

# The La'ο Hamutuk Bulletin

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## UNMISET Support for Public Administration

With the end of the Indonesian occupation of Timor-Leste in 1999, government administration disappeared. In addition to the formal abolition of the Indonesian provincial administration, the TNI/militia campaign of violence and mayhem destroyed most public facilities. Furthermore, approximately 7,000 civil servants left or fled Timor-Leste, creating a severe shortage of human resources with which to reconstruct public administration and services.

When the United Nations, Indonesia and Portugal agreed to the referendum, they also agreed that the UN would be responsible for governing Timor-Leste for a transitional period if the Timorese people rejected continued Indonesian rule. To that end, the UN Security Council created UNTAET — the United Nations Transitional Administration in East Timor — to govern the country for two and a half years. The Timorese people and the UN hoped that UNTAET would prepare the people of Timor-Leste to govern themselves after this period.

Unfortunately, that hope was not realized. Although the Security Council had given UNTAET chief Sergio Vieira de Mello absolute authority, his mission did not significantly involve participation by the people. As Xanana Gusmão recently commented — “Timorese were often regarded as those who would receive a gift, not those who had a country to build with their own hands.” The power conferred on Sergio De Mello and UNTAET from New York not only “failed to decentralize its own form of absolutist authority” in the words of a former senior member of UNTAET staff, it also “excluded the local population from the equation.”

UNTAET was largely successful in addressing the humanitarian emergency created by “Black September 1999,” and

facilitated the Constituent Assembly and Presidential elections, as well as the drafting of Timor-Leste’s Constitution. However, given the massive social and political problems which still require attention, large tasks remained for Prime Minister Mari Alkatiri’s elected government. Attempts to decentralize power have been slowly and inadequately carried out, partly a legacy of the centralized structures created under UNTAET. Civic education programs have not adequately focused on citizens’ interactions with government. (see *La’ο Hamutuk Bulletin*, Vol. 3, No. 4, May 2002). Effectively addressing these problems requires not only political will, but also the support of sound administrative structures.

It was obvious to all that numerous problems would remain when Timor-Leste became independent in May 2002, although UNTAET would end. After much discussion, the UN Security Council created UNMISET, the United Nations Mission of Support in East Timor (see *La’ο Hamutuk Bulletin*, Vol. 4, No. 2, May 2003), with a one-year mandate which was extended twice, until May 2005.

UN Security Council Resolution 1410 directed UNMISET to do the following:

- √ Assist administrative structures by placing advisors in critical posts, to ensure viability and political stability;
- √ Provide law enforcement while helping with the development of the national police service (PNTL);
- √ Contribute to East Timor’ external and internal security.

For approximately three years, UNMISET has gone about implementing its mandate. In this article *La’ο Hamutuk* evaluates UNMISET’s attempts to develop Public Administration.

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Some questions relating to this issue are: Why did the UN Security Council choose this sector as one of its priorities after UNTAET? Where did the funds come from? How did they implement this mandate? What have been the effects of its implementation?

*La'o Hamutuk* conducted interviews with various parties, including SRSG Sukehiro Hasegawa, former UNMISSET spokesperson Marcia Poole, and international staff recruited as advisors or mentors in various ministerial offices. We also read numerous documents. This article analyzes UNMISSET's progress in public administration, as well as contributions by civil society. The contributions from the international community through International Advisors are also important, although our main focus is on UNMISSET's mandate for public administration and the effects of this.

### A View on Public Administration in Timor-Leste

The public administration system under UNTAET had various problems. The *Timorization* process, the policy consciously followed by UNTAET to build popular capacity and transfer power, is an example. Though a National Consultative Council (NCC), then National Council (NC) were created to give the appearance of power transfer, they were only places for debate, with power still resting entirely with the SRSG. Any popular participation during UNTAET was not reflected through the NCC or NC as the members were unelected. This lost opportunity not only deprived Timorese people of the chance to practice decision-making during the transition, but created an atmosphere of mistrust and disempowerment — a virtual occupation — which made it more difficult to develop a professional civil administration of Timor-Leste people.

As a result, the people of Timor-Leste were not prepared to administer their own nation after UNTAET and so international support — more constructively deployed — from the United Nations was still very much needed.

Recognizing this, the UNDP (United Nations Development Program) led a “skills audit” in October 2001 that iden-

tified more than 300 international advisory positions for various departments and units within state institutions—with 100 positions classified as “stability” posts and 228 as “development” posts. This finding was a major part of the foundational guidelines for the post-UNTAET mission.

In keeping with UNTAET's mandate, the UN Secretary General's report to the Security Council in 2002 recommended a mandate to support public administration. The report defined “stability” positions as “critical” for the functioning of key state institutions and the provision of basic government services, and recommended that U.N. member states pay for these positions through assessed contributions

to UNMISSET. The report characterized the “development” positions as vital to longer-term needs in improving the capacity of state institutions and ensuring sustainable development; instead of assessed contributions paying for these positions, the report recommended that donors voluntarily support the posts by providing funding to the UNDP or directly to the Timor-Leste government.

Through UN Resolution 1410, UNMISSET had three major mandates, one of which was to assist public administration structures; it did so by recruiting and contracting “stability” advisors. Meanwhile, the UNDP managed funds provided by donors to recruit, contract, and support the 228 “development” advisors. State institutions have a role in designing the positions during recruitment and hiring. In both cases, the main goal was to transfer the advisors' skills and experiences to Timor-Leste's civil servants, while meeting immediate and longer-term needs of the state apparatus and to ensure sustainable development.

UNMISSET ended in May 2005, replaced by a smaller and narrower mission (UNOTIL—the United Nations Office in Timor-Leste), including fewer international advisors. Based on priorities identified by the state institutions, the number of Political Stability Advisors was reduced from 100 to 58, and Development Advisors reduced from 228 to 114 (later increased to 118). This decision was made after UNDP, UNMISSET, and the Capacity Development Coordination Unit (CDCU) of the Government of Timor-Leste created a joint task force to consult relevant institutions.

### Placing of Advisors

The 2001 skills audit identified four critical areas in state institutions to receive help from international staff: financial services; internal systems within various ministries; essential services (such as water and sanitation, power, roads, housing, and health); and legal/justice systems.

Government ministries and the state secretariat received the most help by far, followed by the justice system, parliament, and the office of the president. Of all the departments

in the government, the Ministry of Planning and Finance received the most advisors. The table below shows how many advisor positions were identified — not all of them were filled, and some were filled after long delays for funding and recruitment.

**Table 1: Distribution of the “most critical” and “critical” positions by type of state institution**

**2002-2004**

State institution	Stability positions (UNMISSET)	Development positions (UNDP and others)
Ministry of Planning and Finance .....	33 .....	59 .....
Min. Communications, transport, etc. ..	15 .....	30 .....
State Administration .....	11 .....	19 .....
Min. Justice .....	6 .....	9 .....
Council of Ministers .....	2 .....	16 .....
Min. Agriculture .....	1 .....	13 .....
Min. Education .....	2 .....	11 .....
Min. Health .....	1 .....	9 .....
Secr. Environment .....	0 .....	9 .....
Other ministries & secretariats .....	7 .....	22 .....
Judiciary* .....	6 .....	1 .....
Parliament .....	1 .....	2 .....
Office of the President .....	0 .....	8 .....
Others .....	0 .....	15 .....
<b>TOTAL .....</b>	<b>100** .....</b>	<b>228** .....</b>

**2004-2005**

State institution	Most critical pos'ns (UNMISSET)	Critical positions (UNDP and others)
Ministries and state secretariat .....	39 .....	97 .....
Judiciary* .....	13 .....	2 .....
Parliament .....	2 .....	5 .....
Office of the President .....	2 .....	5 .....
Others .....	2 .....	9 .....
<b>TOTAL .....</b>	<b>58 .....</b>	<b>118 .....</b>

\* International judges, prosecutors, investigators and police in the Serious Crimes Unit and Special Panels are not advisors and therefore not included.

\*\* Totals appear incorrect because this data comes from two charts in the same UNDP document which are inconsistent.

**Funding**

As discussed above, two funding sources support public administration advisory positions in Timor-Leste. UNMISSET’s Political Stability Advisors are funded from the Peacekeeping Operation budget for the Civilian Support Group (CSG), which also includes PKF military operations. \$485 million was spent during UNMISSET’s first two years (see *La’o Hamutuk Bulletin*, Vol. 4, No. 2). The \$85 million spent during UNMISSET’s third year included \$17 million for military and police personnel, \$36 million for civilian personnel, (a combination of international advisers, UN ‘Volunteers’ and national staff), and \$31 million for operational costs.

Of the civilian personnel budget, \$7,339,800 was used to fund UNMISSET’s 58 ‘Most Critical’ advisers during 2004-5. If all the positions were filled for the entire year, the average cost of a ‘most critical’ adviser would be \$126,548.

Funding for the Development Advisors (Critical Positions in 2004-5) came from bilateral and multilateral donors. UNDP funded 55 advisers during 2004-5 at a cost of \$4,746,775, for a per-advisor average cost of \$86,305. Some positions were not filled or were filled late.

Other Development/Critical positions are paid for by bilateral donors without involving UNDP funding.

**Bilateral donors for UNDP-managed advisors**

Donor	Contribution (US\$)
Australia .....	435,000
Canada .....	708,000
Denmark .....	135,000
European Commission .....	3,000,000
Finland .....	544,000
Ireland .....	2,037,000
New Zealand .....	1,207,000
Norway .....	1,301,000
Sweden .....	3,133,000
UK .....	135,000
USA .....	395,000
UNDP .....	206,000
<b>Total .....</b>	<b>13,236,000</b>

In addition to providing funding through the UNDP, some bilateral donors directly hired and placed people in various posts, without going through the UNDP. Some UNDP staff described this process as ‘supply driven,’ explaining that country representatives approached the Timor-Leste government with projects that they wished to fund directly. This suggests that many bilaterally funded advisers are not necessarily placed according to government priorities.

Bilateral Development Partners	Positions Supported
AusAID (Australia) .....	11
JICA (Japan) .....	3
Government of Portugal .....	14
USAID (USA) .....	5
UNMISSET .....	2
Other .....	4
<b>Total</b>	<b>39</b>

Source: *www.undp.east-timor.org*, accessed 1 August 2005

**Implementing Support for Public Administration**

There are a number of steps in the implementation process. First, there is an assessment involving stakeholders — the Timor-Leste government, UN agencies, and international financial institutions — to determine situational needs in the field. The assessment serves as the foundation of the mechanism for capacity building, and seeks to understand the capacity of local counterparts. After that, the stakeholders seek funding by approaching potential donors. After funds are located, they find and hire the advisor. Next, they begin the capacity building process. Finally, they design and put into practice an exit and transition strategy.

- There are three main pillars of capacity building:
- √ skills and knowledge, which stresses individual ability
  - √ systems and processes, which focuses on organization and procedures within and between units
  - √ attitude and behavior, which relates to an individuals’ comportment within an institution.

In order to facilitate the realization of these “pillars,” advisors conduct trainings, help design and implement policy and legal structures, and produce manuals and operating systems.

Some progress achieved includes the establishment of organic laws for national institutions such as the PNTL, the military, and various ministries. There were also policies implemented in education, health, and natural disaster management.

### Analysis

*La’o Hamutuk* has identified seven key problems with international support for capacity building:

1. decision making
2. limited time for capacity building
3. tension between individual and institutional capacity building
4. language, experience and cultural barriers between international advisors and local staff
5. insufficient coordination between UNMISSET and UNDP
6. international advisors not doing what they are supposed to do
7. neglect of various state institutions

### Decision-making

There was a serious problem from the outset as the October 2001 “skills audit” took place before there was a Timor-Leste government; while power was in the hands of UNTAET. Although East Timorese were involved in the audit, their role was minor compared to international staff and institutions. Thus, the process of selecting needs and spe-

in terms of identifying capacity development priorities in conjunction with UNMISSET and the UNDP. This takes place within the government’s Capacity Development Coordination Unit (CDCU). But it was not until July-August 2003 that the Government of Timor-Leste participated in an assessment of capacity development needs (for the period after June 2004) together with UNMISSET and the UNDP. For the previous two years, international actors identified the positions and the East Timor government only gave its consent, with the final decision regarding funding (for the UNMISSET positions) made by the Security Council. As for the development positions administered by the UNDP, they depend on voluntary support and resources from donors.

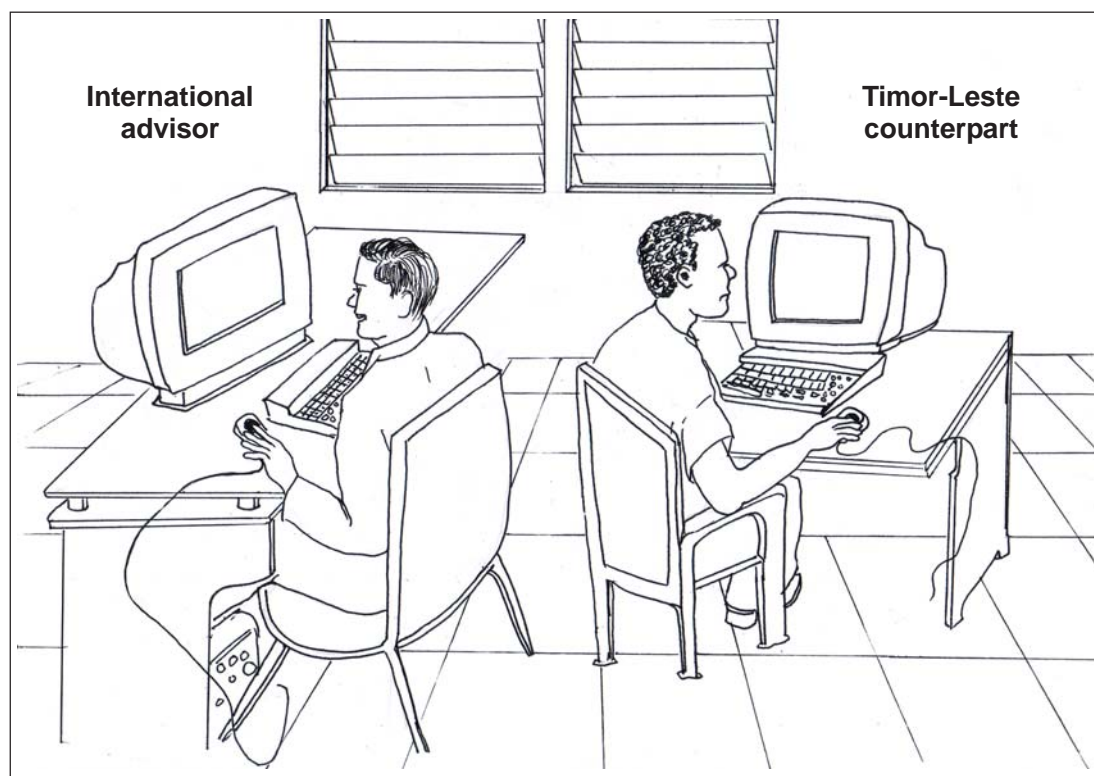
### Time

The time for recruiting should be one or two months, but often it takes longer to hire a qualified advisor. Most advisors receive a three-month, six-month, or one-year contract with the possibility of extension. Given that a typical advisor has little to no experience with the social and political conditions in Timor-Leste, he or she needs considerable time to adapt. The advisor also needs time to assess the local counterparts’ abilities, relevant institutional and political structures, cultural factors, as well as the relationship of individuals to their respective institutions. To achieve this requires a long process. In this regard, one or even two years of advising cannot achieve the desired results, especially given the fact that the job of an advisor is to assist capacity building not only with individuals, but also with institutions. Furthermore, some advisors leave before the end of their contract, creating new delays as new advisors are hired.

### Individual versus institutional capacity building

For the first two years, advisors used a one-to-one approach, focusing on individuals at the three highest levels (level 5, 6, and 7, 7 being the level of minister) of Timor-Leste’s state institutions. This approach proved to have significant drawbacks. First, there was always the possibility that the person whose capacity was being or had been developed would move. Furthermore, this approach created skill centralization, resulting in dependency of institutions on certain individuals. In doing so, the advising partnerships had the effect of concentrating skills in small numbers of individuals at the highest levels and thus had limited impact on the capacity of institutions as a whole.

For such reasons, a new approach was implemented in June 2004, putting institutional capacity building at the center. Each advisor now assesses multiple individuals on a variety of levels and throughout the institution. UNDP and UNOTIL will continue with this approach until May 2006.



cific advisors—and by extension the shaping of the capacities and worldviews of East Timorese staff and state institutions—was biased toward the perspectives of internationals.

The government’s role has gradually increased over time

## Communication

The problem of communication, due to different languages spoken by advisors and advisees, is significant. This problem has been identified by many advisors, as well as by East Timorese.

In the case of the UNDP, 74% of current advisors speak Portuguese or Tetum, but most speak only Portuguese, a language in which few Timorese have strong ability. Only 49% of the UNDP advisors speak Indonesian or Tetum — so half the advisors do not speak languages understood by most East Timorese.

Some of the advisors have no training experience, compounding the difficulty of transferring their skills to Timor-Leste staff.

Related to these problems is one of cultural understanding. Given that language ability is very much related to intercultural understanding, the fact that many advisors are unable to communicate with advisees in one of East Timor's two principal languages, Tetum and Indonesian, seriously impairs the skills transferring process.

For this reason and more, it is best if advisors are people who are very familiar with and/or have spent time in Timor-Leste. Not only would this improve communications, because advisors will at least know something about the social, historical and cultural reality of this country, but it will also shorten the time advisors need to adapt and make assessments.

## Coordination

In terms of coordination, UNMISSET and the UNDP are on one side, and the government of Timor-Leste on the other. Confusion often arises due to the overlapping functions of UNMISSET and UNDP, an outgrowth of what a November 2004 report to UNDP called a “growing convergence between the mandate of the peacekeeping mission and that of UNDP.” During the stabilization phase (roughly mid-2002 to end of 2003), this report identified the problems in coordination between UNDP and UNMISSET. To try to remedy this, the UNDP program team moved to the UNMISSET compound in June 2004 so it could work more closely with UNMISSET's (and now UNOTIL's) Civilian Support Group. This work takes place through a joint office called the Institutional Capacity Development Unit (ICDU). As a result, there is now more centralization in policy making with regard to institutional capacity building. And there are plans to further this centralization by sharing offices with the Government of Timor-Leste's own Capacity Development Coordination Unit (CDCU). In addition, UNMISSET, the UNDP, and the government's CDCU have created a monitoring and evaluation system for international advisors, a system that will hopefully soon cover bilateral advisors as well.

## Specific tasks versus capacity building

Advisors are expected to transfer their skills to their local counterparts, not to carry out “line functions”—specific tasks related to the institutions in which they work. Although officially advisors do not perform line functions, some international advisors admit that they carry out programmatic and management tasks, rather than fulfilling their capacity-building duties. Some advisors complained about what they regard as the low skill levels of the local staff. Although it's

true that Timor-Leste people hired for specific positions sometimes don't have the necessary skills and experience, that's why capacity-building is important for the future. Some advisors' negative perspectives probably contributes to their tendency to do specific tasks rather than build capacity as they perceive the local staff as having insufficient capacity to merit their efforts or as having little potential. Advisors with more favorable outlooks toward their East Timorese counterparts see the creation of a positive environment that facilitates local staff carrying out their duties as the most important thing that advisors should do.

## Neglect of non-governmental state institutions

The vast majority of the advisor positions went to government ministries. Institutions such as the National Parliament have received extremely little attention until recently. In 2002-2004, for example, Parliament received only three out of 338 international advisor positions, leading many in the legislative body to complain. The situation improved, however, in 2004-2005. In that year, about 30% of the 58 stability (now called “most critical”) advisors support non-governmental state institutions such as the judiciary. In the case of development (now named “critical”) advisors, about 20 percent are placed in non-governmental units. In addition, the UNDP has separate support projects for East Timor's parliament and judiciary. Many other international trainers and advisors work with the police, military, schools, health system and other public services, but these are outside the scope of this article.

## Conclusion and Final Recommendations

The international community's support for the public administration sector is very important and has had many positive outcomes. At the same time, the positive effects of the capacity building have been uneven. Some ministries which have received relatively large amounts of support still experience significant problems.

The Ministry of Planning and Finance, for example, has received more advisors than any other. However, complaints from the public show that the two directorates with the most problems — in terms of perceived corruption and transparency — and the ones considered the most inefficient are the ministry's customs and tendering process sectors. The Ministry of Education similarly continues to experience major difficulties because of its inability to fully execute its budget. It is estimated that in the year 2004-5, almost 60% of the budget will not be executed. For such reasons, these ministries will continue to need capacity building assistance—far beyond the end of the UNOTIL mandate on 20 May 2006.

In addition to these challenges, there have been a number of significant problems with capacity building efforts thus far that have undermined the long-term prospects of East Timor's state institutions.

√ Timor-Leste's government and the country's people—through their elected representatives—must have a larger voice in the identification of priorities as they relate to international advisors. Parliament should receive significantly more support. Without this, the parliament cannot achieve its potential as a vibrant democratic body, and the very legal framework that the parliament helps to build and that serves as the foundation of society will suffer.

- √ Were international advisers paid less than the high salaries they receive, the surplus funds could be used better. On the one hand, the challenges facing the government would be better served by employing more advisers with demonstrable experience in training counterparts.
- √ On the other hand, advisers could be given time to assess the particular needs of a counterpart and the internal systems of the organization in which they will work. Intensive language courses before the start or as part of an adviser's contract could contribute to improved communications between adviser and counterpart.
- √ Rebuilding public administration under UNTAET was a necessity for the functioning of the new state of Timor-Leste. However, UNTAET operated a highly centralized power structure that delayed bringing East Timorese into

the equation for far too long, taking two years to understand that Transitional was the most important word in their name. After the transition to UNMISSET, this legacy of centralization could have been changed sooner if there had been greater and swifter coordination between UNMISSET, UNDP and the government. The presence of highly paid consultants, many of whom had limited effectiveness in developing the skills of Timorese counterparts, raises questions about whether these advisers are being allowed adequate preparation time; whether, in the context, the selection of advisers is donor/supply driven; and whether the right advisers with the right skills are being selected at all. Lastly, the importance of equal distribution of these advisers across state governmental and non-governmental institutions must be repeatedly emphasized. ❖

### **Action Aid: Make Aid Work Better**

A May 2005 report by Action Aid, a non-governmental organization based in the United Kingdom, helps provide some valuable context for analyzing the strengths and weaknesses of international support for capacity building in East Timor.

According to the report, *Real Aid: Agenda for Making Aid Work*, past experience demonstrates that bilateral (government to government) assistance—when deployed effectively as part of a larger development strategy—can make a significant difference in helping low-income communities escape poverty. The report also argues strongly for high-income countries to provide far greater amounts of bilateral aid, but of a much higher quality than they typically do at present.

Higher quality international assistance, according to Action Aid, means that donor countries should focus the vast majority of their resources on poverty reduction—especially in the world's lowest income countries. Currently, the majority of Western aid to so-called developing countries is what the report calls “phantom aid”—aid that is not truly available for poverty reduction. In the case of the United States and France, Action Aid estimates that almost 90% of their overseas assistance is of the phantom variety. Although the report focuses primarily on poverty reduction—and its findings here apply to such projects in Timor-Leste—it also contains useful observations about international consultants which is relevant to advisors and capacity-building in Timor-Leste.

To move beyond phantom aid and bring about “real aid” requires, among other things, that donors “untie” their assistance: in other words, aid recipients should not be compelled to use the aid to purchase goods and services from the donor countries. In addition, the report calls upon donors to eliminate excessive monitoring and reporting requirements, institute two-way accountability (both donors and recipients need to be transparent and accountable to one another), and provide promised assistance in a timely fashion.

Especially relevant to the matter of capacity building is the report's analysis of technical assistance and what it calls “runaway spending on overpriced technical assistance from international consultants.” Technical assistance worldwide amounted to US\$18 billion in 2003, at least 25% of total bilateral assistance. Such aid typically pays for consultants who advise recipient governments and engage in capacity building.

According to Action Aid, technical assistance often does not produce positive results for three main reasons. First, donors usually insist that consultants come from donor countries and, as a result, consultants rarely come from developing countries. Second, consultants receive highly excessive salaries. In Cambodia, for example, donors spent between \$50 and \$70 million in 2002 on 700 international consultants, an amount that approximates the annual salaries for 160,000 Cambodian civil servants. In Vietnam, according to an official with Britain's official aid agency (DFID), the United Kingdom normally pays its consultants in Vietnam between \$18,000 and \$27,000 per month, while paying Vietnamese consultants between \$1,500 and \$3,000. Timor-Leste's experience, where UN missions paid international staff an average of 30 times as much as they paid local staff, is consistent with these examples.

Third, technical assistance is typically not accountable to local needs and desires; instead, it often manifests the agendas of the donors. Indeed, it is typically the donors that select and contract the consultants. In addition, there is often very poor coordination between donors so that there is a lot of duplication and, hence, waste.

Action Aid estimates that at least 75 percent of technical assistance is “phantom” aid. To remedy this, it calls upon donors to allow recipient governments to control and manage the selection and hiring processes, to recruit local experts (in the case of Timor-Leste, this could include individuals from the Timorese diaspora) as consultants, or people from the larger region in which the recipient is located.

## In Brief

### Globalize Justice - Not War and Poverty

Three East Timorese activists—Tomas Freitas of *La' o Hamutuk*, Avelino Coelho of the Socialist Party of Timor, and Julino Ximenes of HAK Association—participated in the second Asia-Pacific International Solidarity Conference in late March in Sydney. The conference, organized by *Green Left Weekly* and Action in Solidarity with Asia and the Pacific (ASAP), was attended by hundreds of people and included presentations from around the world, including Indonesia, India, the Philippines, Australia, and the United States.

The myriad issues discussed at the conference included issues surrounding the Asian tsunami, the anti-war movement, internationalism, the environment, women's liberation, cultural activism, rebuilding the socialist Left, Australian imperialism and third world solidarity. One of the public sessions featured former U.S. Special Operations soldier Stan Goff, now a leading campaigner against the war in Iraq and writer on Washington's foreign policy. Goff spoke of the importance of activists with a military background organizing against the war in order to reach soldiers who were less suspicious of veterans than others. What is needed is not just an anti-war movement, Goff said, but an "anti-empire" movement that can challenge Washington's program for world domination.

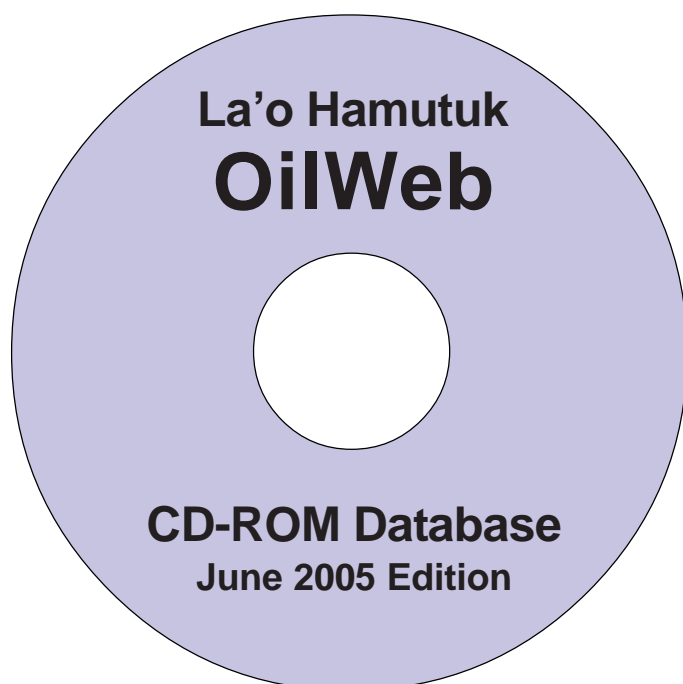
Tomas Freitas spoke of the problems brought about by the United Nations' transitional government in Timor-Leste, and how Timor-Leste's government is now grappling with them. He also discussed the struggle for an international tribunal for East Timor and the political conflict between Australia and Timor-Leste over their maritime boundary.

### Extractive Industry Transparency

Held in the Queens Mary II building in London, England on 17 March 2005, this conference was an initiative by the British government to discuss the issues of transparency and oil revenue, following up on a conference two years earlier. The Conference was attended by various participants from the oil industry, governments (including Prime Minister Mari Alkatiri), civil society and international financial institutions.

*La' o Hamutuk* was invited to the meeting as a delegation from civil society, and our paper (available at [www.etan.org/lh/misc/PetFundSub/05LHtoEITI-UK.htm](http://www.etan.org/lh/misc/PetFundSub/05LHtoEITI-UK.htm)) is being considered for the EITI record. Apart from the conference itself, *La' o Hamutuk* asked Timor-Leste Secretary of State for Tourism, Investment and the Environment Jose Teixeira for a government commitment to follow up on the results of the meeting, and also made this request to Tina Redshaw, British Ambassador to Timor-Leste. Both responded positively. The follow-up will focus on only Timor-Leste issues. According to the Woodside Petroleum company's declaration during the EITI meeting in London, Woodside has also promised to follow up on the EITI meeting to ensure transparency from the side of the international oil companies involved in the exploitation of oil and gas in the Timor Sea.

At the conference, *La' o Hamutuk* supported mandatory requirements that companies should publish what they are paying to governments and that governments also should publish what they receive from oil companies. We also pointed out gaps between our government's statements in London and what is actually required by Timor-Leste's Petroleum Laws. *La' o Hamutuk* will continue to work to see that promises by the government of Timor-Leste and the international oil companies are realized. ❖



### ***La' o Hamutuk* has updated our *OilWeb* CD-ROM with significant new information.**

This invaluable reference includes information on Timor-Leste's petroleum resources, the history of exploration and development here, detailed legal and documentary data (including a film) on the Australia-Timor-Leste maritime boundary dispute, as well as background articles on consequences of oil and gas development around the world. The new addition includes text and commentary on Timor-Leste's Petroleum Act and Petroleum Fund Act, plus many local and global background papers on transparency, the "resource curse", and other essential information.

All of the original historical and political analysis, audiovisual material, etc. is still on the new edition, which has more than 2,000 files.

Hundreds of copies have already been distributed worldwide. The *OilWeb* CD is available from our office and a few international distributors: \$2 for campaigners, \$50 for institutions.

The next *La' o Hamutuk Bulletin* will include articles on Timor-Leste's new petroleum laws, and how those laws fail to protect Timor-Leste from serious problems which often come with oil and gas development. For a preview, see [www.etan.org/lh/misc/PetRegSub/04submission.html](http://www.etan.org/lh/misc/PetRegSub/04submission.html)

# The Community of Portuguese Speaking Countries (CPLP)

On 20 May 2002, the day Timor-Leste's independence was restored, the new nation became an official member of the Community of Portuguese Speaking Countries (CPLP), joining Angola, Brazil, Cape Verde, Guinea-Bissau, Mozambique, Portugal and São Tomé and Príncipe. Although Timor-Leste had been an "Invited Observer" of CPLP meetings since 1998, it could only become a full member after its independence, and after the new constitution declared Portuguese as one of its official languages.



The community sees itself as a "new political project, which has as [its] main base the Portuguese language, historical link[s] and common patrimony of the Eight [members] – which constitute a geographically [discontinuous] space, but identified by a common language." That said, it is only in Portugal, Brazil and Angola where Portuguese is spoken by a majority of the population.

In terms of their common historical links, the "third world" members were all invaded and colonized by Portugal for hundreds of years, which, of course, brought similar influences to all of them. In particular, Timor-Leste shares especially close links with the African members, due to a comparable history of oppression under Portuguese colonialism and similar liberation movements. During the struggle for independence from Portugal in the 1970s, many East Timorese nationalist leaders received support and inspiration from liberation movements in countries such as Angola, Mozambique and Guinea-Bissau. Those were also the first countries to recognize Timor-Leste's independence declared on 28 November 1975. It is also true that the CPLP has, since its creation, officially supported Timor-Leste's struggle against the Indonesian occupation.

Now, however, more than 30 years later, what does it mean for Timor-Leste to become a member of a community of Portuguese speaking countries? In addition to historical links of support between Timor-Leste and some of the CPLP members, what can CPLP offer to an independent Timor-Leste?

## What is the CPLP?

The Community of Portuguese Speaking Countries was created on 17 July 1996, coincidentally exactly 20 years after the Republic of Indonesia officially claimed the annexation of Timor-Leste as its 27<sup>th</sup> province (Integration Day). The CPLP represents, in effect, a re-assembly of the former Portuguese colonial empire.

Unlike the English and French communities (the Commonwealth and the Francophone Community), which are more focused on economic "cooperation" and "development," the Portuguese community has a very strong cultural element of promoting the Portuguese language and "lusophony" (see below). The promotion of the Portuguese language is clearly stated as one of the three main goals of the community. According to its statute, any State can become a member of the community as long as it uses Portuguese as its official language.

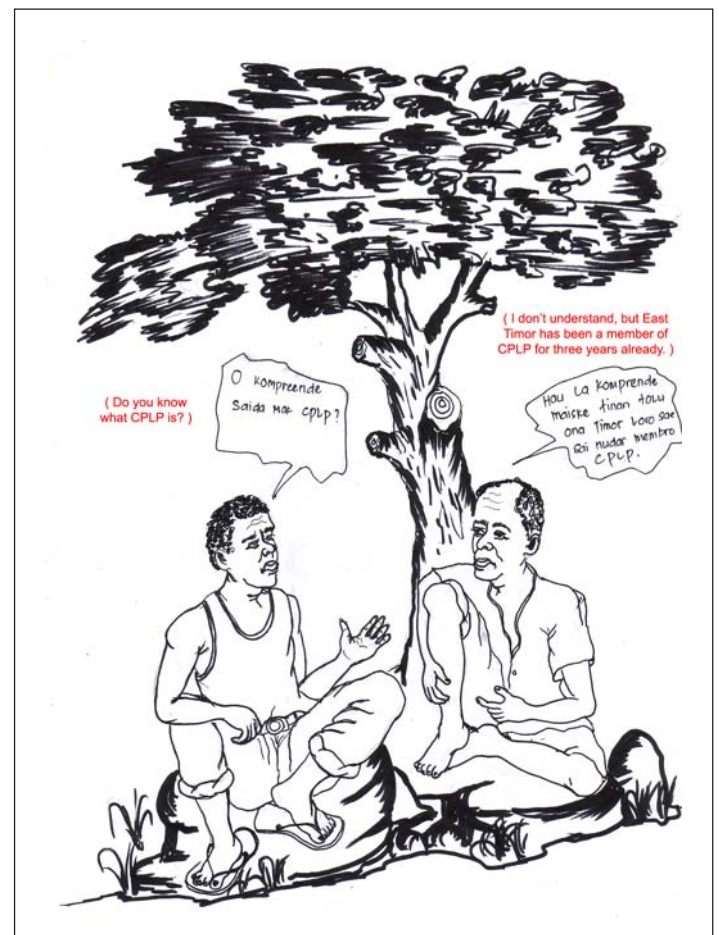
Since its inception, the CPLP has been guided by the following principles:

- √ Equality among the member States;
- √ Non-intervention in internal matters of each member State;
- √ Respect for the national identities of each;
- √ Reciprocity of treatment;
- √ Excellence in terms of peace, democracy, the rule of law, human rights and social justice;
- √ Respect for members' territorial integrity;
- √ Promotion of development;
- √ Promotion of mutually advantageous cooperation.

## CPLP's Structure

CPLP is composed by three decision-making bodies and one executive body. Decisions in all three decision-making bodies are made by consensus.

- √ **Conference of Head of States and Governments:** It meets every two years or anytime a minimum of two thirds of the member states require. This body is composed of the highest authority of each member State and is the highest decision-making body. The next meeting of the Head of States will happen in 2006, in Guinea Bissau.
- √ **Council of Ministers:** Composed of the Ministers of Foreign Affairs of each member State, the Council meets every year or when required by at least two thirds of the members. It responds to the Conference of Head of State and Governments.





√ **Permanent Committee:** Composed of one representative of each member State, it meets monthly at the CPLP headquarters in Lisbon. It is coordinated by the representative of the country, which holds the presidency of the Council of Ministers.

√ **Executive Secretariat:** This is the main executive body of the CPLP. It implements the decisions made in the three decision-making bodies above. The Secretariat is directed by the Executive Secretary, an eminent person from one of the country members, for a two years mandate.

In addition to these four bodies, the CPLP also has the **Focal Points for Cooperation**, which coordinates the cooperation activities in the scope of the Community and assists all other CPLP bodies responsible for cooperation. There are also **Thematic Ministerial Meetings** in which ministers and secretaries of State occasionally meet with the aim to coordinate the cooperation activities in their respective areas.

The Executive President of the CPLP is Fradique de Menezes, from São Tome and Principe, and the Executive Secretary is Luis Fonseca from Cape Verde. Both were elected at the Fifth Conference of Heads of States in São Tomé in July 2004.

### Budget

The Executive Secretariat's budget is composed of obligatory annual fees paid by each member, plus voluntary contributions. The Standing Committee on Consultation is responsible for preparing the budget, which is subject to approval by the Council of Ministers.

In fact, CPLP is almost a "bankrupt" community. Many of its members often fail to pay their annual fees, and typically only Brazil and Portugal are able to make voluntary contributions. Even so, these two countries are more worried about their own bilateral projects than in investing in the community.

When interviewed by Lusa in June 2004, the then-Executive Secretary, Mr. Zeferino Martins, reported that Portugal, Brazil, Angola and Mozambique normally pay their annual fee. Guinea Bissau rarely pays, and São Tomé and Cape Verde, when they pay, are late. Timor-Leste itself said in the last meeting of the CPLP Council of Ministers that it will probably be unable to pay its membership for the next few years.

However, according to Manuel Brito Semedo, director of the CPLP's International Institute of Portuguese Language, in 2002 and 2003 only half of the members paid their annual fee, and in 2004 only two did.

#### Voluntary Contributions – Fiscal Year 2004 (Euros)

Angola .....	103,211
Brazil .....	309,427
Mozambique .....	36,174
Portugal .....	393,892

\* Source: [www.cplp.org](http://www.cplp.org), Resolution on the Approved Budget for the Executive Secretariat for the year 2005

The approved budget for 2004 was 1,082,704 Euros. It was financed by the annual membership fee of 30,000 Euros per member and by voluntary contributions amounting to 842,704 Euros.

For an international community that involves eight members and such ambitious goals, this is a very modest budget. Since we know that many members didn't pay their fees, the actual budget must have been considerably lower.

There is also the "Public Fund," limited to financing cooperation projects within the community. This fund is very small – also due to a lack of donations by members – and many approved projects never move beyond paper for lack of funds.

### What does the CPLP do?

All CPLP's activities and actions stem from its three main objectives: politico-diplomatic agreement; social, cultural and economic cooperation; and promotion and spreading Portuguese language and Lusophone culture.

#### 1. Politico-Diplomatic Coordination:

As with most of the regional and/or post-colonial communities, the CPLP has as one of its main goals to constitute a unified group to defend the common interests of its members, primarily in the scope of multilateral organizations such as the United Nations and its agencies, thus strengthening the presence of its members on the international stage.

One example of this unified voice is the CPLP's support for Brazil's objective to get a permanent seat in the UN Security Council. This reflects the interests of Brazil itself, but also the interests of all other CPLP members, which are hoping to have an unconditional ally in the Security Council. When *La'o Hamutuk* interviewed Timor-Leste's Secretary of Defense, Roque Rodrigues, he stressed the importance for Timor-Leste to have such a "good friend" in the Security Council.

From its creation, the CPLP championed the cause of Timor-Leste as one of the main goals of its diplomatic efforts. In every meeting of the CPLP Council of Ministers there was a statement affirming its support for the independence of Timor-Leste. The motto "Free Xanana, free Timor-Leste" was raised by all CPLP members in every international forum in which they participated.

However, this "unified voice" is not always so unified. As a CPLP documents says, this diplomatic coordination has the goal of defending "common interests and necessities" of its members. When the interests and necessities are not the same, the CPLP loses its voice as a group. That happened regarding the invasion of Iraq by the U.S. and its allies. CPLP was unable to get a consensus and issue a common position. Although Brazil, Cape Verde, São Tome and Mozambique publicly condemned the invasion, Portugal and Angola openly supported it.

Timor-Leste was neutral on the invasion, although Minister of Foreign Affairs José Ramos-Horta declared his support for the "peace mission" led by the United States in Iraq.

Most of the politico-diplomatic actions led by the CPLP are related to its own members. In recent years the CPLP sent missions to mediate crises in São Tome and Principe and Guinea Bissau, as well as election observers to Mozambique (2003) and Guinea Bissau (2004).

The CPLP is composed of mainly low-income and politically weak countries, with little power of pressure in the international arena –with the partial exceptions of Brazil and Portugal. Therefore, diplomatic efforts by CPLP to defend the interests of its poor members in the face of rich and powerful countries are of dubious effectiveness.

## 2. Social and Economic Cooperation

Effective international cooperation depends to a large extent on money, something CPLP lacks.

In addition to projects developed and funded within the scope of the community, CPLP also coordinates activities of public and private institutions with the aim of increasing cooperation among the member states and their institutions, such as the Brazilian Agency for Cooperation (ABC) and the Portuguese Institute for Aid to Development (IPAD). CPLP's cooperation projects are financed not only with resources granted by the member governments, but also increasingly by resources available through partnerships with multilateral bodies, non-governmental organizations, companies and private entities interested in supporting the social and economic development in Portuguese speaking countries.

The budget approved for cooperation projects at the 10<sup>th</sup> Meeting of the Focal Points, in February 2005, was 640,000 Euros. According to the Executive Secretary of CPLP, Luis Fonseca, the Special Fund of the organization will fund 500,000 Euros of this amount.

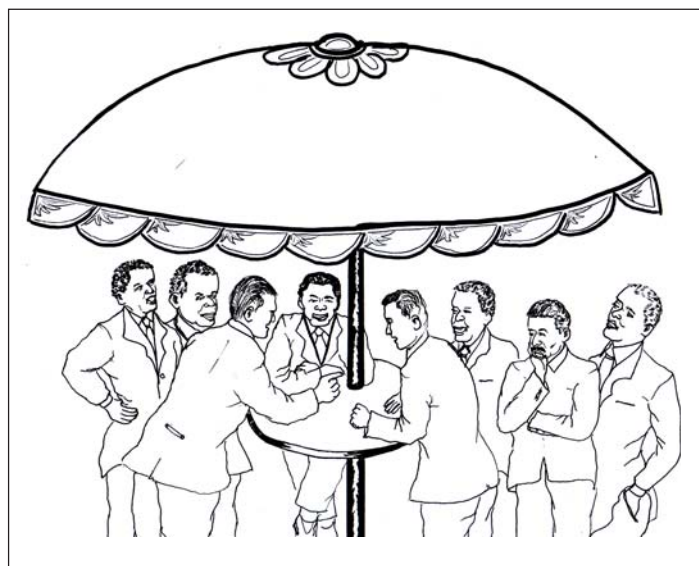
As illustrated by the table below, three of the four projects approved at the meeting are capacity building, and one is in the health sector.

Project	Developed by	Budget (Euros)
Capacity Building in Small business for Women	Federation of Associations of Business Women of the CPLP	288,000
Capacity Building (project yet to be defined)	Brazilian Agency for Cooperation	150,000
Capacity building for 20 government officials from Angola, Cape Verde, Guinea-Bissau, Mozambique, Sao Tome and Principe and Timor-Leste, in international commercial relations.	Brazil's Ministry of Foreign Affairs	129,500
Seminar on Treatment for Malaria	Institute of Hygiene and Tropical Medicine (an initiative of the governments of Portugal, Angola and Brazil)	72,500

If these projects are realized, it will be the first time that Timor-Leste is included in CPLP-funded projects. Since the restoration of independence in 2002, Portugal and Brazil have funded and implemented several cooperation projects in Timor-Leste (see *La'o Hamutuk Bulletins Vol. 3, No. 6* and *Vol. 4, No. 3-4*), but all of them have been bilateral.

## 3. Promotion and spreading Portuguese language and "Lusophone" culture

This is the primary reason behind the creation of the CPLP. "Lusophone" culture is a nebulous concept, quite difficult for non-Portuguese people to understand (even those who



speak Portuguese). In short, one could define "lusophony" as the Portuguese colonial legacy, and that which identifies the former Portuguese colonial empire, for which the maximum expression is the Portuguese language.

Nearly every CPLP meeting discusses how to promote the Portuguese language within the country members and internationally. Although Portuguese is one of the official languages of all members, native languages dominate in five of the CPLP countries, as in Timor-Leste.

The main project designed to promote the Portuguese language in these countries is the International Institute of Portuguese Language (IILP) based in Cape Verde, created in 2002. The Institute is the jewel of the CPLP, but like the rest of the community it suffers from lack of funds and projects which are never implemented. Although the Institute has officially existed for three years, it has not been very productive. According to its director, the IILP can only be effective "if the members pay their annual dues, which constitute the budget of the institute." He also said that 60% of the budget goes for administration and salaries, leaving very little for actual projects.

Again, most of the projects on these topics are funded and implemented bilaterally, by Portugal and Brazil, and in cooperation with the Camões Institute and the Centers for Brazilian Studies.

Both Portugal and Brazil focus their current aid projects in Timor on education and the "reintroduction" of Portuguese language, sending individuals to teach Portuguese in the formal and non-formal system education sectors and to train Timorese teachers.

In April 2005, the Portuguese wire service *Lusa* wrote that "the number of East Timorese who speak Portuguese has increased three times since Independence," going from 5-10% percent to almost 25%. Such a claim has little basis in reality. The number of East Timorese who speak Portuguese is, in reality, quite low. It is perhaps for this reason that, during the ceremony of anniversary of the newspaper *Semanário*, in January 2005, President Xanana Gusmão and Prime Minister Mari Alkatiri both accused the CPLP of doing nothing to help the promotion of Portuguese in the country.

## Conclusion

There is no doubt that two (or more) are stronger than one, and that it is becoming more and more difficult for small, isolated countries to survive in today's world. In an ideal world, countries would get together and form communities according to common interests, mutual support and true solidarity. In this ideal world there would be movements and institutions which could change the power balance in the world and achieve far greater levels of justice.

But since this world is far from ideal, countries get together for numerous reasons which most of the time has little to do with true solidarity. In the capitalist way of globalizing, these "communities" repeat to varying extents the dominant dynamic throughout the world: high-income countries have a disproportionate amount of influence over low-income ones.

And the CPLP is no different. Although unlike most international and multilateral organizations, all member States have the same voting power (no matter how much money each contributes to the organization), it's clear that Portugal and Brazil dominate the CPLP according to their own agendas and interests. They are the richest and most powerful countries of the community, give the highest contributions and present, finance and implement most of the community's projects. They basically lead the community.

For these two countries, the advantages of such a community are quite clear: they broaden their influence, get unconditional votes for their candidates in international organizations and guarantee new markets for their products.

But what are the advantages for a small, low-income and not powerful country such as Timor-Leste? Timor has no production to export apart from coffee and, in the future, oil, which many other members of the community also export. It has very little "Lusophone" culture to promote and little influence over the community. Perhaps Timor-Leste feels that it has a historical debt, because the CPLP has, since its beginning, supported Timor-Leste's independence.

One advantage could be aid. But the CPLP is a "poor" community, with a very small budget for "cooperation projects," most of which prioritize the African members, not Timor-Leste. Up until now, Timor-Leste has not received any CPLP cooperation projects.

It is true that Timor-Leste gets considerable amounts of bilateral aid from Brazil and Portugal, which would not happen if Timor-Leste hadn't chosen Portuguese as its official language. When investigating Brazilian aid to Timor-Leste, *La'o Hamutuk* interviewed the then Brazilian ambassador, Mr. Kiwal de Oliveira, who said that if Timor-Leste had not chosen Portuguese as one of its official languages, Brazil would most likely not have any cooperation projects in the country. We would not be surprised if similar sentiments had come from Portugal. As this is bilateral aid, conditions are usually attached.

The CPLP has been criticized for its lack of effectiveness (and interest) in defending the interests of its poorest members. When visiting Angola in May 2005, CPLP's Secretary said that the community makes the most progress in the areas of politico-diplomatic coordination and cooperation between members. But some heads of state do not seem to agree. Last year, Cape Verde's prime minister declared that CPLP should become more dynamic, especially regarding the African continent and in strengthening relationships between the members. Early this year, East Timor's prime minister himself showed his dissatisfaction with the community, telling *Lusa* that the CPLP "hasn't yet created mechanisms to affirm itself in the international arena."

A community in which six of its members are among the poorest in the world, in which thousands die very year from starvation, malaria, AIDS and lack of potable water, can only be effective when it becomes a true community, based on solidarity and not primarily on the interests of its two most powerful members. ❖

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## Editorial: Whitewashing Wolfowitz

Paul Wolfowitz's nomination and subsequent appointment to head the World Bank was, by the Bank's own admission, received with a "mixed response." Among the positive attributes some said he would bring to the job was the development experience gained during his tenure as ambassador to Indonesia in the 1980's. According to such thinking, Wolfowitz promoted sound economic thinking and regional security during his ambassadorial stint, while having a strong record of 30 years of public service. Wolfowitz' backers confidently predicted his critics would be pleasantly surprised by the man regarded as the Bush administration's in-house intellectual.

We doubt it.

Our concerns about the World Bank's new president centre around two interrelated matters. First, he is a strong advocate of one-size-fits-all neoliberal economics, systematically used in developing countries with demonstrably poor results. Second, he has shown contempt for democracy and international legal mechanisms through his support for the Indonesian military (TNI) and the war on

Iraq. That said, his appointment is in itself symptomatic of larger structural problems of democracy and transparency at the Bank that must be addressed if inroads are to be made in alleviating poverty in the so-called developing world.

Wolfowitz spent his time in Jakarta (1986-89) pushing economics and security, while merely paying lip-service to human rights and democracy. Though he now takes credit for having catalyzed democratic reform as ambassador and in his previous job as assistant secretary of state for East Asia and the Pacific, it is difficult to see how Wolfowitz' and Washington's association with brutal dictatorships in Southeast Asia — Suharto and Ferdinand Marcos of the Philippines, as well as Chun Doo-Hwan of South Korea — can be regarded as anything other than active encouragement and patronage. These dictators, with anti-communist credentials firmly in tow in keeping with the U.S. cold war agenda, also let their economies be used as testing grounds for the prevailing economic policies of the day — known collectively as the 'Washington Consensus.' These ideas were

endorsed by the U.S. government, and then exported by the World Bank and IMF.

Political economist Jeffrey Winters notes that Wolfowitz oversaw the Economic Policy Support Office (EPSO), stationed in the U.S. Embassy in Jakarta. The EPSO, the World Bank and IMF were responsible for promoting some of the most calamitous economic planning inflicted on Indonesia, such as the deregulation of the banking sector. This set the stage for private banks to set up with few rules governing their conduct and no mechanism for the government to restrain them. The Indonesian economy was turned into a truck without brakes, heavily laden with the public's deposits and careening towards the 1997-8 Asian economic crisis, when the banking system had to be bailed out. This led to a huge debt sustained ultimately by the Indonesian people.

The IMF/World Bank prescription for Indonesia was the same for other developing countries: trade liberalization, reduced tariff barriers, an opening up to foreign investment, the encouragement of export-oriented industries, privatization, and deregulation. Money could flow freely across national borders, while workers could not. The paramount goal of this approach was economic growth that would, so the story went, reduce poverty and unemployment rates and, as another by-product, result in the strengthening of democratic values such as freedom of speech and the press.

These seriously contestable assumptions of the Consensus were based on the supposedly irrefutable science of neo-classical economic theory. Few countries subjected to the Consensus during that era emerged unscathed. Subsequently for example, during the Asian economic crisis, those economies that accepted the advice of the U.S. not to impose 'capital controls' (allowing investors to electronically and instantly move money out of hard-hit countries) saw the crisis in their countries deepen. These were many of the same countries, including Indonesia, which adopted the Consensus wholesale.

### **Wolfowitz and the TNI**

Wolfowitz involvement with Indonesia stretched beyond his time as ambassador. Ever since the U.S. Congress banned military training for Indonesia in 1992, Wolfowitz has advocated resumption of U.S.-Indonesia military ties and other support for the Suharto regime. After he became under-secretary of defense in 2001, Wolfowitz was in a position of authority, and the Bush administration has recently acted to restore this training. These moves are partly motivated by Indonesia's strategic importance to Washington in the 'War on Terror', although the path towards this has been eased by Wolfowitz' own network of connections with senior members of the TNI, forged in the 1980's.

During a trip to Jakarta in January in the aftermath of the tsunami, he used the occasion while standing alongside Indonesian Defense Minister Juwono Sudarsono, to again raise the issue of military training for the TNI. He argued that U.S. military training could provide a positive influence: "I believe we've mitigated some of the problems by the fact that many Indonesian officers...have been to the United

States...I think it's a resource that we need to rebuild." In another interview he was more specific: "Officers who've had real contact with the U.S. are much more open in their outlook, much more accepting of civilian control, much more supportive of democracy."

With this in mind, it is instructive to take the case of one such U.S.-trained officer, Major General Sjafrie Sjamsuddin, who attended a special intelligence-training course in the U.S. in 1977, and another on anti-terrorism in 1986. By 1991, Sjamsuddin was the head of Kopassus intelligence and played an important role in the Santa Cruz massacre. In the wake of the 1999 referendum, a secret document showed that, along with counterpart and overall commander of the TNI and militias in East Timor, Major General Zacky Anwar Makarim, Sjamsuddin planned the TNI/militia policy of terrorizing the population and destroying infrastructure. Illustrating how little the TNI has changed since then, Sjafrie was appointed chief TNI spokesman in 2002.

Sjamsuddin is just one of many TNI officers responsible for war crimes and crimes against humanity who received U.S. training. Paul Wolfowitz continues to advocate training for a military that has refused to accept accountability for its past conduct and continues to commit atrocities in Aceh, West Papua, and elsewhere in Indonesia. Given this – and his recent role as one of the principle architects of the illegal invasion and disastrous occupation of Iraq – Paul Wolfowitz has consistently demonstrated disdain for basic human rights and international law.

### **Conclusion**

Paul Wolfowitz's appointment makes a mockery of the idea that the World Bank is an institution dedicated to poverty eradication and a more just and peaceful world. A man who has consistently championed ties with one of the world's most authoritarian regimes and who advocates rampant American militarism in order to further a world order that disproportionately benefits the United States is hardly a friend of the global majority.

Wolfowitz's appointment painfully demonstrates that the World Bank is in dire need of reform. It is a fundamentally undemocratic institution: it is run according to a share of the votes based on money contributed by its members, favoring rich countries – especially the United States, which has always appointed the Bank's president. As such, the Bank has always had an American president, illustrating the ties between the Bank and U.S. geopolitical and economic interests. (Australian-born James Wolfensohn became a naturalized U.S. citizen prior to becoming Bank president.)

The Bank is in dire need of addressing these issues and taking a detached look at its economic policies that have contributed to gross socio-economic inequalities throughout the world. Similar to the case of Robert McNamara (who also came directly from the U.S. Department of Defense and an unpopular war – Vietnam – to head the World Bank for over a decade) Paul Wolfowitz' past indicates that his presidency will perpetuate and increase global economic injustice. ❖

# CoE: Lack of Political Will Blocks Justice for Timor-Leste

In late May 2005, the Commission of Experts (CoE) submitted its much-awaited report to the United Nations Secretary-General. Two months later, the UN published the report as a public document, following its presentation to the Security Council, and the report is available on the internet at <http://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/426/17/pdf/N0542617.pdf?OpenElement>.

Secretary-General Kofi Annan appointed the commission in February 2005 to review the adequacy of the judicial processes in Indonesia and Timor-Leste in bringing those responsible for the serious violations of human rights committed in 1999 to justice. This followed a number of Security Council resolutions reaffirming that the perpetrators of the violence that terrorized the Timorese people be held accountable in courts of law. The Commission's members were an eminent Indian jurist, a Japanese professor of international law, and a Fijian human rights leader, all with long experience in international human rights and law.

In Timor-Leste the CoE review included the Serious Crimes Unit (SCU), the Special Panels for Serious Crimes (SPSC), and the Defense Lawyers Unit. Although the Indonesian government initially declined to cooperate with this review, in mid-May Jakarta allowed the commissioners to enter Indonesia. The Commission was also asked to "consider ways in which its analysis could be of assistance to the Commission for Truth and Friendship" recently formed by the governments of Indonesia and Timor-Leste (See page 16).

As a result of their investigations, the commissioners concluded that justice for the 1999 crimes has not yet been achieved for the people of Timor-Leste. In particular, these processes have failed to bring to account "those who bear the greatest responsibility for serious violations of human rights." The primary reason for these failures, according to the report, is the lack of political will—especially in Indonesia. In mid-June, Timor-Leste's President and Prime Minister wrote to the UN Secretary-General, objecting to the Commission's recommendation for an international tribunal and defending their bilateral Truth and Friendship Commission.

## Justice and political will in Indonesia

The Commission found that, despite resource, time and mandate constraints, Indonesia's 1999-2000 Commission of Inquiry into Human Rights Violations in East Timor (KPP HAM) investigation was conducted in a "comprehensive, credible and objective manner" in compliance with applicable international standards.

However, the Commission found that the subsequent judicial processes in Indonesia, including the 1999 Attorney-General's Office investigation and the Ad Hoc Human Rights Court in Jakarta, were "manifestly inadequate with respect to investigations, prosecution and trials, and has failed to deliver justice. The atmosphere and context of the entire court proceedings were indicative of the lack of political will in Indonesia to seriously and credibly prosecute the defendants." In addition, the report stated that "Many aspects of the ad hoc judicial process reveal scant respect for or conformity to relevant international standards."

The commissioners also noted that the failure to achieve justice in Timor-Leste is largely due to the lack of cooperation of the Government of Indonesia with the Timor-Leste serious crimes process for investigation and access to indictees.

Importantly, the Commission found sufficient evidence to indict and prosecute a number of high-level individuals (such as former general Wiranto and others indicted with him) and expressed its grave concern that such high-level perpetrators have not been brought to justice in Timor-Leste.

However, the Commission noted the progressive changes in Indonesia since the early Ad Hoc trials and commends as "laudable" the recent legal reforms in Indonesia to strengthen the rule of law and respect for human rights, in particular the separation of executive power from the judiciary.

## Justice and political will in Timor-Leste

The Commission found that the serious crimes process in Timor-Leste "achieved some measure of justice for the victims and their families" and "accountability for some of the atrocities committed in 1999." While the SCU and SPSC performed poorly in the first few years, the serious crimes process improved considerably over time and is now (or was at the time of the visit) "generally satisfactory and accords with international standards." Importantly, the Commission found that it "has also significantly contributed to strengthening respect for the rule of law in Timor-Leste" and "encouraged the community to participate in the process of reconciliation and justice."

That said, the Commission noted the failure of the serious crimes process to bring most alleged perpetrators to trial due to the lack of an extradition agreement between Timor-Leste and Indonesia. Consequently, almost all of those convicted in the SPSC process have been East Timorese people of relatively low level command responsibility. At the same time, the Commission noted the "insufficient resources to meet the minimum requirements of the respective mandates" – that under UNTAET ultimately led to the restriction of its capacity and mandate to only 1999, ostensibly for practical purposes.

The Commission criticized President Xanana Gusmão's effort to stop the *Wiranto et al* indictment from being forwarded to Interpol, highlighting it to illustrate how the Office of the General Prosecutor of Timor-Leste "appears to be subject to undue political pressure and influence." In this regard, the judicial process does not fully conform to national law or international standards because the OGP does not function independently from the government. Overall the Commission concluded that currently there is "an absence of political will and Government support in Timor-Leste for the continuation of the serious crimes process." Given the end of the serious crimes process in Timor-Leste on 20 May, the Commission expressed its fear that the incomplete nature of the process could lead to a breakdown in the country's criminal justice process and encourage impunity.

The Commission made a special note that the records of the SCU and SPSC must be guaranteed secure protection.

## Key recommendations to achieve justice

In light of their review, the Commissioners set out a number of options to the Security Council to ensure that credible justice is achieved:

Option one calls on the Indonesian and Timor-Leste governments to conduct credible judicial processes within their own countries on these serious crimes with the necessary international assistance.

In the case of Indonesia this would involve a comprehensive review, expansion of the judicial mandate as it applies to East Timor in 1999, the likely re-trial of cases, as well as measures to ensure transparent judicial integrity. This explicitly includes the investigation of the *Wiranto et al* case with a view to prosecution. In the case of Timor-Leste this would involve supporting the continuation of the serious crimes process until its work is completed, the separation of the Office of the General Prosecutor from political interference, and the timely processing of arrest warrants. The Commission notes that it is necessary that both Governments agree to mutual legal cooperation, including access to indictees in Indonesia.

It is recommended that the commitment of the two Governments be practically demonstrated within a period of six months from a date set by the Secretary-General.

Option two: If the above recommendation is not chosen by the Security Council or accepted by the both Governments, the Commission strongly recommends that the United Nations set up an alternative mechanism for a credible judicial process to be completed. It recommends this mechanism enable the Timor-Leste Government to retain sovereignty over the judicial process and encourages judicial capacity building with international assistance.

Option three: If neither of the above recommendations are enacted, the Commission recommends that the Security Council establish an international tribunal based in a country other than Indonesia or Timor-Leste.

Option four: Consider the possibility of using the International Criminal Court as a means for investigating and prosecuting serious crimes committed in Timor-Leste.

Complementary option: The Commission notes that Member States of the United Nations may, in accordance with their national laws, “lend their jurisdiction to the international community at any time to pursue the investigation and prosecution of persons responsible for serious violations of human rights in Timor-Leste in 1999.”

## The Commission’s concluding remarks

The Commission points out that although they have been restricted to looking at the judicial processes of 1999 the Commission “cannot help but be mindful of the contextual background leading to the situation in 1999, in particular the scale and gravity of atrocities committed prior to 1999, during Indonesia’s 24-year-long rule over East Timor.”

## Peaceful demonstration greets the arrival of the Commission of Experts

On 5 April 2005, about 100 human rights and justice activists and students held a silent protest at the Nicolau Lobato International Airport, Dili, to greet the arrival of the Commission of Experts formed by the UN Secretary-General. The activists held up banners which read: “**No Impunity, No Amnesty, Justice For Victims.**”

The following day, NGO’s from the National Alliance for an International Tribunal met with the Commission of Experts at UN Headquarters, Obrigado Barracks. The meeting was organized by the UNMISSET Human Rights Unit to review the justice implemented by the Special Panels of the Serious Crimes Unit and the Ad Hoc Human Rights Court in Indonesia. Issues discussed included whether the processes had been implemented according to international law and if the functions and responsibilities implemented had provided justice to the victims. During the meeting the Commission raised the issue of whether the people of Timor-Leste had chosen reconciliation over justice.

The Commission of Experts also met with victims and relatives of victims from 13 districts, a meeting which was organized by the UNMISSET Human Rights Unit. Here the Commission was able to hear directly from the victims regarding their wishes.

The results of these meetings and the information gained from various NGO’s and relatives of the victims were part of the information which resulted in the Commission of Experts Report to the UN Secretary-General and Security Council.

While recognizing the importance of forgiveness, the Commissioners insist that it must be coupled with justice and end their report with strong statements that call on the international community to support justice and the rule of law for the Timor-Leste people and in the interests of the international community.

“No violation of human rights, no invasion of human dignity and no infliction of pain and suffering on fellow human beings should be allowed to go unpunished. While recognizing the virtue of forgiveness and that it may be justified in individual cases, forgiveness without justice for the untold privation and suffering inflicted would be an act of weakness rather than of strength.”

“The Commission wishes to emphasize the extreme cruelty with which these acts were committed, and that the aftermath of these events still burdens the Timorese society. The situation calls not only for sympathy and reparations, but for justice.” ❖

## Editorial: Truth and Friendship

(continued from back page)

Crimes, with the result that 76% of those indicted by the Serious Crimes Unit are enjoying sanctuary in Indonesia. In terms of Jakarta's ad-hoc tribunal, not a single Indonesian received a sustained conviction — a result in part of a highly flawed and insincere process. In addition, Jakarta did not provide any documents to the CAVR, despite numerous requests. For such reasons, there is little evidence that the Indonesian government will work with the CTF in a manner that produces beneficial results. Although the CTF is not empowered to hold perpetrators accountable, it is instructed to “recommend rehabilitation measures for those wrongly accused of human rights violations,” leading to fears that even the initial steps taken by KPP-HAM or the Serious Crimes Unit's indictment of *Wiranto et al* could be reversed.

The CTF is also vulnerable to government intrusion. The two foreign ministers have a direct oversight and advisory role, which raises questions about the integrity of the findings. In this context, it is difficult not to conclude that the real aim is to achieve consensual rather than conclusive truth, since truth is never served well by political management.

Finally, the CTF does nothing to address the yawning gap of accountability over the major atrocities committed between 1975 and 1998, a period that covers Indonesia's brutal invasion and almost the entire subsequent occupation. Many of the events during this period were undoubtedly Crimes against Humanity and War Crimes, yet the CTF as now envisioned will completely ignore them. This has the effect of legitimizing Indonesia's initial aggression and its very presence in East Timor—both flagrant violations of international law.

### Questionable legitimacy

There is a mounting range of evidence that the vast majority of Timor-Leste people, particularly victims, demand accountability and justice in formal courts of law for serious crimes. Yet, Timor-Leste's government has not consulted the people in establishing the CTF, discarding their right to justice, nor does it seem likely that it will consult them about recommendations for reconciliation.

The Dili-based Judicial System Monitoring Programme (JSMP) has questioned the formal democratic legitimacy of the CTF, arguing that it is unconstitutional since it bypassed Parliamentary authorization and will grant amnesty without following proper legal processes. Moreover, the Timor-Leste

National Alliance for International Tribunal (ANTI), as well as Indonesian human rights NGOs, argue that the CTF is improper on the grounds that it undermines the judicial proceedings already underway and contradicts United Nations Security Council resolution 1272, which requires that the perpetrators be brought to justice.

### Questionable effectiveness

Reconciliation between the two governments is no substitute for reconciliation between the people of those nations. It stands to reason that a precondition for reconciliation involves identifying the right parties to be reconciled and ensuring their genuine acceptance and participation. The CTF is unlikely to achieve the genuine involvement of the perpetrators, the victims or the two nations' peoples. Without their participation, the CTF's version of reconciliation can only be a sham.

For these reasons the Timor-Leste National Alliance and Indonesian NGOs have argued that the CTF cannot provide a firm foundation for a real and lasting reconciliation or strengthen democracy and human rights in the two countries. The CTF cannot create genuine closure or mutual respect through politically palatable shortcuts that try to bypass the people to create “consensual truths.” There are too many recent spectacular failures of government attempts to paper over historical truths to believe that long-term political stability and respect for human rights can be achieved without genuine truth and justice.

### Conclusion

The CTF's critical shortcomings reaffirm *La'o Hamutuk's* view that there needs to be an independent international tribunal. The atrocities committed in 1999—in addition to many more between 1975 and 1998—undoubtedly constitute War Crimes and Crimes against Humanity. As such, the whole international community must bear responsibility for their investigation, prosecution and redress. While we can perhaps understand the pressures on Timor-Leste's government that lead it to take a pragmatic (and timid) approach to accountability, there is no excuse for the international community. The real test of international commitment to human rights is whether justice is as vigorously pursued for those, like the Timor-Leste people, who have less power on the world stage. Failure to do so for the crimes committed in Timor-Leste would only work against the United Nations' credibility and diminish respect throughout the world for international human rights and legal mechanisms. ❖

## Who is La'o Hamutuk?

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In March 2005, the Governments of Indonesia and Timor-Leste signed an agreement to establish a joint Commission of Truth and Friendship (CTF, KVA or CVA) to deal mainly with human rights violations in Timor-Leste in 1999. The key objective of this new body is to “establish the conclusive truth” about the events in order to promote reconciliation and friendship within and between the two countries. The CTF’s mandate is to review and examine materials documented by the Indonesian National Commission of Inquiry on Human Rights Violations in East Timor (KPP-HAM), Jakarta’s Ad-Hoc Human Rights Court on East Timor, the joint Timor-Leste-UN Special Panels for Serious Crimes, and the Commission of Reception, Truth and Reconciliation in Timor-Leste (CAVR). The Commission will produce a public report establishing the “shared historical record” and recommend measures to promote reconciliation and friendship. The CTF is not a judicial process and it is forbidden from leading to or recommending further judicial proceedings against perpetrators.

The Terms of Reference (TOR) for the CTF are online at <http://www.deplu.go.id/2005/detail.php?doc=96e52248b11d7ca67014e8008f2fdead>. This Indonesian Foreign Ministry website also had the TOR in Bahasa Indonesia, but it was removed sometime in July.

The Commission began work in early August. Its ten members are appointed by Timor-Leste (Jacinto Alves, Dionisio Babo, Aniceto Guterres, Felicidade Guterres and Cirilio Cristovao Varadales) and Indonesia (Achmad Ali, Wisber Loeis, Benjamin Mangkudilaga, Msgr. Petrus Turang and Agus Widjojo).

### What is the cost of the Commission for Truth and Friendship?

*La’o Hamutuk* supports the principal of promoting reconciliation and friendship between Indonesia and East Timor. But such reconciliation and friendship must be based not only on establishing the truth about the atrocities committed in Timor-Leste, but also on justice for those crimes. The Commission of Truth and Friendship falls far short in both these areas. For this reason, we have serious concerns about the goals, credibility, legitimacy and the likely effectiveness of the CTF in meeting its stated aims. By providing impunity to perpetrators and denying victims’ access to future justice, and by delimiting its work to the year 1999, the CTF comes at the high cost of truth, accountability and respect for human rights and international law.

The two governments proposed the CTF in late 2004 as an effort to dissuade the UN from appointing the Commission of Experts (CoE, see page 13). Secretary-General Kofi Annan rejected this pressure, and the current political purpose of the CTF is unclear. In their report, the Commission of Experts strongly criticized the Terms of Reference of the CTF, saying that it “contradict[s] international standards on denial of impunity for serious crimes” and has no “mechanism compelling witnesses to tell the truth.” The CoE also observed that “the [Timor-Leste] Government’s firm support for the Commission of Truth and Friendship does not necessarily reflect broad public support in Timor-Leste.”

### Denial of justice and truth

The East Timorese and Indonesian governments have made it clear that the CTF is meant to close the book on the crimes committed in 1999. But unlike the CAVR and other truth and reconciliation commissions, the CTF precludes any judicial processes. The CTF will offer amnesty to all perpetrators who cooperate, and its terms of reference explicitly forbid the CTF process from leading to prosecution or recommending a new judicial body. Instead of determining individual culpability for crimes, the CTF is instructed to emphasize institutional responsibilities. Not only does this make it easy for authorities to avoid moral responsibility, but these measures seem to be aimed at preventing the future establishment of an independent judicial process, such as an international tribunal.

Apart from abruptly blocking justice in the courts, the CTF is unlikely to serve the truth well. This is because the inquiries, taken together, to which the CTF is restricted were severely hampered — sometimes intentionally but also by poor management, incompetence, and inadequate resources. Most importantly, the Indonesian government refused to cooperate with international and Timor-Leste efforts to investigate and bring people accused of human rights violations in 1999 to justice through the Special Panels for Serious

*(Continued on page 15)*

## What is La’o Hamutuk?

*La’o Hamutuk* (*Walking Together* in English) is an East Timorese non-governmental organization that monitors, analyzes, and reports on the principal international institutions present in Timor-Leste as they relate to the physical, economic, and social reconstruction and development of the country. *La’o Hamutuk* believes that the people of Timor-Leste must be the ultimate decision-makers in this process and that this process should be democratic and transparent. *La’o Hamutuk* is an independent organization and works to facilitate effective East Timorese participation. In addition, *La’o Hamutuk* works to improve communication between the international community and East Timorese society. *La’o Hamutuk’s* East Timorese and international staff have equal responsibilities, and receive equal pay. 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.

*La’o Hamutuk* welcomes reprinting articles or graphics from our *Bulletin* without charge, but we would like to be notified and given credit for our work.

*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.*