

# The La'o Hamutuk Bulletin

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## Justice for East Timor?

Just over two years ago, the Indonesian military (TNI) and its militia forces began their final campaign of terror and destruction in East Timor. The results are well known: approximately 70 percent of the country's buildings and infrastructure destroyed; over two thousand people killed; untold numbers of women raped; and hundreds of thousands of people displaced. These atrocities shaped the creation of the UNTAET mission and spurred efforts to ensure accountability for the crimes against humanity and war crimes committed against the people of East Timor.

In the September 2001 issue of *Tais Timor*, UNTAET outlines its "twenty major achievements," which do not include anything related to Serious Crimes prosecution. (Their claimed "functioning judicial and legal system" deals only with "ordinary" crimes.) UNTAET's silence about its achievements reflects what is widely seen as insufficient progress in this area. Of course, this is a problem not only of UNTAET's making, but more importantly it results from inadequate political will on the part of Indonesia and the United Nations' most powerful members to ensure that East Timor sees justice. Nevertheless, there are serious shortcomings with UNTAET's efforts to ensure justice for human rights crimes committed in the context of Indonesia's invasion and occupation.

This *Bulletin* focuses on attempts to achieve accountability for crimes committed during Indonesia's attempt to conquer and "integrate" East Timor. These crimes began in 1975 when Jakarta initiated its campaign of aggression against Portuguese Timor and formally ended in 1999 when TNI withdrew from the territory. In many ways, the international crimes continue today as militia and their backers in TNI still hold thousands of East Timorese virtual hostages in Indonesian West Timor.



In addition to an overview of various efforts to achieve justice, the issue includes a critical analysis of the investigation and prosecution by UNTAET of Serious Crimes (genocide, crimes against humanity, war crimes, murder, torture and sexual offenses) and an article that discusses the activities of the international solidarity movement to bring about an international tribunal. Also contained within are an overview of the embryonic Commission on Reception, Truth, and Reconciliation, an article on East Timor's evolving judicial system (for "ordinary" crimes), an examination of the relationship of the evolving justice system to incidents of violence against women in East Timor, and a piece that explores an alternative to an international tribunal. We are including a letter from Transitional Administrator Sergio de Mello to *La'o Hamutuk* on the ongoing refugee crisis, together with our response. A chronology listing important justice developments over the last two years is appended as a supplement. ❖

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# Sites of Justice-Related Efforts

There are three relevant “sites” of justice-related activity: international (more specifically, within the United Nations system), Indonesia, and East Timor presently under UNTAET.

## The United Nations

Internationally, the United Nations quickly launched an investigation of the atrocities committed in the context of the UNAMET mission. On 27 September 1999, the UN Commission on Human Rights (UNCHR) passed a resolution calling upon the Secretary-General to establish an International Commission of Inquiry on East Timor (ICIET) into gross human rights violations in East Timor. The UNCHR limited the Commission’s mandate to begin in January 1999, when President Habibie first suggested a vote in East Timor. UNCHR also requested that three Special Rapporteurs carry out missions to East Timor focusing on extrajudicial executions, torture, violence against women, disappearances, and forced displacement.

In a 10 December 1999 report to the Security Council, the Special Rapporteurs accused the TNI, along with militia, of crimes including “murder, torture, sexual violence, forcible transfer of population and other persecution and inhumane acts, including destruction of property,” crimes “committed on a scale that is widespread or systematic or both.” They recommended that the Security Council consider setting up an international tribunal unless Jakarta produced credible results from its investigation and promised prosecution of those responsible for the 1999 terror in East Timor “in a matter of months.” At the same time, the rapporteurs asserted that the tribunal “should have jurisdiction over all crimes under international law committed by any party in the Territory since the departure of the colonial Power [Portugal, in 1975].”

Less than two months later, the ICIET report called upon the UN to “establish an international human rights tribunal consisting of judges appointed by the United Nations” for crimes committed in 1999. While releasing the report, the Secretary-General stated that he was “encouraged by the commitment shown by President Abdurrahman Wahid to uphold the law and to fully support the investigation and prosecution of the perpetrators through the national investigation process under way in Indonesia.” Mr. Annan also reported that Indonesia’s foreign minister had “strongly assured” him “of the Government’s determination that there will be no impunity for those responsible.”

Kofi Annan went on to write that he intended “to pursue various avenues to ensure that [accountability for the crimes] is accomplished adequately, *inter alia*, by strengthening the capacity of UNTAET to conduct such investigations and enhancing collaboration between UNTAET and the Indonesian ... KPP-HAM” investigation.

Given this opening, the members of the Security Council—especially Indonesia’s powerful allies—were more than willing to defer to Jakarta’s request that it have the right to prosecute its own. But the Security Council stated that Indonesia had to bring the perpetrators to justice “as soon as possible” and should “institute a swift, comprehensive, effective and transparent legal process, in conformity with international standards of justice and due process of law.”

Since that time, little has happened in official circles—apart from occasional warnings to Jakarta that lack of progress will lead to renewed efforts to establish an international tribunal. There is no progress at the United Nations toward an international tribunal for East Timor, and some powerful countries are retreating from earlier passive support for the idea. In the last few meetings on East Timor in the Security Council, for example, no member-state has mentioned a tribunal, nor have UNTAET or East Timorese officials done so in their testimony. Only the efforts of local and international NGOs and the work of the international solidarity movement keep the issue alive.

## Indonesia

Soon after Indonesia violently and reluctantly withdrew from East Timor, Jakarta promised to rigorously investigate and prosecute gross violations of human rights and international humanitarian law in 1999. On 22 September 1999, the Habibie government gave its approval to Indonesia’s official human rights body, Komnas HAM, to form its own Commission of Inquiry into Human Rights Violations in East Timor (KPP-HAM) to investigate human rights crimes committed during 1999. Soon thereafter, Habibie signed a regulation authorizing Komnas HAM to establish an ad hoc court to prosecute civilians and soldiers for human rights crimes in East Timor and elsewhere.

On 31 Jan. 2000, KPP-HAM released the Executive Summary of its report stating that “gross violations of fundamental human rights have been carried out in a planned, systematic and large-scale way in the form of mass murder, torture and assault, forced disappearances, violence against women and children (including rape and sexual slavery), forced migration, a burnt-earth policy and the destruction of property.” The report accused 33 people of gross crimes. They included the former governor of East Timor, five district heads, sixteen army officers, one police officer and ten civilian militia heads. The report specifically named General Wiranto, the Defense Minister and head of the TNI in 1999, and Major-General Zacky Anwar, then head of military intelligence.

In early February 2000, Indonesia’s Attorney General, Marzuki Darusman, stated that it would take three months to decide whether to file charges against those accused by the Komnas HAM investigation. That never happened. In November of the same year, he promised that Jakarta would prosecute 22 suspects implicated in crimes against East Timor in January 2001. That did not occur either.

On 23 April 2001, Indonesian President Abdurrahman Wahid approved the establishment of a human rights court for East Timor, but one that would have only prosecuted violations committed after the August 1999 popular consultation. In response to criticism from many quarters, Megawati changed the court’s mandate in August 2001 to include crimes committed in April as well as in September 1999, but not those committed in other months. At the same time, the new decree restricted the court’s jurisdiction to crimes committed in Dili, Liquiça and Suai only.

While the redefined court could potentially try former militia leader Eurico Guterres (now head of Megawati’s PDI-P

party's youth wing), it appears that the goal of the change was to placate international critics. As one Jakarta-based diplomat explained, Megawati may be prepared to sacrifice Guterres in order to appease the international community. Amnesty International was more pointed in its criticisms, stating that the limitations on the court mean "that hundreds of victims of violations during 1999 throughout East Timor will be denied justice and the full truth of the events will not emerge."

In August 2001, Benjamin Mangkoedilaga (responsible for establishing the court) stated that he expected court hearings to begin in October. However, in October Indonesia announced that the judges would not be named until December. Given such stalling, it is not surprising that Bishop Belo has stated that "We have no faith in the investigations being conducted in Jakarta. Those who authorized the crimes in East Timor will not face justice there."

### East Timor (UNTAET)

After InterFET troops arrived in East Timor on 20 September 1999, about a dozen Australian military police became responsible for investigations into human rights crimes. InterFET transferred this responsibility and relevant files to CivPol in December 1999. On 22 March 2000, UNTAET head Sergio Vieira de Mello formally shifted this task to a division headed by UNTAET's Human Rights Unit (HRU), but still within CivPol.

The transfer of responsibility to the Human Rights Unit had many advantages, particularly as the HRU understands East Timor's recent history and how the human rights atrocities fit into a larger political-military pattern, as well as enjoying good relations with East Timorese NGOs. Nevertheless, the Human Rights Unit never received the resources needed to effectively manage this responsibility.

Between June and August 2000, UNTAET established a prosecution service to oversee investigations into Serious Crimes first within its Judicial Affairs Department, and then within the Ministry of Judicial Affairs, removing this responsibility from HRU. UNTAET also established a Special Panel for Serious Crimes within the Dili District Court, which has the exclusive power in East Timor to try cases of genocide, war crimes, torture and crimes against humanity (irrespective of time) as well as murder and sexual offenses committed between 1 January and 25 October 1999.

With the arrival of a new Deputy SRS in July 2001 and the restructuring of the government in September 2001, UNTAET is reassigning responsibility for Serious Crimes. At press time, they had not finalized the details.



Serious Crimes investigators have prioritized ten cases from 1999, including the massacres at the Catholic churches in Liquiça and Suai, and the killings at Manuel Carrascalão's house. Since its establishment, the Prosecutor General's office has indicted over 42 individuals—including a few low-ranking Indonesian and East Timorese TNI members—for crimes against humanity, and many others for individual cases of murder and other serious crimes. There have been eleven convictions thus far, all low-level militia members; no Indonesian military officers have yet appeared before the court.

Many have criticized the slow pace of investigations and prosecutions by UNTAET, which is partly due to a shortage of staff and other resources. The Indonesian government's refusal to cooperate with UNTAET investigations and prosecutions—despite having signed a memorandum of understanding on 6 April 2000 obligating Jakarta to do so—has weakened UNTAET's effectiveness in this area. At the same time, however, there are significant problems within and around the Serious Crimes Unit that are independent of resources and Jakarta's lack of cooperation. (See next page.)

Other "sites" of justice could be in third countries which can host civil or criminal trials for crimes against humanity, war crimes and other crimes subject to universal jurisdiction. The recent civil suit and \$66 million judgment against TNI general Johnny Lumintang (in absentia) in the United States demonstrates the potential for such efforts. ❖

# UNTAET and Serious Crimes

Since the arrival of UNTAET, one of its most critical responsibilities has been to initiate and achieve accountability for some of those who perpetrated crimes against the people of East Timor during 1999. Early in the mission, UNTAET assigned people to investigate Serious Crimes (murder, rape, massive arson and worse). This was originally part of the Human Rights Unit but was transferred to the Ministry of Justice in June 2000. Throughout, the UNTAET leadership (through the SRSG and the Deputy SRSG) has been responsible for administrative management of the unit. As we go to press, the unit is undergoing major personnel and structural changes.

The General Prosecutor has overall responsibility for investigation and prosecution of both "ordinary" and "serious" crimes, each of which is assigned to a Deputy General Prosecutor (DGP). The DGP for Serious Crimes heads what has come to be known as the Serious Crimes Unit (SCU), encompassing prosecutors, forensic specialists, data management personnel, and investigators. However, in reality, the structure of the SCU

has been confusing and ill-defined, even for those who work there, with dual reporting to both the UNTAET leadership and the ETTA Ministry of Justice.

From August 2000 until mid-October 2001, Mohamed Othman served as General Prosecutor. From July 2001 to October 2001, Jean-Louis Gillisen served as DGP for Serious Crimes, filling a long-standing vacancy. Øyvind Olsen, who just resigned as head of the investigation branch of the SCU, functioned as the *de facto* head of the SCU until Gillisen arrived.

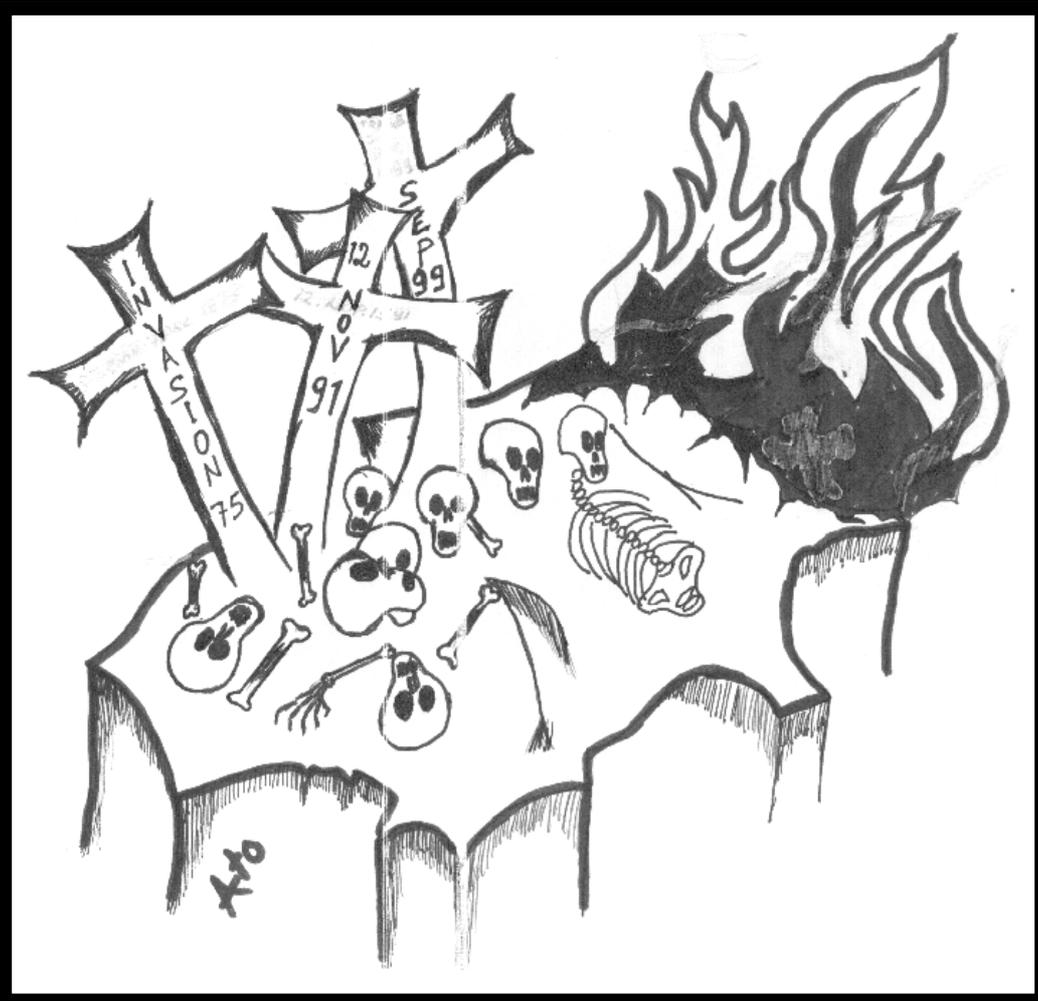
Within UNTAET, overall responsibility for justice is now assigned to New Zealander Dennis McNamara, who became Deputy SRSG in July 2001. In September, with the formation of the all-East Timorese Second Transitional Government, Ana Pessoa became Minister of Justice, replacing Gita

Welch. The new General Prosecutor is East Timorese lawyer Longuinhos Monteiro, 33, who had been DGP for Ordinary Crimes. As we go to press, UNTAET/ETTA has not filled the two top positions in the Serious Crimes Unit (formerly held by Jean-Louis Gillisen and Øyvind Olsen).

It is impossible to predict the effects of these changes, but we are optimistic that UNTAET leadership is finally addressing long-standing problems. Much of this article describes the problems that existed up to October.

The Serious Crimes Unit has brought more than 40 indictments for crimes against humanity (mostly militia mem-

bers and supporters, and East Timorese TNI), and has investigated several hundred murders. These accomplishments reflect the fact that the unit includes many highly dedicated and strongly qualified investigators and prosecutors. Nevertheless, many East Timorese and internationals here feel that investigations and prosecution of Serious Crimes are moving much too slowly, and that the goals set by the SCU fail to include



the systematic and coordinated nature of the atrocities, or to explore crimes committed before 1999.

Many believe that the problems stem from several principal factors: mismanagement, incompetence, lack of vision, inadequate resources, and insufficient political will within the international community.

## Mismanagement, Incompetence, Lack of Vision

*La'o Hamutuk* interviewed current and former staff associated with the investigation and prosecution of Serious Crimes. Almost uniformly, they were highly critical of Øyvind Olsen's leadership, reporting that he had very poor relations with many of the staff. Criticisms were also raised about communication within the division, and with General Prosecutor Othman's and former Justice Minister Gita

Welch's unwillingness to deal with personnel problems. Staff morale within Serious Crimes is very low, and has caused several competent, committed people to resign.

*La'o Hamutuk* has learned of many specific incidences of incompetence, poorly-defined strategy and objectives, ineffective data management, and bad judgment in the Serious Crimes Unit. As Amnesty International wrote in its July 2001 report on justice in East Timor, "Apart from resolving the 10 priority cases there appears to be no strategy for investigating other cases which took place during 1999 or indeed thousands of human rights violations which took place in previous years." We have also heard numerous anecdotes illustrating lack of even rudimentary knowledge of East Timor's recent history among SCU staff. Given that all SCU management has recently resigned, we will not go into detail, but, like many others, we hope for significant improvement during UNTAET's final months.

The SCU has no public outreach program, which is essential in a traumatized post-conflict society where survivors and communities need and want to be informed about what authorities are doing to ensure justice. Many are critical of the lack of cooperation between the SCU and East Timor's civil society, including the SCU's failure to work with NGOs and others with extensive information, evidence and documentation.

The SCU has not reached out to work with UNTAET's Human Rights Unit (HRU), whose international and local staff throughout the country know a great deal about East Timor's recent history. The HRU has strong ties to local communities and organizations who could aid in investigations.

Taken together, these examples illustrate the danger of an over-reliance on international experts with little background in East Timor, while doing almost nothing to integrate East Timorese into the process. Although current changes may address these problems, many ask why they were allowed to persist for so long.

## **Inadequate Resources**

Amnesty International wrote "There has been a continual shortage of staff, including investigators and prosecutors with experience and expertise in investigating and prosecuting cases of human rights violations and crimes against humanity." In December 2000, for example, there was only one prosecutor for Serious Crimes. While the situation has improved, there are still only seven prosecutors.

Outgoing DGP Gillisen estimated that at least 55 investigators are needed to cope with the workload. But there are only 26 investigators assigned to the SCU, and only 11 of them are on the ground at any one time, due to contract rotations. Frequent contract rotations (every 6 -12 months) of investigators (many of whom are CivPols loaned by governments on 6-month contracts) mean that continuity and knowledge have been lost.

At present only one three-judge panel is functioning to try perpetrators of Serious Crimes. Although UNTAET is in the process of setting up two more panels, many doubt that the necessary support staff – interpreters, public defenders, etc. – exists to conduct more than one trial simultaneously. With the first crimes against humanity trial already in its

third month, it will take a long time to try even those who have already been indicted.

Material resources are also in short supply. For example, half of the investigators do not have vehicles, nor does the Deputy General Prosecutor. This lack of human and material resources makes it difficult to create an effective judicial system.

## **Lack of Political Will?**

For at least a year, it has been clear that the Serious Crimes Unit was fraught with problems. In early 2001, Transitional Administrator Sergio Vieira de Mello requested Mary Fisk, a person with a long and respected association with the United Nations, to conduct an internal investigation of the SCU. UNTAET never released the Fisk Report, but well-informed people describe the report as recommending significant changes, including new management. It took six months before major changes were made, during which time, UNTAET renewed contracts of people cited as problems in the Fisk Report, while others who identified the problems left in frustration.

This raises the question of political will. As one former Serious Crimes staffer stated, "There's an argument that elements of UNTAET and the donor countries really don't want a rigorous Serious Crimes Unit. It might embarrass Indonesia at a time when they don't want to do so."

It is, of course, impossible to assess the validity of such suspicions, but the fact that they exist even within the SCU speaks to how profound the unit's problems are. These doubts are reinforced by the poor performance of the governments that dominate the United Nations regarding justice for East Timor.

As UNTAET nears its end, the UN is planning for the investigation and prosecution of Serious Crimes in the successor mission, with expected increases in international and local staff. A major funding problem exists, however, as the United States and France do not want assessed contributions to be used for activities outside of the narrow parameters of traditional peacekeeping. The Secretary-General has proposed that Serious Crimes prosecution in UNTAET II be funded from assessed contributions, although most civilian functions, including the judiciary, will depend on voluntary contributions.

The Serious Crimes Unit is, at present, the only place where perpetrators of crimes against humanity committed during the Indonesian occupation can be called to account. With the justice process in Indonesia going nowhere, and with the UN not yet willing to establish an international tribunal for East Timor, hopes for justice rest here for now. Although the unit has some accomplishments, performance in many areas has been lacking, and UNTAET's leaders, as well as influential governments, have been reluctant to take action. Although recent SCU management changes indicate that this may finally be changing, consistent public vigilance and advocacy are needed to ensure that the changes have significant, lasting effect. Furthermore, until UNTAET and the UN broaden their vision and deepen their determination, many of the worst perpetrators will continue to enjoy impunity in Indonesia. ❖

# East Timor's New Judicial System

By *The Judicial System Monitoring Programme (JSMP)*

When UNTAET was established in Oct. 1999, the judicial system that had been in place throughout the Indonesian occupation of East Timor was effectively in ruins. The Indonesian military and its militia has destroyed infrastructure such as court buildings, and documents such as court files and legal texts. The Indonesian bureaucracy that had administered the court system had fled, taking with it the vast majority of judges, prosecutors and qualified lawyers. There was an immediate vacuum of not only law enforcement but also of a legal system to enforce. As a result, an urgent and integral part of UNTAET's mandate was to recreate a functioning justice system, including the very foundations on which that system would be based.

Since then, UNTAET has created four district courts in Dili, Baucau, Suai and Oecusse, as well as a national Court of Appeal. UNTAET also appointed 25 judges, 13 prosecutors and 9 public defenders in early 2000. The judges now hear both criminal and civil cases, including disputes relating to commercial contracts, land agreements and border control activities. With the exception of a special panel of the Dili District Court that hears the Serious Crimes cases, most of which relate to the violence in 1999 and use international judges and prosecutors, East Timorese judicial officers deal with all legal cases. Furthermore, a Timorese police force is now in place, although it is still supported by the international Civilian Police. There are also public defenders—UNTAET-appointed lawyers that represent people in court if they have no other lawyer. Finally, court buildings and prisons are largely rebuilt, and the slow task of developing skills and knowledge of how to run a justice system has begun.

However, despite this progress, insufficient resources, both in equipment and personnel, are hampering the effective administration of justice. Basic rights to a fair trial, such as the right to legal representation are jeopardized due to the insufficient number of public defenders. Currently there are only 12 public defenders for the entire country, all East Timorese. The situation is exacerbated by the fact that, prior to 1999, few East Timorese had received a legal education and nearly all of those who were qualified were not allowed by the Indonesian administration to practice law. As a result the lawyers have either very little or no practical experience.

The same problem applies to the new East Timorese judges. They have only received minimal training, yet must struggle to manage extraordinary case loads. In countries that employ the Anglo-American common law legal tradition judges are only chosen from the most experienced senior lawyers. In the continental European civil law tradition, which forms the basis of Indonesian law, judges undergo an extensive training program and begin with only minor cases.

The laws that now apply in East Timor are an unusual combination of Indonesian law, UNTAET regulations, and international human rights law. For most day-to-day legal matters, particularly criminal offences, the Indonesian laws that were in place throughout the occupation continue to apply. Although the UN regulations dictate that only Indonesian laws that are consistent with international human rights

law are enforceable, to date the Transitional Administration has still not undertaken a comprehensive review of these laws to assess the extent of their incompatibility with international standards. This system has caused considerable confusion, not just for ordinary people who are subject to the laws, but also for the police, judges, prosecutors and lawyers who are trying to follow and implement them.

As most East Timorese have never experienced an independent and impartial formal justice system, considerable ignorance and mistrust of the official justice system continues. Basic public information about the new justice system is currently lacking, including information about how to access complaint mechanisms and the entitlement to formal justice procedures. Similarly, there is a great need for education and information about a person's rights upon arrest, including the right to legal representation and the right to silence. There have already been instances in which police investigators question suspects, sometimes in relation to extremely serious allegations, without the protection of having a lawyer present on their behalf to ensure the upholding of the laws that guarantee these rights.

In addition, East Timor has many valuable traditions of community-based mediation and other forms of dispute resolution, of which local communities are justifiably proud. Some of these have long histories that pre-date even the Portuguese colonial presence and are administered by local leaders such as the *lia nain* (traditional law person). Some of these systems have been developed or adapted as alternatives to the corrupt and arbitrary nature of the Indonesian justice system.

In many formal justice systems around the world there has been increasing recognition of the usefulness of mediation and other dispute resolution alternatives to going to court, which can often be inflexible and expensive. Such systems can complement a formal justice system when used in appropriate cases. At the same time, there is a need for caution. As Amnesty International noted in a recent report on East Timor, "the use of alternative, non-judicial criminal justice mechanisms can lead to serious human rights violations" where they operate in an unregulated way without adequate protection.

Certain violent activity in particular, such as murder or rape, should be treated as criminal offences and penalized accordingly. Amnesty cited several cases in which violent crimes against women and children have been "resolved" by means including the payment of money, sometimes against the victim's wishes. In the absence of a functioning justice system that has earned the trust of the community, vulnerable groups such as women and children face pressure to accept alternate forms of community "justice" that may place them at greater risk.

An independent and impartial justice system is one of the most important foundations of any just society based on the rule of law and respect for human rights. When perpetrators of abuse and other injustices can act with impunity, the basic principle of equality before the law is undermined. While the pursuit of justice for the victims of past atrocities and abuses committed in East Timor remains an important goal, the proper establishment of a justice system with the capac-

ity to fairly determine disputes and to prosecute current and future crimes according to law must also be a priority in the reconstruction process.

It is vital that the international community continues to support and provide material assistance to the fledgling justice system well beyond the expiration of the UNTAET man-

date. If the new justice system does not receive the necessary support, the legacy of impunity and corruption left by Indonesia will continue to undermine the development of the rule of law in an independent East Timor. ❖

*JSMP is an independent project that aims to improve the quality of justice provided by the judicial system in East Timor.*

**“An International Tribunal is the most pressing demand in the interests of justice. Of all the victims of Indonesian military violence the greatest suffering was borne by women, who up to this time, have not met with the justice they hoped for.”**

**–The East Timorese Women’s Network, Women’s Issues in East Timor, Donors’ Conference June 2001**

## Women and Justice

By Kate Halliday

The number of cases of violence against women in East Timor has risen sharply according to media reports (see *The La’o Hamutuk Bulletin*, Vol. 2, Nos. 1&2) with the majority of offenders being husbands and brothers. East Timorese women activists have repeatedly raised concerns about this matter.

The Vulnerable Persons Unit of CIVPOL in Dili also notes that there has been an increase in women reporting domestic violence crime over the last year. However, they also report that women are experiencing difficulties with the criminal process and that they are very vulnerable to pressure to withdraw their complaints of violence.

The justice system can respond to violence against women in a number of important ways by:

- √ clearly prohibiting violence;
- √ ensuring that the justice system treats domestic violence in the same way as other forms of violence;
- √ providing protection for women from continuing violence; and
- √ providing adequate and just compensation for injuries caused by violence.

The Convention on the Elimination of Discrimination Against Women states that women are entitled to equality before the law. The Declaration on the Elimination of Violence against Women recognizes that violence against women is an impediment to equality and the full enjoyment of human rights.

At the moment in East Timor the legal situation in relation to violence against women is quite complex due to the continuing existence of Indonesian law in some areas and the introduction of UNTAET regulations in other areas. However the first regulation passed by UNTAET in 1999 makes it clear that international human rights standards, including the standards contained in the Convention on the Elimination of All Forms of Discrimination Against Women, have a clear role in the law in East Timor. Public officials must exercise their duties in accordance with these standards. Indonesian law only continues to apply in East Timor as long as it complies with these international human rights standards or until it is replaced by UNTAET regulation.

The Indonesian criminal code does not provide adequate protection for women from violence. Under this law, for example, it is not prohibited for a man to rape his wife. Threats of violence and attempted assault are also not prohibited by the code. This law fails to give a clear message to the community that domestic violence is the same as other forms of violence. It is also inconsistent with international human rights standards, in that women do not have the full support of the law in seeking protection from violence.

UNTAET’s law on criminal procedure introduced some important rights for victims of violence. Under this law an investigating judge has the power to prevent a perpetrator who has been arrested for domestic violence from living in the family home while the court is investigating and prosecuting a case of violence. When convicting a perpetrator of violence, a judge may order the perpetrator to pay compensation to the victim. This is a significant law for victims of violence as many would not be able to pursue civil proceedings against a perpetrator for compensation.

Many East Timorese communities continue to use traditional dispute resolution mechanisms that also involve the payment of compensation to a victim by the perpetrator. Recently, however, there have been allegations that some judges are blurring these traditional roles with their new authority in the formal legal system, and “resolving” domestic violence disputes merely by ordering payment of compensation, rather than proper prosecution of criminal behavior. It is vitally important that judges and prosecutors are trained adequately in domestic violence issues.

Ensuring that the law itself protects women and complies with international human rights standards is only the first step. In addition, there must be effective community education about women’s rights and sensitive administration of the laws.

It is the responsibility of all those involved in the justice system—lawmakers, police, prosecutors, lawyers and judges—to ensure that women achieve full equality before the law. ❖

*Kate Halliday is an Australian-based lawyer who recently volunteered with Fokupers in Dili.*

# The Commission for Reception, Truth, and Reconciliation: An Overview

## What is the CRTR?

On 13 July, UNTAET passed Regulation 2001/10, establishing the Commission for Reception, Truth and Reconciliation (CRTR) in East Timor. The Commission has three general areas of activity, each of which aims to promote human rights in East Timor.

First, it will establish the truth regarding human rights violations that took place between 1974 and 1999, while reporting these violations and the factors that contributed to their occurrence. In this regard, the Commission will investigate not only individual cases of rights violations, but also the extent to which the violations were part of a systematic pattern of abuse. Allegations of war crimes and crimes against humanity will thus form part of the Commission's investigations. The CRTR will also examine the role of international actors (such as foreign governments), and will hold hearings outside East Timor as it attempts to provide a full picture of why gross human rights abuses occurred. But the CRTR will have limited resources for investigations. And, as its jurisdiction is limited to East Timor, it cannot bring charges against those who refuse to cooperate, nor to compel testimony or evidence from Indonesia or other national governments.

Second, the CRTR will assist "in restoring the human dignity of victims," in part by providing them with the opportunity to tell their stories publicly. It will also help to promote reconciliation among East Timorese by "supporting the reception and reintegration of individuals who have caused harm to their communities" by what are deemed as lesser crimes (such as theft, minor assault, arson, and the killing of livestock). This will entail holding perpetrators of such crimes accountable to their victims. The Commission will do this through "Community Reconciliation Procedures" (CRPs) by which perpetrators will agree to perform acts of restoration that are meaningful to the survivors and their communities. For example, the crime of burning a house down might require the offender to rebuild that house. The resulting "community reconciliation agreement," will be registered at a district court, which will ensure acts of reconciliation are proportionate to the original crimes, are carried out, and do not violate human rights. The Commission will refer Serious Crimes (such as murder, rape, wholesale destruction or planning such crimes) which are ineligible for CRPs, to the General Prosecutor for possible prosecution.

Third, the CRTR will report its findings and make policy recommendations, thereby bringing pressure on East Timor's government, the international community and other agencies relating to a range of issues, including the needs and rights of victims.

The CRTR is the result of a proposal drafted by a Steering Committee supported by the UNTAET Office for Human Rights, following an initiative from the CNRT Congress. The CRTR Steering Committee included representatives of youth, women's and survivors' groups; human rights and church organizations; UNHCR, and relevant UNTAET departments. The Committee drafted the CRTR proposal with support from UNTAET legal affairs, and conducted community consultations in every district.

Truth commissions have become a popular prescription for reconciliation in several post-conflict countries. The establishment of a truth commission is based on the assumption that making the truth public about who did what to whom in the context of gross human rights abuses will facilitate reconciliation in a society trying to recover from war and/or widespread, gross human rights abuses.

One function of a truth commission is to investigate past human rights abuses and produce a comprehensive report, outlining not only individual cases, but also patterns and policies underlying such abuses. In addition to their reports, truth commissions often encourage and facilitate apologies to victims—to individuals and the society as a whole—by perpetrators of atrocities. In this regard, they help increase the likelihood that former

adversaries will coexist peacefully. In South Africa, for example, the Truth and Reconciliation Commission included a small restorative justice component, whereby perpetrators performed work for victims; the TRC also proposed a reparation program. Moreover, truth commissions can provide recommendations for measures to prevent the recurrence of human rights violations.

## Structure and role of East Timor's CRTR

A Selection Panel is consulting the community, after which it will select and recommend seven persons "of high moral character, impartiality, and integrity" (at least 3 of whom will be women) for the Transitional Administrator to appoint as National Commissioners to head the Commission. Four political parties that existed prior to Indonesia's invasion (Fretilin, the UDT, Kota, and Trabalhista), the NGO Forum, the Women's Network, the Catholic Church, the Po-



litical Prisoners' Association, the Association of Families of the Disappeared, UNTAET's Office of Human Rights Affairs, and the Transitional Administrator have each appointed one member to the Selection Panel. Pro-autonomy groups in Indonesia were invited twice but have so far declined to join the panel, although the position is still open in a gesture of reconciliation.

The CRTR will operate for two years with the option of a 6-month extension. The Commission will have six regional offices staffed by Regional Commissioners of similar personal and professional qualities as the National Commissioners.

The CRTR proposes to have 270 East Timorese staff, with a budget of nearly US\$4 million. They hope to take 10,000 statements from survivors of atrocities, an ambitious goal. For their national office, they plan to rehabilitate the Comarca Prison in Dili, where many East Timorese political prisoners were tortured during the Indonesian occupation. The prison will become a museum and resource center run by the Association of Ex-Political Prisoners after the CRTR ends in two years.

Pat Walsh, coordinator of the CRTR's Interim Office on behalf of the UNTAET Human Rights Unit, explained to *La' o Hamutuk* that one of the underlying ideas of the Commission is to provide an incentive for refugees in West Timor to return home. Many of them are militia members who fear reprisals when they return to their communities. Those taking a lead role in establishing the CRTR hope that militia members will see the "Community Reconciliation Procedures" as an acceptable mechanism of justice, one that will ensure the safety of returnees by satisfying the demand of individuals and communities for accountability for lesser crimes. Others involved in refugee assistance, however, do not believe the CRTR will help in this regard, and fear it may even be counterproductive. One of the CRTR's more unique factors in comparison to similar commissions in other countries is the nature of the conflict in East Timor. Because the gross human rights abuses were the result of what was first and foremost an international rather than an internal conflict, the vast majority of those guilty of war crimes and crimes against humanity—members of the Indonesian military and Indonesian government officials—are outside of the country. And for East Timorese members of TNI-directed militia groups in 1999, most of those accused of the worst crimes remain in Indonesia to where they fled following their participation in the post-UNAMET ballot campaign of terror. In any case, such individuals have little incentive to cooperate with the CRTR as they are not eligible for participation in the "Community Reconciliation Procedures."

While the Commission has the authority to request and gather information from witnesses, government officials and people in other countries, it does not have power to compel anyone outside of East Timor to cooperate. Consequently, those most responsible for gross human rights violations from 1975 to 1999 will not participate in the truth-telling process. The Commission's work is not intended to reconcile East Timor with Indonesia, although a credible account of Indonesia's atrocious record in East Timor from 1975 to 1999 may someday help Indonesia to address this history.

## Some Concerns

There are concerns that the United Nations, donor governments, or East Timorese political leaders could use the existence of the CRTR as an excuse for not moving forward to prosecute those who committed Serious Crimes, even though such crimes are outside the scope of the Commission. A new government, faced with budgetary problems as well as daunting demands and pressures (national and international) might be tempted to lower the priority of criminal prosecutions, especially in light of limited resources and experience.

In its July 2001 report on Justice, Amnesty International welcomed the provision in the CRTR regulation that empowers it to refer Serious Crimes cases to the General Prosecutor's office. Amnesty, however, "seriously doubts whether the capacity currently exists to process these cases effectively or in a timely fashion." In this regard, it fears that the CRTR could absorb resources that might otherwise be available to the judiciary, potentially undermining the process of justice, although reducing the court caseload is one of the arguments used to justify the Commission.

Meanwhile, UNTAET and East Timorese political leaders have been negotiating with militia leaders suspected of having committed Serious Crimes—even crimes against humanity—with the hope of facilitating the return of refugees from West Timor. The relationship between these negotiations and the CRTR (as well as the Serious Crimes Unit) is unclear. Although UN policies rule out amnesty, some militia leaders in West Timor have asked for it, encouraged by some East Timorese and UNTAET officials, such as the recognition of the "practical value of amnesty" by an East Timorese leader. Such words increase worries that the future government might use the CRTR as a substitute for justice.

In response to such concerns, UNTAET and ETTA officials have promised that the CRTR is not a substitute for justice, and that there is no amnesty for Serious Crimes. In fact, they argue, the CRTR is complementary to the justice process: By creating an official record of human rights violations, the Commission will help facilitate accountability.

Currently, there is little grassroots understanding of the CRTR—especially among the refugees remaining in West Timor. As Pat Walsh admits, "There is a need for more public information and education about the process. There's an information vacuum on the other side of the border." The CRTR will have to ensure that all sectors of East Timorese society are aware of its purpose and rationale if it hopes to attract their meaningful participation and have a real impact on reconciliation.

Recently, the CRTR's Interim Office held meetings with pro-autonomy leaders to explain the rationale behind the CRTR. As Francisco Guterres, a member of the Interim Office, states, "It is important that militia members see the CRTR furthering their long-term interests. Without their participation in the reconciliation process, they will be isolated from their communities."

If the CRTR is to attract refugees in West Timor to return, it will need cooperation from higher-level militia members who control the movement of the refugees. Most militia leaders, however, will not see the Commission as serving their interests, as they were not involved in developing it. Since the Commission will collect testimonies in a process not governed by laws of evidence, those who committed the most serious offenses could fear that the CRTR process might actually lessen their chances of receiving a fair trial. ❖

# Solidarity and International Justice

By Paul Barber

“East Timor will not follow the path of those in Nicaragua or Mozambique who believed that international activist support was no longer important once independence had been achieved. We have waged East Timor’s struggle with the help of concerned people from around the world, and we will continue to remember and rely on you in this new phase of East Timor’s history.”

— José Ramos Horta, letter to Utrecht International Solidarity Conference, May 2000

Since the scorched-earth devastation of East Timor in September 1999, the international solidarity movement has placed a high priority on supporting East Timorese demands for an international tribunal to try those responsible for the crimes against humanity committed by the Indonesian military and their militia proxies. Because diplomatic considerations have often constrained East Timorese leadership from speaking out, and UNTAET has failed to argue the case for a tribunal, the voices of global activists—along with those of East Timorese NGO and student activists—have often been the loudest.

In May 2000, activists from Europe, the United States and Indonesia met in Utrecht, Netherlands, and reaffirmed that they would encourage efforts to hold the Indonesian military to account for their crimes and call for a special international tribunal for East Timor. As a result, the International Federation for East Timor (IFET) and over 80 organizations and human rights campaigners from around the world wrote to UN Secretary General Kofi Annan in July 2000. Similar letters were sent to national governments and to the European Union.

Earlier, the intensive lobbying of U.S. activists was key to enacting a law that prohibits the financing and training of the Indonesian military by Washington (the Leahy amendment). The legislation blocks the U.S. from resuming bilateral military co-operation until those responsible for violence in East Timor are brought to justice. The law is still in effect, although ETAN and other U.S. activists must continually defend it against Bush Administration attempts to restore the U.S.-Indonesia military-to-military ties.

A pattern has evolved whereby Indonesia has been doing just enough to prevent the establishment of an international tribunal while actually doing little to advance genuine justice. Foreign governments eager to resume military cooperation with Jakarta, or reluctant to act effectively to advance justice, are all too keen to accept symbolic or minor developments in Indonesia as progress.

President Megawati has continued this tactic. As part of what appears to have been an attempt to encourage the U.S. to restore military ties, she recently revised the jurisdiction of Indonesia’s *ad hoc* court for East Timor to include crimes committed in April and September 1999, instead of just those committed in the post-ballot period. At the same time, she restricted the court’s jurisdiction to crimes committed in Dili, Liquiça and Suai. Although this step has little substance (no prosecutions have begun, making the court a mere shadow), many governments once again are saying that Jakarta de-

serves even more time to prosecute those responsible for atrocities in East Timor.

Many international activist groups believe that the tribunal should have jurisdiction over all war crimes and crimes against humanity committed in East Timor since the Indonesian invasion in 1975, including complicity and command responsibility. Although the specific jurisdiction and mandate of any international court will inevitably be a product of political compromise, most advocates still believe that all those who are guilty should be held accountable.

Media work by solidarity groups has played a part in keeping the possibility of an international tribunal included in press coverage of the justice issue. Solidarity activists have also undertaken important work at the UN Commission on Human Rights in Geneva. The 2001 Chairperson’s Statement on East Timor (expressing the consensus of interested governments), for instance, while far from perfect, was better than the one in 2000. Although this year’s statement did not mention an international tribunal, it did leave open the option of international action. The next session of the Commission, in March/April 2002, will also require concerted lobbying to ensure that pressure for justice is maintained.

The international solidarity movement has worked closely with church groups, which—together with Bishop Belo—have launched important initiatives demanding an international tribunal. In June 2001, 45 church aid agencies and human rights groups repeated the demand in a statement issued in Canberra at the international donors’ conference on East Timor.

East Timor support groups in Asia are also pressing for a tribunal. The Free East Timor Japan Coalition recently made this a priority for its campaigning, focusing its efforts on the Japanese government and the members of the UN Security Council. In the Philippines, the Asia-Pacific Coalition for East Timor (APCET) has suggested that a People’s Tribunal (unofficial prosecutors presenting evidence to a panel of experts who are not legal judges) could be a good way to highlight the issues, develop the evidence, and create momentum toward an official legal court. IFET groups in other countries also continue to make the justice campaign a top priority.

In the United States, the East Timor *Action Network* (ETAN) is advocating for a congressional resolution supporting an international tribunal. ETAN facilitated a lawsuit in which six 1999 torture survivors and relatives of murder victims sued General Johny Lumintang, former TNI Vice-Chief of Staff. In September, a Washington judge awarded the plaintiffs US\$66 million in damages (which they will probably never get). The judge decided that “Lumintang had ‘direct’ responsibility for these acts: as the third-ranking member of the Indonesian military, he – along with other high-ranking members of the Indonesian military – planned, ordered, and instigated acts carried out by subordinates to terrorize and displace the East Timor population, to repress East Timorese who supported independence from Indonesia, and to destroy East Timor’s infrastructure following the vote for independence.”

In the Netherlands, human rights and pro-democracy groups have launched a major campaign to highlight the

scourge of impunity in Indonesia and encourage bringing leading generals responsible for atrocities in Indonesia and East Timor to justice.

The solidarity movement has maintained its position and strategy in the face of uncertain international political will. The movement must continue to ensure that demands for international justice do not disappear. Without such demands, there will be no justice. Indonesia will have less incentive to reform its justice system while the international community will likely reduce its post-UNTAET support for the Serious Crimes work of East Timor's embryonic justice system.

The solidarity movement must also look to other ways of advancing its strategy bearing in mind that the need to end impunity is also a major concern of colleagues in the Indo-

nesian NGO movement. The possibility of preparing legal cases against leading generals and using the courts of countries, such as Belgium, which have shown a willingness to exercise universal jurisdiction over crimes against humanity, is an idea which the movement must seriously consider. Solidarity groups are likely to have the chance to discuss this and other possible strategies at a conference on impunity in Amsterdam at the beginning of December.

The constant search for justice goes on, and the international solidarity movement still has a lot of important support work to do in this new era in East Timor's history. ❖

*Paul Barber works with TAPOL, the London-based Indonesia Human Rights Campaign.*



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# An International Tribunal for East Timor?

By Jon Cina

During the recent campaign for the election of the Constituent Assembly, there were renewed appeals for the United Nations to establish an international criminal tribunal to investigate and try perpetrators of crimes committed during the Indonesian occupation of East Timor. Such calls reflect acute and widespread disillusionment with efforts to date by UNTAET and Indonesia to bring the guilty to justice. As a result, momentum is building within various sectors of East Timorese civil society to ensure the establishment of such an institution.

Although these demands are not new, there has been little discussion of whether and how an international criminal court could actually advance the cause of justice in East Timor. This article therefore examines some of the arguments for and against such a tribunal.

## Why an International Tribunal?

An international tribunal is an institution composed of judges, prosecution, investigation, defense lawyers and administration, established in response to particular crimes considered so serious that they concern the international community as a whole. Such tribunals carry out investigations and conduct trials outside national judicial systems. The UN Security Council, acting on behalf of the international community, may use special powers to create one. The Security Council can also grant the resulting tribunal legal authority to order countries to assist it. The UN appoints international judges and prosecutors to staff courts established in this way. A more recent variant is for the UN to enter into an agreement with the government of an independent country to create a special court, which the Security Council can then endorse. The UN is currently negotiating such treaties with Sierra Leone and Cambodia. Unlike courts created directly by the Security Council, however, these institutions include some local judges, selected by the UN and the national governments concerned.

It is assumed that a court established by the UN in the name of the world community would have greater legitimacy and authority than domestic courts in East Timor and Indonesia. The tribunal could be vested with the power to order states, including Indonesia and Australia, to co-operate by providing relevant evidence, such as intelligence material against perpetrators, and to transfer accused persons residing in their territory. If Indonesia or other governments refused to do so, the tribunal could, in theory, refer such non-compliance to the Security Council for an appropriate response. The proposed international court and its prosecution office could thus potentially become vocal and morally powerful advocates for justice.

An international court is also viewed as the correct judicial response to the systemic, savage and sustained crimes committed in East Timor, especially as one element of the policy behind the crimes committed in 1999 was to attack UNAMET, and thereby challenge the authority of the Security Council.

The Report of the UN International Commission of Inquiry on East Timor recommended such a tribunal in January 2000, but the UN Secretary-General and Security Council

favoured a parallel approach focusing on domestic legal systems. Thus, Indonesia was urged to investigate and prosecute appropriate individuals under its jurisdiction, while the UN established the Serious Crimes Unit (SCU) within UNTAET to mount its own prosecutions.

## Could an International Tribunal be Effective?

The most concrete difficulty with accountability for crimes of the past is how to obtain custody of the most senior responsible individuals, most of whom remain in Indonesia under the control of an uncooperative government and military. The SCU has notably failed to indict or prosecute such persons. However, an international court, even one with the widest possible powers to order state compliance, is unlikely to resolve this dilemma. This is because of Jakarta's stated refusal to cooperate with any international tribunal and the unlikelihood of Indonesia's powerful allies, many of which are members of the Security Council, exerting pressure on Jakarta to do so.

Other international tribunals have in general been successful in obtaining custody of suspects. This is more the result of their unique circumstances, however, rather than their status as international courts: in Germany and Japan, foreign armies controlled the countries and were able to secure the attendance of the majority of suspects at the Nuremberg and Tokyo tribunals; and in Rwanda, supportive national and regional governments have arrested suspects and made them available for trial.

East Timor faces a situation closer to the countries of the former Yugoslavia, where a number of countries provided refuge to individuals charged with atrocities by the International Criminal Tribunal for the Former Yugoslavia (ICTY). Although the ICTY's mandate from the UN includes the power to order governments to assist it, and there was a multinational military force in the region with the power to arrest suspects, it took several years before shifting priorities among powerful Western countries finally produced effective pressure on governments to surrender the most senior accused persons. Indonesia's economic and strategic significance to the countries that dominate the United Nations is generally far greater than Yugoslavia's. Thus, even the authority of an international tribunal is unlikely to overcome the political obstacles to effective international pressure on the Indonesian government to transfer suspects.

Another major obstacle an international tribunal would confront is funding. Since their creation in 1993 and 1994, the ICTY and its sister court for Rwanda (ICTR) have cost over US\$700 million. The ICTY expects to continue operation until 2020. The expenditures and the life span are signs of the success of both courts in establishing a workable, if limited, system of international criminal justice, a success that has far exceeded the expectations or intentions of those who created the two tribunals. But these successes are also a virtual guarantee that the international community will not again enter into an open-ended commitment to find and to try perpetrators in any given situation. Current efforts to create United Nations courts in Cambodia and Sierra Leone indicate that there would only be sufficient support for a very limited form of international criminal body for East Timor.

The difficult decisions about who should be prosecuted in such a context may leave many as unsatisfied as they are with the current UNTAET and Indonesian processes. Indeed, an international tribunal may exacerbate existing tensions over who is accountable. East Timor may face a situation similar to that of Rwanda, where low-level perpetrators are tried relatively quickly but with less stringent legal safeguards by the struggling Rwandan judicial system, while those ultimately responsible remain at liberty or are prosecuted over a longer period, with full respect for due process by the ICTR, which is based outside the country. Thus, the relationship between an international tribunal, the SCU and the Commission for Reception, Truth and Reconciliation in particular requires detailed consideration.

There would also be an inevitable delay between the decision to establish an international tribunal and the commencement of its investigations and trials. Experience with other tribunals indicates that it can take years of negotiations to find agreement among the views

of many different countries on what the court's mandate and legal powers to compel co-operation should be. Securing funding and hiring competent staff—translating commitments into action—is also usually a slow and complex process.

### An Alternative to an International Tribunal?

The Indonesian and UNTAET systems are deeply flawed; much of the support for an international tribunal is based on their perceived failure. However, there is an assumption that no more can be done to improve their efficacy. This may be true generally in respect to Indonesia; certainly in the short and medium term it is reasonable to expect that Jakarta will continue to avoid a judicial examination of the role of senior officials, or to transfer them to an alternative jurisdiction. A restructured Serious Crimes Unit, on the other hand, has the potential to achieve many of the goals that supporters of an international tribunal seek.

Troubled by weak management, a narrowly interpreted mandate and inadequate political and financial support, the SCU has little credibility among East Timorese or international actors. Yet, there are persuasive reasons for continuing to support it. Acting in conjunction with the Special Panels for Serious Crimes, it is a Security Council-mandated process to investigate and prosecute perpetrators. It therefore has much of the authority and legitimacy that an international court would provide, and a more creative and active approach could see it using its mandate to increase pressure on Indonesia, through UNTAET, the Security Council

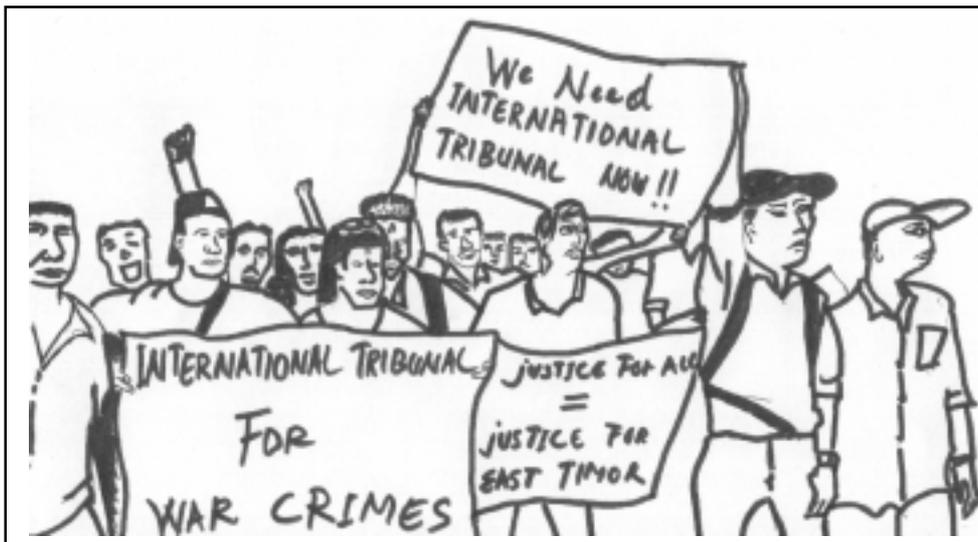
and direct bilateral discussions.

Moreover, the SCU and Special Panels are based in East Timor and are required to involve East Timorese fully in its work, both crucial elements in ensuring that justice is accessible to, and includes the input of, the East Timorese people. There is no guarantee, however, that an international court would be located within East Timor or that it would include East Timorese staff effectively. Without such participation, any effort to use judicial mechanisms to deal with the mass violence committed in East Timor seems destined to fall short of the expectations of the East Timorese people.

The potential in the current system should therefore be tested before embarking on an alternative criminal justice

mechanism. This should begin with a radical and genuine reform of the structure, personnel and funding of the SCU and related offices.

As part of this effort, the UN should first commission an expert review of the operation of the SCU and Special Panels and commit to implementing the findings.



UNTAET should also relocate the SCU, Special Panels and defense counsel outside existing government structures to reflect the importance of accountability for past crimes. Moreover, UNTAET should recruit additional prosecutors, defenders, investigators, and other professional staff and should expedite the recruitment of East Timorese personnel to shadow internationals.

In addition, the SCU should urgently articulate a policy on crimes committed before 1999. UNTAET should begin an ongoing and comprehensive public education program to disseminate information about the criminal accountability process throughout East Timor, while SCU staff should be based, and Special Panels should be enabled to sit, outside Dili as much as possible. Consideration should also be given to the establishment of a consultation committee composed of East Timorese and international NGOs and other interest groups to facilitate the transfer of information and views to and from SCU, the Special Panels and defense counsel.

To consider post-independence options for justice, UNTAET should sponsor a meaningful conference that would include representatives of East Timorese and international NGOs, various sectors of civil society, and international legal specialists. ❖

*Jon Cina was, until recently, a Case Manager and Legal Advisor to UNTAET's Serious Crimes Unit. Prior to coming to East Timor, he spent four months documenting war crimes in Kosovo and three years working at the International Criminal Tribunal for the former Yugoslavia.*

# Justice and Accountability in East Timor: International Tribunals and Other Options

NGO Seminar held in Dili, 16 October 2001

## Summary of the presentations of the working groups

There is a consensus that there should be an international tribunal. This consensus has been arrived at by the different groups for many different reasons including;

- To uphold the values of humanity
- To guarantee the rights to justice
- For the historical record
- To deter similar future crimes
- To foster reconciliation

To act upon this consensus, we discussed some short term and some long term goals. In the long term ( and this list is not in any order of priority) we need to:

- Collect, catalogue and protect evidence
- Organize groups of survivors and the families of victims
- Sensitize the community on the importance of accountability for past crimes for ensuring justice and the rule of law, now and in the future
- Campaign at local, national and international level

In the short term (and again, not in any particular order of priority) we need to:

- Develop a system of data/evidence collection
- Prepare a statement to give to Dennis McNamara, Deputy SRSG, prior to his visit to Indonesia.
- Prepare a statement for the next Security Council meetings on 27 and 31 October.
- Call upon international solidarity in support of the establishment of an International Tribunal.
- Look at the prospects of inserting a provision in the constitution guaranteeing justice in the future
- Lobbying and campaigning
- Prepare for the international donors meeting in Oslo in December

## In Brief

On 21 August, **the East Timor Prosecutor General indicted a Civilian Police officer from Jordan on suspicion of raping an East Timorese woman.** Police arrested the suspect on 5 July following an alleged incident that occurred at a Dili hotel. Prosecutors have asked for an expedited hearing on the case so the trial is expected to begin soon at the Dili District Court.

Press reports from late August indicate that **the Australian government was continuing to side with Phillips Petroleum to pressure East Timor to agree to a tax framework favored by the oil company.** While Canberra stated that it would not interfere in negotiations between East Timor and Phillips, reportedly refusing the oil company's request that it intercede directly to influence Dili, Canberra contin-

ued to exert pressure indirectly. Foreign Minister Alexander Downer said Australia would encourage the oil company to hold “a more intense debate” with officials in Dili. Natural Resources Minister Nick Minchin said that he hoped that Phillips would be able to persuade Dili to adopt a “more realistic and pragmatic” stance on taxes for Timor Gap oil and natural gas by honoring an agreement made in October 1999 between oil companies and the East Timorese resistance (see *Bulletin*, Volume 2, No. 5). Otherwise, Minchin said, East Timor would lose valuable revenues, implying that oil companies would not invest under an alternative agreement. UNTAET officials called Canberra’s words “arrogant” and Mari Alkatiri called upon Australia not to interfere in the negotiations, stating that East Timor “will not allow it [Canberra] to influence our decisions, much less our system of taxation.” While what East Timor is seeking is not public, press reports indicate that Dili is hoping to establish a tax rate of 40 percent or more. Phillips Petroleum plans to return to the negotiating table soon, and hopes to have a taxation agreement with East Timor’s Constituent Assembly by early November.

On 3 September, the **London-based Catholic Institute for International Relations (CIIR) warned that the democratization of East Timor could falter unless UNTAET and the Constituent Assembly “take full account of the input of women.”** Based on the observations of a CIIR delegation present in East Timor for the 30 August election, CIIR contended that most political parties “have not prioritised the needs of women in their programmes” and that many party leaders admitted to the delegation of not being aware of their parties’ policies towards women. Moreover, it raised concerns about the failure of many to recognize the seriousness of domestic violence in East Timorese society. The delegation also concluded that the civic education campaign failed to reach many women, especially in rural areas.

On 4 September 2001, *Suara Timor Lorosa’e* newspaper reported that **East Timorese Defense Force (FDTL) Brigadier General Taur Matan Ruak accepted the offer from the Indonesian military (TNI) to train East Timor’s armed forces.** The previous day, Indonesian General Kiki Syahnakri stated that TNI would like to help train the FDTL. Matan Ruak gave the following explanation: “From a political perspective, we can’t continuously be at war forever. While until now, we have faced political problems, we must not fight one another as enemies forever.”

*La’o Hamutuk comment: During 24 years of occupation, TNI carried out major campaigns of violence against the East Timorese, including mass kidnapping, rape, torture and killing. TNI trained and armed the militias that destroyed East Timor in 1999 and forcefully deported over one third of the population. It is too early for these kind of joint trainings and East Timor’s Defense Force must not learn the cruel and inhumane techniques exhibited by TNI.*

**The East Timor NGO Working Group on Refugees and Returnees wrote to Ruud Lubbers, UN High Commissioner for Refugees, to express its “concerns and recommendations regarding the winding down and the closure of the UNHCR operation in East Timor.”** The 8 Septem-

ber letter called plans to close the UNHCR field offices in Baucau and Maliana on 31 September and to cease humanitarian assistance to returnees “untimely,” especially given the expectation that returns will increase significantly following the 30 August elections. The NGO coalition foresees this process continuing through 2002, writing that a significant reduction at this time “in UNHCR staff and its departure from East Timor . . . would be an indication to the East Timorese, the Government of Indonesia and the refugees themselves that the situation of the refugees has been resolved or is irresolvable.” For such reasons, the NGO grouping advocated that the UNHCR “continue to ensure the protection and long-term reintegration of returnees” by maintaining its presence and continuing to provide humanitarian assistance to returnees at least until June 2002. It also called upon the UN agency to increase “co-ordination and co-operation with both governmental and non-governmental organizations” working with refugees in West Timor, as well as with local NGOs assisting with the process of reintegrating returnees into their communities. In light of the concerns expressed in this letter, the UNHCR is reevaluating its plans. (See article on page 17.)

On September 11, **Megawati Sukarnoputri accepted Japan’s controversial plan to contribute troops to the peacekeeping mission in East Timor** (see *Bulletin*, Vol. 2, No. 5) while meeting in Jakarta with General Nakatani, the head of the Japanese Defense Agency. The meeting took place eight days after East Timorese NGOs, including *La’o Hamutuk*, wrote to Japan’s Prime Minister Koizumi Junichiro and Foreign Minister Tanaka Makiko regarding the plan. Recalling the “bitter experience” of the East Timorese people with the Japanese military during World War II and Tokyo’s support for Indonesia’s illegal occupation of East Timor from 1975 to 1999, the NGOs urged the Japanese government to abandon its plan to send troops to East Timor. Instead, they advocated, Tokyo should use the funds they would have expended on sending the troops “to compensate victims of abuses during World War II and during Indonesia’s occupation.” In addition, they called upon Tokyo to “publicly acknowledge that past policies have caused great suffering to the East Timorese people.” They concluded that Japan could better assist in enhancing East Timor’s security by pressuring Jakarta to stabilize the situation along the West Timor boundary and to institute constructive diplomatic relations with Dili.

Since 8 October, **an additional 88 passengers have been able to travel between Dili and Oecusse each week.** UNTAET has provided an additional airplane flight and extra seats on two existing helicopter flights every week following the suspension of the ferry service between the enclave and the mainland in early September. The extra seats are free of charge and are available to both East Timorese and internationals. Negotiations are currently being held between UNTAET/ETTA, the governments of Germany and Portugal, international agencies, and transport companies, with progress towards more permanent solutions to the transportation problem, including land and/or sea transport, expected by mid-November. The Portuguese government has given US\$200,000 to UNTAET for transport to the enclave, some of which is currently in use. ❖



## UNTAET

## United Nations Transitional Administration in East Timor

16 August 2001

Dear Madam/Sir:

I am writing concerning your editorial, "The United Nations: Aiding or Undermining a Resolution of the Refugee Crisis?", that appeared in the July edition of the La'o Hamutuk Bulletin. I take strong exception to the position put forward in that piece which is a disservice to the hard work and no little courage displayed by many in UNTAET and the UN system who have been working ceaselessly to seek to bring about a resolution to the refugee problem in West Timor.

Refugee crises are often among the most intractable problems that the international community must face: hundreds of thousands of Cambodians remained stuck in camps in Thailand for over a decade; the matter of the Vietnamese boatpeople has only recently been resolved; Afghan refugees remain in Pakistan many years after they left their homeland. The list goes on. Yet in well under twenty months – a lifetime, admittedly, for those living in the misery of a refugee camp – some 185,000 refugees have returned or been brought back to East Timor, the vast majority to be welcomed with open arms. I agree that that is not the end of the problem: many thousands more remain in West Timor but to suggest that the continued existence of refugees constitutes a "devastating indictment of UNTAET's and the international community's ability and, perhaps, willingness to support the human rights of the East Timorese" is as absurd as it is offensive. Did Samson Aregahegn, Carlos Caceres and Pero Simundza, three UNHCR colleagues murdered in Atambua, lack "willingness" in this regard?

There is something approaching the naïve in your intimation that because UNTAET has not prevented the terrorization of refugees by people over whom we have no control in a territory in which we have no authority then that somehow constitutes a devastating indictment of our approach to this dilemma. Refugee crises are often the product of, and in turn help generate, complex and turbulent political situations. The crisis of East Timorese refugees is no different. Pressure is being brought to bear to have the problem resolved once and for all. This is being done at the international, regional and local levels. Progress is being made as witnessed by the numbers who have so far returned. Further efforts will be required to tackle the problem head on, not least by the Indonesian authorities in ensuring that the remaining refugees are afforded the opportunity to decide their own future free from all fear and coercion. But in the final analysis, I am hopeful that the majority of those still in the camps will decide to come home following the passage of peaceful elections in East Timor. They have a critical role to play in their country's future.

My objection to your editorial, however, does not end there. I object also to your criticism of UNTAET's approach to the recent registration exercise in West Timor. There is nothing "inconsistent" in declaring the exercise professionally run but criticizing the context in which it took place. You criticized us for not rejecting the registration but what precisely was it that you wanted us to reject?

I further regret your criticism – even if indirectly through quoting another source – and naming of an individual UNTAET officer, my Chief of Staff, N. Parameswaran, without even seeking his or my views in advance of publication. Few people have worked as hard and as ceaselessly to bring an end to the refugee problem. It is through his efforts alone that many hundreds, if not thousands, of refugees have been able to return. The fact that you do not know about this is an indication not that it did not take place but rather that our priorities lie more in ending this crisis once and for all than in trumpeting every success achieved along the path to that goal. To those UNTAET staff who have criticized Param for seeking good relations with Jakarta, I would simply ask what would they have him do in such a situation?

Finally, please can you enlighten me as to when we declared the remaining refugees in West Timor to be "voluntary migrants"? I am unaware of this change in policy. On the contrary, it is hoped that the United Nations will be able to return to West Timor in the near future and on a permanent basis. We are working hard towards that end. We are not abandoning anyone.

Having failed to consult in the preparation of your editorial, I trust that you will at least afford me the right of reply and print this letter in full in the next edition of your bulletin.

The Editor  
The La'o Hamutuk Bulletin  
Dili

A handwritten signature in black ink, appearing to read "Sergio Vieira de Mello".

Sergio Vieira de Mello  
Special Representative of the Secretary-General  
and Transitional Administrator

# La'o Hamutuk Responds:

## Refugee Return Too Slow, Strategy Still Misguided

La'o Hamutuk appreciates the letter from the SRS in response to our editorial. We share his concern about how important the refugee issue remains. We hope his letter and this reply will further illuminate the difficult problems which keep one-tenth of the East Timorese people trapped in Indonesia, excluded from voting and nation-building.

In a democracy, organizations may express opinions on government policies without consulting the authorities. Although we did not talk with the SRS's office before writing our editorial, we based it on public information as well as discussions with current and former UNTAET staff. We have shown this reply to the SRS before publication as a courtesy.

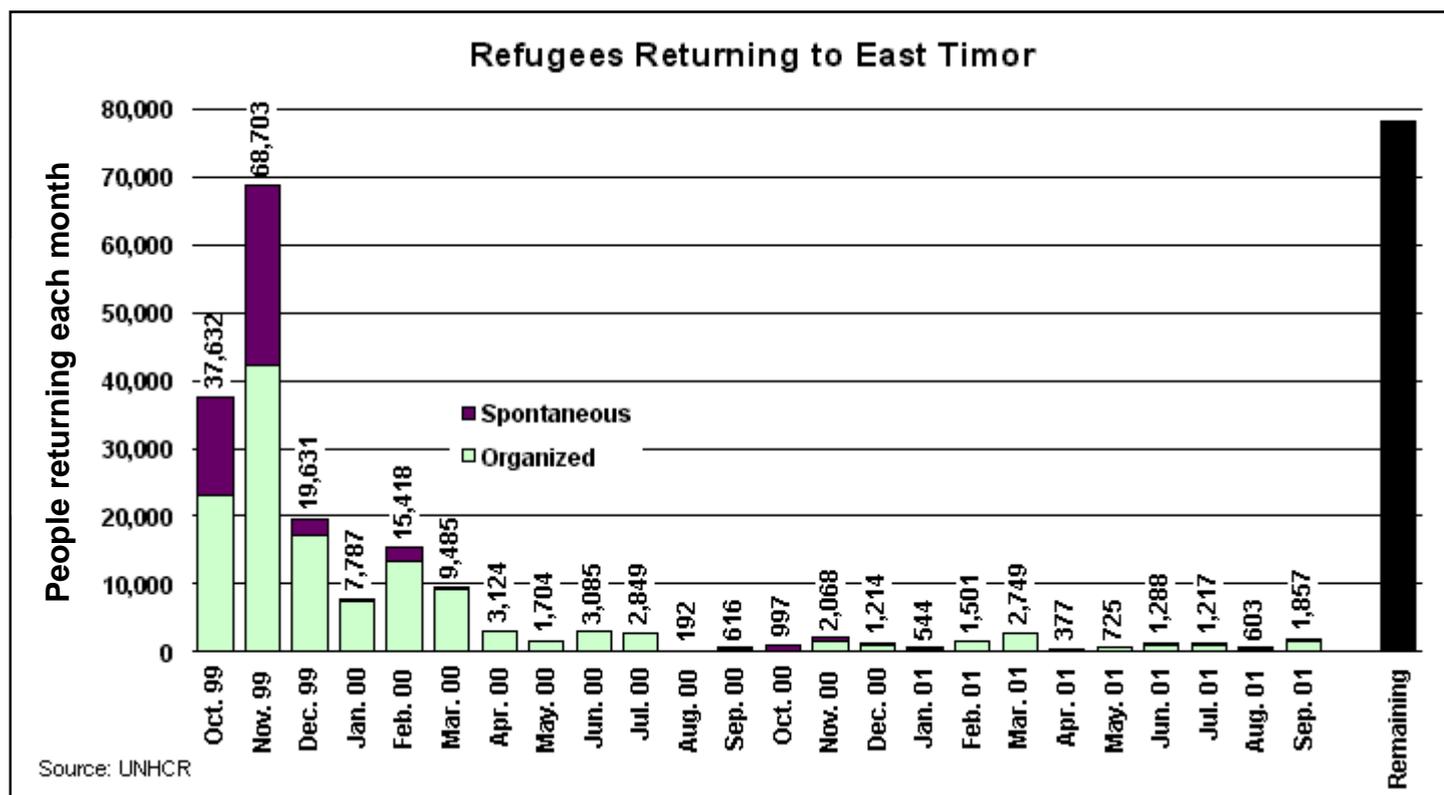
We share Mr. De Mello's appreciation that 185,000 of the East Timorese taken to West Timor have returned, and that people here have welcomed them. UNTAET, UNHCR, IOM and other international agencies deserve credit for helping most of these people come home, but one-third of the original refugees remain in squalid camps in Indonesia, and the return has slowed to a trickle (see graph). At recent rates (about 1000/month) it will take more than six years for everyone to come back – long after UNTAET has left East Timor.

We have serious reservations regarding UNTAET's strategy of negotiating with criminals like Mahidi militia leader Cancio Carvalho. Although Mahidi permitted more than 900 Ainaro and Covalima-based refugees to return in September (the first positive result of this approach), the tactic undermines the rule of law and could make the refugees' repatriation hostage to unacceptable demands (such as amnesty for militia leaders guilty of Serious Crimes). It also confuses the East Timorese refugees about the processes of justice, could pre-empt their ability to make a free choice to repatriate or not (militia leaders decide for them), and increases the power and legitimacy of militia leaders.

If UNTAET were to persuade Indonesia authorities to bring militia leaders to justice, the refugees under their control would be free to come home. Instead, the refugees observe UN officials negotiating with militia leaders, and the UN loses the refugees' trust. Genuine refugees remain in West Timor, while militia followers and leaders, as well as East Timorese TNI soldiers, return to East Timor with impunity. Many refugees, already misled and confused about the situation in East Timor, fear that those who have been oppressing them for the past two years will resume that role if and when the refugees finally go home. No wonder only 61 refugees returned spontaneously in September, the lowest figure in six months.

We join with Mr. De Mello in his admiration and grief for the three international UNHCR workers brutally murdered by pro-Jakarta militias in Atambua on 6 September 2000. We also mourn the many East and West Timorese killed in that massacre. Contrary to Mr. De Mello's implication, our editorial did not criticize those on the front lines who take tremendous risks and make great sacrifices. Rather, it placed the responsibility on Indonesian political and military officials who have failed to take significant action to bring their killers to justice, to disarm and remove militia from the camps, or to create safe conditions for international agencies to operate throughout West Timor. That responsibility extends to international leaders – especially members of the United Nations Security Council – who have not brought sufficient political pressure to bear on the Indonesian government.

Each of the estimated 75,000 East Timorese remaining in West Timor (NGOs estimate at least 2,000 have died in the camps) is just as human as the three UNCHR workers who were murdered, together with several Timorese, by pro-Jakarta militias in a sadly successful tactic to scare away international agencies attending to the refugees. The best



possible tribute to these martyrs would be to enable all the East Timorese refugees who chose to go home to do so.

We did not write that the SRSG had “declared the remaining refugees ‘voluntary migrants.’” Rather, our editorial expressed concern about a possible future scenario, stemming from donor pressure to shift refugee agency priorities to other places, and about the disastrous consequences for Timorese on both sides of the border if the refugees are forgotten. We’re reassured that the SRSG finds this scenario as abhorrent as we do, and that UNTAET is “not abandoning anyone.” But UNTAET is a temporary mission, and IOM and UNHCR are discussing imminent downsizing.

On 8 September, the NGO Working Group on Refugees and Returnees wrote to the UN High Commissioner for Refugees “to express our concerns and recommendations regarding the winding down and the closure of the UNHCR operation in East Timor,” which had been scheduled for the end of October 2001. In response to the letter and the obvious need, UNHCR is considering whether to continue some East Timor operations into 2002, albeit with significant reductions and no permanent presence in West Timor. We remain worried that current approaches will leave tens of thousands of East Timorese stuck in Indonesia when UNHCR has other priorities and UNTAET’s mandate ends.

UNTAET should be more assertive in informing the international community of the continuing refugee problem and in asking for help. On 30 July 2001, Mr. De Mello addressed the UN Security Council. He did not mention the refugees in his 4,500 word speech. After about a dozen governments raised the issue (several praised Indonesia’s registration and “cooperation”), Mr. De Mello replied that he believed that the registration did not reflect the definitive wishes of the refugees, and that up to 80% would eventually return. We hope that this is correct, but we fear it will not happen without concerted international pressure, and we wish Mr. De Mello had asked for it in New York.

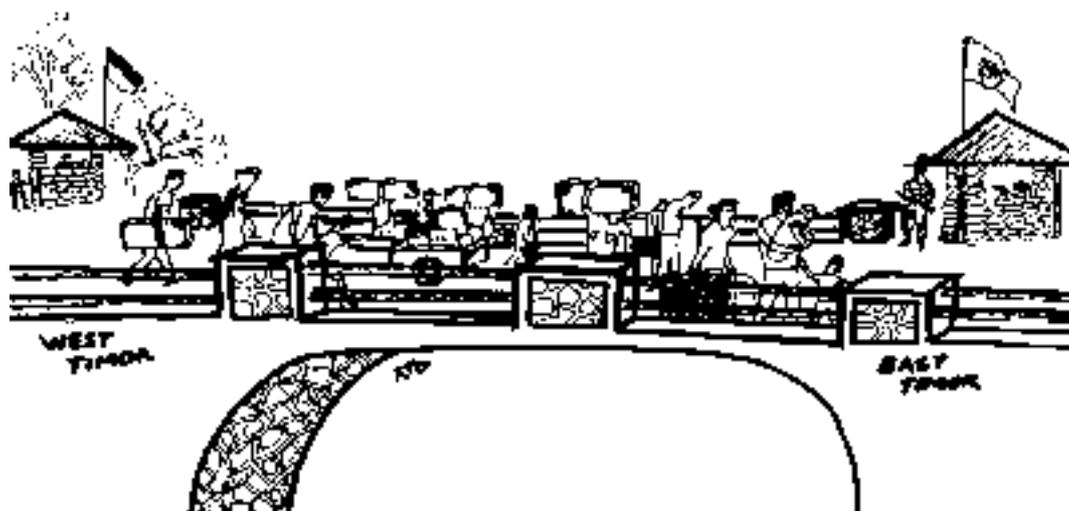
The UN Secretariat gives the refugees somewhat more attention. At the same Security Council meeting, Secretary-General Kofi Annan provided a 64-paragraph report with three paragraphs on the refugees. The S-G pointed out that although Indonesian reports of the registration showed that “98 per cent opted to remain in Indonesia ... there is some question as to whether it reflects their long-term intentions. Continued disinformation and intimidation in the camps prior to the registration process, feelings of uncertainty on the part

of refugees about the political process in East Timor, and a lack of clarity as to whether the benefits to which they are entitled in Indonesia would continue in East Timor, may have contributed to their reluctance to return at this stage.” During the Security Council meeting, Indonesia’s ambassador did not mention the refugees, although he did assert that “Indonesia has indeed disbanded and disarmed what was at that time called ‘militia.’”

We encourage the SRSG to focus his attention on those in Jakarta who bear responsibility for this travesty, rather than on NGOs like *La’o Hamutuk* who call for more effective measures to solve it. We appreciate the difficulty of resolving protracted refugee problems here and elsewhere, but we hope that UNTAET will focus its full attention to resolve the one under its mandate. UNTAET is a new kind of mission, with unprecedented authority, and it should use its powers to fulfill the task assigned by the Security Council in 1999: “... to ensure ... the safe return of refugees and displaced persons.”

*La’o Hamutuk* reiterates our call for disarming and disbanding the militias to enable the refugees to freely choose whether to stay or return – a freedom of choice which appears to be bypassed by the UNTAET-militia negotiation process. We were gratified in August when Mr. Parameswaram’s told local NGOs that UNTAET is not accepting the results of the registration, a position apparently tacitly accepted by the Indonesian government. We encourage UNTAET to inform the Security Council of UNTAET’s position, and to insist that Indonesia allow consistent humanitarian assistance to the refugees, while at the same time pressing Jakarta to bring to justice the military and militia leaders who created the refugee problem.

*La’o Hamutuk* welcomes the opportunity to work together with UNTAET to bring pressure on those in Indonesia and the international community to enable all East Timorese to participate in next year’s independence celebration. As expressed elsewhere in this *La’o Hamutuk Bulletin*, we believe that Indonesia has squandered the good will of the international community to handle justice and refugee repatriation within its own national processes. The responsibility now lies squarely with the international community, as represented by the United Nations Security Council, both to deliver justice with an international tribunal and to deliver freedom by effectively demanding that Indonesia make it possible for all East Timorese people who want to return home to do so. ❖



## Editorial: When Should Accountability Start?

Crimes against humanity have universal jurisdiction and no statute of limitations; they can be prosecuted regardless of the alleged perpetrator, time, location and context. From the beginning, efforts in the United Nations have had a fundamental flaw. The international community, following the lead of Indonesia, is ignoring crimes committed before 1999. Thus, there have been no official efforts by the United Nations, its member states, or Indonesia to investigate or prosecute crimes committed between 1975 and 1998.

We fear that the United Nations position does not only reflect the views of Indonesia's powerful allies on the Security Council, but also results from limited commitment on the part of key UN figures, including High Commissioner for Human Rights Mary Robinson. In August 2000, Robinson told a Dili meeting that the UN is concerned only with the events of September 1999 because they occurred during a UN mission.

Although such a position has no basis in international law, some international human rights organizations appear to accept these parameters, apparently believing that calling for full accountability would undermine already weak international support for justice for East Timor. Some also contend that starting with a small demand—justice for 1999—will open the door to prosecuting crimes committed earlier.

Although we understand the political motivations of dip-

lomats in supporting a narrow framework for justice for East Timor, human rights organizations have an obligation to criticize such a framework—and to do so publicly and forcefully. A self-inflicted compromise is dangerous: when one limits one's demands, one is likely to get even less.

An uncountable number of crimes against humanity were committed during the 1975-1999 period in East Timor. Although an international court could not pursue all of them, it could prosecute a limited number of the worst crimes—such as the 1975 invasion, the mass killings at Matebian in 1979, Lacluta in 1981 and Kraras in 1983, the 1991 massacre at the Santa Cruz Cemetery, and a handful of the most horrible atrocities committed in 1999. Such an approach would have the advantage of limiting the duration and costs of the tribunal while covering the entire period of the Indonesian invasion and occupation, thus increasing the likelihood that many of the principal architects and perpetrators would be held accountable.

It would also confirm that the invasion, occupation and destruction of East Timor by Indonesia was a long-standing, systematic, criminal conspiracy, planned and ordered at the highest levels of government. Many of the perpetrators continue to wield authority and influence in East Timor's nearest neighbor. The future of peace, justice and democracy in both East Timor and Indonesia depends on holding the highest-level perpetrators accountable. ❖

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### Editorial: Time to Get Serious *(continued from page 20)*

It is for such reasons that concerted and sustained advocacy for an international tribunal must take place within East Timor—for which there is far greater potential now that there is an elected legislature and an East Timorese cabinet—and around the world.

Until now, the voices in East Timor and within the international human rights and solidarity community have not been sufficient, nor have they adequately challenged the United Nations' willingness to accept that which is clearly unjust: prosecution of low-level perpetrators of some crimes committed in 1999, but not for those in charge, or for any crimes committed from 1975 through 1998.

The October 16 "Seminar on Justice and Accountability for East Timor" held in Dili drew many interested activists who unanimously supported a call for international justice. We hope that their enthusiasm will give new life and effectiveness to the campaign both here and internationally.

As Jon Cina suggests (see page 12), an international tribunal as conventionally conceived is not the only route to justice for East Timor. An international tribunal is not an *end* in itself, but a *means* to ensure justice and accountability for perpetrators of terrible crimes. In this regard, there are a number of potential mechanisms, each requiring that the international community provide political backing and material resources. But whatever justice mechanism arises, it must have a true commitment to working with civil society while ensuring a high degree of East Timorese participation and ownership of the process.

A far-reaching dialogue within East Timor, in conjunction with international supporters, is beginning to identify the most appropriate mechanisms and the best means to struggle for them. International activists and civil servants can help in this area. East Timor's political leadership is severely constrained by the need to maintain a working relationship with Indonesia and to avoid alienating powerful members of the international community. It is thus incumbent on East Timor's international supporters to create a space so that East Timorese activists can respond to the call for justice voiced across East Timor.

As international solidarity activists wrote to the CNRT Congress in August 2000, "the issue of justice goes beyond the scope of East Timor. The crimes committed by the TNI in East Timor are not ordinary crimes. They are Crimes against Humanity. As such, they ... concern Humanity as a whole. Not addressing these crimes will undermine the international efforts for accountability and prevention of further such crimes." In this regard, justice is important not only for East Timorese society, but also for Indonesia, and for the entire world.

It is past time to work for full accountability for war crimes and crimes against humanity committed from 1975 to 1999. This means challenging UNTAET and the United Nations, but more importantly the world's most powerful countries, including the United States, Britain, France, and Japan—all of whom supported Indonesia's crimes in East Timor. Not surprisingly, they are doing very little to ensure that East Timor receives the justice it needs and deserves. ❖

# Editorial: Time to Get Serious About Justice for East Timor

The East Timorese deserve the right to justice as much as any people in the world. As this country recovers from 24 years of conflict and gross human rights abuses, it is now time for justice and accountability with full international backing. Indonesia's 1975 invasion and occupation were flagrant violations of international law, causing one of the highest death tolls proportionate to population in the last half-century.

The final act of terror of the Indonesian occupation—the September 1999 rampage after the overwhelming pro-independence vote—was a blatant violation of Jakarta's international obligations. As the International Commission of Inquiry on East Timor (ICIET) wrote in January 2000, the “actions violating human rights and international humanitarian law in East Timor were directed against a decision of the United Nations Security Council ... and were contrary to agreements reached by Indonesia with the United Nations to carry out that Security Council decision.”

Many in East Timorese civil society demand an international tribunal to hold those who committed crimes against humanity in East Timor accountable for their actions. At an October 16 conference in Dili, 75 East Timorese activists and survivors unanimously appealed for such a process. This builds on the call from East Timor's National Council (the former legislature), many East Timorese NGOs, all 16 political parties, and prominent individuals, such as Bishop Carlos Belo. The ICIET made the same recommendation in its report to the Security Council. Although the UNTAET Administration has taken on the task of investigating and prosecuting certain crimes committed during 1999, it is severely limited in resources and in its ability to obtain Indonesian cooperation.

In January 2000, the Security Council decided not to establish a tribunal, deferring to Indonesia. The Security Council also stated that Jakarta had to bring the perpetrators to justice “as soon as possible,” implying that if they failed to do so, the Security Council would establish an international tribunal for East Timor.

More than 20 months later, Indonesia has not indicted anyone for crimes committed in East Timor. Nevertheless, the United Nations is not moving to implement its promise to establish a tribunal if Jakarta fails to fulfill its commitment. Thus, apart from a few UNTAET trials of East Timorese militia members, the justice process has gone nowhere.

Megawati Sukarnoputri became president of Indonesia in July, promising to set up an *ad hoc* court to try some 1999 crimes committed in East Timor. We doubt her commitment. Soon after taking office, Megawati changed the scope of the *ad hoc* court from only crimes committed after the 30 August vote to also cover crimes committed in April 1999. At the same time, her decree limits the court to crimes committed in Dili, Liquiça and Suai. Amnesty In-

ternational responded “with dismay” to the new decree and called it “a case of one step forward, two steps back,” but Australian foreign minister Alexander Downer characterized it as “a very positive step forward,” and most other governments were silent.

Megawati then appointed M.A. Rahman as Attorney General. Last year, as head of the team deciding prosecution for crimes committed in East Timor, Rahman recommended prosecuting only low-ranking officers, ignoring those with most responsibility for the crimes. Some suggest he obstructed the work of the team.

Jakarta hopes to avoid serious action until the UN loses interest, or at best to placate the countries that dominate the United Nations by prosecuting only a handful of low-level perpetrators, mainly militia, for a few of the crimes committed in 1999. They believe that continued stalling will avert the possibility that the Security Council would expend the political and financial resources required to establish an international tribunal. Some East Timorese leaders are reluctant to push hard for a tribunal, or to confront Indonesia's intransigence, as East Timor has little leverage without strong UN backing.

*(continued on page 19)*

## What is La'o Hamutuk?

*La'o Hamutuk (Walking Together in English)* is a joint East Timorese-international organization that monitors, analyzes, and reports on the principal international institutions present in Timor Lorosa'e as they relate to the physical, economic, and social reconstruction and development of the country. *La'o Hamutuk* believes that the people of East Timor must be the ultimate decision-makers in the reconstruction/development process and that this process should be as democratic and transparent as possible. *La'o Hamutuk* is an independent organization and works to facilitate effective East Timorese participation in the reconstruction and development of the country. In addition, *La'o Hamutuk* works to improve communication between the international community and East Timorese society. Finally, *La'o Hamutuk* is a resource center, providing literature on development models, experiences, and practices, as well as facilitating solidarity links between East Timorese groups and groups abroad with the aim of creating alternative development models.

*In the spirit of encouraging greater transparency, La'o Hamutuk would like you to contact us if you have documents and/or information that should be brought to the attention of the East Timorese people and the international community.*