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## مجلس حقوق الإنسان

الدورة العشرون

البند ٣ من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

### تقرير المقررة الخاصة المعنية بمسألة الفقر المدقع وحقوق الإنسان، ماغدالينا سيبوليدا كارمونا

إضافة

البعثة إلى تيمور - ليشتي \*\*

موجز

اضطلعت المقررة الخاصة المعنية بالفقر المدقع وحقوق الإنسان، السيدة ماغدالينا سيبوليدا كارمونا، بدعوة من حكومة تيمور - ليشتي، ببعثة إلى هذا البلد في الفترة من ١٣ إلى ١٨ تشرين الثاني/نوفمبر ٢٠١١. وجمعت المقررة الخاصة معلومات مباشرة عن حالة حقوق الإنسان للأشخاص الذين يعيشون في فقر مدقع وعن السياسات المتعلقة بالتخفيف من حدة الفقر، والتنمية والحماية الاجتماعية، وتخصيص الموارد لهذه المجالات من جانب الحكومة.

\* يُعمَّم موجز هذا التقرير بجميع اللغات الرسمية، أما التقرير نفسه، الوارد في مرفق الموجز، فيُعمَّم باللغة التي قدم بها فحسب.

\*\* تأخر تقديم الوثيقة.

وتسلّم المقرّرة الخاصة بصعوبة المهمة التي تواجهها تيمور - ليشتي في التصدي لتحدي بناء الدولة وتنميتها بعد مرور عشر سنوات فقط على استقلالها. بيد أنه، على الرغم من سرعة النمو الاقتصادي الذي شهده البلد في السنوات الأخيرة، فإن وضع أفقر شرائح المجتمع لا يزال خطيراً وثمة تفاوت كبير ومتزايد من حيث مستويات الدخل وإتاحة الفرص وإمكانية الحصول على الخدمات. وتشدد المقرّرة الخاصة على أن التزامات البلد في مجال حقوق الإنسان بإعمال حقوق سكانها كافة الاقتصادية والاجتماعية والثقافية على نحو مطّرد، ودون تمييز، هي التزامات سارية حتى في مرحلة التنمية وإعادة البناء بعد انتهاء الأزمة.

وتبحث المقرّرة الخاصة في هذا التقرير مسألة تمتع أضعف الأفراد والجماعات بحقوق الإنسان، ولا سيما الحقوق الاقتصادية والاجتماعية والثقافية، وتقديم توصيات محددة بشأن كيفية تنفيذ سياسات اجتماعية واقتصادية تكفل للسكان كافة نمواً وتنمية منصفين وشاملين.

## Annex

### Report of the Special Rapporteur on extreme poverty and human rights on her mission to Timor-Leste (13–18 November 2011)

#### Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1–4	4
II. General context .....	5–11	4
III. Legal and institutional framework .....	12–17	6
IV. Achieving equitable and sustainable poverty alleviation: human rights-based growth and development .....	18–26	7
V. Groups particularly vulnerable to poverty .....	27–46	9
A. Women .....	28–31	9
B. Children and youth .....	32–46	11
VI. Challenges to the realization of rights by those living in extreme poverty .....	47–79	14
A. Access to justice .....	47–53	14
B. Right to health .....	54–61	15
C. Right to housing and access to land.....	62–68	17
D. Social security and social protection .....	69–79	19
VII. Conclusions and final recommendations.....	80–84	21

## I. Introduction

1. In the present report, the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, documents the findings of her mission to Timor-Leste from 13 to 18 November 2011. During the visit, the Special Rapporteur collected first-hand information that provided an overview of the human rights situation of people living in extreme poverty in order to conduct a human rights-based analysis of key public policies relating to poverty alleviation, development and social protection.

2. The Special Rapporteur met with various Government authorities, including then President José Manuel Ramos-Horta; Deputy Prime Minister José Luis Guterres; the Minister of Economy and Development João Gonçalves; the Minister of Justice, Lúcia Maria Brandão Freitas Lobato; the Minister of Social Solidarity, Maria Domingas Alves; and the Deputy Minister of Foreign Affairs, Alberto Carlos. She also met with the following: the National Investigation Department (Vulnerable Persons Unit) of the Polícia Nacional de Timor-Leste, the National Commissioner for the Rights of the Child, the Secretary of State for the Promotion of Equality, the Secretary of State for Social Assistance, the Director of Social Reinsertion, the Provedor for Human Rights and Justice, the Anti-Corruption Commissioner and the President of the Petroleum Fund Consultative Council.

3. The Special Rapporteur also held meetings with representatives of international organizations, donor agencies and civil society organizations. She visited and met with residents in the communities of Suai Loro, Galitas, Raimea and Zumalai in Covalima District; Maliana in Bobonaro District; and Dili.

4. The Special Rapporteur expresses her gratitude to the Government of Timor-Leste for its full cooperation during her mission. She also extends her thanks to the United Nations Integrated Mission in Timor-Leste (UNMIT), in particular to the Human Rights and Transitional Justice Section, and to the United Nations Country Team. Lastly, she expresses her gratitude to all those who met with her, in particular those who shared their personal experiences of living in extreme poverty in Timor-Leste.

## II. General context

5. More than a decade ago Timor-Leste emerged from a period of conflict and instability, and embarked upon a process of State-building and development. After restoring the country's independence in May 2002, the Government of Timor-Leste faced the task of consolidating peace and security, and rebuilding their country: restoring the physical infrastructure, 70 per cent of which had been destroyed; constructing the political and institutional architecture; and reconciling its people. Timor-Leste has dedicated significant efforts towards achieving these objectives, necessitating the investment of a large part of the country's financial and human resources, which remain limited.

6. In recent years, Timor-Leste has experienced rapid economic growth, due primarily to the country's considerable oil and gas reserves, and as a result has come to be categorized as a lower middle-income country. Despite these advances, most Timorese people continue to experience poverty, deprivation and insecure employment. Ten years of rapid population growth, a devastating political and security crisis in 2006, which had a serious impact on economic and social conditions, and recent global economic turmoil have restricted progress on achieving the Millennium Development Goals, and Timor-Leste

remains among the least developed economies in the region, ranking 147th out of 187 countries in the United Nations Human Development Index.<sup>1</sup> The intergenerational transmission of poverty continues; according to the World Bank's 2009 projections, at least 41 per cent of the population live below the poverty line,<sup>2</sup> roughly the same percentage as in 2001.<sup>3</sup>

7. The extent and depth of poverty in Timor-Leste is even more severe than the income poverty statistics suggest. According to the Multidimensional Poverty Index, which identifies multiple deprivations in households with respect to education, health and standard of living, 68 per cent of the population in Timor-Leste suffer from multiple deprivations, and an additional 18 per cent are vulnerable.<sup>4</sup> Food insecurity affects up to 70 per cent of households during the "lean season" from December to February,<sup>5</sup> exacerbating the poor nutritional status of women and, in particular, children, 58 per cent of whom suffer from chronic malnutrition.<sup>6</sup>

8. Access to adequate water and sanitation facilities remains poor, particularly in rural areas, where approximately 43 per cent of households do not have access to clean water and 74 per cent of households do not have access to improved sanitation.<sup>7</sup> While the Government reports that about two thirds of the population has access to drinking water,<sup>8</sup> the Special Rapporteur received information that poor water quality implies that only a very small percentage of Timorese have access to safe drinkable water, and many must walk considerable distances to obtain it. The lack of access to clean water and sanitation facilities contributes to illnesses among children, including diarrhoea, one of the leading causes of death of children under 5 years old.<sup>9</sup>

9. Income inequality has risen significantly. Disaggregated data reveals that the 75 per cent of Timorese people who live in rural areas suffer disproportionately from poverty and disadvantage. The disparities between those who live in Dili, 71 per cent of whom fall within the highest wealth quintile in Timor-Leste, and those who live in rural areas, are stark: rural populations experience far higher rates of chronic income poverty and food insecurity, and far lower health and education outcomes. Insufficient infrastructure impedes travel, communication and access to information, and the concentration of decision-making

<sup>1</sup> United Nations Development Programme (UNDP), *Human Development Report 2011—Sustainability and Equity: A Better Future for All*, "Explanatory note on 2011 HDR composite indices: Timor-Leste", p. 2. Available from <http://hdrstats.undp.org/images/explanations/TLS.pdf>.

<sup>2</sup> World Bank, "A 2009 update of poverty incidence in Timor-Leste using the Survey-to-Survey Imputation Method". The national poverty line was defined as US\$ 0.88 per capita per day in 2007.

<sup>3</sup> International Monetary Fund, "Democratic Republic of Timor-Leste: Poverty Reduction Strategy Paper—National Development Plan, Road Map for Implementation of National Development Plan, Overview of Sector Investment Programs—Strategies and Priorities for the Medium Term" (2005), p. 33.

<sup>4</sup> UNDP, "Explanatory note" (note 1 above), p. 4.

<sup>5</sup> UNDP, *Timor-Leste Human Development Report 2011*, p. 52; Timor-Leste Strategic Development Plan 2011-2030, p. 109; World Food Programme, "Timor-Leste: coping with seasonal food shortages", 1 April 2010; Oxfam Australia, "Timor-Leste Food Security Baseline Survey Report", 2007, pp. 4-5.

<sup>6</sup> Strategic Development Plan, p. 40; National Statistics Directorate, *Timor-Leste Demographic and Health Survey 2009-10* (Dili, 2010), p. 150; UNDP, *Timor-Leste Human Development Report*, p. 52. The most common strategies of coping with food shortage are eating less preferred or cheaper food, and reducing meal size and the number of meals (Oxfam Australia, "Baseline Survey", pp. 34-35).

<sup>7</sup> Highlights of the 2010 Census Main Results in Timor-Leste. See also *Demographic and Health Survey*, p. xxxi.

<sup>8</sup> Timor-Leste, Millennium Development Goals 2010 booklet (Dili, 2010), p. 34.

<sup>9</sup> *Demographic and Health Survey*, pp. 139-140.

processes in Dili severely impedes the delivery of basic services at the district, *suco* (village) and *aldeia* (sub-village) levels. The overwhelming majority of people living in rural areas suffer from underemployment and employment insecurity. Although the great majority of the rural population depends on subsistence agriculture, investment in the agriculture sector has been inadequate. Fiscal policies have failed to achieve a diversified economy, and growth in Timor-Leste depends heavily on the country's finite petroleum reserves. This raises serious concerns about the sustainability of the country's economic framework, which has been strongly criticized by some Timorese actors, including civil society organizations.<sup>10</sup>

10. Despite these challenges, the country has achieved some impressive gains over the past 10 years, making considerable progress in terms of stability and security, and experiencing rapid economic growth. The Government of Timor-Leste is progressively increasing its capacity to provide its population with basic social services, such as primary health care and education. In the Strategic Development Plan 2011–2030, the Government reiterated its commitment to alleviating extreme poverty, building human capacity and making basic social services accessible to all Timorese. The country has successfully established the Petroleum Fund, and an accompanying legal framework for oil production, taxation and revenue management.

11. The challenge of constructing the country has, in many ways, been tackled with significant success by the State, which has demonstrated a strong commitment to democracy and determination to improve the lives and livelihoods of all Timorese. The Special Rapporteur acknowledges the well-intentioned steps taken by the Government to confront this daunting task. The obstacles that Timor-Leste has faced in striving for accelerated development while at the same time addressing social divisions in a post-conflict context have been considerable, though not insurmountable. The Special Rapporteur wishes to congratulate Timor-Leste on its advances thus far, and calls on the Government to redouble its efforts to reduce poverty, achieve inclusive growth and development, and build sustainable industries and a strong economy that will benefit the poorest and most vulnerable in Timorese society.

### III. Legal and institutional framework

12. Timor-Leste has shown commitment to the protection and promotion of human rights, as evidenced by steps taken to ratify most of the core international human rights instruments, to improve their domestic implementation, and to engage with various United Nations human rights mechanisms.<sup>11</sup> The Special Rapporteur notes the Government's positive attitude towards ratification of additional human rights instruments, as recently expressed in the course of its examination under the universal periodic review (A/HRC/19/17, para. 77).

13. The Constitution of Timor-Leste (2002) guarantees a range of rights, including the rights to life (sect. 29), personal freedom, security and integrity (sect. 30), freedom of speech and information (sect. 40), freedom of conscience, religion and worship (sect. 45), the equality of all citizens before the law (sect. 16, para. 1), and non-discrimination (sect. 16, para. 2). It protects and promotes economic, social and cultural rights and duties

<sup>10</sup> See Timor-Leste Institute for Development Monitoring and Analysis (La'o Hamutuk), [www.laohamutuk.org](http://www.laohamutuk.org).

<sup>11</sup> See the report of the Working Group on the Universal Periodic Review on Timor-Leste (A/HRC/19/17), and the report of the Working Group on Enforced or Involuntary Disappearances on its mission to Timor-Leste (A/HRC/19/58/Add.1).

(Part II, Title III), including the rights to work (sect. 50), social security and assistance (sect. 56), health (sect. 57), housing (sect. 58), education and culture (sect. 59) and a healthy, humane and ecologically balanced environment (sect. 61). The Constitution reaffirms access to courts for all (sect. 26) and the independence of the judiciary (sect. 119).

14. Timor-Leste has also made progress in adopting key legislation protecting human rights (including the Law against Domestic Violence, the Law on the Protection of Witnesses, the Criminal Procedure Code and the Penal Code) and has established several mechanisms to monitor human rights violations, namely the Office of the Provedor for Human Rights and Justice, the National Commission for the Rights of the Child and the Anti-Corruption Commission. The Special Rapporteur particularly welcomes the establishment of child protection officers in each district, an important step towards improving the protection and promotion of the human rights of children and youth. However, she is concerned that the capacity and effectiveness of some these institutions are limited by a lack of funds and enforcement powers.

15. While the Special Rapporteur commends Timor-Leste on adopting a strong legislative framework for the protection and promotion of human rights, she notes that this is not sufficient to ensure the full enjoyment of rights, in particular by the poorest segments of society. The Special Rapporteur was told that most Timorese, including officials of the State, are often unaware of what laws and legal measures exist and are available to them. She found that those responsible for implementing laws and programmes are hampered by insufficient resources, inadequate capacity, a lack of accountability, and the concentration of decision-making processes in Dili.

16. There also seems to be a lack of understanding of the indivisibility and interdependency of all human rights. In order to ensure that human rights, including economic, social and cultural rights, are enforceable and enjoyed by the poorest groups in society, they must be at the heart of the design, implementation and evaluation of public policies. Meaningful and effective participatory mechanisms must be put in place, those responsible for implementing social policies must be fully accountable, and the principle of equality and non-discrimination must underpin all development policies.

17. The indivisibility of rights also means that ending impunity is an essential prerequisite to ensuring stability, peace and sustainability. The Special Rapporteur encourages the State to take measures to ensure that post-conflict justice and reconciliation is prioritized and that a legal framework is put in place to ensure that those responsible for serious crimes during the conflict are called to account for their deeds, and the victims of those crimes are able to access reparations (see A/HRC/19/58/Add.1). She also reminds the Government of Indonesia, the United Nations and the international community of the role they must play in ensuring that the perpetrators of crimes during the Indonesian occupation are brought to justice.

#### **IV. Achieving equitable and sustainable poverty alleviation: human rights-based growth and development**

18. The Special Rapporteur recognizes that Timor-Leste is a young country still in the early stages of development. Nevertheless, the situation of poverty and deprivation in the country is severe, and economic growth and development have not translated into sustained improvements in living conditions or job creation for the great majority of Timorese people. Development has been uneven and inequitable, its benefits not reaching the poorest sectors of society, particularly rural populations.

19. The human rights framework imposes an obligation on States to ensure that they devote the maximum available resources to the progressive realization of economic, social

and cultural rights. In this context, the Special Rapporteur is concerned about the prioritization of public expenditures in Timor-Leste. She notes that even as the State budget has increased in recent years, there has been a gradual decline in the percentage allocated to social services, including health and education services, as well as to agriculture.

20. The Special Rapporteur welcomes the increases in allocation to these areas in the 2012 budget, which occurred immediately following her visit. Nevertheless, while 53 per cent of the \$1.67 billion budget is earmarked for physical infrastructure, only 7.1 per cent will be allocated to education, 3.3 per cent to health and about 1.5 per cent to agriculture.<sup>12</sup> Although she recognizes that physical infrastructure is important for ensuring the physical accessibility of social services, the Special Rapporteur calls on the Government to reassess the allocation of its resources, to ensure that social services are sufficiently financed to facilitate the progressive realization of economic, social and cultural rights for all Timorese in a sustainable manner.

21. The concept of progressive realization recognizes the challenges faced by small, developing countries such as Timor-Leste in meeting their obligations with respect to economic, social and cultural rights. Yet it also requires that core minimum obligations be met by the State to ensure the satisfaction of, at the very least, minimum essential levels of enjoyment of economic, social and cultural rights. The obligation to achieve these minimum essential levels cannot be dispensed with even when resources are limited, or when a country is in the earliest stages of development.

22. Moreover, compliance with the maximum available resources requirement implies an obligation to ensure sufficient resources are generated. The Special Rapporteur received information that the management of the Petroleum Fund has been effected with efficiency and transparency.<sup>13</sup> However, some concerns have been raised that the Government is consistently withdrawing more from the Fund than the estimated sustainable income level, and that projections from Government spending plans have Timor-Leste exhausting its petroleum resources by 2024, and the Petroleum Fund even sooner.<sup>14</sup>

23. The Special Rapporteur reminds the Government that its fiscal choices will have ramifications for its ability to ensure the realization of economic, social and cultural rights for the population. As the Government is aware, Timor-Leste cannot achieve sustainable and equitable development by relying solely on the revenue from its limited oil and gas resources. Inclusive poverty reduction and the creation of decent work necessitate measures to increase the capacity of the non-petroleum sectors of the economy, particularly agriculture, in order to ensure a diverse revenue stream with long-term stability. The Special Rapporteur also calls on the Government of Timor-Leste to assess whether its corporate taxation rates, among the lowest in the world, should be revised in order to expand the resources available to address poverty and reduce inequality.

24. Development should be a “bottom up” process in which the population can meaningfully and effectively participate in the establishment of national priorities. Consultation alone is not enough; those who are affected by State policies and programmes must have a say in the decisions that affect their lives. To this end, the Special Rapporteur commends the consultation process led by the Prime Minister as part of the formulation of

<sup>12</sup> Timor-Leste, Budget Transparency Portal, available from <http://budgettransparency.gov.tl/public/index?&lang=en>.

<sup>13</sup> See Revenue Watch Institute, “Timor-Leste: transparency snapshot”, available from [www.revenuwatch.org/countries/asia-pacific/timor-leste/transparency-snapshot](http://www.revenuwatch.org/countries/asia-pacific/timor-leste/transparency-snapshot).

<sup>14</sup> La’o Hamutuk, “Submission to Committee C: Economy, Finances and Anti-Corruption, National Parliament, Democratic Republic of Timor-Leste”, 21 October 2011. Available from [www.laohamutuk.org/econ/OGE12/LHSubComCPNOJE2012En.pdf](http://www.laohamutuk.org/econ/OGE12/LHSubComCPNOJE2012En.pdf).



the Strategic Development Plan 2011-2030, but emphasizes that further active measures must be taken to enable the meaningful participation of those living in remote rural areas. Policies should include mechanisms to ensure that all barriers to participation, including linguistic, economic or geographical obstacles, are overcome.

25. The Special Rapporteur also welcomes the recent Sensus Fo Fila Fali initiative to disseminate the 2010 Census results relevant to each of the 442 sucos. This constitutes a good example of how information can be disseminated at the local level in an accessible way, enabling communities and individuals to monitor and audit progress made by Government policies in their own communities.<sup>15</sup>

26. Importantly, the Government of Timor-Leste must also take steps to confront the growing urban-rural divide. The Special Rapporteur welcomes the Government's commitment in principle to the decentralization process,<sup>16</sup> and the recent scaling-up of the local development programme for the country's 13 districts.<sup>17</sup> The Special Rapporteur calls on the Government to continue the process of decentralization by devolving appropriate decision-making powers to local authorities and ensuring that service delivery can be tailored to local needs and overseen by locally based officials.<sup>18</sup> The Government should take the necessary steps to finalize and approve the subsidiary legislation for decentralization; ensure coherence between the subsidiary legislation and the national local government legislation; raise public awareness regarding the decentralization process; and enable and encourage participation in the decentralization reforms through broad civic education campaigns. The Special Rapporteur also calls on development partners and agencies to assist the Timor-Leste authorities in the process of capacity-building for its civil servants, particularly at the municipal level.

## V. Groups particularly vulnerable to poverty

27. Although in Timor-Leste poverty is widespread, several groups are particularly vulnerable. In the following section, the Special Rapporteur will focus on the enjoyment of human rights by two of those groups—women, and children and youth.

### A. Women

28. Timorese women face pervasive structural discrimination and negative gender stereotypes, which dramatically impede their ability to participate in and benefit from education, employment, health services and political representation. A life of poverty and discrimination is the reality for many women in Timor-Leste, particularly women living in mountainous and highland areas, female heads of household, widows and older women.<sup>19</sup> Although Timor-Leste ratified the Convention on the Elimination of All Forms of Discrimination against Women in 2002, and has incorporated guarantees of gender equality and non-discrimination into its Constitution,<sup>20</sup> men continue to be more likely to be

<sup>15</sup> Timor-Leste, Ministry of Finance, Sensus Fo Fila Fali, available from [www.mof.gov.tl/about-the-ministry/statistics-indicators/sensus-fo-fila-fali/](http://www.mof.gov.tl/about-the-ministry/statistics-indicators/sensus-fo-fila-fali/).

<sup>16</sup> Strategic Development Plan, p. 119.

<sup>17</sup> Susanne Kuehn, "Briefing note on the decentralization process in Timor-Leste" (Joint UNDP-United Nations Capital Development Fund Governance Support Programme), April 2011, second page.

<sup>18</sup> UNDP, *Timor-Leste Human Development Report*, p. 73.

<sup>19</sup> Concluding observations of the Committee on the Elimination of Discrimination against Women (CEDAW/C/TLS/CO/1), para. 41.

<sup>20</sup> Constitution, sects. 17 and 50.

educated than women at all educational levels except primary,<sup>21</sup> and have higher rates of literacy.<sup>22</sup> A total of 45 per cent of women aged 15 years and over have not had any education at all.<sup>23</sup> As the Government recognizes, widespread female illiteracy is one of the primary obstacles to achieving substantive gender equality, combating domestic and gender-based violence, and reducing maternal mortality rates.

29. In its review of Timor-Leste in 2009, the Committee on the Elimination of Discrimination against Women expressed concern at the prevalence of a patriarchal ideology in Timor-Leste, with firmly entrenched adverse stereotypes and cultural norms (CEDAW/C/TLS/CO/1, para. 27). It noted that domestic and gender-based violence is an acute problem facing the country, a conclusion also reached by the Special Rapporteur during her visit and consultations. Studies reveal that almost half of all Timorese women feel unsafe in their relationship with their partner,<sup>24</sup> and 38 per cent have experienced physical violence which, three times out of four, is inflicted by a current husband or partner.<sup>25</sup> Despite the prevalence of domestic violence, victims fear being stigmatized or further punished if they report it; less than a quarter of women who experience violence seek help (with women living in poverty the least likely to do so), and of these only one in 20 turn to the police or non-governmental organizations for assistance, the rest turning to family, friends and neighbours.<sup>26</sup>

30. The Special Rapporteur applauds the work of non-governmental organizations that are implementing initiatives to provide victims of domestic and gender-based violence with counselling, access to shelters, legal aid and court support,<sup>27</sup> some in partnership with the Government. However, the important work of these organizations should not be seen as relieving the Government of its responsibility to provide such services. The response of the Government to domestic and gender-based violence has fallen short in many respects, and the Special Rapporteur calls on the Government to increase resource allocation to initiatives that support victims of domestic and gender-based violence; encourage the relevant judicial and police officials to prioritize the prosecution of gender-related crimes; ensure such cases are dealt with efficiently; remove language barriers and other obstacles which prevent victims of gender-based crimes from accessing the formal justice system; and guarantee the protection of victims. The handling of domestic violence cases through customary or traditional justice mechanisms that do not comply with international human rights norms and standards should be actively combated.

31. The Special Rapporteur acknowledges that Timor-Leste has taken some important steps to combat this serious problem, including finally adopting the Law against Domestic Violence (2010), and designating domestic violence as a public crime in the 2009 Penal Code. However, the Special Rapporteur received information that these laws are not being widely implemented. She calls on the Government to put in place the appropriate measures to ensure that relevant officials are trained on the proper operation of the laws and that the public is informed of their existence and importance. Further efforts are also required to

<sup>21</sup> *Demographic and Health Survey*, p. 18.

<sup>22</sup> *Ibid.*, pp. 34–35.

<sup>23</sup> Timor-Leste, *Timor-Leste Labour Force Survey 2010*, p. 18.

<sup>24</sup> Michelle Hynes and others, “A determination of the prevalence of gender based violence among conflict affected populations in East Timor”, *Disasters*, vol. 28, No. 3 (2004), p. 315.

<sup>25</sup> *Demographic and Health Survey*, pp. 228 and 230.

<sup>26</sup> *Ibid.*, p. 245.

<sup>27</sup> Such as Psychosocial Recovery and Development in East Timor (PRADET, <http://pradet.org/>) and Forum Komunikasi Perempuan Timor Lorosa’e (FOKUPERS).

ensure the provision of legal, social and health services for victims at the district level as required by the Law.<sup>28</sup>

## B. Children and youth

32. Owing to elevated mortality rates during the Indonesian occupation and high birth rates since independence,<sup>29</sup> the population of Timor-Leste is overwhelmingly young; 40 per cent of Timorese are under 14 years of age,<sup>30</sup> and in rural areas more than half of the population is under 19 years old. As such, the future prosperity of Timor-Leste will depend largely on the investments it makes to develop the human capital of its youth. Today, children in poor households make up more than half of all people living in poverty in Timor-Leste.<sup>31</sup>

33. As children depend on their families, communities and the State for their survival and development, they are affected by the lack of or inadequate access to basic services. In particular, malnutrition poses a threat to the survival and development of more than half of Timorese children under 5. Chronic malnutrition is the result not only of a lack of food, but also of insufficient access to health-care facilities, poor feeding practices and lack of access to safe drinking water.

34. Half of all children in Timor-Leste are not formally registered,<sup>32</sup> a factor which seriously undermines the State's ability to design and implement policies that respond to the needs of children. The Special Rapporteur encourages the Government to continue to pursue innovative efforts to raise awareness of the issue, such as the 2011 National Birth Registration Campaign. It must also improve the legislative and institutional framework for birth registration in compliance with its obligation under the Convention on the Rights of the Child (art. 7).

35. Efforts must also be made to improve the situation of Timorese youth, among whom widespread poverty, low literacy levels, limited life opportunities and high rates of unemployment are still translating into disenfranchisement and frustration.<sup>33</sup> Much of the social unrest leading to the 2006 crisis was driven by youth who, lacking the means to constructively channel their dissatisfaction, turned to violence.

36. The primary vehicle to address these frustrations, reduce child poverty and improve the status of children and youth in Timor-Leste is education. Education is both a human right in itself, and an indispensable means of realizing other human rights.

37. The Special Rapporteur commends Timor-Leste for guaranteeing the right of every citizen to education in its Constitution and making provision for free and compulsory education from grades one to nine. The National Education Policy 2007–2012 recognizes the importance of preschool education, and the Government has committed to ensuring that at least half of Timorese children are enrolled in and receiving quality preschool education

<sup>28</sup> Law No.7/1010 of 7 July 2010, chap. IV.

<sup>29</sup> *Demographic and Health Survey*, p. xxiii.

<sup>30</sup> 2010 Census (note 7 above).

<sup>31</sup> World Bank and Directorate of National Statistics, Timor-Leste, *Timor-Leste: Poverty in a Young Nation*, 2008, p. 11.

<sup>32</sup> 2010 Census and *Demographic and Health Survey*, pp. 28–29.

<sup>33</sup> Richard Curtain and Brent Taylor, "Viewing young people as assets in the development process: key findings of a national survey in Timor Leste" (2005, UNICEF Timor-Leste); Lene Ostergaard "Timor-Leste Youth Social Analysis Mapping and Youth Institutional Assessment" (2005, World Bank Timor-Leste).

by 2015.<sup>34</sup> In 2008, the adoption of the Organic Law of the Ministry of Education, the Education Policy and the Basic Law on Education provided the foundation for the establishment of a new education system.

38. Notwithstanding this solid legal framework, and despite the Government's commitment to improving education enrolment and outcomes, Timor-Leste faces serious challenges in developing its education system and improving the availability and quality of education for all of its children. Although recent years have seen an increase in net enrolment rates in primary education, less than 50 per cent of children who reach school age enrol in grade one<sup>35</sup> and less than a third of those children remain enrolled until grade nine.<sup>36</sup>

39. In addition, most recent assessments indicate that education outcomes across Timor-Leste are very poor,<sup>37</sup> schools are crowded and in poor physical condition, and the necessary supplies and materials are unavailable.<sup>38</sup> A lack of adequate sanitation facilities discourages girls' attendance,<sup>39</sup> and limited means of transportation to schools affects both boys and girls living in remote rural areas.<sup>40</sup> Children with disabilities, who represent 1 in every 100 primary school students, face even greater obstacles in having their educational needs addressed.<sup>41</sup>

40. Children's education is also hampered by their poor health and nutritional status.<sup>42</sup> In the poorest and most vulnerable households, the opportunity cost of a child attending school may be too high, particularly in the context of limited employment opportunities, the poor quality of education received, and the perceived irrelevance of education.<sup>43</sup>

41. Throughout her mission and in all of her consultations, the Special Rapporteur was repeatedly informed of the serious problems relating to language that undermine the impact and accessibility of the education system. Timor-Leste is a linguistically diverse State: the Constitution designates Tetum and Portuguese as official languages, and recognizes that "other national languages shall be valued and developed by the State" (sect. 13, para. 2). English and Bahasa Indonesia are considered working languages, and many indigenous languages are also spoken, such as Fataluku and Baiqueno.

42. Although Timor-Leste should be proud of its linguistic diversity, it creates great challenges for the education system.<sup>44</sup> Despite being spoken by less than half of Timorese

<sup>34</sup> According to the Government, today only 11 per cent of Timorese children from 3 to 6 years old attend preschool. The quality of preschool education is low, with no standard basic curriculum and variable teaching standards (Strategic Development Plan, p. 18).

<sup>35</sup> Timor-Leste, Ministry of Education, Education Statistical Yearbook 2008/2009, tables 13 and 14.

<sup>36</sup> Timor-Leste, Ministry of Education, National Education Strategic Plan 2011-2030 (2010), p. 19.

<sup>37</sup> See for example, World Bank, "Timor-Leste: an analysis of early grade reading acquisition", 2009.

<sup>38</sup> Timor-Leste and United Nations system, *The Millennium Development Goals, Timor-Leste* (2009), p. 29.

<sup>39</sup> UNDP, *Timor-Leste Human Development Report*, p. 33.

<sup>40</sup> *Demographic and Health Survey*, p. 20.

<sup>41</sup> Timor-Leste, Ministry of Education, and ASSERT, *Ita Hotu Ba Eskola! Report on the First National Survey of Disability in Timor-Leste's Primary Schools, 2008*, p. 6.

<sup>42</sup> A strong relationship exists between household economic status and school attendance, documented at both the primary and secondary levels and among males and females. *Demographic and Health Survey*, p. 20.

<sup>43</sup> UNDP, *Timor-Leste Human Development Report*, p. 46.

<sup>44</sup> *Ibid.*

people,<sup>45</sup> Portuguese is the official medium of instruction in all primary and secondary schools. However, textbooks in Portuguese are scarce, and many teachers do not speak it fluently. While Tetum is taught in primary schools, difficulties arise in terms of the lack of written materials and dealing with different dialects.

43. Given these factors, it is unsurprising that Timor-Leste has poor education outcomes, low retention and high repetition rates.<sup>46</sup> Empirical data shows that children learn better in their mother tongue in the formative stages and early childhood education<sup>47</sup> and children are less likely to attend school if they are unable to understand their teachers or their materials. In order to respect the richness of linguistic and cultural diversity, international human rights principles hold that wherever possible, education policies should provide children with opportunities to have instruction in their mother tongue.<sup>48</sup> Linguistic difficulties in the education system, and particularly the inability of children to access education in their mother tongue or native language, also often results in exclusion from information and access to services (A/HRC/17/29 and Corr.1, para. 63).

44. Acknowledging the particular challenges that Timor-Leste faces, the Special Rapporteur calls on the Government to confront the challenges of language and education. The Special Rapporteur recognizes the investment by the Government in the eradication of illiteracy. Literacy programmes have been implemented in all 13 districts, yet benefit only approximately 10 per cent of the population.<sup>49</sup> She notes that a draft Mother Tongue-Based Multilingual Education policy and pilot programme are under consideration, and that differing opinions have been expressed on the matter.

45. A further issue which greatly affects youth is unemployment. The International Monetary Fund has estimated that about 15,000 to 16,000 young people enter the labour market each year; only 9,500 jobs are estimated to have been created during 2008 and 2009, despite increases in public spending and economic growth.<sup>50</sup> Studies show that the school-to-work transition of young Timorese is hampered greatly by the lack of linkages between the training and education system and the commercial sector. In the absence of a comprehensive social security system, most youth in Timor-Leste have no choice but to enter the informal economy and subsistence farming, where earnings are low and unstable.<sup>51</sup>

46. In recent years, the Government has initiated several programmes to address the concerns of the youth population, particularly unemployment. A national youth policy has been adopted and a national youth fund is to be created to finance initiatives for youth groups and associations.<sup>52</sup> The Special Rapporteur welcomes these policies, as well as the Government and Parliament's commitment to youth training and integration into the work market, as expressed by the recent approval of the Timor-Leste National Training

<sup>45</sup> Only 39.3 per cent of the population aged 15-24 are literate in Portuguese, and 77.8 per cent are literate in Tetum. With respect to the entire population over 15, 25.2 per cent are literate in Portuguese and 56.1 per cent in Tetum. See 2010 Census (note 7 above).

<sup>46</sup> *Demographic and Health Survey*, pp. 20-22.

<sup>47</sup> See report of the Special Rapporteur on the right to education (A/HRC/17/29 and Corr.1), para. 63.

<sup>48</sup> Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, art. 4, para. 3.

<sup>49</sup> Timor-Leste, Millennium Development Goals (note 8 above), pp. 11-12; UNDP, *Timor-Leste Human Development Report*, p. 47.

<sup>50</sup> World Bank, Independent Evaluation Group (IEG), *Timor-Leste Country Program Evaluation 2000-2010: Evaluation of World Bank Group Program* (Washington D.C., 2011), pp. 42-43.

<sup>51</sup> Draft Timor-Leste National Youth Employment Action Plan 2009, p. 4.

<sup>52</sup> Strategic Development Plan, p. 52.

Commitment package, which is to commence in 2012.<sup>53</sup> She calls on the State to strengthen efforts to diversify the economy to ensure that those seeking employment will have access to decent work in sustainable sectors, such as agriculture, small industries and tourism.

## **VI. Challenges to the realization of rights by those living in extreme poverty**

### **A. Access to justice**

47. Since independence, Timor-Leste has faced the immense challenge of building a judicial framework and community of legal practitioners. With the assistance of the international community, some progress has been made to create the system of laws, establish justice mechanisms, bolster the numbers of judicial personnel, improve justice facilities in rural areas, and establish an integrated case management system linking all justice institutions.

48. However, significant advances and reforms to the legal framework are still required to raise the quality of and access to the formal justice system, particularly in rural areas. Some institutions provided for in the Constitution, such as the Supreme Court of Justice and the Audit Court, are yet to be established. Legal awareness and literacy among the population remains low; laws and regulations are published in Portuguese, and only some are translated into Tetum or other local languages. This prevents a large proportion of Timorese from knowing and claiming their rights.

49. The centralization of the Timorese justice system presents a considerable obstacle to accessing justice for those living in poverty, particularly in rural areas. While regional registries and branch offices of the National Directorate for Land and Property have now been set up in each of the 13 districts, district judicial offices or courts have yet to be established in many of the districts.<sup>54</sup> The Special Rapporteur welcomes the Government's initiative to operate a mobile court service in the Baucau and Suai regions and recommends that this be expanded to all districts, pending the establishment of permanent district courts, in order to bring justice closer to the people, improve awareness of the formal justice system, and disseminate legal information to the communities, especially in isolated areas. She welcomes the Government's recognition that the justice system remains inaccessible to substantial parts of the population, and urges the Government to fulfil its commitment to strengthening the capacity and accessibility of the formal justice system.<sup>55</sup>

50. Timorese cultural practices often reflect a preference for the resolution of legal issues at the community level, and the use of traditional justice mechanisms remains widespread.<sup>56</sup> At times these mechanisms fall short of meeting international human rights norms and standards. In order to encourage the people to resolve disputes and claim their rights through the formal justice system, the Government needs to concentrate on building the capacity of the system to dispense justice quickly and efficiently at the district levels. It is also crucial that Timor-Leste adopt a clear regulatory framework to articulate a cohesive and coordinated integration of the formal justice system and traditional justice mechanisms.

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<sup>53</sup> Ibid., p. 30.

<sup>54</sup> Ibid., p. 181.

<sup>55</sup> Ibid., p. 179.

<sup>56</sup> World Bank, "Trust, authority and decision-making: findings from the Extended Timor-Leste Survey of Living Standards", Justice for Poor briefing note, June 2010.

51. Ensuring affordable access to competent legal representation is an essential element of improving access to the formal justice system, particularly by people living in poverty. In this regard, the Special Rapporteur welcomes the recent progress on the Law on Access to Courts (2011), which stipulates broad legal aid coverage at all stages of criminal, civil and administrative matters, including the payment of related expenses. The Special Rapporteur commends the Government on facilitating broad participation of civil society organizations in the drafting process, which has produced a law that is a significant step towards ensuring access to justice for those living in poverty.

52. However, the Special Rapporteur is concerned that the positive impact of the Law will be undermined by pre-existing legislation. The Law on the Juridical Regime Governing the Private Legal Profession and Lawyers Training (Law No. 11/2008 of 30 July 2008) requires that all legal practitioners in Timor-Leste successfully complete a 15-month full-time training course at the Legal Training Centre and 9 months of practice by 2012. The Special Rapporteur is concerned that if the legislation remains in force, Timor-Leste will have a serious shortfall in its stock of qualified legal practitioners, having received information that by July 2012 no more than seven legal practitioners will have completed the course and will therefore be licensed to practice in Timor-Leste, alongside the 16 public defenders. There is already a severe shortage of trained lawyers and judges in the country, a factor which has exacerbated the lengthy backlog of cases and undermined confidence in the judiciary.<sup>57</sup> Although it is important to put in place measures to improve the quality of legal services in Timor-Leste, this must be balanced against the urgent need to ensure that legal practitioners are sufficient in number to meet the needs of the population. Following her mission the Special Rapporteur was informed that an amendment to this legislation, extending the transitional regime allowing lawyers who have not yet completed the training course to practice for two more years, was introduced by the Ministry of Justice and submitted to Parliament. She calls on Parliament to favourably consider this amendment.

53. The Special Rapporteur also calls on the Government to improve access to justice for children and youth. There are no separate children's courts or specially trained juvenile judges in Timor-Leste, nor legislative protection for children as victims, witnesses and alleged offenders. In the light of the State's obligation under international human rights law to prioritize the best interests of the child in all such processes, this situation must be rectified with the passage of the draft Juvenile Justice Law and the draft Law on Special Criminal Procedures (for those between 16 and 21 years old), which have been under discussion for several years.<sup>58</sup> The Special Rapporteur reminds the Government that the establishment of a family and children's court, as proposed in the draft Juvenile Justice Law, must provide for the establishment and regulation of separate children's detention centres and address the specific needs of girls and children with disabilities.

## **B. Right to health**

54. Over the past decade, Timor-Leste has made notable progress in increasing access to and improving the quality of basic health care services, the success of which is evidenced by dramatically improved health indicators: immunization coverage for children aged 12 to 23 months has nearly tripled from 18 per cent in 2003 to 53 per cent in 2009,<sup>59</sup> almost 80 per cent of children are treated for basic illnesses, and 86 per cent of mothers receive some degree of antenatal care. Timor-Leste has achieved Millennium Development Goal 4, on

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<sup>57</sup> World Bank, IEG, *Timor-Leste Country Program*, p. 77.

<sup>58</sup> Committee on the Rights of the Child, general comment No. 10 (2007) on children's rights in juvenile justice; see also Economic and Social Council resolution 2007/23.

<sup>59</sup> *Demographic and Health Survey*, pp. xxvi and 133.

reducing by two thirds the under-5 mortality rate,<sup>60</sup> and progress in maternal health has resulted in reductions in the fertility rate from 7.8 to 5.7 births per woman.<sup>61</sup>

55. At the same time, Timor-Leste continues to experience one of the highest rates of chronic child undernutrition in the world; almost 60 per cent of children under 5 years of age are stunted; 33 per cent are severely stunted; and 45 per cent are underweight.<sup>62</sup> There has been a slight deterioration in these outcomes over the last 10 years.<sup>63</sup> Malnutrition among women is also a serious concern; a third of Timorese women are underweight.<sup>64</sup> These health outcomes are attributable not only to widespread poverty, but also to food insecurity, vulnerability to recent food price spikes, and the low productivity of the Timorese agricultural sector, which primarily revolves around subsistence farming.

56. While the Special Rapporteur welcomes the initiative of the Government to implement a nutrition campaign, information and education must be complemented by strengthening measures to address the complex issue of malnutrition, including measures to improve agricultural production, monitor food insecurity, and support food assistance programmes.

57. While the Constitution enshrines the right to free universal health care, in practice people living in poverty, particularly those in rural areas, are far from realizing this right. Many barriers remain that prevent people from accessing health care; for example, remote communities face long distances and difficult and costly travel to access health care facilities, which are often poorly equipped and staffed.<sup>65</sup> Particularly concerning is the access to maternal health, generally insufficient in the whole country, but considerably worse outside Dili.<sup>66</sup>

58. The incidence of maternal mortality in Timor-Leste is one of the highest in the world. More than 40 per cent of Timorese women who die between the ages of 15 and 49 die from pregnancy-related complications.<sup>67</sup> This is an unacceptable and preventable reality, and illustrates the urgent need for the Government to identify maternal mortality as a priority area for attention and resource allocation. High rates of maternal mortality are suggestive not only of failures in the health-care system and in the provision of other public services, but of structural discrimination and a lack of political will to prioritize the rights of women.<sup>68</sup>

59. The Special Rapporteur calls on the Government to increase expenditure and adopt policies that strengthen health systems, giving priority to maternal health.<sup>69</sup> These policies must be accompanied by access to information, including on sexual and reproductive health, regardless of marital status or age; access to voluntary family planning and legal and

<sup>60</sup> Timor-Leste, Millennium Development Goals Indicators, available from [www.mof.gov.tl/about-the-ministry/statistics-indicators/millennium-development-goals-indicators/?lang=en](http://www.mof.gov.tl/about-the-ministry/statistics-indicators/millennium-development-goals-indicators/?lang=en).

<sup>61</sup> Strategic Development Plan, p. 33.

<sup>62</sup> *Demographic and Health Survey*, p. 150.

<sup>63</sup> *Ibid.*, pp. xxvii, 150-151.

<sup>64</sup> *Ibid.*, p. 165.

<sup>65</sup> A. Zwi and others, *Timor-Leste Health Care Seeking Behaviour Study*, University of New South Wales (Sydney, 2009), pp. 8, 16, 26-27, 54.

<sup>66</sup> For example, 53 per cent of women in urban areas deliver in a health facility compared with only 12 per cent in rural areas. *Demographic and Health Survey*, pp. 119-120.

<sup>67</sup> *Ibid.*, pp. xxvi and 112.

<sup>68</sup> See for example the report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) on preventable maternal mortality and morbidity and human rights (A/HRC/14/39).

<sup>69</sup> See the report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (A/61/338), para. 19.



safe abortions; and special measures to ensure the right to education for women and to address multiple forms of discrimination.

60. Acknowledging the Government's efforts to ensure accessible health care for even the most remote communities, the Special Rapporteur welcomes the implementation of the Integrated Community Health Services (SISCA) programme at the local level. However, she notes that SISCA requires additional support in terms of staffing, training, and transportation in order to increase its effectiveness, widen the scope of its coverage and scale up nutrition interventions. The Government's commitment to establish primary health care facilities in every suco by 2015 is to be commended.

61. The Special Rapporteur calls on the Government to ensure that health-care services adequately accommodate and respond to the needs of persons with disabilities, who comprise around 5 per cent of the population.<sup>70</sup> Of particular concern are the documented cases of persons with mental illnesses held in permanent or long-term restraints by families or community members, as no State-run facility exists for the long-term care of persons with mental illnesses.<sup>71</sup> While the Special Rapporteur welcomes the adoption of a National Mental Health Policy and a Community-Based Rehabilitation Strategy, the Government must ensure that sufficient human and financial resources are dedicated to its implementation.

### C. Right to housing and access to land

62. The extensive destruction and violence committed by the Indonesian military and pro-Indonesian militias following the referendum in 1999 seriously affected the housing stock and infrastructure in the country.<sup>72</sup> Taking power at the time of independence in 2002, the new Government committed to prioritizing measures to address the severe backlog in available housing. The National Development Plan, issued at the inception of the new Government, prominently incorporated the goal of "adequate shelter for all".

63. Ten years on, adequate housing is still out of reach for many Timorese. It is estimated that 58 per cent of communities live in poor housing conditions,<sup>73</sup> with the majority having no access to clean water and sanitation. Yet the political will to address the serious lack of adequate housing appears to have weakened; for example, there is no explicit mention of the right to adequate housing in the Strategic Development Plan 2011-2030.

64. Progress on implementing the Millennium Development Goals Suco Program, adopted by the Government in early 2011, has been limited. Under this programme, five houses would be built in each of the 2,228 aldeias annually, resulting in more than 55,000 houses being built by 2015.<sup>74</sup> From a human rights perspective, this project raises a number of serious concerns, including with respect to the lack of objective eligibility criteria and complaint mechanisms; the absence of meaningful and effective participation of community members; the cultural adequacy and sustainability of importing prefabricated

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<sup>70</sup> Timor-Leste Census 2010, vol. 4, p. xiv.

<sup>71</sup> UNMIT and OHCHR, *Of Course We Can: Report on the Rights of Persons with Disabilities in Timor-Leste* (2011), pp. 24–27.

<sup>72</sup> Report of the International Commission of Inquiry on East Timor (A/54/726-S/2000/59, annex), paras. 129-130.

<sup>73</sup> Summary of stakeholders' submissions to the universal periodic review (A/HRC/WG.6/12/TLS/3 and Corr.1), para. 44.

<sup>74</sup> Strategic Development Plan, p. 111.

houses; and the gender dimensions of accessing the benefits.<sup>75</sup> Without these criteria in place, the programme will be seen as charity, not an entitlement of the beneficiaries, and will be open to abuse and manipulation.

65. A serious impediment to the realization of the right to adequate housing in Timor-Leste is the complex situation of land titling. The violence following the 1999 referendum resulted in the destruction, inter alia, of many valuable records and files, including land and property titles. Land claims are complicated by historical land confiscations, population displacement and the multiplication of legal regimes, which include Portuguese, Indonesian and local land regimes and transactions.<sup>76</sup> A 2012 report of the World Bank and the International Finance Corporation ranked Timor-Leste 183rd out of 183 countries in terms of ease of registering property.<sup>77</sup> Of the estimated 200,000 land parcels in Timor-Leste, less than 25 per cent have ever been formally registered. Few recorded deeds still exist, the majority having been destroyed during the violence of 1999.<sup>78</sup> A large number of families dwell on land to which they do not hold a legal title, or which is claimed by several parties or the State.

66. Throughout the visit, the Special Rapporteur received information concerning forced eviction practices in the country. Meeting with families temporarily living in Aitarak Laran after having been evicted from their homes in ex-Brimob in Bairo-Pite, she witnessed the detrimental impacts of these evictions. In some cases families had been living on plots for many years before being evicted without proper notice. While the majority of evicted families had received some financial compensation, many claimed that it was insufficient to purchase new land and rebuild new homes. Their new living conditions do not provide adequate shelter to withstand the rainy season, nor access to adequate sanitation facilities.

67. While the Special Rapporteur is confident that the Government is aware of the complex situation of land ownership in Timor-Leste, the use of such eviction practices is in clear violation of its human rights obligations. The struggles of nation-building and development cannot be an excuse to displace and destroy the homes of people living in poverty, who are entitled to protection against forced evictions and arbitrary interference in their home and privacy. Where justifiable in the most exceptional circumstances, evictions must meet the strict requirements set down in the basic principles and guidelines on development-based evictions and displacement.<sup>79</sup>

68. Three land laws have been under long and extensive discussion in Parliament, and were adopted after the completion of the Special Rapporteur's visit. The Special Rapporteur welcomes the identification of land-regime reform as a priority, and acknowledges that both Government and Parliament have taken steps to provide a clear and stable legal framework. However, a preliminary review of the recently adopted laws raises concerns about the compliance of several aspects of the laws with international human rights standards and obligations, including with respect to the participation of civil society in the discussions. With these reservations in mind, the Special Rapporteur welcomes the recent decision by the former President to veto the laws and send them back to Parliament for additional appraisal, and she calls on the Government to invite the Special Rapporteur on adequate

<sup>75</sup> See below the analysis of these elements in social protection programmes.

<sup>76</sup> World Bank, "The lay of the land: land access and dispute resolution in Timor-Leste", Justice for the Poor briefing note, June 2010.

<sup>77</sup> World Bank and the International Finance Corporation, "Ease of doing business in Timor-Leste", available from [www.doingbusiness.org/data/exploreconomies/timor\\_lemte](http://www.doingbusiness.org/data/exploreconomies/timor_lemte).

<sup>78</sup> USAID Country Profile, Property Rights and Resource Governance: Timor-Leste, 2011, p. 7.

<sup>79</sup> A/HRC/4/18, annex I. See also Committee on Economic, Social and Cultural Rights general comment No. 7 (1997) on the right to adequate housing: forced evictions.

housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, to assess the draft laws and their subsequent implementation.

#### **D. Social security and social protection**

69. The Government of Timor-Leste has shown a clear commitment to investing in social protection programmes. However, the size and adequacy of the individual social protection programmes vary significantly; the veterans' payment (Pensions for Combatants and Martyrs of the Struggle for National Liberation) is the most generous programme and represents 69 per cent of the total social protection budget, while the conditional cash transfer programme targeted primarily at female-headed households (Bolsa da Mãe) receives only 2 per cent of the total budget and distributes the smallest benefits.

70. The Special Rapporteur commends the Government for its efforts to expand and implement social protection programmes, and notes the importance of a strong legal and institutional framework in ensuring that the programmes will outlast the political cycle and not be manipulated for political purposes. Nonetheless, she has some concerns about the lack of assessment of the human rights impact of some components of the programmes.

71. From a human rights perspective, universal social protection schemes are the best way for States to meet their human rights obligations to ensure that there is no discrimination in the selection of beneficiaries. In this regard, the Special Rapporteur commends the Government for the universal approach it has taken with respect to the pension for older persons and the disability pension.<sup>80</sup> However, she is concerned about the high incidence of exclusion errors in the delivery of social protection. According to a 2011 survey, for example, 86 per cent of persons with disabilities do not receive the disability pension.<sup>81</sup> Social protection programmes should prioritize reaching the poorest of the poor, before moving to progressively wider coverage; in Timor-Leste only half of the transfers go to the poorest segment of society and about 25 per cent of transfers go to the richest households.<sup>82</sup>

72. In most of the programmes, eligible households are invited to receive benefits by the *Chefe do Suco* (village chief). This targeting method raises serious human rights concerns that must be addressed by the Ministry of Social Solidarity. While community leaders may have better knowledge about who is experiencing poverty in their community, this mode of targeting has the potential to reinforce power structures, patron-client relations and local gender norms, creating tensions and further stigmatizing some groups in the community. Including community leaders in the targeting process also creates opportunities for bribery and the abuse of power. Considering that women are less able to influence decision-making processes, they run the risk of being excluded.

73. The Special Rapporteur calls on the Government to ensure that social programmes avoid perpetuating asymmetries of power in the communities and actively seek to enable the most disadvantaged and excluded members of the community to benefit from the programme. Special attention must be given to ensuring that all aspects of the programme are gender sensitive. Doing so requires the active participation of women, and policymakers

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<sup>80</sup> Decree-Law 19/2008.

<sup>81</sup> "Social assistance for a changing Timor-Leste: selected findings from the first Timor-Leste Social Protection Survey 2011", presentation by the World Bank at the conference entitled "10 Years on: The Contribution of Social Programmes to the Construction of the Social State in Timor-Leste", Dili, 16 February 2012.

<sup>82</sup> Ibid.

must ensure that the participatory process does not perpetuate the existing male-dominated power structures.

74. The Special Rapporteur recommends that the Ministry of Social Solidarity assess the possibility of implementing a categorical targeting of non-universal programmes, benefiting everyone in the most deprived communities first. The assessment of which communities are the most deprived must be objective and independent. The Government must ensure that the selection of beneficiaries is made on the basis of reasonable and objective criteria and that people have access to a complaint mechanism to review any possible unfair exclusion from the programmes. Such a mechanism must be impartial and anonymous, and have the competence to provide effective redress.

75. The Special Rapporteur is also concerned about the geographical accessibility of the programmes, the cultural adaptability of the dissemination methods, and the imposition of requirements that may discourage eligible beneficiaries to apply. The poorest and most marginalized populations often experience real difficulties meeting the administrative requirements of social protection programmes. A survey shows that more than 70 per cent of beneficiaries across all programmes cited obtaining required documentation as the most significant difficulty when applying.<sup>83</sup>

76. In Timor-Leste the populations most in need of social protection are those removed from urban centres. Therefore, additional efforts must be made to ensure that physical and practical obstacles such as long distances, difficult geographical terrain, and high transportation and opportunity costs are not preventing people from accessing the programmes. In this regard, the Special Rapporteur is particularly concerned about the implementation of the pension programme for the elderly: almost one third of the beneficiaries must travel 90 minutes or more to receive the benefit.<sup>84</sup> The Special Rapporteur encourages the Ministry of Social Solidarity to continue to assess the best way of delivering the benefits, in full recognition of the potential discriminatory effect of particular modes of disbursement.

77. The Special Rapporteur has particular concerns about the Bolsa da Mãe programme. Initially, the design of the programme raised serious human rights concerns with respect to the reasonableness, objectivity and transparency of the qualifying conditions for the scheme. The Special Rapporteur welcomes the flexibility displayed by the Ministry of Social Solidarity in making improvements, which have included revising the eligibility criteria. Following the completion of her mission, the Special Rapporteur was informed of the adoption of a Decree-Law on the Bolsa da Mãe programme, which enshrines the new framework in law. The Special Rapporteur welcomes the changes to the programmes as reflected in the new Law, including the establishment of a monitoring system to oversee the implementation of the programme. Of great importance is the inclusion in the new Law of provisions which ensure the continuous implementation and funding for the programme. However, the Special Rapporteur is extremely concerned about the imposition of conditionalities in the programme.

78. While evidence from some countries suggests that conditional cash transfer programmes are successful in achieving health and education outcomes, policies from very different contexts may not translate well to Timor-Leste in this case. Because of the specific vulnerabilities of people living in poverty in Timor-Leste, including the limited access to education and poor infrastructure, the imposition of conditionalities could undermine the enjoyment of human rights. Furthermore, it involves additional monitoring and

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<sup>83</sup> Ibid.

<sup>84</sup> Ibid.

administration costs, as well as private costs to the beneficiaries in complying with conditionalities. Resources may be better spent on extending the scope of the programme or the level of benefits, than on the administrative costs associated with monitoring conditionalities.

79. The Special Rapporteur urges the Government to continue to expand the capacity of the Bolsa da Mãe programme such that universal provision is ultimately achieved. In this regard, and considering the scarcity of resources, the Special Rapporteur suggests Timor-Leste re-evaluate whether the resources expended on the veterans' pension could be more efficiently allocated. Supporting veterans is an important part of the national cultural and social fabric in Timor-Leste, and the country should be proud of the strong framework it has put in place to address the needs of its veterans. However, the programme receives a large percentage of the social protection budget, despite delivering benefits to only a small fragment of the Timorese population. Furthermore, the programme has encountered difficulties with regard to the identification of beneficiaries, despite various efforts by the Government to verify data and eligibility.<sup>85</sup> The Special Rapporteur recommends that the Government undertake an evaluation of the effectiveness and scale of the programme.

## VII. Conclusions and final recommendations

80. **The Special Rapporteur recognizes the advances made by Timor-Leste and the ongoing challenges it faces in order to consolidate peace and security and achieve sustainable development. However, she is concerned that poverty persists despite notable efforts and several successful programmes, and that economic growth and development have not benefited all Timorese equally. The Government must concentrate its efforts on social and economic policies which ensure inclusive and equitable growth and development for all the population. To this end it must strengthen efforts to diversify the non-oil economy, build sustainable industries, and ensure the preservation of its natural resources for future generations.**

81. **Although the report includes detailed recommendations in each of its sections, the Special Rapporteur would like to urge Timor-Leste to take the following steps as a matter of priority.**

82. **With regard to the institutional and legal framework:**

(a) **Ratify the Convention on the Rights of Persons with Disabilities, the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure;**

(b) **Finalize the adoption of a national plan of action on gender-based violence and human trafficking, and dedicate sufficient resources to enable the Secretariat of State for the Promotion of Equality, and key ministries, to implement this plan;**

(c) **Adopt a national plan of action for child rights and provide the National Commission for the Rights of the Child with the necessary resources to enable it to carry out its mandate. The Government should also consider expanding the mandate**

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<sup>85</sup> World Bank, "Defining heroes: key lessons from the creation of veterans policy in Timor-Leste", 2008; International Center for Transitional Justice, "Unfulfilled expectations: victims' perceptions of justice and reparation in Timor Leste", 2010.

of the Commission to receive complaints of violations against children's rights, and undertake institutional interventions;

(d) Conduct further consultations with the public and civil society in order to finalize the draft Juvenile Justice Law and the draft Law on Special Criminal Procedures in accordance with international human rights principles, and finalize the adoption of the Children's Code and child protection legislation, regulating adoption, foster care and institutional care for children;

(e) Provide timely responses to the recommendations of the Provedor for Human Rights and Justice, as required by law, and implement its recommendations. A higher degree of financial independence should be afforded to the Provedor in order to ensure its compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles);

(f) Expedite the passage of the draft Law on Reparations and the draft Law on a Memorial Institution, both of which are currently before Parliament;

83. With regard to improving access to justice, education, health and land rights:

(a) Redouble efforts to tackle domestic and gender-based violence, including by improving the implementation of the Law against Domestic Violence and the Law on the Protection of Witnesses, and increasing resource allocation to the Vulnerable Persons Unit of the National Police;

(b) Ensure a broad legal aid-delivery model in implementing the newly adopted Law on Access to the Courts (2011) that will guarantee legal aid in all districts;

(c) Amend the transitional provisions of the Law on the Juridical Regime Governing the Private Legal Profession and Lawyers Training in order to extend the time frame for completion of the training course by at least two years and allow part-time enrolments;

(d) Ensure that all legislation, draft legislation and other legal documents are widely available at least in both Portuguese and Tetum and that interpretation services in Portuguese and Tetum, as well as regional languages, are available in all districts and in the Prosecution Office and the Public Defenders Office;

(e) Ensure that the absence of proficiency in either of the two official languages does not impair the enjoyment of any human rights;

(f) Expand the coverage and quality of health-care services, goods and facilities, focusing on addressing intra- and inter-district differences, capacity development of health workers, and maternal health care;

(g) Ensure that the Integrated Community Health Services are staffed with trained professionals and that adequate budgetary, logistical and infrastructure resources are allocated in a timely fashion;

(h) Commit sufficient resources to the implementation of the National Mental Health Policy and the Community-Based Rehabilitation Strategy;

(i) Consider human rights impacts prior to the initiation of any project that could result in displacement, with a view to preventing forced evictions and fully securing the human rights of all potentially affected persons, groups and communities;

(j) Ensure that the international human rights legal framework relevant to evictions is reflected in the new land laws.

84. With regard to strengthening the social protection system:

(a) Increase coordination among existing social protection initiatives, ensuring national coverage, transparency, accountability and access without discrimination;

(b) Ensure that payments are distributed regularly and that the existing programmes are expanded to reach all eligible beneficiaries, particularly those in rural areas;

(c) Ensure that targeting methods do not result in discrimination and exclusion or perpetuate existing asymmetric power structures;

(d) Review the imposition of conditionalities in the Bolsa da Mãe programme, expand the programme and establish a complaint mechanism;

(e) Ensure, in the meantime, that social protection programmes reach the most vulnerable as a matter of priority;

(f) Develop employment schemes to address the structural barriers that prevent specific groups (youth, women, persons with disabilities and others) from actively participating in the workforce.

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