently and impartially" without "improper influence" and requires public prosecutors to discharge their duties impartially. These provisions generally were respected.

The court system includes four district courts (Dili, Baucau, Suai, and Oecussi) and a national Court of Appeals in Dili. The Ministry of Justice

is responsible for administration of the courts and prisons and also provides defense representation. The prosecutor general is responsible for initiating indictments and prosecutions. Until a supreme court is established, the Appeals Court was the country's highest tribunal.

Establishing justice sector institutions and recruiting and training qualified judges, prosecutors, and defense attorneys proved difficult. In January the president of the Court of Appeals announced that all 22 sitting judges failed the qualifying exams taken in 2004 and were therefore required to step down. Exceptions were made for judges on the Court of Appeals, the Special Panels for Serious Crimes, and the National Election Commission. In May it was announced that all of the prosecutors and public defenders who had taken their qualifying exams had failed. Four international judges, who had arrived in September 2004, took responsibility for all cases in the district courts. Five international prosecutors and six international public defenders arrived in August and September. Private lawyers continued to represent the majority of defendants in the district courts.

Personnel shortages affected the entire legal system, but it disproportionately affected the operations of the Baucau, Oecussi, and Suai district courts, which operated at irregular intervals. The international judges, who were originally hired to assist their national counterparts in tackling the nationwide case backlog, instead divided their time between covering district court cases and providing training to the ex-judges, prosecutors, and public defenders and were thus only able to travel to the district courts for a few days at a time once or twice a month. During the year many legal experts observed that court processing of criminal cases was slower than in previous years and that no civil cases had proceeded to judgment.

The shortage of qualified prosecutors and technical staff for the office of the prosecutor general resulted in a 2,707 case backlog in the prosecutor's office, a modest reduction from previous months.

Trial Procedures

The law provides for the right to a fair trial; however, the severe shortages of qualified personnel throughout the system led to some trials that did not fulfill prescribed legal procedures. Trials are before judges. Except for sensitive cases, such as crimes involving sexual assault, they are public; however, this was inconsistently applied. Defendants have the right to be present at trials and to consult with an attorney in a timely manner. Attorneys are provided to indigent defendants. Defendants can confront hostile witnesses and present witness and evidence of their own. Defendants and their attorneys have access to government-held evidence. Defendants enjoy a presumption of innocence and have a right of appeal to higher courts.

The legal regime is complex and inconsistently applied. Pending development of a complete set of national laws, Indonesian laws and the UN's transitional regulations remained in effect. The constitution stipulates that UN regulations supersede Indonesian laws (see section 2.a.); however, this was inconsistently applied. For example, in a September 2004 decision the Court of Appeals declared that a UN executive order decriminalizing defamation did not effectively overrule an Indonesian law under which defamation is criminalized.

The Court of Appeals operated primarily in Portuguese. The UN regulations, many of which are in force, were available in English, Portuguese, and Indonesian, as well as in Tetum, the language most widely spoken in the country. Laws enacted by parliament, intended to supplant Indonesian laws and UN regulations, were published in Portuguese with very few available in Tetum. Litigants, witnesses, and criminal defendants often were unable to read the new laws. Trials are required to be conducted solely in Portuguese and Tetum. However, international judges sometimes refused to provide translations of the trial proceedings. For example, in October 2004 an international judge refused to allow translation of the proceedings of a pretrial hearing for a complainant who spoke Tetum and English but not Portuguese. The complainant claimed that the translation provided was inadequate and that he was pressured to sign a statement in Portuguese, which he did not understand.

The Serious Crimes Unit (SCU) was responsible for investigations and indictments concerning genocide, war crimes, crimes against humanity, murder, sexual offenses, and torture that occurred in 1999. Pursuant to UN Security Council resolutions, the SCU ceased its investigations in November 2004 and ceased virtually all other operations on August 30. At the time of its closure the SCU had filed 95 indictments against 391 persons. Of these 290 remained at large in Indonesia with little chance of being returned to stand trial. In 2000 the transitional administration also established the Special Panels on Serious Crimes within the Dili District Court to try those charged with the mass killings and other gross human rights violations committed in 1999. The two Special Panels, each of which consists of two foreign judges and a local judge, have exclusive and "universal" jurisdiction to adjudicate cases concerning these human rights violations. The Special Panels for Serious Crimes were adjourned on May 20. As of their adjournment the Special Panels had issued 84 convictions, three acquittals (one of which was later overturned by the Court of Appeals), and 13 indictment dismissals.

Although the Special Panels were adjourned, they can be reconstituted whenever needed as long as they meet the requirement of comprising two international and one local judge. In August former militia member and SCU indictee Manuel Maia was arrested after he crossed the border from Indonesian West Timor. At year's end he remained in pretrial detention and plans were in place to convene a Special Panel to try him. Several other former militia members were also arrested in August and September who reportedly were investigated but not indicted by the SCU. At year's end it was not clear how these cases would be handled and whether they would be indicted and tried for serious crimes.

The SCU worked very closely with the Truth and Reconciliation Commission of East Timor (CAVR, or Comissao de Acolhimento, Verdade e Reconciliacao de Timor Leste). While the SCU is mandated to investigate and prosecute crimes against humanity committed in 1999, the CAVR investigated less egregious human rights violations that occurred between April 1974 and October 1999. CAVR also facilitated reconciliation between victims and perpetrators of these violations (see section 4). The CAVR held its final public meeting in March 2004 and presented its final report to the president on October 31. The president presented the report to parliament on November 28. At year's end it had not yet been made public.

The Ad Hoc Tribunal, based in Indonesia, failed to achieve accountability for crimes against humanity committed in East Timor in 1999. In

February the UN appointed a Commission of Experts (COE) to evaluate the Ad Hoc Tribunal and the SCU and recommend the next steps for achieving accountability. The COE concluded that the serious crimes process in East Timor had "ensured a notable degree of accountability for those responsible for the crimes committed in 1999" but that the Ad Hoc Tribunal in Indonesia was "manifestly inadequate." The COE report recommended continued UN support of the serious crimes process in East Timor so that investigation, indictment, and prosecution of perpetrators could continue (see section 4).

In December 2004 the governments of Indonesia and East Timor agreed to form a bilateral Truth and Friendship Commission (TFC) to address human rights violations committed in East Timor in 1999 (see section 4). The TFC was inaugurated on August 11 and held several meetings during the remainder of the year. The COE report criticized the TFC's terms of reference as contradicting international standards that prohibit impunity for crimes against humanity. Throughout the year there was widespread public criticism in East Timor of the TFC as not addressing the need for true accountability. There was continued public support for an international tribunal or other mechanism to bring to justice those indictees who remained at large in Indonesia. The five widely respected East Timorese members of the commission at times expressed guarded optimism about the prospects that the TFC would engage in a thorough and honest search for the truth.

Political Prisoners

There were no reports of political prisoners.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The law prohibits such actions, and the government generally respected these prohibitions in practice; however, there were a few reports of arbitrary interference with privacy, family, home, and correspondence. A land law promulgated in 2003 broadly defines what property belongs to the government and has been criticized as disregarding many private claims. Although the government was in the process of drafting a comprehensive land law that is expected to include details on how ownership of land is to be determined in cases of conflicting claims from Portuguese and Indonesian times, the government nonetheless claimed property that had other claimants. For example, in 2003 the government seized the home of an opposition leader and proceeded with construction on the property although the legal ownership was yet to be determined. At year's end the case remained pending in the Dili District Court.

On July 26, coincident with the raids on CPD-RDTL offices in Baucau (see sections 1.d. and 2.a.), the police searched the residence of a journalist in Baucau apparently without a warrant.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The law provides for freedom of speech and of the press, and the government generally respected these rights in practice; however, there were instances in which government officials attempted to interfere with these rights.

Individuals could generally criticize the government without reprisal and a UN executive order decriminalized defamation. However, in September 2004 the Court of Appeals decided that the executive order did not overturn the Indonesian statutes that define libel and defamation as criminal offenses (see section 1.e.). During the year there were several cases of persons arrested for criticizing the government. For example, on March 15, a man who complained at the Dili prosecutor's office about lack of action regarding an alleged assault on his mother was arrested for defamation and held overnight. On April 6, two men were arrested in Viqueque for comments they made during the screening of a film during a visit by government officials. The men reportedly disputed the claims of the film and called the president a liar. Under the Indonesian penal code the men were charged with "publicly giving expression to feelings of hostility, hatred or contempt against the government." They were released on April 13, pending investigation of the case. On June 16, a man was detained on defamation charges for statements against the prime minister in connection with the detention of his son. In each of these cases the suspects were detained briefly and released for lack of evidence following their detention review hearings.

In April after a newspaper published numerous articles that were regarded as unfavorable to the government, including reports on famine deaths that the government had denied, the government evicted it from government-owned headquarters it had occupied since 1993. The eviction was not illegal, but the timing suggested a political motive. On July 26, police, carrying out a raid of the headquarters of CPD-RDTL in Baucau (see section 1.d.), searched without warrant the nearby house of a journalist who works for the local community radio station and a Dili-based daily newspaper. The police accused him of hiding CPD-RDTL members. The journalist's report on this incident appeared August 9. On August 11, police who had gone to the radio station where he worked in response to a fight arrested him without warrant and detained him for 24 hours. The journalist and the director of the community radio station reported that the arresting officers said the detention was in retaliation for critical reporting on the police.

There were four daily newspapers, three weeklies, and several newspapers that appeared sporadically. Their editorials frequently criticized the government and other political entities. During the year there was increased concern regarding the use of defamation suits against the media. In December the Council of Ministers passed a penal code that included provisions criminalizing defamation and insults to a person's "honor." By year's end, amidst an intense national debate, the president had neither promulgated nor vetoed the law.

The Public Broadcast Service (PBS) owned and operated a radio station and a television station. The PBS radio service was available throughout the country. The PBS television broadcast was available only in Dili and Baucau. In addition to the PBS radio station, there were 18 community radio stations, including at least 1 in each district. Radio was the most important news medium for most of the country.

There were no legal or administrative restrictions on Internet access.

The government generally did not restrict academic freedom; however, in 2004, the Council of Ministers issued a decree requiring that academic research on Tetum and other indigenous languages be approved by the National Language Institute (INL). It gave the INL the power to refuse to authorize linguistic research that "has no scientific merit" or that "would not be advantageous to the country." Foreign researchers must obtain authorization from the INL "under penalty of manifest illegality." There were no reports during the year that this law had been applied to prevent academic research or to punish researchers.

b. Freedom of Peaceful Assembly and Association

The law provides for the freedom of assembly and association, and the government generally respected these rights; however, the authorities violated these rights in some cases.

Freedom of Assembly

During April 19 to May 8 large-scale, antigovernment demonstrations in Dili, police roadblocks at times stopped participants coming from the districts. The roadblocks were later lifted.

On October 5, police in Dili evicted minibus drivers demonstrating against higher fuel prices from the area in which they were gathered because they had not provided advanced notification. This appeared to be based on a new law on freedom of assembly and demonstrations that had not yet been promulgated and so technically was not in force. The law establishes guidelines for obtaining permits to hold demonstrations and, among other things, requires that police be notified four days in advance of any demonstration or strike. In December police arrested ASDT party members for holding a political meeting without permission.

Freedom of Association

There were several cases during the year of persons being arrested apparently on the basis of their membership in antigovernment organizations (see section 1.d.). On February 7, the police district commander in Manatuto told community members that they must seek police permission before participating in any group (see section 1.d.).

c. Freedom of Religion

The law provides for freedom of religion, and the government generally respected this right in practice. More than 90 percent of the population was Roman Catholic, and there were small Protestant and Muslim minorities. Generally, religious minorities were well integrated into society.

The large-scale, antigovernment demonstrations, which took place during April and May (see section 2.b.) were organized by Roman Catholic Church officials. Among other things, they were protesting a government decision that shifted religious education from the core public school curriculum and made it an after-school elective without state funding. At the conclusion of the demonstrations the prime minister and the country's two Catholic bishops signed a joint declaration that provides that the teaching of religion "must be included as a regular discipline in the public school curriculum," subject to the right of each child's parents to opt for their child's participation or nonparticipation.

In November and December 2004 the government deported to Indonesia a group of Muslims of Malay descent who had occupied a Dili mosque for three years. The group had experienced difficulty integrating into society and obtaining citizenship. Ethnic Timorese Muslims have not faced the same difficulties.

Societal Abuses and Discrimination

During the year there was a report that Protestant evangelists and their converts in the Liquica area had been harassed and threatened by members of the communities in which they were proselytizing. Subsequently the community was reported to have successfully mediated this conflict. There was also a report that a Protestant minister in the Manatuto area had been threatened and beaten by community members.

There is no indigenous Jewish population, and there were no reports of anti-Semitic acts.

For a more detailed discussion, see the [2005 International Religious Freedom Report](#).

d. Freedom of Movement within the Country, Foreign Travel, Emigration, and Repatriation

The law provides for these rights, and the government generally respected them in practice; however, during large-scale, antigovernment demonstrations in Dili in April and May, police roadblocks at times stopped participants coming from outlying areas (see section 2.b.).

The law prohibits forced exile, and the government did not employ it.

The conflicts in 1999 and anti-independence militia activity in 2000 and 2001 resulted in 250 thousand East Timorese fleeing their homes and crossing the border into West Timor. By 2003 approximately 225 thousand had returned home. During the year an additional small number of refugees returned from West Timor.

Protection of Refugees

The law provides for the granting of asylum or refugee status to persons in accordance with the 1951 UN Convention relating to the Status of Refugees and its 1967 protocol. In practice the government provided protection against *refoulement*, the return of persons to a country where they feared persecution. The government granted refugee status or asylum; however, there were concerns that the country's regulations governing asylum and refugee status may preclude genuine refugees from proving their eligibility for such status. For example, persons who wish to apply for asylum have only 72 hours to do so after entry into the country. Foreign nationals already present in the country have only 72 hours to initiate the process after the situation in their home country becomes too dangerous for them to return safely. A number of human rights and refugee advocates maintained that this time limit contravenes the 1951 convention. These advocates also expressed concern that no written reasons are required when an asylum application is denied.

There were no applicants for asylum during the year. At year's end, nine cases submitted in 2003 and 2004 were still pending final decisions. After the promulgation of the 2003 Immigration and Asylum Act, the government assumed responsibility from the Office of the High Commissioner for Refugees (UNHCR) for adjudicating asylum claims. Throughout the year, UNHCR continued to mentor immigration officials to ensure that asylum applications were processed according to treaty guidelines. The government instituted a process whereby all asylum applications must be approved by the minister of the interior. This requirement led to delays.

Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

The law provides citizens with the right to change their government peacefully through periodic elections.

Elections and Political Participation

In 2002 Xanana Gusmao was inaugurated as the first president, and, in accordance with the constitution, the members of the constituent assembly were sworn in as the first national parliament. Mari Alkatiri became the first prime minister of the country. The 88-member assembly, elected in a free and fair election in 2001, was charged with writing a constitution, which was completed in 2002 and came into effect upon independence. Some observers criticized the provision under which the constituent assembly automatically became the parliament and a parliamentary election is not required until five years after independence.

In 2004 the government, with oversight by independent election authorities and assisted by UN advisors, carried out a voter registration, and the list of registered voters was published for public scrutiny. The resulting voter database was used for local elections and is to be maintained and updated for future presidential and parliamentary elections. Local elections using the new list began in December 2004 and were completed on September 30. The late 2004 elections, in the remote enclave of Oecussi and western districts bordering Indonesia, were plagued by administrative problems, the most significant being errors and omissions on the voter registration lists. However, the national election commission moved quickly to rectify most problems and each successive round of local elections held during the year saw improvements because registration list problems were dramatically reduced. International observers found no evidence of electoral fraud. However, there were allegations by opposition parties of intimidation and misuse of government resources by the ruling party at all stages of the elections. The National Commission on Elections, the independent election oversight body, had extremely limited resources with which to investigate.

There were 23 women in the 88-seat assembly. Women held three senior cabinet positions--minister of state, minister of public works, and minister of finance and planning--and four vice minister positions. One of the four judges on the appeals court was a woman.

The country's small ethnic minority groups were well integrated into society. The number of members of these groups in parliament and other government positions was uncertain. Both the prime minister and the minister of defense were members of ethnic minority groups.

Government Corruption and Transparency

During the year there was increased concern within society and among international observers regarding credible reports of corruption in government institutions. There were accusations during the year of lack of transparency in the government procurement process. For example, in July it was alleged that a company partly owned by the prime minister's brother was unfairly granted a monopoly to sell weapons to the government. Opposition members of parliament who asked to review the contracting procedures were not allowed to do so. There continued to be credible rumors of petty corruption at the nation's port. In addition customs and border officials were suspected of facilitating the smuggling of gasoline, tobacco, and alcohol across the border from Indonesia. The Office of the Inspector General carried out investigations into nine cases of maladministration or possible corruption during the year. One case, involving allegations of bribery in a district health office, was referred for prosecution.

The law stipulates that all legislation, supreme court decisions, and decisions made by government bodies must be published in the official gazette. Failure to publish them renders them null and void. Regulations also provide for public access to court proceedings and decisions. In addition rules governing the national budget and accounts ensure public access. The country's Petroleum Fund Law, passed by the parliament on June 20, was consistent with internationally acceptable principles of transparency and oversight.

Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A wide variety of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Nongovernmental organizations (NGOs) have played an active role in assisting and advising in the development of the country, and numerous NGOs were established over the last four years.

According to the controversial 2003 Immigration and Asylum Act, foreigners are prohibited from taking part in political activities. This provision could preclude foreigners and international NGOs from assisting labor unions or projects to promote the development of civil society, and it could also allow the government to restrict noncitizens from monitoring the criminal or judicial systems. In addition the law allows the government to prohibit foreigners from holding conferences and cultural exhibitions if the government believes that the activities would jeopardize the interests of the country. An exception in the law exempts activities contracted by government institutions, funded by bilateral or multilateral assistance programs, and aimed at training or strengthening democratic institutions that are constitutional and regulated by law or strictly academic in nature.

In April 2004 parliament passed a law establishing the constitutionally mandated Office of the *Provedor* (Ombudsman) for Human Rights and Justice. The *provedor* was elected by parliament in March, and the government designated funds for the establishment of the office. The Office of the *Provedor* is responsible for the promotion of human rights, anticorruption, and good governance, and it will have the power to investigate cases and make recommendations to the relevant authorities. At year's end the office was not fully established or staffed.

The CAVR, which was charged with inquiring into past human rights violations, was headed by 7 national commissioners and 29 regional commissioners in 6 regional offices. The CAVR sought truth and reconciliation through testimonials by victims and perpetrators of human rights violations. The CAVR held numerous reconciliation meetings in locations throughout the country. In December 2003 the CAVR held a four-day public hearing on internal political conflict between 1974 and 1976, in which several victims and current government leaders publicly discussed the breakdown of relations among domestic political parties and subsequent violence and related human rights violations during the period between Portugal's decision to decolonize the country in 1974 and Indonesia's intervention in late 1975. In March 2004 the CAVR held its final public hearing, dedicated to the topic of violence against children. Twelve witnesses testified on the effect of the various stages of the armed struggle on the lives of children, both before and during the Indonesian occupation.

In February the UN appointed a Commission of Experts to evaluate the Indonesian and East Timorese procedures and to recommend the next steps for achieving accountability for human rights violations committed in 1999. In a May 26 report to the UN High Commissioner for Human Rights the COE concluded that the serious crimes process in East Timor had "ensured a notable degree of accountability for those responsible for the crimes committed in 1999" but that the Ad Hoc Tribunal in Indonesia was "manifestly inadequate." Overall the COE noted that accountability was still lacking for those bearing greatest responsibility for the crimes against humanity committed in 1999. The COE report recommended continued UN support of the serious crimes process in East Timor so that investigation, indictment, and prosecution of perpetrators could continue.

In December 2004 the governments of Indonesia and East Timor agreed to form a bilateral Truth and Friendship Commission to address human rights violations committed in East Timor in 1999. The TFC was inaugurated on August 11, and held several meetings during the remainder of the year. The COE report criticized the TFC's terms of reference as contradicting international standards that prohibit impunity for crimes against humanity. Throughout the year there was widespread public criticism in East Timor of the TFC as not addressing the need for true accountability. One observer noted that the East Timorese were focused on truth and the Indonesians wanted to bypass truth and go directly to friendship. There was continued public support for an international tribunal or other mechanism to bring to justice those indicted who remained at large in Indonesia. The East Timorese members of the commission at times expressed guarded optimism about the prospects that the TFC could engage in a thorough search for the truth.

Section 5 Discrimination, Societal Abuses, and Trafficking in Persons

Government regulations prohibit all forms of discrimination. Nonetheless, violence against women was a problem, and discrimination against women, persons with disabilities, and members of minority groups occurred.

Women

Domestic violence against women was a significant problem and sometimes was exacerbated by the reluctance of authorities to respond aggressively to allegations of domestic violence. In some cases a lack of resources was used to justify official inaction and failure to investigate or prosecute cases involving violence against women. The PNTL were particularly slow to follow up on cases where the accused occupied a position of power. For example, in April the wife of a member of parliament (MP) was admitted to a hospital, reportedly as a result of being beaten by her husband. Although the PNTL initially started to investigate the case, they soon suspended the investigation on the basis that parliamentary regulations prohibit the arrest of an MP for offenses punishable with less than a five-year prison sentence. Although the parliamentary rules do not prohibit investigation, no further action was taken. In July PNTL officers refused to investigate allegations of repeated domestic violence by a PNTL deputy district commander. When the officer's wife sought medical treatment for injuries allegedly inflicted by her husband, the doctor at the hospital refused to provide it without authorization from the PNTL district commander. When she took her case to the district commander, he refused to initiate an investigation and instead pressured her to resolve the issue through mediation.

Although rape is a crime, failures to investigate or prosecute, as well as long delays were common in alleged cases of rape and sexual abuse. For example, in April a case of three PNTL officers accused of rape was dismissed when the victim and witnesses failed to appear at trial hearings despite significant evidence that had been presented at a prior hearing (see section 1.c.). The PNTL conducted an investigation of a 2003 case in which a woman allegedly was raped by a member of the F-FDTL. However, at year's end the PNTL reported the case had been dismissed.

Government regulations prohibit persons from organizing prostitution; however, under the Court of Appeals' interpretation of Indonesian laws still in force, prostitution itself is not illegal. Nevertheless, in past years police often arrested women accused of prostitution and some were mistreated while in detention. In past years the government deported some foreign women for alleged prostitution on the ground that they had violated the terms of their visas. However, there were no reports of such deportations during the year. In 2004 a local NGO conducted a study on prostitution and trafficking and estimated that there were up to 358 sex workers in the capital, of whom approximately 115 were

possible trafficking victims (see section 5, Trafficking).

There was no law prohibiting sexual harassment; however, sexual harassment was reportedly widespread, particularly within some government ministries and the PNTL. Efforts were being made to establish a case history of sexual harassment complaints and to introduce laws to explicitly address the problem.

There were no reports of gender-based employment discrimination during the year; however, women usually deferred to men when job opportunities arose at the village level.

Some customary practices discriminate against women. For example, in some regions or villages where traditional practices hold sway, women may not inherit or own property.

A UN-created gender affairs unit has continued as the Office for the Promotion of Equality within the prime minister's office. The unit worked with government ministries and departments to promote gender equality and coordinated activities to reduce gender-based violence.

Women's organizations offered some assistance to female victims of violence, established shelters for victims of domestic violence and incest, and operated a safe room at the national hospital for victims of domestic violence and sexual assault. Other NGOs supported women through microcredit lending.

Children

The constitution stipulates that primary education shall be compulsory and free; however, no legislation has been adopted establishing the minimum level of education to be provided, nor has a system been established to ensure provision of free education. According to a UN study, approximately 25 percent of primary education age children nationwide were not enrolled in school; the figures for rural areas were substantially worse than those for urban areas. Only 30 percent of children in lower secondary education (ages 13 to 15) were enrolled, with an even greater difference between urban and rural areas. At least 10 percent of children did not begin school. These statistics were fairly consistent for both male and female students.

Poor health facilities throughout the country resulted in high infant and under-age-five mortality rates. The major causes of death among children typically were combinations of infectious diseases, persistent malnutrition, and parasitic diseases. The low rate of vaccinations against communicable diseases was a serious problem. Although for some diseases vaccination rates were as high as 72 percent, the UN estimated that less than 15 percent of children between 12 and 23 months had been fully vaccinated. Under the UN's Extended Program on Immunization, vaccines and refrigeration equipment have been supplied to clinics in locations around the country. However, the status of equipment maintenance and condition were unknown at year's end and accessibility to these clinics and the lack of understanding of the need for vaccinations remained problems.

Domestic violence, including violence against children and child sexual assault, was a significant problem. Some commercial sexual exploitation of minors occurred (see section 5, Trafficking).

During the year the prime minister signed a decree establishing an inter-ministerial working group to draft a children's code and another decree establishing a National Commission for Children.

Trafficking in Persons

The law prohibits trafficking in women and children, whether for prostitution or for forced labor; however, there have been several reports of women and girls trafficked into the country for prostitution in recent years. In 2004 a local NGO conducted a baseline study of human trafficking and the sex industry and estimated that as many 115 foreign sex workers in the capital might be victims of trafficking. Several establishments in the capital were known commercial sex operations and were suspected of also being involved in trafficking. While the PNTL conducted raids on brothels and massage parlors in Dili during the year, there were credible reports that some police and customs officials were guilty of collusion with such establishments or with those who trafficked foreign women into the country to work in these establishments. UN officials and local NGO leaders cited several instances in which foreign women, usually of Chinese, Indonesian, or Thai origin, reported that they had been trafficked to the country and were being held against their will. For example, in 2004 two Indonesian women interviewed by a local NGO stated that they had been hired by a businessman in Jakarta to work as housekeepers in a Dili hotel. When they arrived in Dili, the man confiscated their passports and confined the women to his house, telling them that they had to work as prostitutes to pay back their travel expenses.

There was widespread ignorance about the trafficking issue. Trafficking victims did not understand their rights or who to contact for assistance. Police were uninformed about the nature of trafficking, how to recognize it, and how to handle cases. Indonesian women detained for prostitution typically were dropped off at the border with no due process for investigation into whether they were trafficking victims.

UN authorities and the government established a working group to monitor and control trafficking. The Aloia Foundation, an NGO headed by First Lady Kirsty Sword Gusmao, provided assistance to female victims of trafficking and advised the government on trafficking-related issues.

Persons with Disabilities

Although the constitution protects the rights of persons with disabilities, the government has not enacted legislation or otherwise mandated accessibility to buildings for persons with disabilities, nor does the law prohibit discrimination against persons with disabilities. There were no reports of discrimination against persons with disabilities in employment, education, or the provision of other state services; however, difficult access to schools in many districts resulted in many children with disabilities not attending school. Training and vocational initiatives did not give attention to the needs of persons with disabilities. During the year some persons with mental disabilities faced discriminatory or degrading treatment due in part to a lack of appropriate treatment resources. For example, in May a man suffering from mental illness was arrested after allegedly stoning a car. No investigation was carried out but PNTL held him for several days "for his own protection" without contacting mental health workers until UN officials suggested they contact the Ministry of Health.

National/Racial/Ethnic Minorities

Relations are generally good between the ethnic Timorese majority and members of several small ethnic minority groups; however, there were occasional reports of discrimination against ethnic Chinese (who are less than 1 percent of the population) and ethnic-Malay Muslims. An historic tension between residents of the eastern part of the country, whose cultures and languages are partly of Papuan origin, and the Austronesian inhabitants of the western part of the country had largely subsided by the time of independence, but it was an occasional aggravating factor in personal and political disputes.

Section 6 Worker Rights

a. The Right of Association

The country has a labor code based on the International Labor Organization's standards. The law permits workers to form and join worker organizations without prior authorization. Unions may draft their own constitutions and rules and elect their representatives; however, attempts to organize workers generally have been slowed by inexperience and a lack of organizational skills. In 2004 the government established official registration procedures for trade unions and employer organizations.

The Immigration and Asylum Act prohibits foreigners from participating in the administration of trade unions.

b. The Right to Organize and Bargain Collectively

While collective bargaining is permitted, workers generally had little experience negotiating contracts, promoting worker rights, or engaging in collective bargaining and negotiations.

The law provides for the right to strike, but few workers exercised this right during the year (see section 2.b.).

There are no export processing zones.

c. Prohibition of Forced or Compulsory Labor

Government regulations prohibit forced and compulsory labor, including by children; however, there were reports that in November 2004, PNTL officers in Covalima District forced members of CPD-RDTL to perform labor as a form of punishment. There were no such reports during the year.

d. Prohibition of Child Labor and Minimum Age for Employment

The labor code largely prohibits children under 18 from working; however, there are circumstances under which children between the ages of 15 to 18 can work, and there are even exceptional exemptions for children under 15. The minimum age did not apply to family-owned businesses, and many children worked in the agricultural sector. In practice enforcement of the labor code outside of Dili was limited. There were unconfirmed reports that children as young as 10 were being used to smuggle goods across the border between Indonesia and East Timor.

e. Acceptable Conditions of Work

The labor code does not stipulate a minimum wage; however, employers generally used and employees expected a wage of \$85 (the US dollar is the country's official currency) per month as a minimum standard. This amount provided a decent standard of living for a worker and family. The labor code provides for a standard workweek of 40 hours per week and standard benefits such as overtime, minimum standards of worker health and safety, and days off. As required by the labor code, the government in 2004 nominated members to the National Labor Board and the Labor Relations Board. These boards received several weeks of training and began work in 2004. There are no restrictions on the rights of workers to file complaints and seek redress within these codes or other legislation. Workers have the right to remove themselves from hazardous conditions without jeopardizing employment; however, it was not clear that they could avail themselves of this right in practice.

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